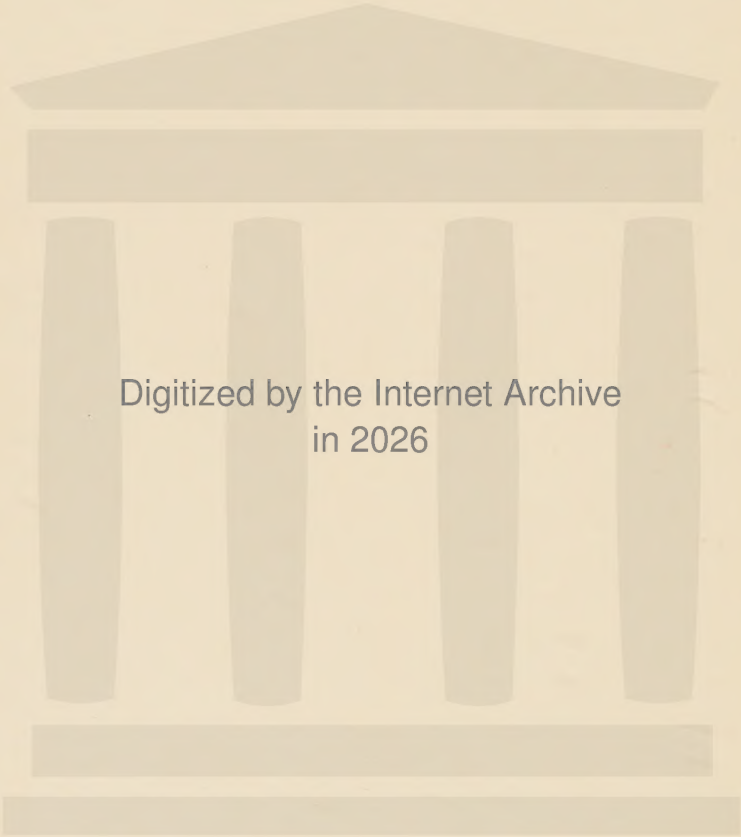
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Abridged Reports

of the

Interstate Commerce Commission

and

Current Digest of Decisions

UNDER THE

INTERSTATE COMMERCE ACT

VOLUME X

(SUPPLEMENTAL DIGEST NO. IX)

(CONSOLIDATED DIGEST VOL. IV)

(112 I. C. C. to 132 I. C. C.)

BY

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OF THE

CHICAGO BAR

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PREFACE

In accordance with the new plan explained at length in the preface of the preceding volume, this book accomplishes a threefold purpose. It is Supplemental Digest No. 9 of the Original Digest set; it is volume X of the Abridged Reports, and volume IV of the Consolidated Digest.

The decisions of the Commission are published very irregularly and frequently a number of volumes overlap. While the greater portion of this book contains the decisions from Volume 112 I. C. C. to 132 I. C. C., it is advisable to call attention to the fact that there are a few points from 104 I. C. C., 107 I. C. C., and 109 I. C. C. which did not appear in the preceding volume but were published since then, and are included in this volume.

This book is arranged alphabetically, similar to the preceding volumes, by such subjects as are the ordinarily accepted divisions into which the principles governing interstate traffic naturally classify themselves. This can best be seen by referring to the Table of Contents, which immediately follows, and is a reprint of the entire classification. It is earnestly recommended that readers study this classification, printed in the front of the book. By seeing the entire classification together, it is easier to become familiar with it, and it will be found a simple way of finding the decisions desired.

The classification, section numbers, and topics in this volume, with the exception of the new subjects added, are exactly the same as in the other volumes, so that when the reader finds decisions of interest in any volume, he can turn to the same subject and section number in any book and obtain all other distinctions and variations on that principle.

Owing to the rapid development of traffic law, some new subjects have been added, which were not in the other volumes, because at the time of their publication, such divisions of the law had not yet been developed. Others will be found greatly amplified since the publication of the preceding volume.

It is again earnestly suggested that readers of this book study the Table of Contents very carefully. As about ten thousand points of traffic law are classified, it can readily be understood that familiarity with the classification is necessary to make the book of the quickest available use. We

have tried to evolve a logical and complete analysis of the field of traffic law and a classification which affords a birds-eye view of the entire subject. But no classification is self executing.

Inasmuch as there are many points which may not be logically classified under a particular head, but which may, nevertheless, have some bearing on it, cross-references are inserted redirecting the reader to such points.

In all cases where it is possible to do so a so-called "fact point" has been made. These "fact points" show tersely, but completely, all evidence on which the Interstate Commerce Commission or the court bases its decision in the particular case. The author has attempted to summarize in an easy, readable style, ton-mile revenues, distances, commodities, rate comparisons and other evidence presented in the particular case. Not only therefore, have all traffic principles been classified but also the economic principles and facts governing each particular case.

The decisions are arranged chronologically under each section, the most recent decisions being placed last.

At the back of the book will be found indexes to the cases involved. Commencing with the volume immediately preceding the indexes of commodities and localities were discontinued. The Commission is now preparing an index of commodities and localities from the inception of the Commission. There is also published by private interests a cumulative index of commodities. The demand for such indexes in the one volume does not appear intense and such indexes are therefore discontinued. It is believed more benefit will be derived by the subscriber if we eliminate any feature which subsequent developments may cause to become mere "padding".

The author takes this opportunity of thanking the many subscribers whose kindly letters of appreciation have been a real reward for the large expenditure of personal time involved in the preparation of this work.

Appreciation is also expressed for the courtesy of the West Publishing Company in permitting the author to make use of their digests and head notes of the state court and federal cases which the author has used in this volume and preceding volumes.

HERBERT C. LUST.

Chicago, Ill., November, 1928.

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CROSS REFERENCES

See Common Carrier; Facilities and Privileges §3 (h); Import Traffic §2 (3o); Switch Tracks and Switching; Tap Lines.

I. APPLICATION OF ABSORBED RATE.

§1. In General.

(a) Prior to decision in 52 I. C. C. 209, carriers absorbed loading and unloading charges at public stockyards, but not elsewhere. In that case carriers refusal to absorb out of their line-haul revenues increases for loading and unloading livestock at public stockyard at Chicago was upheld, on ground that it was duty of shippers rather than of carriers to load and unload livestock and other carload traffic. Since adoption of section 15 (5) of act, carriers have been required to perform loading and unloading of ordinary livestock at public stockyards without extra charge to shippers. However, duty still rests upon shippers to load and unload such shipments at other than public stockyards. Southwestern Horse & Mule Asso. v. A., T. & S. F., 129 I. C. C. 730, 737.

II. DISCRIMINATION.

See Discrimination.

§1½. In General.

(a) In original report, 98 I. C. C. 619, failure of carriers to absorb out of applicable rates the entire compress charge on cotton originating at and forwarded from Jonesboro, Pine Prairie, and Mamou, La., compressed at Alexandria, and reshipped to New Orleans, was not found unreasonable, it being shown that compression was not "at the expense of the carrier" as provided by tariff. Upon further hearing, original report reversed as under terms of the tariff carrier extended to shipper the protection of the through rate, not only in event that compression was "by and at the expense of the carrier," but also when, as here, after compression, it was redelivered to originating carrier, irrespective of whether compression was done by the carrier or some other agency. In either instance carrier would obtain entire haul from point of origin to destination, and transportation facilities accorded would be identical. Reparation awarded. Haas & Co. v. Director General, 123 I. C. C. 121.

§3. Refusal to Absorb.

(a) Nitrate of soda: Proposal to increase rates on, from ship side at New Orleans and subports to points in Arkansas and Oklahoma on class A lines by discontinuing absorption of handling charges at ports, thereby establishing same basis as that applying to destinations on other than class A lines, found not justified. Proposed increase would seriously affect use of this commodity as a fertilizer in its competion with other fertilizers. Moreover, the yield of revenue under present rates seems ample. Nitrate of Soda from New Orleans, 104 I. C. C. 761.

III. CONTROL AND REGULATION

See Control and Regulation.

§4. In general.

(a) The Commission has repeatedly found that a carrier can not be compelled to absorb the switching charges of a connecting line in the absence of unjust discrimination or undue prejudice. Romann & Bush Pig Iron & Coke Co. v. A. T. & S. F. Ry., 129 I. C. C. 509, 510.

IV. REASONABLENESS.

See Reasonableness of Rates.

§5. In general.

(a) Southwest Missouri R. R., respondent, proposed to absorb 30c per ton of the charges for draying carload shipments of lead or zinc ore or concentrates, from the wagon scales of any mine in Kansas or Oklahoma to desig-

nated loading tracks of that carrier in Oklahoma and southeastern Kansas. The mines are served principally by the Northeast Oklahoma and the Mineral Belt, whose loading tracks extend to within a few hundred of almost every mine in the district. All of the ore, however is drayed across wagon scales at the mines before it is loaded on the cars, and the teamsters receive a minimum charge of 50c per ton for the socalled turnaround haul of one quarter of a mile or less. For longer hauls the charges are graded upward from the minimum, but the ore is generally hauled to the nearest loading track or one within the turnaround distance, as the shippers will not ordinarily pay more to have it hauled to a more distant loading point. Respondent operates an electric line from Carthage and Joplin, Mo., to Picher, Okla., which is in the heart of the ore field, but there are only six or seven mines adjacent to its loading tracks. It is mainly a passenger carrying line. Original decision, Drayage absorptions by S. W. M. R. R. Co. 113 I. C. C. 179. The fact that the other lines may be in a relatively prosperous condition, however, would hardly be sufficient reason by denying them the privilege of establishing similar absorptions if respondent is permitted to establish its proposed absorption arrangement. In the event such absorptions were established, respondent would be at the same disadvantage as at present, and in addition it would lose the 30c per ton on all of the ore handled by it. The proposed absorption, however, would be equivalent to a reduction in the joint rates from the loading tracks to the smelting points which are already subnormal in the sense that they are as low or lower than the rates in effect on June 25, 1918, and this reduction would be made without the approval of connecting lines parties to such rates and over the objections of protestants whose rates are generally the same. Certainly it would create a dangerous precedent to permit a carrier to use such an arrangement to invade the field already adequately served by other carriers. Considering the low level of the rates, the announced intention of the other lines of publishing similar absorptions, and the possibility of the practice spreading, the Commission is of the opinion that the proposed schedules would promote destructive competition. At any rate, viewing the proposed arrangement as an extension of the carriers service the proposed schedules do not "plainly state the places between which property and passengers will be carried," as required by section 6. It is, therefore, unnecessary to pass upon the propriety of the constructive station practice in this case. The Commission is not without sympathy for respondent's desire to increase its revenues so that it may operate with profit, but it must give consideration to other things besides respondents situation and needs. Moreover, it is not persuaded that respondent would accomplish its purpose through the absorption of drayage charges. HELD, proposed schedules violate section 6 of the act, because they do not plainly state the places between which the property will be carried, and that they would create undue prejudice and preference in violation of section 3. HELD, further, a method of publishing rates for the transportation of certain classes of property which provides by way of absorption for a uniform reduction in the rates is neither a proper method nor one which satisfies the requirements of section 6. Furthermore, the proposed schedules, if permitted to become effective, would be inconsistent with the performance of the duty imposed upon the Commission by the act. Schedules proposed not justified. Absorption of drayage charges, 128 I. C. C. 405.

(b) Proposed absorption of charges for draying lead or zinc ore to loading tracks of Southwest Missouri R. R. in the Picher district of northeastern Oklahoma and southeastern Kansas, found not justified. Under proposed schedules absorption would be paid on ore drayed from mines at distance from loading tracks at charges graded upward from minimum-haul charge but such hauls being longer than from other mines in the district, shippers would not incur the longer haul and pay the higher rate on account of the absorption. Difference in rates is not predicated upon absorption or nonabsorption of drayage charges, and such difference does not excuse the discrimination between loading tracks. Moreover, ore produced in more distant fields is sold on same market as that from central fields and failure to make the same absorption on such shipments would be productive of undue prejudice and preference. See 27 I. C. C. 347. Absorption of Drayage Charges, 128 I. C. C. 405, 411.

(c) Proposed absorption would be equivalent to a reduction in joint rates from loading tracks to smelting points, which rates are already subnormal, and reduction would be made without approval of connecting lines parties to such rates. Moreover, it would create a dangerous precedent to permit a carrier to use such an arrangement where field is adequately served by other carriers. Considering the low level of rates, announced intention of other lines of publishing similar absorptions, and possibility of practice spreading to other commodities similarly handled, commission is of opinion that proposed schedules would promote destructive competition. Under such circumstances similar reduced rates have previously been found not justified under section 15a of the act. See 69 I. C. C. 589. Absorption of Drayage Charges, 128 I. C. C. 405, 412.

(d) Proposed schedules for absorption of drayage charges on lead or zinc ore to loading tracks of Southwest Missouri R. R. in Picher district of Oklahoma and Kansas, found not to "plainly state places between which property and passengers will be carried," as required by section 6 of the act. Proposed arrangement differs from that prescribed in 34 I. C. C. 453; 91 I. C. C. 539 in that rates are published to apply from loading tracks and not mines or wagon scales, and no obligation rests upon respondent to complete the service beyond end of its rails. While it refers to wagon scales as constructive stations they are not so designated in suspended schedules nor could they be treated as such because proposed absorption would not pay for hauling ore from wagon scales at more distant mines in the district and service will extend only so far as proposed absorption would pay for hauling ore to the tracks. Moreover, no definite points are given and it is doubtful as to where constructive stations could consistently be located. Absorption of Drayage Charges, 128 I. C. C. 405, 413.

(e) Upon further hearing, finding in previous report 102 I. C. C. 353, that switching charges and assessment thereof in addition to road-haul rate on lumber from sawmills in Idaho and Washington, milled in transit at Spokane, Wash., are not unreasonable, discriminatory or unduly prejudicial, affirmed. Nothing of record would warrant a finding that refusal to absorb switching charges under such circumstances as described is in violation of either section 2 or 3 of the act, as tariff provisions with respect to switching charges and their absorption which apply to complainant's traffic apply also to traffic of its competitors. Moreover, in 49 I. C. C. 613; 88 I. C. C. 413, it was found that carriers may lawfully absorb switching charges on competitive traffic, and refuse to absorb them on traffic that is not competitive, so long as all shippers similarly situated are treated alike. Federal Match Corp. v. G. N., 128 I. C. C. 415.

(f) Rates assailed represent increases which are results of cancellation of former absorptions and burden of proof is upon defendant. Amer. Fruit & Veg. Shippers Ass'n. v. Amer. Ry. Exp. Co., 128 I. C. C. 651, 660.

(g) Complainant alleged refusal of defendant to absorb connecting line switching charges, assessed and collected at designated destinations for delivering carload shipment of grain products to socalled off line industries, was and is in violation of tariffs. The grain under consideration originates at points exclusively on defendants line, in forwarded to, and milled at, established transit stations on defendants line which are also junction points with other railroads, and the grain products are thence shipped over defendants line to destinations on that line where delivery to consignee must be accomplished through a switching service performed by another carrier. The record presented indicates that all the traffic was local to the defendants rails and noncompetitive in character from a transportation standpoint. No tariff provision published by defendant has been pointed out which provides that defendant will absorb destination switching charges of other lines on that class of traffic. HELD, complaint dismissed. Southern Kansas Millers Club v. A. T. & S. F. Ry., 129 I. C. C. 632.

§5½. Legality.

See Legal Rates; Legality of Rates.

(a) Upon investigation by commission on its own motion into and concerning a certain tariff of Southwest Missouri R. R., an electric line, providing for absorption of drayage charges on ore from the Picher, Okla., district FOUND: Such tariff is nothing more or less than a statement that out of its published tariff rate the carrier will make to shippers at

certain mines, either directly or through the medium of payments to teamsters employed by them, specified rebates varying in amounts in inverse ratio with accessibility of such mines to its rails, but that shippers at other mines, including those nearer to as well as farther distant from its rails, will be required to pay full published tariff rate if they tender at same loading tracks like traffic for like transportation. Such tariff clearly results in unjust discrimination under section 2, and provides for application of more than one rate in violation of section 6, of the act. Drayage Absorptions by S. W. M., 113 I. C. C. 179.

(b) The Commission has in a number of cases found that carriers may lawfully absorb switching charges on competitive traffic, and refuse to absorb such charges on traffic that is not competitive, so long as all shippers similarly situated are treated alike. Federal Match Corp. v. G. N. Ry., 128 I. C. C. 415, 417.

ACCOUNTING

I. POWER TO REGULATE.
§1. Jurisdiction of Commission.
§2. State regulation.
II. APPLICATION TO RATES.
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CROSS REFERENCES

See Reports of Carriers.

I. POWER TO REGULATE.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) Proceeding instituted by commission on its own motion pursuant to section 20 (8) of the act under which it is required to prescribe classes of property for which depreciation charges may properly be included under operating expenses and percentages of depreciation which shall be charged to each class of property, classifying carriers as it may deem proper for the purpose. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295.

(b) Prior to 1920 commission's power over depreciation accounting was vague and discretionary, but amendment of 1920 made the power definite and its exercise mandatory. The amendment is in no way inconsistent with prior provisions of section 20; it clarifies those provisions so far as depreciation accounting is concerned. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 325, 326.

(c) Upon contention that if section 20 of the act gives commission power to require depreciation charges, the statute is in this respect unconstitutional and invalid, since it attempts to give commission managerial powers over carriers, HELD, It is not commission's province to pass upon constitutionality of statutes enacted by Congress. However, the power conferred by section 20, as amended in 1920, is clearly no more an invasion of managerial functions than power to determine what are reasonable rates that a carrier may charge, or what securities it may properly issue. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 325, 326.

(d) The provisions of section 20 (5) of the act specifically empower commission to require and prescribe amount of depreciation charges of carriers, and general power to prescribe a uniform system of accounts also implies and includes the power to require accounting for depreciation. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 323, 328.

(e) Where a local telephone company undertakes to originate or deliver toll messages, practically all of its property is open for use in interstate commerce and at any time may be so used. Under such circumstances Congress has power to regulate accounting practices of such companies with respect to their property, including accounting for depreciation. Stated otherwise, telephone property, although used largely for local business, is subject to Federal regulation when it is subject to interstate use. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 332.

II. APPLICATION TO RATES.

§3. In general.

(a) The rates of depreciation of steam locomotives used by common carriers,

as generally computed by them in annual reports which they are required to file with commission, average about 4 per cent. United Chem. & Organic Products Co. v. Director General, 112 I. C. C. 687, 692.

(b) The policy of protecting credit by manipulating maintenance expenditures is uneconomic and may be perilous to investors. Where credit is protected by misrepresenting facts there is nothing on the face of accounts to indicate, except by resort to extensive comparisons, that repairs or renewals have been deferred. Net income is no protection to investors if procured at expense of upkeep, and while deferring of proper maintenance may not be a serious matter if confined to comparatively short periods and deficiency made good without undue delay, its extension over any length of time invites disaster, to which investors have frequently fallen. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 316.

§5. **Construction of Commission's Rules.**

(a) Contention that paragraphs (1) and (3) of section 3 of the act vitiate an operating agreement providing for joint use of terminal facilities in so far as it provides for an equal division of interest and taxes not sustained. Those charges are distinctly capital charges, based upon terminal property itself, not upon its use, and are divided among lines in proportions of their equitable titles to or interests in property. For their respective uses of property the lines also severally assume proportionate maintenance and operating expenses. This is not undue prejudice, preference, or discrimination within meaning of paragraph (1). Also, as essentially capital charges, they have no direct or indirect relation to interchange of traffic between several lines within contemplation of paragraph (3). M.-K.-T. v. K. C. T. 104 I. C. C. 203, 224.

(b) Working capital is understood to include, usually, three parts; First, investment in a stock of material and supplies; second, cash necessary to pay operating expenses incurred for common-carrier service prior to time when revenues from that service are available; and, third, a buffer fund of cash constantly on hand to cover amply recurrent and fluctuating deficiencies in the inflow of revenue applicable to payments falling due. Divisions Received by B. R. R. & C. Co., 104 I. C. C. 415, 426.

(c) These proceedings instituted on motion of the Commission arise out of provisions of paragraph 5 of section 20 of the act which requires the Commission as soon as practicable to prescribe, for carriers subject to the act, the classes of property for which depreciation charges may properly be included under operating expenses, and the percentages of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. There is general agreement that, with the exception of land and grading, most of the property units which make up the plant of a railroad or telephone company are gradually worn out in operation or are abandoned from time to time in favor of better substitutes. There also can be no doubt that the cost of such worn out or abandoned property units is a part of operating expense to be charged against the service. The basic question is whether such cost should be charged in bulk at the time when each unit is retired, or should be anticipated by periodical installments spread over its service life. It is conceded that the service lives of most units of railroad and telephone property are terminable. It is also conceded that the consumption of these units in service is an expense of operation. The question is only whether this expense should be accounted for, in the light of the best available information, as a continually accruing expense, or whether it should be accounted for as an expense suddenly incurred in its entirety at the time when the unit is retired. The Commission has no hesitation in reaching the conclusion that the former method of accounting will conform much more closely to the facts than the latter. The depreciation reserve, when all is said and done, is merely a record of the undoubted fact that the service lives of existing property units have to a certain extent been consumed. It may be an imperfect record, subject to correction or modification from time to time, but no question can exist as to the underlying fact. The fact may also be that appreciation has taken place in certain other property units, or that accumulated surplus is sufficient to counterbalance the effect of depreciation, or that the earning capacity of the company has enhanced the value of its securities, or that yearly retirements equalize to such an extent that operating expenses will be approximately the same whether or not there is accounting for

depreciation. These are all facts, which, if established, it may be desirable that the accounts should indicate, so far as practicable; but not to the exclusion of the fact of depreciation. Having reached the conclusion that depreciation charges are necessary in order that the accounts may properly reflect the facts of operation, it is, strictly speaking, immaterial whether or not they burden patrons or investors. The doctrine that accrued depreciation must be deducted in determining rate base value has been upheld very definitely by the Supreme Court. That being the case, the depreciation or installment method of accounting becomes a necessary measure of self protection, so far as the companies are concerned. Notwithstanding these decisions of the Supreme Court, however, the railroad, gas, and electric companies are not ready to concede this doctrine, and hence their insistence upon the retirement method of accounting. Depreciation accounting conforms with far greater accuracy than the retirement method to the actual facts with respect to operating costs. Neither investors nor the public are left in doubt in regard to the costs which are currently being incurred and ought currently to be met in the interest of prudent and sound economy. If these costs be met, the financial condition of the companies will be strengthened and they will be able to face the future with a greater degree of assurance. There will be no need for mortgaging the future to meet the debts of the past. Investors and the public generally will be protected against extreme fluctuations in operating expense and against unnecessarily large volume of outstanding securities demanding interest or dividend payments. Depreciation accounting, in short, conforms to the principles of conservative and constructive finance. The purpose of a system of accounts is to record the facts as to the operations of the carriers. Depreciation is a fact, so far as certain classes of property are concerned, and unless it be properly accounted for the record is incomplete and misleading. Long before 1920 and acting under general authority, the Commission required the carriers to set up in their accounts charges for depreciation on equipment, and no one has seriously questioned its power to make this requirement. Yet if it has such power with respect of equipment, plainly it also has it with respect to other classes of property. Assuming that depreciation is a fact, and the Commission has so found, the proper recording of that fact in the accounts is no more a matter for the exercise of managerial discretion than the proper recording in the accounts of the amounts paid for the wages of trainmen or for the purchase of fuel. The power to prescribe a uniform system of accounts implies and includes power to require accounting for depreciation, and the Commission has such power prior to the act of 1920. The amendment of that year gave it in addition power to determine the facts as to the amount and extent of depreciation. But this additional power is clearly no more an invasion of managerial functions than the power to determine what are the reasonable freight rates that a railroad company may charge or what securities it may properly issue. It seems to be well established that where a local telephone company undertakes to originate or deliver toll messages, and most of them do so undertake, practically all of its property is open for use in interstate commerce and at any time may be so used. Under such circumstances, no doubt would seem to exist as to the power of Congress to regulate the accounting practice of such companies with respect to their property, including the accounting for depreciation. HELD, that depreciation is the loss in service value not restored by current maintenance other than extraordinary repairs, and incurred in connection with the consumption or prospective retirement of property in the course of service from causes against which the carrier is not protected by insurance, which are known to be in current operation, and whose effect can be forecast with a reasonable approach to accuracy. HELD, the term "extraordinary repairs" shall, for the purposes of this finding, be construed to mean repairs involving renewals of substantial portions of a unit of property which are made in connection with the reconstruction or restoration of the unit or which involves renewals of longitudinal sections of continuous structures or the replacement of parts of such structures of a particular type by the substitution of parts of an improved type or design. That the term "service life" shall be construed to mean: In the case of units of property which are ultimately retired as units and which are not subject to extraordinary repairs, the estimated period of time between the installation of the unit in question and its prospec-

tive retirement. In the case of units of property which are not ultimately retired as units, but are continued in service indefinitely by extraordinary repairs, the estimated average period of time between the installation of the sections or parts of the unit in question which are renewed from time to time by the extraordinary repairs and their prospective retirements. In the case of units of property which are ultimately retired as units but have their period of service prolonged by extraordinary repairs, the estimated period of time is between the installation of the unit and its prospective retirement as a unit. That the term "net salvage value" shall be construed to mean the amount received for property retired and disposed of, or the amount representing the secondhand value if suitable for reuse, after deducting the cost of removing the property and of recovering the salvage. In cases where the cost of removal and recovery is greater than the value of the material recovered, "net salvage value" may be a minus quantity. That the term "service value" shall be construed to mean: In the case of units of property which are ultimately retired as units and which are not subject to extraordinary repairs, the difference between the ledger value of the unit and its estimated net salvage value at the time of prospective retirement. In the case of units of property which are not ultimately retired as units but are continued in service indefinitely by extraordinary repairs, the difference between the ledger value of the unit and the estimated net salvage value of materials recovered in connection with the extraordinary repairs. In the case of units of property which are ultimately retired as units but have their period of service prolonged by extraordinary repairs, the difference between the ledger value of the unit and the estimated net salvage value at the time of prospective retirement plus the estimated cost of extraordinary repairs intervening between installation and retirement after deducting the estimated net salvage value of materials recovered in connection with such repairs. That the total expense of depreciation in connection with any unit of property is its service value determined as above provided. Ledger value, as the term is used in the above and subsequent findings in this report, shall be determined in accordance with findings (8) and (9) infra. HELD, annual depreciation charges shall be computed at such percentage rate of the ledger value of the unit of property in question that the service value may be distributed under the straight line method in equal annual charges to operating expenses during the estimated service life of the unit. Annual charges so computed shall be reduced to a monthly basis by dividing by 12. HELD, that the classes of property of telephone companies for which depreciation charges may be properly included under operating expenses are the classes of property included in this category by the tentative report of the depreciation section, and in addition the class of property known as "right of way." HELD, classes of property of steam railroad companies for which depreciation charges may properly be included under operating expenses are the classes of property placed in the category by the tentative report of the depreciation section and in addition the following classes of property: ties, rails, other track material, ballast, right of way fences and paving. This find is subject to one important qualification. In case the railroad can show that its life is dependent upon a particular source of traffic, that it must be abandoned once that source is exhausted, and that exhaustion can be predicted with reasonable degree of accuracy, then the entire property of that railroad may be classed as depreciable. It seems desirable that depreciation due to this particular factor should be handled through a special amortization account rather than through the depreciation reserve. It would seem that equipment, which is movable and upon abandonment of a particular railroad can be used elsewhere, should be excluded from this treatment. HELD, group basis of depreciation accounting should be adopted, and that it should be applied to such primary investment accounts under the respective classifications for steam railroad companies and telephone companies as include property hereinbefore found to be depreciable. HELD, the percentages of depreciation which shall be charged by steam railroad companies and telephone companies with respect to each primary account of depreciable property shall be determined as follows: Each such company shall estimate the percentages of depreciation which it deems applicable to the ledger value of each such primary account, such percentages being based upon service values and service lives, developed by a study of the company's history and experience and such engineering informa-

tion as may be available with respect to future prospects. In each case such estimates shall be accompanied by sworn statements showing the bases therefor and the methods employed. In the case of steam railroad companies, such estimates and the accompanying statements shall be filed with this commission within the time prescribed in the order hereinafter entered. In the case of telephone companies such estimates and the accompanying statements shall be filed, within the time prescribed, with the state commission or commissions having jurisdiction over the particular company, except that where no state commission has jurisdiction or is willing to act in the premises they shall be filed with this commission. In the case of steam railroad companies this commission shall, after an office check, prescribe by temporary order the percentages of depreciation which shall be charged with respect to each class of property of each company, and in the case of telephone companies this commission shall by temporary order prescribe similar depreciation percentages, following the recommendations of the state commissions to the extent that such advice can be procured. After the issuance of the temporary orders, opportunity shall be afforded at public hearings, if desired, for the presentation of evidence by all interested parties with a view to the modification of such orders and for the submission to this commission of views based on such evidence. In the case of telephone companies, such public hearings shall be conducted for this commission, so far as possible, by state commissions. HELD, steam railroads shall make a subdivision or redistribution of their road and equipment investment accounts as between each of the primary accounts embracing depreciable property and all other primary accounts, determining the amount which shall be entered in each of the primary depreciable accounts as follows: In the case of equipment, the amounts shall be based on the records and data now used in connection with depreciation accounting on equipment, subject to such modifications as the Bureau of Accounts may find necessary to correct possible inconsistencies. In the case of other property installed prior to July 1, 1914 quantities and prices determined by the Bureau of Valuation, as shown by the inventories on file in said Bureau, shall be used. In the case of other property installed subsequent to June 30, 1914, but prior to the date of valuation, the quantities shown by the inventory shall be used but the prices shall be the actual cost of the property as recorded under the accounting classifications of the commission. In the case of other property installed subsequent to the valuation date, actual quantities and costs shall be used as recorded under the aforesaid accounting classifications. In all cases the amounts so determined shall be recorded for each primary acount by valuation sections. The amounts which shall be entered in each of the primary depreciable accounts having thus been determined, their aggregate shall be deducted from the lump sum theretofore carried for road and equipment, and the remainder shall be carried in the investment accounts as an unadjusted item representing all other primary accounts. In the case of ties, rail, ballast, and other track material laid since June 30, 1914, actual costs shall be used notwithstanding the provisions for replacement accounting in the effective classifications. Where actual cost is not available, average prices shall be used based on the cost of the material on hand as of the date the material was placed in track. Where the material now in track was secondhand when last placed in track, the cost shall be upon the basis of its then value as secondhand material. Provided, however, that this finding shall be subject to the following exceptions: (a) in the event an agreement has been or is hereafter reached between the Bureau of Valuation and the carrier with respect to cost, the agreed figures shall, when different, be substituted for the inventory figures. And in the event that a change in the inventory figures has been or is hereafter ordered by the commission, the basis so ordered shall be substituted. (b) In case of unadjusted item remaining for all other primary accounts, after deduction of the aggregate of the adjusted primary depreciable accounts, proves to be a minus or a plainly inadequate quantity, the amounts entered in each of the primary depreciable accounts shall be, subject to the approval of the commission, proportionately reduced to the extent necessary to avoid such a result. HELD, in determining the amounts to be respectively credited to the primary investment account and charged to the material and supplies account and to the depreciation reserve in the case of the retirement of

a unit of property, amounts for specific units shall be used as far as practicable; but that where that is impracticable, because of the relatively large number and small size of the units, average amounts shall be used. Such accounting shall be in accordance with detailed instructions hereinafter to be issued by the Bureau of Accounts of the commission. HELD, where a longitudinal section of a continuous structure, such as a long trestle, right of way fence, snowshed, wire line, etc., is renewed in its entirety, or where parts of such structures of a particular type are replaced by the substitution of parts of an improved type or design, such as the substitution of concrete for wooden posts in a fence or of copper for steel wire in a telephone line, the ledger value of the property so retired, determining by taking a proper proportionate part of the total ledger value of the continuous structure, shall be credited to the investment account and the same amount, after deducting net salvage value, shall be charged to the depreciation reserve. HELD, when the total cost of repairs to a particular unit of property exceeds a certain minimum sum and also exceeds a certain minimum percentage of the ledger value of said unit, then the cost of such repairs, in excess of said minimum percentage shall be charged to the depreciation reserve; provided, however, that if the total cost exceeds a certain maximum percentage of the ledger value, the unit shall be deemed to have been retired from service and shall be accounted for accordingly. The minimum and maximum figures to be used in the application of this rule shall be covered by instructions to be issued by the Bureau of Accounts of the commission. HELD, when depreciable property is retired the loss in service value shall, whether or not the cause of the retirement is a recognized factor in depreciation, be charged in its entirety to the depreciation reserve; provided, however, that (a) if the cause of retirement is not a recognized factor in depreciation but is a cause against which the carrier is insured, the depreciation reserve shall be credited with the full amount of the insurance recovered. (b) if the cause is not a recognized factor in depreciation nor covered by insurance, the carrier may, upon proof that the charge will result in undue depletion of the depreciation reserve and with the approval of the commission, increase the amount charged each year to operating expenses on account of depreciation over a period of years in the future to the extent necessary to make good such depletion. HELD, in the case of steam railroad companies an estimate should be made, as of the date when the system of depreciation accounting herein prescribed is made effective and in accord with the principles hereinbefore set forth, of the past accrued depreciation in the property unprovided for by a depreciation reserve, and that the amount so estimated should concurrently be credited to the depreciation reserve and charged to a suspense account on the assets side of the balance sheet. Such estimates of past accrued depreciation unprovided for shall be made by the carrier, subject to check and revision by the commission. Depreciation accounting with all its difficulties is, the Commission is persuaded, a method which will produce a much more nearly accurate reflection of the facts than will retirement accounting. While the Commission does not minimize the difficulties and possible dangers, it is confident that in the course of actual practice and experience they will continually decrease in importance. In the early days of every form of public supervision of private enterprises the difficulties to be encountered create alarm by their apparent multitude and magnitude. In actual practice they gradually lose their formidable character as principles are developed and precedents set. So it will be with depreciation accounting. Owing to the radical change in present methods of accounting which are involved in the case of steam railroad companies, the orders entered are made effective on Jan. 1, 1928, in order that there may be an adequate period of preparation. Telephone and Railroad Depreciation charges, 118 I. C. C. 295.

(d) Locomotive repairs can not be equitably apportioned between services on basis of hours of service alone, without regard to things which affect relative costs, such as the size, tractive capacity, or other characteristics of locomotives used and number of miles run in such services. Rates of P. & P. U. Ry., 115 I. C. C. 469, 489.

(e) Proceeding instituted by commission on its own motion pursuant to section 20 (8) of the act under which it is required to prescribe classes of property for which depreciation charges may properly be included under operating expenses and percentages of depreciation which shall be charged to each class of

property, classifying carriers as it may deem proper for the purpose. Telephone and Railroad Depreciation Charges 118 I. C. C. 295.

(f) Contention that the retirements of most units of a large composite railroad or telephone property tend to equalize, i. e., become same in amount from year to year, found not adequately supported by data of record, the evidence indicating rather that opposition to depreciation accounting is based partly on a desire to adjust retirement charges from year to year in accordance with financial needs. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 303, 305.

(g) With exception of land and grading, most property units which make up the plant of a railroad or telephone company are gradually worn out in operation or are abandoned from time to time in favor of better substitutes. Cost of property thus consumed or abandoned is, therefore, plainly a part of cost of rendering service, and carrier accounts should conform to and adequately record this fact. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 303, 306.

(h) Depreciation charges may not involve diversion of actual funds from either patrons or investors, for where a company is operating at a deficit they will serve only to increase extent of the recorded deficiency. Stated in another way, if depreciation charges are an unnecessary burden, that burden will fall upon patrons where revenue is sufficient to cover such charges and leave a reasonable return, but where revenue is inadequate, the burden may be shared by patrons and investors or be borne wholly by latter. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 307.

(i) The accruing of depreciation charges upon books of common carriers does not necessarily mean that corresponding amounts are collected from the public served. If, after depreciation charges have been accrued, net earnings are insufficient for payment of a reasonable return, then burden of such charges is borne in whole or in part by investors. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 307.

(j) "Depreciation reserve" is a record of undoubted fact that service lives of existing depreciable property units have to a certain extent been consumed. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 308.

(k) The cost of rendering service involved in consumption or abandonment of depreciable units of property is not adequately recorded when no account is taken of this cost prior to time of retirement of such units. An adequate record requires proportionate, periodical charges, i. e., depreciation charges, throughout the service lives of the units. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 306, 308, 309.

(l) Depreciation accounting is a necessary measure of self-protection to carriers, in view of decisions of United States Supreme Court to effect that accrued depreciation must be deducted in determining rate base. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 310.

(m) All things considered, depreciation accounting in the long run is less burdensome to patrons and investors than retirement accounting, since former conforms to principles of conservative and constructive finance. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 306, 313.

(n) Future service lives of common-carrier property can be estimated with sufficient accuracy, subject to public supervision and modification and correction from time to time, to meet needs of depreciation accounting. But in public regulation of this matter, it is desirable to err on the side of overestimating rather than underestimating service lives. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 313, 314.

(o) No good purpose is served, so far as depreciation accounting is concerned, by attempting to distinguish between present and future patrons and their interests. Purpose of depreciation in accounting is to charge cost of current consumption of property in service against current users of property; but method of spreading such cost over a period subsequent to retirement of property is available for use in emergencies. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 314, v15.

(p) Depreciation accounting properly supervised, has for its purpose an adequate record of facts, and it is difficult to justify a departure therefrom for sake of preserving carrier credit. Some better method of preserving such credit, if it needs preserving, ought to be devised than one which accomplishes its results by an incomplete or imperfect record of

actual cost of operation. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 316.

(q) The policy of protecting credit by manipulating maintenance expenditures is uneconomic and may be perilous to investors. Where credit is protected by misrepresenting facts, there is nothing on the face of the accounts to indicate, except by resort to extensive comparisons, that repairs or renewals have been deferred. Net income is no protection to investors if procured at expense of upkeep, and while deferring of proper maintenance may not be a serious matter if confined to comparatively short periods and deficiency made good without undue delay, its extension over any length of time invites disaster, to which investors have frequently fallen. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 316.

(r) Upon contention that if depreciation accounting is extended to cover all depreciable railroad property it will add so materially to operating expenses that further increases in rates will be necessary, HELD: If depreciation accounting is a method by which facts with respect to cost of operating railroad and telephone companies are recorded with approximate accuracy, then that method should be adopted regardless of its effect on rates, since nothing is gained by a refusal to face facts or by deferring to some future date burdens which ought to be borne now. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 317, 318.

(s) Reasons now exist which have not heretofore existed for distinguishing proper provision for depreciation from other means of protecting carrier property, such as accumulation of surplus or rebuilding or improvement programs under guise of maintenance, and also for carefully limiting and supervising such depreciation charges. There is nothing in past history which proves that depreciation accounting is unsound in principle or likely to produce harmful results, on the contrary, there is reason to believe that railroads in past that have best served the public and investors have been those which, in one form or another, have made provision for accruing depreciation. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 317, 318.

(t) Depreciation method of accounting conforms with far greater accuracy than retirement method to actual facts with respect to operating costs. Under the former, neither investors nor public are left in doubt in regard to costs currently being incurred and which ought currently to be met in interest of prudent and sound economy. If these costs be met, the financial condition of carriers will be strengthened and they will be able to face the future with a greater degree of assurance. There will be no need for mortgaging the future to meet debts of the past and both investors and public generally will be protected against an unnecessarily large volume of outstanding securities demanding interest or dividend payments. In short, depreciation accounting conforms to principles of conservative and constructive finance. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 319.

(u) The need for depreciation accounting is emphasized by provisions of sections 15a of the act relative to recapture by the Government of excess income and by existing situation with respect to public regulation of both steam railroad and telephone companies. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 318, 319.

(v) Depreciation accounting is supported by prior decisions of commission in valuation proceedings, by decisions of United States Supreme Court, and by decisions of other courts and Federal and State commissions. It is also in general accord with provisions which at present time are embodied in accounting classifications of steam railroads and telephone companies and which were included in those classifications when section 20 of the act was amended. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 320, 323.

(w) Depreciation is a fact, so far as certain classes of property are concerned, and unless it be properly accounted for the record of a system of accounts is incomplete and misleading. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 325.

(x) Upon contention that if section 20 of the act gives commission power to require depreciation charges, the statute is in this respect unconstitutional and invalid, since it attempts to give commission managerial powers over carriers, HELD: It is not commission's province to pass upon constitutionality of statutes enacted by Congress. However, power

conferred by section 20, as amended in 1920, is clearly no more an invasion of managerial functions than power to determine what are reasonable rates that a carrier may charge, or what securities it may properly issue. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 325, 326.

(y) The provisions of section 20 (5) of the act specifically empower commission to require and prescribe amount of depreciation charges of carriers, and general power to prescribe a uniform system of accounts also implies and includes power to require accounting for depreciation. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 323, 328.

(z) Depreciation accounting for telephone companies, classes A, B, and C, is practicable, but determination of depreciation percentages for various classes of telephone property is a task as to which the commission may well avail itself of the cooperation, services, records, and facilities of State commissions, under provisions of section 13 (3) of the act. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 332.

(aa) The function of depreciation is to account currently for consumption or exhaustion of service life of property from causes known to be in operation and effect of which can be forecast with reasonable accuracy, whereas function of insurance is to afford protection against possible contingencies which can not be foreseen and which may or may not ever occur. Telephone and Railroad Depreciation Charges 118 I. C. C. 295, 341.

(bb) Obsolescence may frequently be a factor to be reckoned with in determining depreciation charges. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 342.

(cc) Depreciation is loss in service value not restored by current maintenance other than extraordinary repairs and incurred in connection with consumption or prospective retirement of property in the course of service from causes against which carrier is not protected by insurance, which are known to be in current operation, and whose effect can be forecast with a reasonable approach to accuracy. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 342.

(dd) Depreciation expense is based upon original cost of property to accounting company, and depreciation accounting requires an analysis of investment and apportionment of appropriate amounts to primary accounts covering depreciable property, under road and equipment for steam railroads. While accounts of steam roads in general furnish no adequate record of property costs, the deficiency may be supplied, with sufficient accuracy for purposes of depreciation accounting, by appropriate use of inventories of commission's Bureau of Valuation. Investment accounts of telephone companies are, in general, sufficiently adapted to such accounting; but if it should develop that they are not, this matter can then be dealt with. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 343, 347.

(ee) The total expense of depreciation in connection with any unit of property is its service value determined by taking into consideration ledger value, net salvage value, and extraordinary repairs. In determining net salvage value the cost of removing property or recovering salvage at time of retirement should be deducted. The retirement of continuous structures such as fences, snowsheds, etc., and of certain other units of property such as equipment, is postponed either materially or indefinitely by application of piecemeal renewals or rebuilding programs, termed "extraordinary repairs" and it is, therefore, essential to a properly comprehensive system of depreciation accounting that provision be made therefor in the reserve. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 347, 351.

(ff) Practice whereby transferred units of property are changed from a cost basis to an assumed market-value basis found to result in fictitious credits for salvage to depreciation reserve, and to run counter to principles underlying commission's accounting regulations, which require that property be charged to the plant account at cost. It also leads to unnecessary and undesirable complications in determination of depreciation charges. Property once acquired should remain in the plant account at cost until finally abandoned or put to a new use different from that for which it was originally installed. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 352, 353.

(gg) Annual depreciation charges of railroad and telephone companies required to be computed at such percent-

age rate of ledger value of unit of property in question that service value may be distributed under the straight-line method in equal annual charges to operating expenses during estimated service life of the unit; annual charges so computed to be reduced to a monthly basis by dividing by twelve. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 356.

(hh) The sinking-fund and straight-line methods of accounting for depreciation compared and latter approved because it is simpler and easier to apply. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 353, 356.

(ii) Where a railroad can show that its life is dependent upon a particular source of traffic and that it must be abandoned once that source is exhausted, and that such exhaustion can be predicated with a reasonable degree of accuracy, then entire property of that railroad may be classed as depreciable. Depreciation due to this particular factor, however, should be handled through a special amortization account rather than through the depreciation reserve and equipment which is movable, and upon abandonment of a particular railroad can be used elsewhere, should be excluded from this treatment. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 366, 367.

(jj) The unit and group plans of accounting for depreciation compared and latter approved for telephone and railroad companies. Operating companies required to account for depreciation charges on leased property, the groups of property and reserves applicable thereto to include improvements thereon. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 367, 372.

(kk) The unit and group plans of accounting for depreciation compared and latter approved. Groups of property and reserves applicable thereto should correspond with primary accounts in road and equipment of steam railroads and of fixed capital of telephone companies, including improvements on leased property. Operating companies must also account for depreciation charges on property leased. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 367, 372.

(ll) The determination of prospective service lives is crux of depreciation accounting. Consequently accuracy of records with respect to consumption of property in service which such accounting is designed to afford, is wholly dependent upon accuracy with which prospective service lives are estimated. It is impossible, however, to lay down any general rule which will apply in case of all companies or even in case of a particular class of companies, owing to different conditions which surround use of property in each individual case. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 372.

(mm) It is impossible to prescribe uniform depreciation percentages for various classes of depreciable property applicable to all companies alike. However, method of determining the percentages of depreciation which shall be charged by steam railroad and telephone companies with respect to each primary account prescribed, and cooperation of State commissions in supervision of the matter availed of in case of telephone companies. Both classes of companies also required to keep adequate property records and maintain in convenient and accessible form engineering data bearing upon prospective service lives. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 372, 380.

(nn) Some classes of property are of such a character that it is not practicable to keep individual unit costs. In determining debits and credits to various accounts under depreciation accounting, amounts for specific units required to be used so far as practicable; but where impracticable, average amounts are to be used. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 380, 381.

(oo) Rules prescribed for depreciation accounting to take care of so-called continuous structures and extraordinary repairs which extend the span of life of such property as equipment. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 381, 382.

(pp) While certain causes of retirement of property, such as fires and other contingencies, are not factors to be included in estimate of depreciation charges, all losses at time of retirement are required to be charged to depreciation reserve, with provisions for compensating adjustments where necessary. Accordingly, rules prescribed to take care of retirements for causes which are not factors in depreciation. Telephone

and Railroad Depreciation Charges, 118 I. C. C. 295, 383.

(qq) Amount of accrued depreciation not previously accounted for by steam railroads, as of the date depreciation accounting for fixed property becomes effective, required to be computed and shown in accounts. Accordingly, a method of adjustment to take care of such past unprovided for depreciation, prescribed. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 384.

(rr) The cost of extraordinary repairs when made and service value of property when retired required to be charged to appropriate primary accounts under maintenance expenses and concurrently corresponding amounts released from depreciation reserve to special accounts provided for that purpose under maintenance expenses. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 385.

(ss) Ordinary maintenance has a bearing upon depreciation accounting. Just as the life expectancy of property may be extended by reconstruction repairs, so it may be curtailed by neglect of ordinary maintenance. It is, therefore, desirable that in prescribing depreciation percentages and charges that commission should be informed, so far as possible, in regard to upkeep of the property. Accordingly, carriers required to include in their annual reports to commission sworn statements showing by primary accounts extent to which ordinary maintenance has been neglected or deferred. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 385, 386.

(tt) Depreciation accounting is speculative only in that it applies to future conclusions drawn partly from past experience and partly from a thorough knowledge of existing facts. The retirement method is also founded on fact but it neglects to take into account all facts. Strict logic would require that advocates of retirement method should neglect to take into account accrued interest, accrued rentals, accrued taxes and audited vouchers until actually paid. While these and similar items can in general be estimated with greater mathematical accuracy, it does not follow from this fact that depreciation charges can not be calculated with sufficient accuracy to achieve their purpose. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 386.

(uu) Depreciation accounting is a method which will produce a much more nearly accurate reflection of facts than will retirement accounting. While com mission does not minimize the difficulties and possible dangers, it is confident that in course of actual practice and experience they will continually decrease in importance. In early days of every form of public supervision of private enterprize the difficulties to be encountered create alarm by their apparent multitude and magnitude but in actual practice they gradually lose their formidable character as principles are developed and precedents set. So it will be with depreciation accounting. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 387.

(vv) Retirement accounting furnishes a record which may be a wholly untrustworthy reflection of facts. By postponing needed retirements a company may make a showing of earnings, designed to mislead investors, this result being generally accomplished in absence of an inquiry extending beyond face of the accounts. On other hand, by concentrating or accelerating retirements a company may conceal prosperity which it does not wish to disclose. Even if there be no intent to mislead or deceive, irregularity in retirements which is often inevitable may, and frequently does, produce that result. The facts in regard to constantly accruing consumption of capital in service are not recorded and record is in all cases deferred until consumption is complete. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 387.

§7. Destruction of Records.

(a) Although the regulations permit of the destructions of a carriers records after a certain number of years, they do not require it. Wertheim Coal & Coke Co. v. L. V. R. R., 112 I. C. C. 513, 515.

III. REPORTS OF COMMISSION.

§8. In General.

(a) The rates of depreciation of steam locomotives used by common carriers, as generally computed by them in annual reports which they are required to file with commission, average about 4 per cent. United Chem. & Organic

Products Co. v. Director General, 112 I. C. C. 687, 692.

(b) Ordinary maintenance has a bearing upon depreciation accounting. Just as the life expectancy of property may be extended by reconstruction repairs, so it may be curtailed by neglect of ordinary maintenance. It is, therefore, desirable that in prescribing depreciation percentages and charges that commission should be informed, so far as possible, in regard to upkeep of property. Accordingly, carriers required to include in their annual reports to commission sworn statements showing by primary accounts the extent to which ordinary maintenance has been neglected or deferred. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 385, 386.

ACROSS-LAKE RATES

See Equalization of Rates §3 (i).

(a) Proposal to restrict application of class rates from points in Indiana to Minneapolis, St. Paul, and Duluth, so as to eliminate cross-lake routes through Michigan, and thus remove existing departures from long-and-short-haul provision of section 4 of the act, found not justified. The cross-lake routes which it is proposed to cancel are reasonably direct and move a substantial volume of traffic, and either continuance is also desirable for emergencies during periods of traffic congestion. Class Rates to Twin Cities, 107 I. C. C. 665.

(b) Proposed increased translake rate on salt from Ludington and Manistee, Mich., to Chicago, Ill., and intermediate points, applicable over car-ferry route of the Pere Marquette to Milwaukee, and C., M. & St. P. beyond, found justified. In Salt Cases of 1923, 92 I. C. C. 388, commission fixed minimum translake rate 1 cent under all-rail rates. The Pere Marquette has its own rails from Ludington and Manistee to Chicago, but the differential in favor of translake route attracts all the traffic and in order to secure the entire haul it desires to maintain same rate over both routes. In the general cases carriers were specifically authorized to apply all-rail rate over translake route and commission sees no reason for changing the finding made therein to effect that a translake rate equal to all-rail rate is justified. Salt from Ludington Group, 112 I. C. C. 255.

ACT TO REGULATE COMMERCE

I. CONSTITUTIONALITY.
II. INTERPRETATION IN GENERAL.
III. TIME OF TAKING EFFECT.
IV. ENFORCEMENT.
V. AMENDMENTS.
§1. War legislation.
VI. TRANSPORTATION ACT.
§2. Construction in general.

CROSS REFERENCES

See Bills of Lading §1a; Carmack Amendment; Commodities Clause; Crimes §2; Cummins Amendment; Discrimination; Government Control; Interstate Commerce; Long and Short Hauls II; Loss and Damage I; Panama Canal Act; Special Contracts II; State Rates and Regulations; Telephone and Telegraph Companies III; Transportation Act.

I. CONSTITUTIONALITY.

See Discrimination §1; Loss and Damage §1, §2; Pipe Lines §2.

(a) Judicial decisions recognize paramount authority of Congress to regulate interstate and foreign commerce, and in certain of them uphold direct assertions of its supreme authority or exercise thereof through commission as against existing contrasts of conflicting exercise of a state's police power. See 219 U. S. 467 and other cited cases. M.-K.-T. v. K. C. T., 104 I. C. C. 203, 221.

(b) Upon contention that if section 20 of the act gives commission power to require depreciation charges, the statute is in this respect unconstitutional and invalid, since it attempts to give commission managerial powers over carriers, HELD: It is not commission's province to pass upon constitutionality of statutes enacted by Congress. However, power conferred by section 20, as amended in 1920, is clearly no more an invasion of managerial functions than the power to determine what are reasonable rates that a carrier may charge, or what securities it may properly issue. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 325, 326.

II. INTERPRETATION IN GENERAL.

See Crimes §2; Discrimination

§1; Export Rates and Facilities §1½; Long and Short Hauls §2½; Loss and Damage §2.

(a) It is not the purpose of interstate commerce act that commission should attempt to equalize fortunes, opportunities, or abilities and disregard transportation conditions, Diffenbaugh Case, 222 U. S. 42, 46; but this principle does not foreclose commission from considering probable effects which would follow prescribing of relationships in rates proposed by certain shippers and opposed by their competitors. See 78 I. C. C. 549, 552. Morrell & Co. v. N. Y. C., 104 I. C. C. 104, 124.

(b) Judicial decisions recognized paramount authority of Congress to regulate interstate and foreign commerce, and in certain of them uphold direct assertions of its supreme authority or exercise thereof through commission as against conflicting exercises of a State's police power. See 219 U. S. 467 and other cited cases. M.-K.-T. v. K. C. T., 104 I. C. C. 203, 221.

(c) From a consideration of the statute as a whole it appears that Congress conferred upon commission full power to determine just and reasonable rates for transportation of mail. The provision for reexamination gives commission power to reexamine, upon application by carriers, mail pay rates previously prescribed and if it is of opinion that rates for services covered by applications were not fair and reasonable as of and following dates applications were filed, so to fix and determine rates that are fair and reasonable. Railway Mail Pay, 104 I. C. C. 521, 524.

(d) The word "action" as used in section 16 (3) of the act must be interpreted to mean "action at law." Pfister & Vogel Leather Co. v. E. R. R., 112 I. C. C. 659, 660.

(e) Contention that the word "practice" as used in the act relates only to matters between shippers and carriers and not to questions affecting handling of traffic between carriers, not sustained. The word as used in paragraphs (6) and (11) of section 1 and paragraph (1) of section 15 of the act clearly comprehends within its meaning questions relating to handling of traffic between carriers. C., R. I. & P. v. B. & O., 113 I. C. C. 681, 683.

(f) The phrase "under substantially similar circumstances and conditions," as found in section 2 of the act, refers to the matter of carriage and does not include competition. See 44 I. C. C. 455 and cases there cited. Winding Gulf Colliery Co. v. C. & O., 115 I. C. C. 113, 119.

(g) The provisions of section 16 (3) of the act, whereby the limitation period is extended 90 days from time of beginning of an action by carriers for recovery of charges, relates to actions at law and has no application where additional charges are paid by shippers under protest upon demand of carriers. Parkersburg Rig & Reel Co. v. B. & O., 115 I. C. C. 539, 542.

(h) From the language of section 16 and its history, it is clear that Congress did not intend to permit carriers to collect undercharges after two years and within three years from accrual of a cause of action and yet deny shippers the right to challenge reasonableness of the rate thus collected. Instead, Congress intended, and by paragraph 3 (d) has provided, that regardless of whether undercharges are collected in two years or three years the shipper may file his complaint within 90 days after such charges are paid. Crerar Clinch Coal Co. v. A. A. R. R., 118 I. C. C. 171, 173.

(i) Prior to amendment of June 7, 1924, to section 16 of the act, a shipper clearly had right to file complaint alleging unreasonableness of a rate which carrier sought by action in court to collect in whole or in part after two years and within three years from the time cause of action accrued. The amendment (Par. 3-d) should not be construed as taking away this right on shipments delivered prior to amendment's passage but on which undercharges are paid subsequent thereto. Its purpose, among other things, was to make certain that the right existed not only where action was brought by carrier to collect undercharges but where, without such action, the undercharges were paid. Crerar Clinch Coal Co. v. A. A. R. R., 118 I. C. C. 171, 173.

(j) The fundamental purpose of the act is "to compel the carrier as a public agent to give equal terms to all," "to cut up by the roots every form of discrimination, favoritism, and inequality," and to "place all shippers upon equal terms." See 200 U. S. 361, and other cited cases. Service on K., O. & G. Ry., 118 I. C. C. 412, 418.

(k) Power to determine whether state

action will obstruct interstate commerce inheres in the United States as an incident of its power to regulate such commerce. Alabama & V. Ry. Co. v. Jackson & E. Ry. Co., 46 Sup. Ct. 535.

(l) Where interstate and intrastate transactions are interwoven, the regulation of the latter is so incidental to and inseparable from regulation of the former as properly to be deemed included in authority of Congress over the former. United States v. New York Cent. R. Co., 47 Sup. Ct. 130.

(m) While in 249 U. S. 557, Supreme Court declared the specific purpose of section 4 (2) is to insure and preserve water competition and to prevent competition that kills, the only fair construction to be placed upon that portion of the act is that it is not applicable except in those cases where rates have been increased after water competition has been eliminated. Woodstock Lbr. Co. v. B. & A., 129 I. C. C. 255, 257.

ACTIONS AT LAW

See Cars and Car Supply §33; Courts I; Demurrage §22; Finance Dockets VIII, §10 (a) Long and Short Hauls §17; Special Contracts IV; Undercharges §7½.

(a) The word "action" as used in section 16 (3) of the act must be interpreted to mean "action at law." Pfister & Vogel Leather Co. v. E. R. R., 112 I. C. C. 659, 660.

(b) In order to warrant recovery by carrier against shipper for damages alleged to have been caused by failure to comply with interstate commerce regulation requiring shipping of carbon bisulphide in metal cans of 28-gauge, it is necessary to prove failure to fulfill such obligation caused injury. W. A. Hover & Co. v. Denver & R. G. W. R. Co., 17 Fed. (2d) 881.

ADDITIONAL CHARGES AND SERVICES

See Agency; Allowances; Baggage Car Service; Branch Lines; Bridges and Tolls; Car Ferry; Compress Companies and Charges; Demurrage; Drayage; Evidence §2½; Export Rates and Facilities; Facilities and Privileges; Floatage; Heater Car Service; Lighterage; Reconsignment; Refrigeration; Special Rates and Services; Storage; Substitution of Tonnage; Switch Tracks and Switching §5; Terminal Facilities; Warehouses; Weights and Weighing §6, §7.

(a) If a shipper is given an additional service peculiarly necessary for his particular shipments he should pay a reasonable charge for that service. Protective Service Rules on Perishable Freight, 104 I. C. C. 79, 87.

ADJACENT FOREIGN COUNTRY

See Alaska; Canada; Coastwise Traffic; Foreign Commerce; Loss and Damage §2½; Mexico; Porto Rico; Through Routes and Joint Rates.

(a) Commission may not prescribe joint rates for future to destinations in adjacent foreign countries. Washington Publishers' Asso. v. A. C. & H. B., 104 I. C. C. 4, 9.

(b) Canada: Commission may not prescribe joint rates for future to Canadian points, but as to rates constructed on combination, such factors as apply wholly within United States are subject to its jurisdiction. In respect of joint rates, and likewise joint-rate factors used in constructing combination rates, American lines over which shipments move are subject to commission's jurisdiction and all carriers parties to such rates are jointly and severally liable for any damage resulting from their unlawfulness. See 83 I. C. C. 460 and other cases cited. Washington Publishers Asso. v. A. C. & H. B., 104 I. C. C. 4, 9.

(c) Mexico: Complaint alleging unreasonable rates on chick-peas (garbanzo) shipped in bond from Mexico to New Orleans, thence exported to foreign countries or Porto Rico, dismissed for want of jurisdiction. Since March 2, 1917, the act has not been applicable to Porto Rico, nor does it confer upon commission jurisdiction over transportation of property from Mexico through United States to Porto Rico, in so far as such transportation takes place within United States, even though transportation were shown to have been partly by railroad and partly by water under a common control, management, or arrangement for continuous carriage or shipment, not here shown, and even though Porto Rico is a

territory appurtenant to the United States. Fernandez & Co. v. S. P., 104 I. C. C. 193.

(d) Where unreasonable rates are assessed on shipments moving from points in the United States to Canadian destinations, commission's order awarding reparation can be entered against the American lines only. Such action, however, should not be construed as affecting any right of Canadian lines to participate in making reparation. Vera Chemical Co. v. A. C., 104 I. C. C. 408, 412.

(e) Canada: Proposed adjustment of rates on lumber and related articles from south Pacific coast origin groups to Canadian points, involving advances and reductions, and designed for purpose of equalizing those rates with north Pacific coast points, found not justified as a whole. Carriers long maintained equal rates from this general territory but parity was disrupted when rates from north Pacific coast points were revised without concurrent revision from south Pacific coast points. While circumstances warranting higher rates from north Pacific coast points on one kind of lumber than on other kinds are not necessarily controlling as to rates from south Pacific coast points, reductions proposed will restore former equalization, no reason appearing why the disparity should be continued or why equal rates should not obtain. The evidence, however, does not support a finding that change proposed in the minima, restriction proposed in the lumber list, or cancellation of transshipment or proportional rates is warranted. Lumber and Related Articles 107 I. C. C. 57.

(f) Adjacent foreign country rates: If rates on traffic moving from Canadian points to destination in the United States are found to be unduly prejudicial, commission clearly has power under the act to require removal of such undue prejudice. Newsprint Paper from Eastern Canada, 109 I. C. C. 701, 703.

(g) The Commission has no jurisdiction to prescribe joint rates from or to adjacent foreign countries to or from points in the United States or to control the charges that carriers in adjacent foreign countries may make for transportation services in those countries, but can deal only with the carriers and transportation within the confines of the United States. Spanish River Pulp & Paper Mills v. A. & W. Ry., 113 I. C. C. 343, 350.

(h) Upon contention that commission has no jurisdiction to pass upon joint rates applying in part to transportation without territorial boundaries of United States, HELD: While commission has no jurisdiction to prescribe such rates for future or to control charges that carriers in adjacent foreign countries may make for transportation services in those countries, it can deal with carriers and transportation within the confines of United States and prescribe the limit of rates in which carriers under its jurisdiction may participate in so far as transportation takes place within boundaries of the United States. See 17 I. C. C. 588, and other cited cases. Spanish River Pulp & Paper Mills v. A. & W., 113 I. C. C. 343, 350, 351.

(ij) The Commission has exercised jurisdiction to award against American lines as participating tort feasors, reparation for damages which resulted from the imposition of excessive international joint rates. Spanish River Pulp & Paper Mills v. A. & W. Ry., 120 I. C. C. 251, 254.

(k) Power or authority of commission to pass upon lawfulness of international joint rates and fix maxima in which the American lines may lawfully participate is not as a matter of law, dependent upon adequacy or inadequacy of divisions accorded or available to those lines. Spanish River Pulp & Paper Mills v. A. & W., 120 I. C. C. 251, 252.

(l) Upon contention that commission can go no further than to require American lines to withdraw from any joint rate to or from an adjacent foreign country deemed excessive or otherwise objectionable, and may deal only with rates of those lines to or from international boundary, HELD: Commission does not undertake to prescribe joint rates as between American and foreign lines but merely determines what in its judgment will be maximum joint rates in which American lines can participate. The proportion of rates to accure to each line is left to negotiation between participants, and if foreign lines decline to join in such rates the American lines are forced to withdraw from joint rates which exceed the maximum, in which case commission can then determine and prescribe specific rates to be applied to or from boundary. If complainants are

then dissatisfied, their remedy lies in the hands of the foreign regulatory body. Spanish River Pulp & Paper Mills v. A. & W., 120 I. C. C. 251, 253.

(m) Recognizing point of termination of commission's authority to deal with international joint rates for future and citing International Nickel Co., 66 I. C. C. 627, the commission entered a "cease and desist order" in lieu of an order to establish and maintain rates. See 98 I. C. C. 339. Spanish River Pulp & Paper Mills v. A. & W., 120 I. C. C. 251, 254.

(n) Where American carriers subject to the act join in maintenance of rates which are in violation of the law, fact that point of origin or destination may be in another country and that carriers not subject to commission's jurisdiction may be parties thereto, is an incident which does not nullify requirements of the act as to American lines. The commission has exercised jurisdiction to award, against American lines as participating tort faesors, reparation for damages resulting from imposition of excessive international joint rates. See 66 I. C. C. 627. If commission may take this action how much more rational is assumption that it may require American lines to refrain from participating in and applying rates which will render them subject to such judgments. Spanish River Pulp & Paper Mills v. A. & W., 120 I. C. C. 251, 253, 254.

(o) Provisions of fourth section of the act apply where point of origin is in an adjacent foreign country and intermediate point and more distant point of destination are in the United States. See 74 I. C. C. 733. Newsprint and Wall Paper, 126 I. C. C. 166, 168.

(p) Commission is without power to prescribe reasonable rates for future on shipments originating in a foreign country. Duplex Printing Press Co. v. B. C. E., 128 I. C. C. 692, 693.

(q) The commission is without jurisdiction to prescribe a rate for the future from a point in the United States through a foreign country to a point in the United States. See 69 I. C. C. 337; 102 I. C. C. 27. Montello Granite Co. v. M., St. P. & S. S. M., 129 I. C. C. 427, 429.

(r) Upon contention of carrier that commission has no jurisdiction to consider reasonableness of charges, assailed; to prescribe charges for future; or to award reparation, on ground that such charge applied in part to transportation without the territorial boundaries of the United States, FOUND: In numerous cases the commission has considered joint rates between Canada and the United States, found them unreasonable, and awarded reparation against United States lines for full amount of damages sustained. See 66 I. C. C. 627. Simpson Co. v. G. T. W., 129 I. C. C. 430, 431, 432.

ADVANCED RATES

I. CONTROL AND REGULATION.

- §1. Jurisdiction of Commission.
  - (1) Inquiry into reasonableness.
  - (2) Power to require advance.
  - (3) Prescribe minimum rate.
  - (4) To suspend advance.
  - (5) To suspend reduction.
  - (5½) Government initiated rates.
- §1½. In general.
- §2. Limitation of power.

II. JUSTIFICATION OF INCREASE.

- §2½. In general.
- §3. Burden of proof.
- §4. Effect.
- §5. Right to advance.
  - (½) In general.
  - (1) To avoid reducing other rates.
  - (1½) Decline in tonnage.
  - (2) To equalize rates.
  - (2½) Fourth section violations.
  - (3) Commodity relationship.
  - (4) Unreasonably low prior rate.
  - (5) Congestion of traffic.
  - (6) Erroneous rate.
  - (7) Expense of competition.
  - (7¼) Low or high state rate.
  - (7½) Paper rates.

(8) To prefer particular locality.
(9) Inadequate facilities.
§6. Right to earn.
(1) On bona fide investment or value.
(2) On unearned increment.
(3) On reproduction value.
(4) On surplus.
(5) For permanent improvements.
(6) All traffic will bear.
(7) Cost of insurance.

III. EVIDENCE.

§6½. In general.
§7. Change in conditions.
(1) In general.
(2) Increased operating expenses.
(3) Impairment of credit.
(4) Cessation of competition.
(5) Competition in general.
(6) Disputes concerning divisions.
(7) Lack of revenue.
(8) Percentage increases.
(9) Government orders or advances.
§8. Presumptions.
(1) Continuance of prior rate.
(2) Temporary reduction.
§8½. Comparisons.
§8½a. Combination rule.
§9. Concerted action.
§9½. Double advances.
§10. Economy of management.
§10½. Fractions.
§11. Scientific management.
§11½. Differentials or rate relationship.
§12. Branch lines.
(1) Operation.
(2) Purchase.
§13. Detriment to shipper.
§14. Benefit to industry.
§14½. Motive of carrier.
§14¾. Previous decision of Commission.
§15. Standard for judging advance.
§15½. Two line haul.
§16. Uniformity of advance.
§16½. Widespread rate adjustment.

IV. REASONABLENESS OF ADVANCED RATES.

§17. In general.
§18. Circumstances and conditions.
(½) In general.
(1) Low receipts per ton mile.
(2) Water competition.
(3) Heavy and uniform tonnage.
(4) Low grade commodity.
(5) Ratio of rate to value.
(6) To gain import duty.
(7) Rates in like territory.
(8) Circuitous route.
(9) Use of commodity.
(10) Increased divisions.
(11) Bulk.

V. DISCRIMINATION THROUGH ADVANCE.

§19. In general.
§19¼. Legal rate.

VI. REMEDIES AND PROCEDURE.

§19½. In general.
§20. Injunctions.
§21. Investigation.
§21½. Orders.

VII. REPARATION.

§22. In general.

VIII. TARIFFS AND PUBLICATION.

§23. In general.
§24. Construction.

CROSS REFERENCES

See Canada (c) (kk); Demurrage §20; Mails; Overcharges (n); Proportional Rates; Through Routes and Joint Rates VI; Water Carriers VI.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction Of Commission.

(2) Power to Require Advance.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) The commission does not subscribe to proposition that where freight

rates are producing, on the property devoted to freight service, the rate of return which has been fixed as fair, the commission can as a matter of law authorize no increase in such rates to correct deficiencies in aggregate earnings growing out of inability of passenger business to meet its full share of revenue burden. Freight and passenger service are both essential and both may be subjected to reasonable rates and charges to produce the fair aggregate return authorized by law even though thereby a higher rate of return may be exacted from the one than from the other. Revenues in Western District, 113 I. C. C. 3, 22, 23.

§1(4). To Suspend Advance.

See Suspended Rates.

(a) Carriers, in proposing certain increased rates suspended by commission, urged that if the commission can not consistently allow proposed schedules to become effective that its findings be deferred until another formal proceeding involving same rates is decided. HELD: The act fixes period during which commission may suspend operation of proposed schedules and requires that proceedings of this character be expeditiously handled. Grain and Products, 115 I. C. C. 615, 617.

(b) Carriers in a suspension proceeding must show that proposed increased rates are not only reasonable under section 1, but also that they will not transgress any other sections of the statute. Federated Metals Corp. v. C. R. R. Co. of N. J., 126 I. C. C. 703, 710.

§1½. In general.

(a) Under Interstate Commerce Act, §§ 1, 2, 3, and sections 13, 15, as amended, and 15a, as added by Transp. Act 1920, Interstate Commerce Commission HELD authorized to increase mimimum rate on salt from Detroit to Chicago, without finding that prior rate was noncompensatory or unreasonable, in order to relieve discrimination otherwise resulting adversely to mines located in New York, Kansas, and Louisiana, and carriers serving them, and for purpose of preventing any prejudicial discrimination between localities, particularly in view of provisions of section 15a for so-called recapture of excess earnings thus allowed. Jefferson Island Salt Mining Co. v. United States, 6 Fed. (2d) 315.

§2. Limitation of Power.

(a) Carriers in proposing certain increased rates suspended by commission, urged that if the commission can not consistently allow the proposed schedules to become effective that its findings be deferred until another formal proceeding involving same rates is decided. HELD: The act fixes the period during which the commission may suspend operation of proposed schedules and requires that proceedings of this character be expeditiously handled. Grain and Products, 115 I. C. C. 615, 617.

II. JUSTIFICATION OF INCREASE.

§2½. In General.

(a) Proposal to increase rates on wagon parts, iron and steel, including skeins from Chattanooga, Tenn., to Charleston, S. C., Hopkinsville, Ky., and Laurel and Meridian, Miss., designed to align such rates with rates from Ohio and Mississippi River crossings to Mississippi Valley points and to meet objections from Louisville interests, found not justified. Present rates are not unduly low, and proposed revision would separate iron and steel wagon parts from special iron and steel list. Wagon Parts to Southern Destinations, 104 I. C. C. 179.

(b) Proposed increases, from the El Dorado-Smackover field in Arkansas, in domestic rates on crude petroleum and fuel oil and in export and coast-wise rates on crude petroleum and refined, gas, fuel, and road oils, to New Orleans-Baton Rouge district in Louisiana, and in export and coastwise rates on crude petroleum and fuel and gas oils to Texas ports, found not justified. While the record lacks detailed information as to degree in which present rates, established to meet an emergency when industry was in a state of depression, yield profit to carriers, facts tend to support conclusion that circumstances and conditions surrounding movement are so unusually favorable to economical handling of traffic as to be almost unique. Petroleum from Arkansas, 104 I. C. C. 651.

(c) Refuse: Proposed increased interstate rates on manufacturing plant refuse, including ashes and cinders not having value for construction purposes, and on quarry strippings, between points on rates on refuse material having such Indiana Harbor Belt R. R., to basis of

value, found not justified. While present rate might be inadequate for service performed, carrier's desire here is to advance rate to prevent diversion of this undesirable traffic from competing lines maintaining higher rates for similar services. Such situations do not warrant general increase proposed; moreover, present rate is not shown to be confiscatory or unremunerative. Ashes and Cinders, 107 I. C. C. 408.

(d) Grain, products, and other commodities: Proposal to increase class and commodity rates on, between certain Iowa and South Dakota points and points in Colorado and Utah by eliminating some origin points from Missouri River rate group and placing them in a higher-rated group, found not justified. While proposed rates compare favorably, distance considered, with rates shown in comparison, there is no showing as to whether origin points or destination from and to which comparative rates are group points, or as to other circumstances or conditions surrounding transportation under such rates. Neither is extent of proposed increases shown, other than rates on grain and products between Iowa points and western destinations, the burden being upon respondents to justify all increases proposed in suspended schedules. Grain and Products from Iowa and South Dakota, 109 I. C. C. 27.

(e) Lumber: Proposed increase in transcontinental rates on, from western producing points to Ripley and Manchester, Ohio, to a basis 5 cents higher than group bases applicable to Trinity and South Ripley, Ky., which would result in rates higher than to farther distant eastern destinations, found not justified in that through rates from the origin territory are blanketed to eastern groups over large areas. Present rates also found to result in undue prejudice in favor of points on C. & O. and nonprejudicial basis prescribed. Lumber from Pacific Coast Points, 109 I. C. C. 140.

(f) Respondents propose to increase the local rates on petroleum and its products, in carloads from Texas to Vicksburg and Natchez, Miss., and to New Orleans, La. Protestants chief concern appears to be caused by the respondents proposal to disrupt the large group of producing points which now have a common rate of 22.5c on petroleum to Vicksburg and Natchez. The distances of these points from Natchez and Vicksburg range between 230 and 554 miles. That the present rate of 22.5c which respondents propose to cancel, falls short of being a maximum reasonable rate is amply proven. HELD, proposed rates justified with the exception of rates on fuel oil and low grade petroleum products from Wichita Falls and Fort Worth and points grouped with them, which should not be more than 80% of the rates on refined oil between the same points. Petroleum oil and its products, 118 I. C. C. 471.

(g) Proposal of carriers forming circuitous routes from points in Scranton and Williamsport, Pa., groups to increase their class and commodity rates on traffic moving to c. f. a. and western trunk-line territories to basis of rates in effect from higher-rated intermediate groups, found not justified. Class and Commodity Rates from Pennsylvania, 115 I. C. C. 331.

(h) Proposed increased rates on cream and related articles, moving in baggage cars on passenger trains, between points on the C. & E. I., by cancelling present rates based on the so-called Beatrice scale, and putting into effect rates based on distance scale prescribed in 46 I. C. C. 601, for application generally in c. f. a. territory, found justified. Although a few carriers have voluntarily published cream rates lower than the c. f. a. scale, that is the basis of rates prevalent in this territory on interstate shipments and there is nothing of record to justify requiring carrier to maintain lower rates over its line than those found reasonable for application over other roads in this territory. Cream and Related Articles, 115 I. C. C. 447.

(i) Principal reason advanced by protestant against a proposed increased rate was that the municipality will shortly let a contract for construction of an expensive courthouse and they desire no change in rates until that contract is awarded. HELD: Contracts of this nature can not control establishment of reasonable rates. Iron and Steel to Shreveport, 115 I. C. C. 612, 614.

(j) Carriers, in proposing certain increased rates suspended by commission, urged that if the commission can not consistently allow proposed schedules to become effective that its findings be deferred until another formal proceeding involving same rates is decided. HELD: The act fixes period during which com-

mission may suspend operation of proposed schedules and requires that proceedings of this character be expeditiously handled. Grain and Products, 115 I. C. C. 615, 617.

(k) Respondents proposed to increase their rates on potatoes and cabbage, carloads and less carloads, from Virginia on the Norfolk Southern to destinations in central territory. Respondents also proposed to provide that rates on these commodities to Toledo, Cincinnati and Cleveland, O., Pittsburgh, Pa., and Wheeling, W. Va., from certain Norfolk Southern stations will apply only when traffic is routed by way of Suffolk, Va., and N. & W. and connections or Virginian and connections. The present rates from Virginia are less than those in effect from Norfolk and contravene the fourth section. Proposed schedules are intended to correct this situation by making these rates not lower than those from Norfolk. The record shows that the present rates on potatoes in certain instances are higher and in others lower from representative points in Virginia than from points in North Carolina. The record is persuasive that the proposed rates in numerous instances are reasonable. They would, however, create fourth section violations at points where no such violations now exist. HELD, schedules not justified. Vegetables from Virginia, 120 I. C. C. 319.

(l) Respondents proposed to revise their rates on fresh fruits and vegetables, in carloads, from southern Missouri, eastern Oklahoma, Arkansas and Louisiana west of the Mississippi river, called 9702 territory, to points in such territory and to Memphis, Tenn., and Mississippi river crossings south thereof. The present rates are a group adjustment as to origin territory, and are not made with any particular reference to the distance. Respondents offered no justification whatsoever for publishing higher rates to Memphis than to St. Louis. The rates on practically all traffic to Memphis are generally lower than to St. Louis from most of the 9702 territory. HELD. schedules not justified. Fruits and vegetables, 120 I. C. C. 395.

(m) Respondents proposed to increase a large majority of the rates on pears, in crates, boxes, or baskets, in carloads, from Group 4, embracing points in central and eastern Washington, eastern Oregon, northern Idaho, and western Montana, to east-bound transcontinental groups F, G and J. The $1.69 rate will contine to apply under respondents tariffs from specified points in Group 4 to Mitchell, S. D., and various other fruit jobbing points in South Dakota. This rate is applicable via Sioux City and the establishment of the $1.73 rate to the latter destination would result in a fourth section violation. The record shows a need for some readjustments in the rate structure from Group 4 points to the destination described which could be accomplished by appropriate tariff publications. The proposed changes confined as they are to pears, add to the defects existing instead of providing a cure. HELD, increased rates not justified. Pears from north Pacific coast points, 122 I. C. C. 642.

(n) Proposed increased rates on wooden handles, l. c. l., from producing points in Arkansas and Missouri to destinations in Louisiana and Texas, found not justified. Wooden handles constitute only commodity on which there is a departure from the normal groupings on l. c. l. traffic from and to origin and destination territories here involved and although present schedules include a number of points for which this special basis serves no purpose because of seeming abandonment of plants, the record presents no sound reason for a discontinuance of this special basis at points where its maintenance has made possible a continuance of the industries at the respective places. If any disadvantages are present by reason of existing adjustment, the suspended schedules will do little more than shift them and create disparities in the rates from complaining points which for a long period have been accorded substantially same treatment. Wooden Handles from Arkansas and Missouri, 123 I. C. C. 146.

(o) Obviously rate increases for future must take into consideration probable future trends as well as immediate needs, and can not be calculated with extreme nicety. New England Divisions, 126 I. C. C. 579, 590.

§3. Burden of Proof.

See Burden of Proof; Evidence I.

(a) Proposed increased rates on newspapers shipped in baggage cars on passenger trains between points in trunkline and c. f. a. territories, found justified. While there are no previous decisions which respect to this class of

traffic to guide commission in determining reasonable rates, facts that none of the general rate increases have been applied to this traffic; that proposed rate represents but a small increase over rate in effect in 1900, in comparison with large increases in operating costs since that year; and that local and out-of-town retail prices of newspapers have been advanced generally since that time by different amounts, indicate that newspapers have not borne their relative share of increases in revenue and increased costs of transportation. Newspapers in Baggage Cars, 104 I. C. C. 527.

(b) The burden of proof to justify proposed increased rates rests upon carriers. Newspapers in Baggage Cars, 104 I. C. C. 527, 529.

(c) Proposal to increase rates on salt from Hartford and Mason City, W. Va. to C. & O. stations, Fernald, Ohio, to Bath, Ind., inclusive, found not justified, respondents having offered no evidence in support of proposed increase. Salt from Ohio and W. Va. Points, 104 I. C. C. 730.

(d) Rates proposed by carriers must be shown to be not only reasonable but otherwise lawful. South Dakota R. R. Commers. v. C. & N. W., 107 I. C. C. 35, 47.

(e) Proposal to increase class and commodity rates on grain and products and other commodities between certain Iowa and South Dakota points and points in Colorado and Utah by eliminating some origin points from Missouri River rate group and placing them in a higher-rated group, found not justified. While proposed rates compare favorably, distance considered, with rates shown in comparison, there is no showing as to whether origin points or destination from and to which comparative rates apply are group points, or as to other circumstances or conditions surrounding transportation under such rates. Neither is extent of proposed increases shown, other than rates on grain and products between Iowa points and western destinations, the burden being upon respondents to justify all increases proposed in suspended schedules. Grain and Products from Iowa and South Dakota, 109 I. C. C. 27.

(f) The burden is upon carriers to justify all increases in rates proposed in suspended schedules. Grain and Products from Iowa and South Dakota, 109 I. C. C. 27, 30.

(g) The statute casts upon carriers burden of justifying proposed increased rates suspended by commission, and withdrawal of protest which led to suspension does not of itself permit conclusion that proposed changes are justified. Classification of Hand Pea Hullers, 109 I. C. C. 143, 145.

(h) Plaster board, wall plaster, stucco, and plaster blocks: Proposed increased rates on, in straight or mixed carloads, from Los Angeles and Seattle to Utah common points, principally on ground that present rates are too low, but also for purpose of placing Los Angeles and Seattle on a more nearly equal basis, found not justified. Rate comparisons submitted by carriers, unaccompanied by a showing of similarity of transportation conditions, found to be of little probative value. On other hand, protestants instanced a number of rates from eastern points to destinations in western territory which have recently been reduced, and contend that present rates should be reduced instead of increased. Plaster Board to Utah Common Points, 112 I. C. C. 3.

(i) The justification of increased rates is the burden respondents must bear regardless of the mechanics by which the rates are constructed. Combination rule on brick, 115 I. C. C. 293, 295.

(jk) Proposal of carriers forming circuitous routes from points in Scranton and Williamsport, Pa., groups to increase their class and commodity rates on traffic moving to c. f. a. and western trunk-line territories to basis of rates in effect from higher-rated intermediate groups, found not justified. Class and Commodity Rates from Pennsylvania, 115 I. C. C. 331.

(l) Proposed increased rates on import and inbound coastwise shipments of fertilizers from Texas Gulf ports to Shreveport, La., and points in Shreveport group, designed for purpose of putting all Texas and Louisiana Gulf ports upon a parity with New Orleans, found not justified. Carriers failed to sustain burden of proof resting upon them to justify the advances proposed, the only justification offered is that they are attempting to carry out what they consider to be commission's view as expressed in a pending proceeding. Fertilizers from Texas Ports, 115 I. C. C. 582.

(m) The burden of justifying pro-

posed increased rates rests upon carriers. Fertilizers from Texas Ports, 115 I. C. C. 582, 584.

(n) Proposed increased rates on newsprint and poster paper from Camas, Wash., and Oregon City and West Linn, Oreg., to destinations in Washington, Oregon, and Idaho, found justified. Evidence presented by protestants is meager, their allegation of discrimination which will result from proposed rates being shown to result from competitive influences beyond control of carriers here involved. Respondents, on the other hand, point out that they are merely restoring basis of rates which formerly existed and which, except for general rate changes, remained in effect for many years without complaint; also that proposed rates and earnings compare favorably with those on numerous commodities from Portland to same destinations. Paper between North Pacific Coast and Spokane, 118 I. C. C. 123.

(o) Proposed increased rates found not justified even though protestants did not appear at hearing and respondent merely offered an explanation of proposed advances rather than justification therefor. Class Rates Between Wyoming and Nebraska and South Dakota, 118 I. C. C. 237.

(p) Proposed increased class rates between points in Wyoming, on one hand, and Nebraska and South Dakota, on other, found not justified. Protestant entered no appearance at hearing and carrier merely offered an explanation of proposed advances rather than justification therefor, indicating that no increase in rates was intended and that it is willing to republish rates so as to preserve existing level. Class Rates between Wyoming and Nebraska and South Dakota, 118 I. C. C. 237.

(q) Horizontal increases in freight rates in 1920, resulted in disturbances to rate relationships and differentials in various instances, but that fact in and of itself does not establish unreasonableness. Paris Flouring Co. v. N. Y., C. & St. L., 118 I. C. C. 291, 292.

(r) Proposed rate changes, mainly increases, on grain and products, including flaxseed, between Minnesota, the Dakotas, Iowa, Wisconsin, and Illinois, principally North Dakota and Minnesota to the larger terminal markets, found not justified. While carriers showed that present rates are low and proposed rates not unduly high, and that unfavorable transportation conditions attend the movements from North Dakota and Minnesota, these conditions were not translated into terms of cost of service or a showing made that they are more burdensome than conditions attending the movement of other important traffic. Nor did carriers show that earnings under present rates are low, either intrinsically or by comparison with those on other commodities. On other hand, shippers' evidence as to relative earnings and cost of service warrants conclusion that present rates are by no means unremunerative, and that earnings thereunder compare favorably with those on other traffic and with earnings derived by other carriers in the western group. Grain and Products, 122 I. C. C. 235.

(s) When carriers in an I. & S. proceeding propose what in substance amounts to a general increase in rates over a large area on agricultural commodities which have been shown to be affected by depression, they must clearly demonstrate that such increase is justified under the law including provisions of the Hoch-Smith resolution. Grain and Products, 122 I. C. C. 235, 264.

(t) The burden of justifying rates increased since January 1, 1910, rests upon carriers. American Door & Mfg. Co. v. B. & O., 122 I. C. C. 471, 472.

(u) Burden of justifying proposed increased rates rests upon carriers. Grain and Products from North Dakota, 123 I. C. C. 49, 55.

(v) As a prerequisite to approval of the Commission of the rates under section 1 it is only necessary for the respondents to show, as it is in all suspension proceedings where it approves rate changes, that the rates were within the limits of reasonableness, not more than reasonable maxima nor less than reasonable minima. Federated Metals Corp. v. C. R. R. of N. J., 126 I. C. C. 703, 709.

(w) The burden of justifying increased rates rest upon carriers. Grain and Products to Arkansas, 128 I. C. C. 29, 30.

(x) Burden of proof is upon complainant to show that rates charged were inapplicable. Nebraska Bridge Supply & Lbr. Co. v. A. G. S., 128 I. C. C. 94. 96.

(y) Where rates have been increased since 1910, burden is upon carrier to justify reasonableness of rate charged

for service performed. Western Paper Makers Chemical Co. v. A. C. L., 128 I. C. C. 244, 245.

(z) Carriers introduced no evidence, contending that complainant had not shown the rates to be unreasonable. Burden is upon carriers to justify reasonableness of rates increased since 1910. Republic Creosoting Co. v. A. G. S., 128 I. C. C. 547, 550.

(aa) Rates assailed represent increases which are results of cancellation of former absorptions and burden of proof is upon defendant. Amer. Fruit & Veg. Shippers Asso. v. Amer. Ry. Exp. Co., 128 I. C. C. 651, 660.

(bb) Burden of proof to show that proposed increased rates are just and reasonable is upon carrier, and this is especially true where commodities affected are the products of agriculture. See 122 I. C. C. 235, 264. Fruit and Vegetables Between Pacific Coast States, 129 I. C. C. 569, 570.

§5. Right to Advance.

(½). In General.

(a) Proposal to increase rates on nitrate of soda from ship side at New Orleans and subports to points in Arkansas and Oklahoma on class A lines by discontinuing absorption of handling charges at ports, thereby establishing same basis as that applying to destinations on other than class A lines, found not justified. Proposed increase would seriously affect use of this commodity as a fertilizer in its competition with other fertilizers. Moreover, the yield of revenue under present rates seems ample. Nitrate of of Soda from New Orleans, 104 I. C. C. 761.

(b) Respondents proposed a general revision of rates on potatoes, carloads, from Wisconsin and elsewhere in western trunk line territory to destinations in southeastern Missouri. The present and proposed rates are published as joint rates, but respondents state that those proposed are constructed generally upon a combination of the local rates from Wisconsin producing points to St. Louis, Mo., or Thebes, or Cairo, Ill., plus Table 12 rates prescribed in 77 I. C. C. 473. In many instances, however, the rates proposed to destinations near the Missouri-Arkansas line are those applicable from Wisconsin producing points to Arkansas destinations, such as Moark, Blytheville, Pittman, St. Francis, and Boynton. The rates from Wisconsin points to the latter destinations are not made upon the full St. Louis, Thebes, or Cairo combinations but in most instances by application of differentials aggregating 19c over the 9702 rates from St. Louis to Ark. On shipments from the territory considered, rates made by adding to the scale rate from the gateway the local to the gateway compare favorably with rates in other territories instanced by respondents. But when compared with lower rates, distance considered, not only to farther distant destinations in Arkansas but also to intermediate destinations in south eastern Missouri where observance of the fourth section requires maintenance of the rates to the Arkansas destinations, or compared with the rates from the same territory of origin to destinations in southwestern Missouri and Kansas, the Commission is not convinced that the rates proposed would be reasonable. Held, proposed schedules not justified. Potatoes to Missouri, 113 I. C. C. 289.

(c) Proposed increased rates on pears, in crates, boxes, or baskets, from Group 4 points in Washington, Oregon, Idaho, and Montana, to eastbound transcontinental Groups F, G, and J, designed for purpose of equalizing rates from Group 4 and the Rogue River district, found not justified. Rates proposed would disrupt rate relationships of long standing, both as to origin and destination groups, and result in fourth-section violations. While record shows a need for some readjustment in the rate structure from Group 4 points, which could be accomplished by appropriate tariff publications, the changes here proposed, confined as they are to pears, add to the defects existing instead of providing a cure. Pears from North Pacific Coast Points, 122 I. C. C. 642.

(d) Respondent, Louisville & Nashville, proposed to increase its rates on forest products, in carloads, from Decatur, Ala., and a few related points to Nashville, Tenn. Present rate on common woods is 11.5 cents and that on walnut, cherry and cedar 13.5 cents. Proposed rate on both groups is 14 cents. Distance from Decatur to Nashville is about 120 miles. From most of the other origin points, which are intermediate, the distances are as much as 18 miles shorter. The increases were decided upon to put Decatur on the same rate basis as Florence and Sheffield, Ala., respectively about 125 and 130 miles southwest of

Nashville, on a branch of respondents line which connects with the main line at Columbia, Tenn., 75 miles north of Decatur. The rate on both groups of woods shown above from Florence and Sheffield to Nashville being 14 cents, HELD, suspended schedules not justified. Forest Products from Decatur, 126 I. C. C. 252.

(e) Respondents proposed to increase their rates on granite, stone and marble, in carloads, from and to points in New England. The proposal is broad in scope, affecting New England generally, except that the local rates of the Maine Central, Central Vermont, and several other of the smaller roads are not proposed to be increased. Subject to certain exceptions the increases would be brought about by the cancellation of commodity rates. Certain increased commodity rates are proposed where it is impracticable to do away with commodity rates owing to the existence of socalled overhead commodity rates to trunk line territory. Other increased commodity rates on the basis of 80% of sixth class rates are contemplated from quarries to cutting plants from which there is a substantial movement by rail. The classification ratings which would generally become applicable if the commodity rates were canceled as proposed are sixth class for rough quarried material and material sawed on not more than four sides, and fifth class for material sawed on more than four sides or chiseled, dressed, hammered or sand rubbed. On much of the traffic there would be no increases. Loss and damage claims are inconsequential. Commodity rates much below the class rates apply on this traffic from New England to trunk line and central territories. They were made to assist New England producers in reaching distant markets in competition with southern and western producers. Many of the present commodity rates in New England compare favorably with those in the south and west. HELD, proposed schedules not justified, without prejudice to the establishment of rates on the sixth class material for application between points on class A lines not in excess of those prescribed in Plymouth Quarries v. N. Y. N. H. & H., 129 I. C. C. 621, with rates on the fifth class material between points on such lines not more than 25% higher than those on the sixth class material, and with rates between points on class B lines and between points on class B and class A lines not more than 10% higher than those between points on class A lines on the respective classes of material. Granite, stone, and marble in New England, 132 I. C. C. 514.

(f) Burlington, respondent, proposed to increase its rates on molding sand, in carloads, from Dallas City, Ill., to Burlington, West Burlington and Keokuk, Ia. Dallas City is on respondents Carthage branch, 56 miles north of Quincy, Ill. The distances over respondents line from Dallas City to Burlington, West Burlington and Keokuk are 16, 20 and 59 miles respectively. Present rates are 75c to Burlington and West Burlington, and $1 to Keokuk. Prior to May 7, 1927 the rates were 76c and $1.11, respectively, and they would be reestablished if the suspended schedules were permitted to go into effect. The level of rates on common and molding sand is generally lower in Illinois Freight Association territory than in western trunk line territory or central territory. The record is persuasive that the proposed rate of 76c will not be unreasonable on molding sand, in carloads, to Burlington and West Burlington, but respondent has not justified the proposed increase in the rate to Keokuk. HELD, proposals not justified, without prejudice to the filing of new schedules in conformity with the findings. Molding sand from Dallas City, 132 I. C. C. 540.

§5 (2). To Equalize Rates.

See Equalization of Rates; Relative Rates.

(a) Proposed increased commodity rates on common black powder from Fairchance, Pa., to Carneys Point, N. J., and points taking same rates, designed to restore parity of relationship formerly existing between commodity rate and first class rate from and to these points, found not justified as to c. l. traffic, but justified as to l. c. l. shipments, latter being satisfactory to all parties concerned. Black Powder from Fairchance, Pa., 104 I. C. C. 45.

(b) Proposal to increase to former basis rates on salt from Ohio producing points to destinations west of Missouri River, found justified. In complying with commission's order in 92 I. C. C. 388, carriers, through error, published reduced rates to points west of Missouri River. Considering wide area of salt production and influence which keen competition has upon rate structure, reduction made in error would give rise to re-

adjustment elsewhere. Moreover carriers here do not propose a new adjustment of rates but simply seek to restore relationship previously existing. Salt to Western Trunk Line Territory, 104 I. C. C. 101.

(c) Grain, products, and alfalfa meal: Proposed increased rates on, from Colorado common points and points grouped therewith to destinations in Wisconsin and Upper Peninsula of Michigan, found justified except where such rates from Utah common points, combinations of local to and proportionals beyond Omaha, or rates to farther distant destinations in violation of long-and-short-haul provision of section 4 of the act. Proposed joint rates equal combination of locals to and from Missouri River cities, which is generally rate basis on these commodities from points west of Missouri River in Oklahoma, Kansas, Nebraska, Wyoming, and eastern Colorado. Grain and Products from Colorado, 104 I. C. C. 281.

(d) Proposal to increase rates on petroleum and products from points on B. & O. between Charleston and Gassaway, W. Va., to Buffalo, N. Y., to basis of rate from Cabin Creek Junction, W. Va., to a point on C. & O., found justified. Proposed rate will result in equalizing rates over all routes, will not be unreasonable, and will effect a proper and relative adjustment with rates on this traffic from other producing points in same general territory. Petroleum from W. Va., 104 I. C. C. 676.

(e) Proposed increase in rate on salt from Pomeroy, Ohio, Hartford, Mason City, Malden, Witcher, and Dickinson, W. Va., to Cincinnati and points within Cincinnati switching district, designed to prevent a threatened disruption of adjustment from other points, and to bring about a better relationship with rates from other producing fields, found justified when used as a local rate, but not justified when used as a proportional rate on shipments moving beyond. Salt from Ohio and West Virginia Points, 104 I. C. C. 730.

(f) Proposal to increase interstate rates on soda products, other than caustic soda, from Syracuse and Solvay, N. Y., to New York lighterage points, found justified. Proposed increase will equalize rates on these commodities over the lines of all carriers, and will effect a more equitable relationship of rates from competing points in c. f. a. territory and Syracuse and Solvay to trunk-line territory, including New York Harbor points. Soda Products to New York Lighterage Points, 107 I. C. C. 171.

(g) Proposed increased rates on brick and related articles taking same rates, including hollow building tile, from Sligo, St. Charles, Climax, and New Bethlehem, Pa., to points in Buffalo and Rochester, N. Y., territory, which would place Clearfield and Curwensville, competing points in the Clearfield group, on a parity with these origin points without disrupting lever of rates in that group, found justified except as to rates from New Bethlehem. Brick and Related Articles to New York, 109 I. C. C. 10.

(h) Proposed increased rates on brass, bronze, and copper articles between points in official classification territory found not justified in their entirety. The increases sought might seriously disturb rate relationships upon which the industry has developed. Reasonable basis of rates suggested. Brass, Bronze, and Copper Articles, 109 I. C. C. 351.

(i) Burlington, respondent, proposed changes in its method of publishing class rates which would result in increases on traffic moving between points on its Billings-Casper division, on the one hand, and on its Alliance-Billings line in southwestern South Dakota and northwestern Nebraska, on the other hand. No increase in rates was intended and respondent is willing to republish the rates so as to preserve the existing level. HELD, schedules not justified. Class rates between Wyoming and Nebraska, 118 I. C. C. 237.

(j) Proposed increased rate on rock, phosphate from points in Florida to Roanoke, Ala., by restoring Group 5 rate previously in effect, found not justified. Roanoke at present enjoys rate applicable to points in Group 4, which reduction was made for purpose of placing that point on a parity with points in the Atlanta - La Grange group. Moreover, distance to Roanoke is less than that to most points in Group 4, and while element of distance is disregarded to a greater or less extent in establishment of group rates and is not necessarily controlling in determining reasonableness of such rates, it may be a very important factor where a system of group rates exists, in determining the group in which a particular point belongs, and it is clear that Roanoke properly belongs in Group 4. Phosphate Rock from Florida, 115 I. C. C. 229.

(k) Proposed increased rate on paper and paper articles from Holyoke, Mass., to Newark and Nutley, N. J., via the New Haven railroad, for purpose of establishing higher commodity rate at present in effect from and to same points via the Boston & Maine, found not justified. Equal commodity rates have applied via both lines and the New Haven contends that cancellation of that rate by the Boston & Maine has removed any necessity for its further continuance via its own line. Contention, however, loses sight of the fact that route of the Boston & Maine is over 100 per cent greater than that of the New Haven and that former carrier is not the rate-making line. Moreover, no evidence was offered showing that present rate is unremunerative. Paper from Holyoke, 115 I. C. C. 336.

(l) Proposed increased rates on salt from Pomeroy, Ohio, and Hartford, Mason City, and Malden, W. Va., to Louisville, Ky., and Jeffersonville and New Albany, Ind., designed to bring about a better relationship with rates and car-mile earnings over certain routes and to remove existing fourth-section departures, found justified when used as local but not justified when used as proportional rates on shipments moving beyond. See also 104 I. C. C. 730. Salt from Ohio and West Virginia, 115 I. C. C. 370.

(m) Proposed increased rates on imported iron and steel articles from Texas Gulf ports to St. Louis, points in Oklahoma and Kansas, and Little Rock and Pine Bluff, Ark., and proposed restriction of import class rates so that fifth-class rates will not apply on iron and steel articles from those points to destinations involved, designed for purpose of restoring domestic and import rates to the same level, found not justified. Reasonable maximum rates for future prescribed. Import Iron and Steel from Gulf Ports, 115 I. C. C. 373.

(n) Proposed increased rate on imported iron and steel articles from New Orleans and other Gulf ports, excluding Texas Gulf ports, to St. Louis, and its restriction to lines east of Mississippi River, and proposed increased rates on those articles from New Orleans to Little Rock and Pine Bluff, Ark., designed for purpose of restoring domestic and import rates on this traffic to same level, found justified, nothing inherent in import traffic, as such, being shown which would entitle it to lower rates than domestic traffic. Import Iron and Steel from Gulf Ports, 115 I. C. C. 373.

(o) Proposed increased rates on import and inbound coastwise shipments of fertilizers from Texas Gulf ports to Shreveport, La., and points in Shreveport group, designed for purpose of putting all Texas and Louisiana Gulf ports upon a parity with New Orleans, found not justified. Carriers failed to sustain burden of proof resting upon them to justify the advances proposed, the only justification offered is that they are attempting to carry out what they consider to be commission's view as expressed in a pending proceeding. Fertilizers from Texas Ports, 115 I. C. C. 582.

(p) Proposed increased class rates between Gary, Ind., and points in northern Indiana and southern Michigan over Elgin, Joliet & Eastern Ry., to full Chicago basis in line with those in effect over other roads, found justified. Class Rates via Elgin, Joliet & Eastern Ry., 118 I. C. C. 263.

(q) Respondent, C. St. P. M. & O. Ry., proposed to increase its rates on grain and grain products, in carloads, from South Dakota stations on its Mitchell branch west of Sioux Falls, S. D., to Omaha, Neb. Although the tariff naming the rates is silent as to routing, not only the origin points but Omaha are on the line of respondent, and the traffic moves all the way over its line through Org, Minn., Sioux City, Ia. and Emerson, Neb. The route through Salem, S. D., and C. & N. W., beyond is 39 to 90 miles shorter. The rates proposed represent the present local rates to Sioux City plus the published proportional rates of 5c on wheat and 4c on corn from Sioux City to Omaha. The proposed revision was made at the request of the Sioux City Grain Exchange so that the rates would reflect the differentials which now obtain, Sioux City over Omaha, on business from those points to the south and southwest. HELD, proposed schedules not justified. Grain and grain products from South Dakota, 122 I. C. C. 393.

(r) Respondents, C. & N. W. and C. M. & St. P. proposed to increase the rates on lumber, carloads, from Chicago, Ill., and points taking the same rate, to

destinations in Illinois and Wisconsin. The present rates on lumber between Chicago and the various destinations under consideration have been in effect for several years and are the same in both directions. The proposed rates apply only on traffic moving from Chicago. The rates in the opposite direction remain unchanged. This would result in increases in the rates from Chicago to the destinations under consideration of from 1c to 3c over the rates in the opposite direction. The record shows that protestant agreed to or acquiesced in the establishment by other carriers of rates to destinations in Illinois and Wisconsin the same as the rates proposed by respondents. Failure to protest the proposed increased rates of the other carriers created a situation as between intrastate and interstate rates that might unduly prefer the users of the latter. The proposed adjustment will remove such a possibility and be an improvement over existing conditions. The proposed increased rates do not appear unreasonable. HELD, schedules justified. Lumber from Chicago, 122 I. C. C. 726.

(s) Proposed increased rates on pears, in crates, boxes, or baskets, from Group 4 points in Washington, Oregon, Idaho, and Montana, to eastbound transcontinental Groups F, G, and J, designed for purpose of equalizing rates from Group 4 and the Rogue River district, found not justified. Rates proposed would disrupt rate relationships of long standing, both as to origin and destination groups, and result in fourth-section violations. While record shows a need for some readjustment in the rate structure from Group 4 points, which could be accomplished by appropriate tariff publications, the changes here proposed, confined as they are to pears, add to the defects existing instead of providing a cure. Pears from North Pacific Coast Points, 122 I. C. C. 642.

(t) Proposed rates on articles in uniform brick list from points in Illinois, Indiana, Missouri, and Iowa to destinations in Wisconsin, Michigan, Minnesota, and North Dakota, found not justified. While rates proposed to Wisconsin and Minnesota are not unreasonably high but are in some instances lower than between points in c. f. a. territory, from points in that territory to Chicago and Peoria, and from Chicago to various destinations in Iowa, Nebraska, and Missouri for comparable distances, record fails to warrant proposed rates higher to Michigan than to Wisconsin. Moreover, an increase is proposed from Chicago to Duluth while no change is proposed to St. Paul, and proposed differential from St. Louis, Mo., over Chicago to the Twin Cities is also out of line with other present and proposed differential relationships. Western Brick Co. v. N. Y. C., 128 I. C. C. 479.

§5 (2½). Fourth Section Violations.

See Long and Short Hauls.

(a) Wisconsin and Michigan points: Proposed increased rates on grain and products and alfalfa meal from Colorado common points and points grouped therewith to destinations in Wisconsin and Upper Peninsula of Michigan, found justified except where such rates exceed rates to farther distant destinations in violation of long-and-short-haul provision of section 4 of the act. Grain and Products from Colorado, 104 I. C. C. 281.

(b) Ohio points: Proposed increased rates on lumber and forest products from Latonia, Newport, and Covington, Ky., to Hamilton, Middletown, Miamisburg, and Dayton, Ohio, found not justified in so far as suspended schedules would create fourth-section departures, the present rates in some instances applying to more distant destinations to which no increase is proposed. Fourth section relief denied. Lumber from Kentucky to Ohio Points, 104 I. C. C. 387.

(c) Proposed increase in transcontinental rates on lumber from western producing points to Ripley and Manchester, Ohio, to a basis 5 cents higher than group basis applicable to Trinity and South Ripley, Ky., which would result in rates higher than to farther distant eastern destinations, found not justified in that through rates from this origin territory are blanketed to eastern groups over large areas. Present rates also found to result in undue prejudice in favor of points on C. & O., and nonprejudicial basis prescribed. Lumber from Pacific Coast Points, 109 I. C. C. 140.

(d) Respondents proposed to cancel a rate of 83.5c applying on potatoes, carloads, from Monte Vista and Colorado points on the D&RGW through Fort Worth, Tex., to points in Texas on the T. & P., between, but not including, Fort Worth and El Paso, leaving applicable through the same gateway rates of 88c to stations Benbrook to Big Spring, in-

clusive, 100c to Midland, 109c to Pecos, and 111c to stations Toyah to Ysleta, inclusive minimum 24,000 pounds from June 15 to Aug. 31, and 30,000 pounds from Sept. 1, to June 14 inclusive. In 1922 a rate of 83.5c was established to meet the rate from Greeley, Colo., to El Paso. It was not the intention of the T. & P., to participate in that rate, which was to have been observed as maximum only at intermediate points on the direct routes. The suspended schedules would eliminate fourth section departures and place the points under consideration on the general basis of rates now applying from and to all other points in the same origin and destination territories for substantially the same distances. Held, schedules justified. Potatoes from Colorado to Texas, 112 I. C. C. 389.

(e) Proposed increased rates on potatoes from Monte Vista and surrounding Colorado points on the Denver & Rio Grande Western to certain destinations in Texas on the Texas & Pacific found justified. Present rates were established to meet competition from Greeley, Colo., and were to apply as maxima only at intermediate points on direct routes. In establishing revised rates from Colorado to Texas to comply with fourth section requirements, the present rates were inadvertently continued to destinations here considered, nor were they restricted in their application to direct routes, as intended. Proposed schedules will eliminate these existing fourth-section violations and place points under consideration on general basis of rates now applying from and to all other points in same origin and destination territories for substantially same distances. Potatoes from Colorado to Texas, 112 I. C. C. 389.

(f) Proposed increased rates on petroleum and products from New Orleans and Baton Rouge, La., and other Mississippi River crossings, and also from Ohio River crossings, to Carrollton, Ky., found not justified. Carriers showed that proposed rates are for purpose of removing fourth-section departures and will restore rates previously in effect which were inadvertently omitted from the tariffs when petroleum rates in the Southeast generally were revised. Protestant however in support of its contention that proposed rates are unreassonable compared them with various lower rates for comparable distances. Reasonable rates for application on this traffic suggested for publication. Petroleum to Carrollton, 113 I. C. C. 587.

(g) Proposed increased rates on canned goods from La Crosse, Wis., Winona, Minn., and points grouped therewith, to Danville and Springfield, Ill., St. Louis, Mo., and points taking same rates, designed for purpose of removing discrimination and violations of long-and-short-haul provision of section 4 of the act, found justified. Compared with rates on canned goods applying generally from Wisconsin to other destination territory and with those in effect generally in c. f. a. territory, the proposed rates do not appear unreasonable. Canned Goods to Illinois and Missouri, 115 I. C. C. 289.

(h) Proposed increased and reduced rates on potatoes from points in the Carolinas on Atlantic Coast Line R. R., to destinations in c. f. a. territory, designed for purpose of removing departures from the long-and-short-haul clause of section 4 of the act, found not justified, it being shown that under proposed adjustment new fourth-section departures would be created in instances where none now exist. Taylor Produce Co. v. A. C. L., 115 I. C. C. 633.

(i) Proposed changes in rates on cotton linters and cottonseed-hull fiber or shavings, involving both increases and reductions, increases predominating, from the Southwest to Missouri, Mississippi, and Ohio River crossings, and northern, eastern, and western points, found not justified. Under schedules proposed, maladjustments would be created, origin relationships disturbed, and instead of removing fourth-section departures as intended, new departures would be created. Moreover, carriers here arbitrarily propose to put the whole industry on a rate plane made to fit the highest graded commodity produced by protesting shippers without having given consideration as to whether the traffic could bear the radical increases proposed, and in view of unqualified testimony of every oil-mill operator that traffic could not stand the increases, their ultimate result would be to kill the traffic and thus reduce existing revenues of carriers. Cotton Linters from Southwest, 118 I. C. C. 419.

(j) Proposed increased rates and routing restrictions on potatoes and cabbage, from points in Virginia on the Norfolk Southern to destinations in c. f. a.

territory, for avowed purpose of correcting existing violations of long-and-short-haul provision of section 4 of the act, by which rates from points here involved are lower than rates in effect from Norfolk, found not justified. While comparison with rates in effect between various points for comparable distances indicates that proposed rates, in numerous instances, are reasonable, their establishment, without corresponding advances from competing points in North Carolina, would result in undue prejudice, and leave uncorrected many fourth-section violations in addition to creating new ones at points where no such violations now exist. Vegetables from Virginia, 120 I. C. C. 319.

(k) Respondents proposed to increase the rate on bituminous coal, carloads, from Harrisburg and other points in southern Illinois on the Big Four to destinations in Missouri on the Frisco, Gravois to Ste. Genevieve, from $1.40 to $1.71. Gravois is the first station south of the St. Louis, Mo., switching limits on the river line of the Frisco and distance from that point to Ste. Genevieve is about 54 miles. The record is persuasive that the proposed rate of $1.71 is not unreasonable but the proposed schedules would leave uncorrected a number of fourth section departures. HELD, suspended schedules not justified without prejudice. Coal southern Illinois to stations on St. S. F. in Missouri, 123 I. C. C. 125.

(l) Proposed increased local interstate rate on tanning extract from Lynchburg, Va., to Norfolk, Pinners Point, and Portsmouth, Va., higher than from Charlottesville, Va., found not justified. Lynchburg is intermediate to Charlottesville and under the increase proposed a higher rate would apply to former than to latter, in violation of long-and-short-haul clause of section 4 of the act. Tanning Extract from Lynchburg, 122 I. C. C. 647.

(m) Proposed increased rate on bituminous coal from stations on the C., C., C. & St. L. Ry., in southern Illinois, to destinations on the St. Louis-San Francisco from Gravois to Ste. Genevieve, Mo., found not justified. While record is persuasive that proposed rate is not unreasonable as compared with rates contemporaneously in effect from and to same points via other routes, proposed schedules would leave uncorrected a number of fourth-section departures. Coal from Southern Illinois, 123 I. C. C. 125.

(n) Proposed increased rates on unmanufactured tobacco from points in central Kentucky to St. Louis, Mo., and East St. Louis, Ill., found justified. Present rates are and have been for many years in violation of long-and-short-haul provision of section 4, and are lower than those found reasonable in 81 I. C. C. 184, from points in Ohio to St. Louis for comparable distances, whereas proposed rates would be relatively reasonable and would remove fourth-section departures now existing. Unmanufactured Tobacco from Kentucky, 126 I. C. C. 93.

(o) Respondents, C. & O. and its connections, proposed increased rates on petroleum and petroleum products, in carloads, from New Orleans, Port Chalmette, Baton Rouge, North Baton Rouge, Mereaux, and Gretna, La., Natchez, Vicksburg and Gulfport, Miss., Mobile, Ala., Pensacola, Fla., and points taking the same rates to Lexington, Winchester and Quinsenberry, Ky. Lexington is served by the Southern, and by C. & O. and L. & N. Winchester is about 18 miles east of Lexington and is served by the C. & O. and L. & N. Quinsenberry is a local station on the C. & O. between Lexington and Winchester about 1 mile west of Winchester. Distances are 862 miles to Lexington, 880 miles to Quinsenberry and 881 to Winchester. Present rate for C. & O. Delivery is 38c, to be increased to 41.5c. Respondents state that the L. & N. and Southern are considered the rate making lines with respect to this traffic and that the rate adjustment under suspension was proposed for the purpose of placing the rates for C. & O. delivery on a parity with the existing rates for delivery by the rate making lines. Lexington, except for stations on the C. & O. to the east thereof, is practically surrounded by points taking the 41.5c rate. No transportation conditions are shown which would warrant the application of lower rates for C. & O. delivery than those effective over the more direct routes of the Southern and L. & N. The record indicates that the rates sought to be increased are unduly low and that the rates under suspension would not be unreasonable for future application. But the adjustment proposed would create a fourth section departure in connection with the route from Baton Rouge to Cincinnati via Lexington and Ashland.

HELD, proposed schedules not justified without prejudice to the filing of new schedules which will not contravene the fourth section of the act. Petroleum to Kentucky points, 132 I. C. C. 89.

(p) Respondents propose generally to increase their rates on iron and steel articles in less than carloads, between points in New England. The increases would be brought about by the cancellation of commodity rates, except where that is impracticable due to the existence of socalled overhead rates from trunk line territory to New England. About 25% of the total less than carload iron and steel tonnage in New England moves under the commodity scale. For distances up to 50 miles practically all of the traffic now moves by truck. The less than carload movement from trunk line territory is small in volume, the shipments generally moving in carloads direct to consignee, or to dealers for distribution in less than carload shipments or by motor. In many instances rates from and to intermediate points would exceed those proposed for longer distances. HELD, schedules not justified. Iron and steel articles in New England, 132 I. C. C. 355.

(q) Proposed elimination of routes via Montgomery, Ala., in connection with joint rates on cotton originating at points in Alabama and Mississippi on the Southern and various other lines, and restriction of such routes so that the Southern will secure the long haul on traffic which it originates or receives from its connections, found justified, except where such restrictions will create unauthorized fourth-section violations. Elimination of routes via Montgomery will not retard movement of cotton from and to points considered; will not subject shippers to increased rates; nor otherwise injure the public interest, as rates now applicable via Montgomery also apply over routes to which traffic is proposed to be confined. Routing on Cotton, 129 I. C. C. 387.

(r) Proposed increased rate on potatoes from Kansas City, Mo.-Kans., to, Coffeyville, Kans. found not justified. Rate proposed would not only result in a fourth-section departure, in that a lower rate would apply through Coffeyville to a point beyond, but would unduly prefer other near-by Kansas competing points to which lower rates obtain. Potatoes from Kansas City, 129 I. C. C. 458.

(s) Proposed revision of rates on lime between points in southern territory for purpose of removing fourth-section departures; of eliminating inequalities between producers; and of providing a uniform basis of rates to apply between points in the South, found justified. Proposed rates are same as or lower than those on lime prescribed in 85 I. C. C. 341, and other cited cases between points in c. f. a. territory and between various other points, and comparison with rates on brick, wall plaster, lumber, and various other commodities indicates that proposed rates are on a low level and produce relatively low car-mile earnings. Respondents directed to publish rates between other points in southern territory indicated, to become effective contemporaneously with those herein found justified. Lime Between Southern Points, 129 I. C. C. 635.

(t) Proposed increased rates on potatoes and vegetables from points in Nebraska, Colorado, Utah, New Mexico, Wyoming, Idaho, Montana, and Oregon, to destinations in Arkansas, Tennessee, and Kentucky, in purported compliance with findings in 120 I. C. C. 245, found not justified. Carriers propose to remove prejudices therein found to exist by increasing rates to Little Rock, Pine Bluff, Helena, Memphis, and points taking same rates, rather than by reducing the rates to southern Arkansas group. Proposed increases would both create and increase fourth-section violations. Furthermore, the reasonableness of present rate on potatoes is involved in several cases now pending, in which the need of a general revision of rates is indicated. Potatoes and Vegetables from Western Points, 129 I. C. C. 652.

§5 (3). Commodity Relationship.

See Classification §17, §22; Comparative Rates; Evidence §12; Relative Rates.

(a) Proposed increased local rates on petroleum and products from points in Texas, Oklahoma, and Arkansas to Vicksburg and Natchez, Miss., and other Mississippi River crossings found justified with exception of rates on fuel oil and other low-grade petroleum products from Wichita Falls and Fort Worth and

points grouped with them, which should not be more than 80 per cent of contemporaneous rates on refined oil between same points. Petroleum Oil and its Products, 118 I. C. C. 471.

(b) Respondents proposed to revise their rates on granite, marble and stone, in carloads, from New England and New York producing points to Wisconsin, Minnesota and northern peninsula of Michigan. Proposed rates will result in both increases and reductions. At present there is a spread of 5.5c between the rates on rough quarried marble and those on dressed marble, and the rate on polished marble is 5c higher than that on the dressed product, and 11.5c higher than the rate on rough quarried marble. Under respondents proposal the rate on rough quarried marble would be only 1.5c less than the rate on dressed marble, but the rate on the dressed product would be 11c less than the rate on polished marble. If joint rates were not in effect on traffic to the Twin Cities the use of the proportional rate to Chicago and the local rates of 13.5c on dressed marble and 12c on rough marble beyond would make through combination rates of 42.5c and 41c, respectively. HELD, proposed schedules on carved, lettered, polished, or traced granite, marble and stone have been justified, proposed schedules on other granite, marble and stone not justified. Granite, Marble and stone from eastern points, 122 I. C. C. 319.

§5 (4). Unreasonable Low Prior Rate.
See Evidence §43.

(a) Proposed increased interstate rates on manufacturing-plant refuse, including ashes and cinders not having value for construction purposes, and on quarry strippings, between points on Indiana Harbor Belt R. R. to basis of rates on refuse material having such value, found not justified. While present rate might be inadequate for service performed, carrier's desire here is to advance rate to prevent diversion of this undesirable traffic from competing lines maintaining higher rates for similar services. Such situations do not warrant general increase proposed; moreover, present rate is not shown to be confiscatory or unremunerative. Ashes and Cinders, 107 I. C. C. 408.

(b) Proposed revision of rates on bananas from Gulf ports to southeastern and Carolina territory found justified, except as to increased c. l. rates. A careful consideration of the record convinces commission that banana rates from such ports to the Ohio River, in so far as they apply over lines proposing increases, are upon less than a maximum reasonable basis. Rates proposed, however, are subject to criticism for the elimination of which a distance scale of rates is suggested. Bananas from Gulf Ports, 109 I. C. C. 211.

§5 (6). Erroneous Rate.
See Erroneous Rates; Evidence §22¼.

(a) Proposal of Chicago & Eastern Illinois to increase interstate rate on grain and screenings from Mount Vernon, Ind., to Louisville, Ky., and Indiana points in same rate group, by restoring rates previously in effect, which were reduced in error, found justified. Proposed increase will enable this carrier to meet competition of L. & N. at point of origin. Grain and Products to Ohio River Crossings, 104 I. C. C. 764.

(b) Proposal to increase rates on concrete roofing slabs from Chicago and group points and from Terre Haute, Ind., to destinations in c. f. a. territory, designed for purpose of correcting error in establishing present basis of rates, found justified. Proposed increase will result in placing rates of all carriers involved on a parity, and will place Chicago on a parity with other producing points in that territory. Concrete Roofing Slabs, 107 I. C. C. 335.

(c) Proposal to increase rates on hay from St. Louis and East St. Louis to certain destinations on Mobile & Ohio R. R. in Mississippi south of Tupelo, designed to correct error in rate publication, found not justified. Proposed increase would effect a general adjustment of hay rates in Mississippi Valley by respondent without cooperation with other carriers in same territory. Moreover, record does not justify establishing rates contrary to principles announced in Southern Class Rate Investigation, 100 I. C. C. 513, for establishment of class rates, or upon a basis different from that provided in 64 I. C. C. 306. Hay to Mississippi Points, 109 I. C. C. 36.

(d) Proposed increased proportional rate on iron and steel articles from Natchez and Vicksburg, Miss., to Shreveport, La., found justified. Carriers cancelled proportionals formerly in effect upon assumption that by so doing higher

distance rates prescribed in 77 I. C. C. 473 would become effective. Proportional rates, however, were not considered in cited case and carriers now propose to restore preexisting rates. In justification thereof carriers show that they compare favorably with rates on same commodities from other important Mississippi River crossings to destinations west thereof; also that continuance of present low westbound rates which became lower than those eastbound through printer's error, would result in breaking down joint rates in effect from principal iron and steel producing centers to Shreveport. Iron and Steel to Shreveport, 115 I. C. C. 612.

§5 (7). Expense of Competition.

See Competition; Market Competition.

(a) Proposed revision of rates on fruits and vegetables between points in California and Oregon, Washington, Idaho, Utah, and Montana, resulting in both increases and reductions, the former predominating, found not justified. While some of present rates, because of active water competition, may be lower than they might otherwise be, earnings produced do not show that they are unremunerative, and economic condition of deciduous-fruit industry is such that it can ill afford an increase in rates. Moreover, proposed revision was published without giving interested shippers a public hearing at which they might have had an opportunity to express their views. Fruits and Vegetables Between Pacific Coast States, 104 I. C. C. 66.

§5 (7¼). Low or High State Rate.

See State Rates and Regulation.

(a) Upon contention that proposed increased rates on sand, gravel, and crushed stone from Nebraska to Iowa, should not be permitted on ground that they would then exceed intrastate rates in effect between points in Iowa and thereby result in undue prejudice, HELD: To reject the proposed increases on that ground would be to hold that intrastate rates may control interstate rates. See also 38 I. C. C. 742. It does not follow that intrastate rates should be used as a standard of reasonableness of interstate rates. Combination Rule on Sand, Gravel, and Stone, 112 I. C. C. 231, 234.

(b) Proposed increased rates on lumber from Chicago, Ill., and adjacent points to destinations in Illinois and Wisconsin, found justified. Proposed adjustment is an endeavor of respondents to increase their rates from Chicago to level of corresponding rates now in effect over other carriers' lines, record showing that they are not unreasonable as compared with rates to other destinations for comparable distances. Moreover, protestant acquiesced in establishment of similar rates by other carriers and failure to protest such increases has created a situation as between intrastate and interstate rates that might unduly prefer users of the latter. Adjustment proposed will not only remove such possibility but will improve existing conditions. Lumber from Chicago, 122 I. C. C. 726.

§5 (8). To Prefer Particular Locality.

See Evidence §2, §40½.

(a) Proposed increased rates on gravel, crushed stone, and sand between points in Oklahoma and points in Kansas resulting from a proposal of carriers to restrict rates which are on a distance basis so that they will not apply where the haul is over more than two lines, found not justified. No justification is shown of record for maintenance between points in Kansas and points in Oklahoma of a basis of rates on these commodities higher than those applying intrastate in Kansas and Oklahoma, or than those prescribed as reasonable in Memphis Southwestern Investigation, 77 I. C. C. 473. Gravel between Kansas and Oklahoma, 120 I. C. C. 523.

(b) Respondents propose to increase carload rates in central territory on paving and roofing pitch, paving and roofing tar, coal tar and oil tar, from 70 to 80% of sixth class rates. Since Jan. 1, 1911 tar and pitch have been rated sixth class in the official classification, but during this time have always moved at lower rates under exceptions to the classification, or in certain instances under commodity rates. The general testimony that the protestant distributes its products throughout central territory and that in so distributing it meets the competition of Chicago and St. Louis, and the showing of the different levels of rates available to the competing plants and the community of interest of respondents in those rates affords sufficient warrant for a finding that the increase in the disparity between the Cincinnati rates, on the one hand, and the Chicago and St. Louis rates, on the other,

which would be produced by the rates here proposed would result in undue prejudice to the protestant which has not been justified. HELD, respondents have failed to justify the suspended rates under section 3 of the act. Pitch and tar in c. f. a. territory, 122 I. C. C. 573.

III. EVIDENCE.

See Evidence.

§7. Change in Conditions.

(5). Competition in General.

See Competition.

(a) Proposed revision of rates on fruits and vegetables between points in California and Oregon, Washington, Idaho, Utah, and Montana, resulting in both increases and reductions, the former predominating, found not justified. While some of present rates, because of active water competition, may be lower than they might otherwise be, earnings produced do not show that they are unremunerative, and economic conditions of deciduous-fruit industry is such that it can ill afford an increase in rates. Moreover, proposed revision was published without giving interested shippers a public hearing at which they might have had an opportunity to express their views. Fruits and Vegetables between Pacific Coast States, 104 I. C. C. 66.

(b) Rods, in coils: Proposal to restrict, throughout official classification territory, application of the billet basis of rates to bolt, nail, rivet, or wire rods and chains iron or steel in coils, so that it will apply on such commodities only when round in cross section, found not justified. Effect of the proposed restriction would be to increase the rates now effective on rods, in coils, which are not round in cross section. The distinction between round and not round does not reflect any substantial difference in material, stage, or process of manufacture, value, or transportation characteristics other than volume of movement. Moreover, the burden resting upon carriers to justify the increase has not been borne, nor has it been made to appear that the resulting difference in rate level would be free from undue prejudice as between round rods and rods of other shapes when shipped in coils. Iron and Steel Articles, 104 I. C. C. 616.

(c) Proposed increased rates on terne metal from Newark, and Brills, N. J., to Buffalo, N. Y., and Buffalo rate points and other destinations in c. f. a. territory found justified under section 1 of the act, but not justified under section 3. Terne metal is now subject to same rates as tin, and this relationship will be disrupted if the terne-metal rates are advanced as proposed. Rates on tin plate and terne plate are the same practically everywhere; these commodities are used for precisely the same purposes, except that terne plate may not safely be used in making food containers, and competition exists between tin and terne metal in sufficient degree to make unlawful the maintenance of higher rates on terne metal than on tin. Moreover, the very cheapness of terne metal indicates that if there is to be any difference terne metal should reasonably have lower rates than tin. Former decision in 113 I. C. C. 487, modified. Federated Metals Corp. v. C. R. R. Co. of N. J., 126 I. C. C. 703.

§7 (6) Disputes Concerning Divisions.

See Divisions §4.

(a) A dispute as to divisions does not afford justification for an increase in rates. Sulphur from Baltimore, Md., to Canada, 112 I. C. C. 485, 487.

(b) Proposal to increase rates on sulphur from Baltimore, Md., to Hamilton, Ont., Canada, found not justified. In 89 I. C. C. 383, commission prescribed reasonable rates from New York and Baltimore to Hamilton, and carrier here endeavors to advance Baltimore rate to the New York level. The increase sought, however, centers about a disproportionate division accorded Canadian lines, but commission has repeatedly held that a dispute as to divisions does not afford justification for an increase of rates. Sulphur from Baltimore to Canada, 112 I. C. C. 485.

(c) A dispute as to divisions does not afford justification for an increase in rates. Sulphur from Baltimore to Canada, 112 I. C. C. 485, 487.

(d) The Commission has consistently found that disagreement over divisions of joint rates is no justification for increasing rates. Restriction of transit on lumber, 129 I. C. C. 669, 671.

§7 (7). Lack of Revenue.

See Evidence §51.

(a) Upon applications of carriers in western district seeking increases in freight rates, generally averaging 5 per cent, with exceptions as to certain com-

modities, predicated on alleged existence of a financial emergency in that district, HELD: No such emergency exists in western trunk-line territory as a whole as would warrant commission in prescribing a general percentage increase in freight rates therein. Record held open for further consideration in connection with proceedings relating to the Hoch-Smith Resolution (S. J. Res. 107). Revenues in Western District, 113 I. C. C. 3.

§7 (8). Percentage Increases.

See Percentage Rates.

(a) Upon applications of carriers in western district seeking increases in freight rates, generally averaging 5 per cent, with exceptions as to certain commodities, predicated on alleged existence of a financial emergency in that district, HELD: No such emergency exists in western trunk-line territory as a whole as would warrant commission in prescribing a general percentage increase in freight rates therein. Record held open for further consideration in connection with proceedings relating to the Hoch-Smith Resolution (S. J. Res. 107). Revenues in Western District, 113 I. C. C. 3.

(b) Proposed increased rates on scrap lead and zinc from Pittsburgh, Pa., group points to destinations in trunk-line and New England territories over the Pennsylvania, equal to 80 per cent of sixth-class rate, and reductions in rates on those commodities over Pittsburgh & Lake Erie, found justified. While proposed rates over the Pennsylvania are higher than present rates on slab zinc and pig lead and are a greater percentage of the sixth-class rate than are the Chicago-New York rates, they are the same as those over the Baltimore & Ohio and are lower than those found reasonable on brass, bronze, and copper articles in 109 I. C. C. 351. On the other hand, proposed rates over Pittsburgh & Lake Erie are lower than rates on slab zinc and pig lead, but they are same as those proposed over the Pennsylvania and no protest thereto was introduced at the hearing. Scrap Lead and Zinc from Pittsburgh, 129 I. C. C. 541.

§7. (9). Government Orders or Advances.

(a) Respondents proposed to readjust certain rates on grain and grain products in carloads and less carloads, from Birmingham, Ala., and Chattanooga and Knoxville, Tenn., to southeastern destinations. The changes here proposed would result in reductions as well as increases in specific rates from the border points and were brought about by certain changes in rates in Georgia in compliance with an order of the Georgia Commission which prescribed a distance scale of class rates between points in that state. The rates so prescribed were generally somewhat higher than the interstate rates. No increased rates are proposed from Knoxville, except on flour and the only increased rates from Chattanooga are on flour to all of the ports, and on grain and flour to Jacksonville for beyond. The greater part of all grain and grain products handled in the south now moves, and will continue to move, under transit on through rates from northern and western points, and there is no present proposal to change these rates. The rates which respondents here propose to readjust are applicable only on shipments, or parts of shipments, originating at the border points, or on grain or grain products which, because of restricted transit arrangements at Birmingham, are forced to move on local rates from that point. Respondents have failed to sustain the burden of justifying the increased rates. Milling interests at Birmingham meet keen competition from those at Nashville. HELD, suspended schedules not justified. Grain and grain products to southeast, 123 I. C. C. 569.

§8½. Comparisons.

See Comparative Rates; Evidence §12, §13.

(a) Brass, bronze, and copper articles: Proposed increased rates on, between points in official classification territory found not justified in their entirety. No justification exists for charging a lower rate on copper than on iron and steel articles which load heavier, move in greater volume, and are far less valuable than copper. Furthermore, increases sought might seriously disturb rate relationships upon which the industry has developed. Reasonable basis of rates suggested. Brass, Bronze, and Copper Articles, 109 I. C. C. 351.

(b) Proposed increased distance commodity rates on interstate shipments of scrap and waste paper from Pacific coast

points to Boston by water, thence by rail to points in New England, for distances of 50 miles and under, found not justified. Proposed rates exceed those maintained by respondents for same distances on a number of comparable commodities and rates maintained on same commodities for similar distances between points on lines of other carriers. Similar increases on shipments originating on and destined to points on respondents' lines, found justified. Various Commodities between New England points, 113 I. C. C. 44.

§8½a. Combination Rule.

See Infra §9½; Combination Rule.

(a) Combination rates assessed on hogs from points in Iowa to New England destinations, with transit at Mississippi River crossings, both factors of which were increased under General Order No. 28 of director general, found illegal. Tariffs governing one factor carried combination rule providing for application of but a single increase to through rate, which constituted a holding out to that effect which must be made good. Reparation awarded. North Packing & Provision Co. v. Director General, 104 I. C. C. 607.

(b) Contention that so-called combination rule applies only by its own terms at junction points, and not at a basing or rate-breaking point, not sustained. As the term "junction point" is used in tariffs here involved, it must be construed to include such well-established rate-breaking points as Mississippi River crossings, which is in keeping with long recognized and universal practice followed by carriers of breaking rates at these points. North Packing & Provision Co. v. Director General, 104 I. C. C. 607, 613.

(c) Contention that combination rule, which provided for application of a single increase to through rates made on combination, was not applicable where a transit arrangement was availed of, upon theory that business was not a continuous through rail movement, such movement having been arrested by virtue of transit privilege, not sustained. Following 257 U. S. 247, commission has consistently applied the principle that transit does not affect continuous shipment from point of origin to final destination. North Packing & Provision Co. v. Director General, 104 I. C. C. 607, 613.

(d) Proposed increased rates on sand, gravel, and crushed stone from points on C., B. & Q., in eastern Nebraska to points in Iowa and Missouri, by cancellation of the combination rule, thereby leaving applicable the full combinations, found not justified. While the proposed rates are too high, it is shown that present rates are on rather a low basis and could well be increased to some extent. Schedules ordered canceled without prejudice to filing of others naming rates in conformity with those herein approved. Combination Rule on Sand, Gravel, and Stone, 112 I. C. C. 231.

(e) The purpose and effect of the combination rule is to provide for only one increase under General Order No. 28 of the director general to through combination rates rather than to the separate factors. Combination Rule on Sand, Gravel, and Stone, 112 I. C. C. 231, 232; Montgomery Cotton Exchange v. L. & N., 112 I. C. C. 325, 328.

(f) Proposed increased through rates on grain and products from Omaha and South Omaha, Nebr., and Council Bluffs and Des Moines, Iowa, when from beyond, and from Illinois Central stations to Arkansas destinations, found not justified. Present proportionals from Des Moines to Arkansas are on a parity with those from Omaha, and competition between these markets is keen, since both draw from same territory. If proposed rates are permitted, the disparity will prevent Des Moines from competing with Omaha. Moreover, in 102 I. C. C. 186, rates on grain originating beyond Des Moines were found unduly preferential and prejudicial to extent they exceeded contemporaneous rates on grain originating beyond Omaha to same destinations, and, in 104 I. C. C. 742, the commission stated that through rates should be somewhat less than the sum of rates to and from an intermediate point, and to urge that combinations are the general basis for constructing rates is not sufficient to justify proposed increases. Grain and Products to Arkansas, 113 I. C. C. 209.

(g) The reason for establishment of so-called combination rule was to prevent multiple increases in rates made upon combinations of locals. Security Cement & Lime Co. v. B. & O., 113 I. C. C. 579, 581.

(h) Where one of the tariffs used in making combination rates on through shipments contains a rule that such rates

will be subject to the increase but once, there is a holding out to the shipper of the rates so constructed, or, in other words, an undertaking by the carrier publishing that rule to protect the resulting aggregate rate. Standard Oil Co. v. A. T. & S. F. Ry., 113 I. C. C. 597, 604.

(i) Respondents proposed to cancel the application of the so-called combination rule on brick and related articles, in carloads, from points in Iowa, Missouri, and Kansas to destinations in Iowa, Missouri, Kansas, Nebraska, North and South Dakota, Minnesota, and other western states and in some instances to establish proportional rates to and from certain junction points. Joint rates are not generally provided on brick and related articles, in carloads, from producing points in the states named to destinations on connecting railroads in other states, particularly to points in the northwest, but combination rates are constructed by the use of the combination rule. The proposed schedules are the result of concerted effort on the part of carriers in western trunk line territory to cancel the use of the combination rule. In lieu thereof some of respondents propose to establish proportional rates from and to specified junctions, which rates are generally 1.25c less than the local rates, and would result in the same combination rates as are now in effect. But in other instances the rates would be increased as much as 2.5c or more, where respondents have intended but failed to propose proportional rates that reflect the full deduction of 1.25c to and from the junction point. The combination rule as applied to brick and related articles contemplates the deduction of 2.5c from each component of a combination rate, and the addition of 2.5c to the sum of the components so reduced. It may be gleaned from the present record that respondents hardly expect the Commission to sanction the increases that they have either intentionally or inadvertently proposed because of a failure of the various respondents to coordinate their efforts in a unified attempt to eliminate the application of the combination rule by the establishment of proportional rates which would result in combination rates not in excess of those now in effect. HELD, schedules not justified. Combination rule on brick, 115 I. C. C. 293.

(j) Complainant attacked combination rate charged on 163 cars of coke shipped between May 23 and Sept. 26, 1919, 49 from Benham, Ky., and 114 from Chattanooga, Tenn., to destinations in Utah and Idaho as inapplicable, because based on rates both factors of which were increased by specific amounts under G. O. 28 of the Director General instead of on a through rate reflecting only a single increase. As the tariffs carrying the factors up to Chicago and Memphis and the tariffs publishing the factors beyond to destination did not contain or make reference to a combination rule applicable on this commodity at the dates of shipment, it follows that the principle laid down in the Sligo case 62 I. C. C. 643, is clearly not applicable to these shipments. HELD, rates attacked applicable except that on shipments which moved between June 1 and Sept. 4, 1919 from Chattanooga, Tenn., through Evansville, Ind., to Spanish Fork, Midvale, Elsinore, and Lehi, Utah, and on June 2, 1919 from Benham, Ky., through Chicago to Lehi, Utah, the combination rates were inapplicable to extent they exceeded $8.90 from Chattanooga and $10.40 from Benham, reparation awarded. Utah Idaho Sugar Co. v. Director General, 115 I. C. C. 707.

(k) Where one of the tariffs used in making combination rates on through shipments contains a rule that such rates will be subject to the increases but once, there is a holding out to the shipper of the rate so constructed which the carrier should protect. Utah Idaho Sugar Co. v. Director General, 115 I. C. C. 707, 708.

(l) Where one of the tariffs used in making combination rates on through shipments contains a rule that such rates will be subject to the increase specified therein but once, there is a holding out to the shipper of the rate so constructed which the carrier should protect. Standard Lumber Co. v. A. C. L. R. R., 118 I. C. C. 703, 704.

(m) Proposal to cancel combination rule on brick and related articles between stations in Iowa, Missouri, Kansas, Nebraska, the Dakotas, Minnesota, and other western States, and, in some instances, to establish in lieu thereof proportional rates to and from certain specified junctions, found not justified. While the commission has commented upon the undesirability of the combination rule from a tariff standpoint and has made suggestions looking to the ultimate elimination of combination tariffs, such

suggestions did not contemplate increases in rates. Carriers can not expect commission to sanction advances which would here be brought about because of a failure on part of carriers to coordinate their efforts in a unified attempt to eliminate the rule by establishing proportionals which would result in combinations not in excess of those now in effect. Combination Rule on Brick, 115 I. C. C. 293.

(n) The Commission has repeatedly sanctioned the carriers efforts to eliminate that rule (combination rule) by the publication in its stead of joint or proportional rates, but have denied authority to cancel it where unjustified increased rates would result. Combination rule on lumber, 129 I. C. C. 564, 567.

§9½. **Double Advances.**

See Supra §8½a.

(a) Combination rates assessed on hogs from points in Iowa to New England destinations, with transit at Mississippi River crossings, both factors of which were increased under General Order No. 28 of director general, found illegal. Tariffs governing one factor carried combination rule providing for application of but a single increase to through rate, which constituted a holding out to that effect which must be made good. Reparation awarded. North Packing & Provision Co. v. Director General, 104 I. C. C. 607.

(b) Contention that combination rule, which provided for application of a single increase to through rates made on combination, was not applicable where a transit arrangement was availed of, upon theory that business was not a continuous through rail movement, such movement having been arrested by virtue of transit privilege, not sustained. Following 257 U. S. 247, commission has consistently applied the principle that transit does not affect continuous shipment from point of origin to final destination. North Packing & Provision Co. v. Director General, 104 I. C. C. 607, 613.

(c) Shipment moved under combination rates, each factor of which was increased under General Order No. 28 of Director General. Tariff naming second factor contained combination rule which provided a method for constructing through rates made on combination, but made no reference to tariff carrying first factor, nor did the latter contain any reference to rule. FOUND: Following the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, and other cited cases, rate charged was inapplicable and reparation awarded. Miller & Brickley Grain Co. v. Director General, 107 I. C. C. 81.

(d) Shipments moved under combination rates each factor of which was increased under General Order No. 28 of director general. Tariff governing second factor carried the combination rule which provided for application of a single increase to through rates made on combination. First factor contained a similar rule which was restricted in its application. HELD: Following 81 I. C. C. 193, and other cited cases, effect of restricted tariff was tantamount to absence of a rule, and rates constructed by application of but a single increase to through rate as contemplated by rule contained in tariff governing second factor found applicable. Reparation awarded for overcharges. White Star Refining Co. v. A., T. & S. F., 109 I. C. C. 577.

(e) On coal moving from Crested Butte, Colo., to destinations in Nebraska and Kansas, no joint rates were in effect. Charges were collected on basis of a combination reflecting both increases authorized under General Order No. 28 of director general and general advances of 1920. Tariff governing one factor carried combination rule which provided a method for constructing through combination rates, tariff governing second factor contained no specific formula. HELD: The rule fixed a definite basis for constructing combinations, and since there was no tariff authority for the 1920 increases they should not have been added. The applicable rates, following 62 I. C. C. 643; 73 I. C. C. 551, and other cited cases, were through rates constructed in conformity with the rule. Shipments found overcharged and reparation awarded. Foster Lbr. Co. v. C., B. & Q., 113 I. C. C. 734.

(f) Respondents proposed to increase their carload rates on brass, bronze and copper ingots, pig, scrap, and related articles between points throughout official classification territory in purported compliance with 109 I. C. C. 351. Principal protest is in regard to the rates to and from points taking 60 and 70% of the rates between Chicago and New York. The rate of 40c prescribed between the points named was scaled back to and including the 71% group, resulting in a rate of 28.5c between New York and that

group, which was blanketed to and including points in the 60% group, including Pittsburgh, to and from which the sixth class rate is the same amount. If the 40c rate had been scaled to all of the percentage groups, it would have produced rates from New York of 28c to the 70% group, 27c to the 67% group, and 24c to the 60% group. The findings in the previous case were clear and specific, and the proposed rates to and from the 60 to 70% groups, are not in accordance therewith, and they have not been justified. The present record, however, discloses that a rate of 24c between New York and the 60% group would not only be 1c lower than the present rate to and from Pittsburgh but it would be slightly lower than the present rates to and from numerous intermediate points, and it would prevent the application of the sixth class rates to and from a large intermediate territory. The sixth class rates to Rome of 22.5c from New York and 25c from Baltimore are as low or lower than the corresponding rates for like distances under the central territory scale. Such rates do not appear to be unreasonable for application on the traffic under consideration. HELD, a rate not in excess of 27c would be reasonable for application on the fifth class rates between New York and points in the 60% group, including Pittsburgh, with rates from and to the other ports based on the usual differential basis. The rates proposed to and from Norfolk in the suspended schedules have not been justified, but the Commission is of the opinion that the Baltimore rates to and from this territory, subject to the Baltimore-Columbus rate as minimum, would be reasonable for application to and from Norfolk. Respondents proposed no evidence regarding the rates to Brockville, Ont., Can., and they are not justified. It is proposed to cancel present commodity rate of 76c per ton on the fifth class articles from Shadyside, a station near East Liberty, Pa., to Homestead, Pa., all in the Pittburgh district and to substitute therefor the full sixth class rate of 9c. The proposed sixth class rate does not appear to be excessive for local line haul movements of that distance; but as a factor of combination rates, in the absence of joint rates, it would result in a double increase in many instances, and as to interstate traffic the proposed cancellation has not been justified. HELD, proposed schedules not justified without prejudice to filing of tariffs in accordance with the findings. Brass, bronze and copper ingots, 118 I. C. C. 725.

(g) Where the combination of separately established locals or proportionals is the usual and recognized basis of rates, the application of an increase to each component of such combination rate is governed by applicable tariffs in effect on date of shipment, and if neither of the tariffs carrying component rates contains or makes reference to a combination rule, there is no holding out to shipper under principle announced in Sligo case, 62 I. C. C. 463; 73 I. C. C. 551. Utah-Idaho Sugar Co. v. Director General, 115 I. C. C. 707, 709.

(h) Shipments moved under combination rates to each factor of which the increase pursuant to General Order No. 28 of Director General has been added. One of the tariffs naming a factor of the combination rate provided that through rates would be subject to but a single increase. HELD: In 62 I. C. C. 643; 73 I. C. C. 551, principle was laid down that where one of the tariffs used in making combination rates on through shipment contains such a rule, there is a holding out to shippers of rates so constructed which publishing carrier must protect. Rates charged were therefore inapplicable, applicable rates being those constructed in accordance with combination rule which provides a specific method for constructing through rates made on combination, published in some one of schedules naming a factor of combination rate. Reparation awarded. Pioneer Coal & Coke Co. v. Director General, 128 I. C. C. 49.

(i) Where one of the tariffs used in making combination rates on through shipments contains a rule that such rates will be subject to but one increase, there is a holding out to shippers of the rates so constructed which the carrier publishing the rule is obligated to protect. Pioneer Coal & Coke Co. v. Director General, 128 I. C. C. 49.

§11½. Differentials or Rate Relationship.

See Differentials; Relative Rates.

(a) Proposed increased translake rate on salt from Ludington and Manistee, Mich., to Chicago, Ill., and intermediate points, applicable over car-ferry route of the Pere Marquette to Milwaukee, and the C., M. & St. P., beyond, found justi-

fied. In Salt Cases of 1923, 92 I. C. C. 388, commission fixed minimum translake rate 1 cent under all-rail rates. The Pere Marquette has its own rails from Ludington and Manistee to Chicago, but the differential in favor of translake route attracts all the traffic and in order to secure the entire haul it desires to maintain same rate over both routes. In the general cases carriers were specifically authorized to apply all-rail rate over translake route and commission sees no reason for changing the finding made therein to effect that a translake rate equal to all-rail rate is justified. Salt from Ludington Group, 112 I. C. C. 255.

(b) Proposed general revision of rates on potatoes, increases predominating, from points in Wisconsin and elsewhere in western trunk-line territory to destinations in southeastern Missouri, found not justified. While proposed rates are shown to be reasonable as compared with rates in other territories, the reverse is true when compared with lower rates, distance considered, not only to farther distant destinations in Arkansas, but also to intermediate destinations in southeastern Missouri where observance of the fourth section requires maintenance of the rates to the Arkansas destinations. Also when compared with rates from same territory of origin to destinations in southwestern Missouri and Kansas. Potatoes to Missouri, 113 I. C. C. 289.

(c) Respondents, G. N., N. P., and Soo Line, generally increased rates on cream and some increased rates on milk, cream, and buttermilk transported on passenger trains in a certain territory embracing points in Montana, North Dakota, Minnesota and other northwestern states. The traffic consists almost entirely of sour cream in 10 gallon cans, weighing on the average, as filled, about 100 pounds each, and moving interstate principally between Minnesota and North Dakota points from country stations to creameries. The cream is picked up at various points along the line, generally in small lots, loaded in baggage cars by railroad employes, and unloaded at destination in some instances by railroad employes and in others by both railroad and creamery employees. In certain instances the cars on arrival at destination are full and in others contain only a few cans, depending on the territory served and the amount of traffic received, transferred, and delivered along the route. The empty cans are returned free, requiring about the same service as filled cans. The traffic has to be checked and waybilled and otherwise handled and cared for something like less than carload way freight. Prior to July 1, 1918 the cream traffic on respondents lines was handled by their respective subsidiary express companies, and was subsequently taken over by the American Railway Express, but since April 1, 1921 it has been transported by respondents themselves. From and to the principal points the proposed rates up to 500 miles are the same as those applicable within the state of Minnesota, which are provided by a scale prescribed by the Minnesota Commission in July, 1922. HELD, rates attacked not justified. Milk and cream in Northwest, 115 I. C. C. 77.

(d) Respondent, C. & E. I., proposed increased rates on cream and related articles between points on its line. Respondents present rates on cream are on the so-called Beatrice scale prescribed in 15 I. C. C. 109, for the transportation of cream to Chicago, Ill., from the territory lying between Detroit and Port Huron, Mich., upon the east and Colorado common points on the west. It now seeks to cancel these rates and put in effect rates about 12% higher on the scale prescribed in 46 I. C. C. 601, for application generally in c. f. a. territory. This basis provides rates on cream 25% higher than on milk. The cream shipments are all less than carload and move in baggage cars on regular passenger trains. Respondent terms it a pick up service and cream, being a perishable commodity, must be handled promptly. It is transported in 5, 8, and 10 gallon metal cans. The rates include the return of the empty cans. Because of the necessity of keeping the cans separated according to stations and owners, the empty cans can not be loaded in tiers and hence occupy about as much space as the filled ones. Although a few carriers have voluntarily published cream rates lower than the c. f. a. scale in this territory, that is the general basis of rates. There is nothing of record which would justify the Commission in requiring respondent to maintain lower rates on cream over its line that it has found reasonable for application over the other roads in this territory. HELD, suspended schedules justified. Cream and related articles, 115 I. C. C. 447.

(e) Upon contention that carriers were never authorized to increase the

differential existing on coal from anthracite fields in Pennsylvania to destinations in the metropolitan district of Boston over those to latter point, FOUND: In dealing with similar situation in 113 I. C. C. 161, it was stated that previous approval of a differential is no indication that change in conditions which brought about general increases and reductions, did not warrant a subsequent change in the differential. Chadwick Coal Yard Co. v. N. Y., N. H. & H., 129 I. C. C. 165, 168.

§14. Benefit to Industry.

See Evidence §45.

(a) Fact that commodities consumed along a carrier's line can be supplied from origins on other parts of its system neither affords justification for, nor establishes reasonableness of, proposed increased rates from points located off the system. Grain and Products, 115 I. C. C. 615, 616.

§14¾. Previous Decision of Commission.

See Previous Decision of Commission.

(a) Proposal to increase to their former basis rates on salt from Ohio producing points to destinations west of Missouri River, found justified. In complying with commission's order 92 I. C. C. 388 carriers, through error, published reduced rates to points west of Missouri River. Considering wide area of salt production and influence which keen competition has upon rate structure, the reduction made in error would give rise to readjustments elsewhere. Moreover carriers here do not propose a new adjustment of rates but simply seek to restore relationship previously existing. Salt to Western Trunk Line Territory, 104 I. C. C. 101.

(b) Proposal to readjust rates on clean rice and products from points in Arkansas, Louisiana, and Texas, and from Memphis, to points in c. f. a. and western trunk-line territories, resulting in both increases and decreases, found not justified as a whole. Proposed readjustments is in purported compliance with, and direct result of, the commission's conclusions in the Stuttgart case, 93 I. C. C. 517, and while it meets rates prescribed in that decision in so far as reductions are concerned, the increases proposed are not in harmony with rates fixed therein. Rice from Arkansas, Louisiana, and Texas, 104 I. C. C. 681.

(c) Cheese. Proposal to cancel commodity rates on, from southern Wisconsin points to Chicago and certain other destinations, leaving in effect higher class rates, designed for purpose of aligning rates on this traffic with general level of rates to Chicago, found not justified. Present earnings on cheese from and to points involved compare favorably with earnings on other commodities between points in western trunk-line territory. Moreover, many of the rates which it is proposed to cancel are those prescribed in 16 I C. C. 85, as subsequently modified by general changes. Cheese to Illinois and Wisconsin, 107 I. C. C. 340.

(d) Proposal to increase rates on apples from points in Virginia on Washington division and Manassas-Harrisonburg branch of Southern Ry. and from points on Washington & Old Dominion Ry. to eastern destinations, by restoring rates previously in effect, found justified, except where proposed rates exceed existing fifth-class rates c. l., and third-class l. c. l., built on official classification level as applied from the Shenandoah Valley and found reasonable in 31 I. C. C. 145. Apples from Virginia Points, 107 I. C. C. 349.

(e) Proposal to increase rates on ore and concentrates from producing points in California, Nevada, and Utah to Utah and California smelter points, found not justified except in instances and to extent authorized in 64 I. C. C. 477; 100 I. C. C. 180, and by subsequent special permission. Proposed rates would so reduce or obliterate margin of profit of producers of ore and concentrates in these territories as to curtail seriously or restrict entirely their present operations. Moreover, present basis of rates has been voluntarily maintained for more than three years, and in present condition of mining industry the substantial increases proposed ought not to be permitted except upon clear and convincing justification, in respect of which evidence here wholly fails. Ore and Concentrates between Calif., Nev., and Utah, 107 I. C. C. 357.

(f) Proposal to increase rates on hay from St. Louis and East St. Louis to certain destinations on Mobile & Ohio R. R. in Mississippi south of Tupelo, designed to correct error in rate publication, found not justified. Proposed increase would effect a general adjustment of hay rates in Mississippi Valley by respondent without cooperation with

other carriers in same territory. Moreover, record does not justify establishing rates contrary to principles announced in Southern Class Rate Investigation, 100 I. C. C. 513, for establishment of class rates, or upon a basis different from that provided in 64 I. C. C. 306. Hay to Mississippi Points, 109 I. C. C. 36.

(g) Proposed increased and reduced rates on fresh meats and packing-house products from points in western trunk-line territory to points in Arkansas, Western Louisiana, and southern Missouri, reflecting changes in relationships as among origin points, found justified in so far as they effect changes from all points except Mason City, Iowa. Proposed rates, representing principally reductions, are based on differentials over rates prescribed in 101 I. C. C. 308, and present differentials are substantially those required to be continued in 23 I. C. C. 652. Fresh Meats and Packing-House Products, 109 I. C. C. 95.

(h) Hullers: Proposed increased ratings on hand pea hullers, l. c. l., in southern, western, and official classifications, designed for purpose of according ratings thereon to conform to those prescribed or approved by commission on power hullers in 98 I. C. C. 357, found not justified. Hand hullers, being both heavier per cubic foot and cheaper per pound than power hullers considered in the cited case, no justification exists for suspended schedules under which they would be rated alike. Proposed minimum weight and c. l. ratings in southern and western classifications found justified, but in official classification a c. l. rating higher than rule 25 found not justified. Reasonable ratings suggested. Classification of Hand Pea Hullers, 109 I. C. C. 143.

(i) Proposed increased and reduced rates on newsprint paper from Shawinigan Falls, and other points in northeast Canada taking same or related rates, to Nashville, Knoxville, and Memphis, Tenn., purporting to be in harmony with commission's findings in 78 I. C. C. 258, and 101 I. C. C. 605, found not justified. Rates from these Canadian mills to Tennessee points have been same as or related to those from competing mills in New England, establishment of proposed rates without similar readjustment of rates from New England mills would result in undue prejudice to Canadian mills, and record does not warrant disruption of present long-standing adjustment. Newsprint Paper from Eastern Canada, 109 I. C. C. 701.

(j) Respondents proposed to increase the carload rate on sulphur from Baltimore, Md., to Hamilton, Ont., Can. Present commodity rate is 25c, proposed to be increased to 28c. The crude sulphur originates at Gulf, Tex., and moves from that point to north Atlantic ports, by rail by Galveston, Tex., thence by water. In 89 I. C. C. 383 the Commission found rate of 28c unreasonable to extent it exceeded 25c, and it is this rate that is proposed to be increased. Distance 473 miles. HELD, suspended schedules not justified. Sulphur from Baltimore, Md. to Canada, 112 I. C. C. 485.

(ja) Respondents proposed to increase the rates on tin cans, in carloads, from Roanoke, Bedford, Buchanan and Troutville, Va., to destinations in Alabama and Florida and the Mississippi valley. The points of origin are served by the N. & W. Tin cans are rated fifth class in southern classification, but at present they move on commodity rates from the points of origin to southern destinations, including Jackson, Miss. It is proposed to cancel those commodity rates and to apply the higher fifth class rates. Prior to March 15, 1924, class rates applied on tin cans from Roanoke and Bedford to the destinations under consideration, and the rates from Buchanan and Troutville were made on a differential over Roanoke. HELD, suspended schedules not justified without prejudice to the filing of new schedules of rates not higher than those which would result from the application of fifth class rates prescribed in 113 I. C. C. 200. Tin cans from Virginia, 118 I. C. C. 91.

(jb) Proposed increased proportional rate on iron and steel articles from Natchez and Vicksburg, Miss., to Shreveport, La., found justified. Carriers cancelled proportionals formerly in effect upon assumption that by so doing higher distance rates prescribed in 77 I. C. C. 473 would become effective. Proportional rates, however, were not considered in cited case, and carriers now propose to restore preexisting rates. In justification thereof carriers show that they compare favorably with rates on same commodities from other important Mississippi River crossings to destinations west thereof; also that continuance of present low westbound rates, which became lower than those eastbound through printer's error, would result in breaking down

joint rates in effect from principal iron and steel producing centers to Shreveport. Iron and Steel to Shreveport, 115 I. C. C. 612.

(jc) Upon further consideration former report, 115 I. C. C. 373, affirmed and proposed increased rate on imported iron and steel articles from New Orleans and other Gulf ports, excluding Texas Gulf ports, to St. Louis, and its restriction to lines east of Mississippi River, and proposed increased rates on those articles from New Orleans to Little Rock and Pine Bluff, Ark., found not justified. Import Iron and Steel from Gulf Ports, 118 I. C. C. 482.

(jd) Upon further consideration former report, 115 I. C. C. 373, affirmed and proposed increased rates on iron and steel articles, imported from Texas Gulf ports to St. Louis, to points in Oklahoma and Kansas, and to Little Rock and Pine Bluff, Ark., and proposed restriction of import class rates so that fifth-class rates will not apply on iron and steel articles from these points to destinations involved, found not justified. Reasonable maximum rates from Texas Gulf ports prescribed for the future. Import Iron and Steel from Gulf Ports, 118 I. C. C. 482, 488.

(je) Proposed increases in interstate rates on sand, gravel, and crushed rock, within Chicago switching district and from the district to destinations just outside, pursuant to commission's decision in 109 I. C. C. 441, found justified in part. Chicago Gravel Co. v. A., T. & S. F., 118 I. C. C. 633.

(jf) Proposed increased rates on brass, bronze, and copper articles in official classification territory, published in purported compliance with commission's findings in 109 I. C. C. 351, found justified in certain respects, but not justified in instances where they do not meet requirements of report in case cited. Brass, Bronze, and Copper Ingots, 118 I. C. C. 725.

(k) Recogizing point of termination of commission's authority to deal with international joint rates for future and citing International Nickel Co., 66 I. C. C. 627, the commission entered a "cease and desist order" in lieu of an order to establish and maintain rates. See 98 I. C. C. 339. Spanish River Pulp & Paper Mills v. A. & W., 120 I. C. C. 251, 254.

(l) Proposed increased rates on grain and products between Kansas and Oklahoma, found not justified. Carriers proposed group rates which they contend are those authorized in 101 I. C. C. 116, wherein maximum distance-scale rates were prescribed between Kansas and Oklahoma. However, authority was specifically denied in that case to increase any existing rates where lower than maximum scale prescribed. Here carriers propose to increase rates to the maximum scale prescribed in cited case, which is clearly unauthorized and contrary to findings therein. Grain and Grain Products, 122 I. C. C. 301.

(m) Proposed increase in basis of rates on paving and roofing pitch, paving and roofing tar, coal tar, and oil tar from 70 to 80 per cent of sixth class in c. f. a. territory, the basis applicable on asphalt, found not justified. While a review of conclusions in 61 I. C. C. 719, wherein 80 per cent of sixth class was prescribed in official classification territory on these commodities justifies carriers' attempts to replace the pitch and tar rates on a parity with those on asphalt in so far as reasonableness of rates is concerned, such an adjustment would produce a disparity in rates between producers at Cincinnati, and St. Louis and Chicago in favor of competing plants at latter points, resulting in undue prejudice to Cincinnati producers. Pitch and Tar in C. F. A. Territory, 122 I. C. C. 573.

(n) Proposed revision of rates on bananas from Gulf ports to southeastern, Carolina, and Mississippi Valley territories, Ohio River crossings, and other southern points, in purported compliance with commission's findings in the Banana case, 109 I. C. C. 211, found not justified. The suspended rates, in so far as their application to southeastern and Carolina territories are concerned, are not in accordance with commission's report in cited case. Moreover, the further revision contemplated by carriers to and from points not involved in that proceeding, if permitted to become effective, would create preferences and inequalities which commission can not sanction. Proper revision of rates upon basis of a mileage scale suggested. Bananas from Gulf Ports, 123 I. C. C. 181.

(o) Proposed increases in class rates between Washington and Oregon points, on the one hand, and Columbia River basin points, on the other, to conform to the general rate adjustment in Wash-

ington and Oregon, and in purported compliance with commission's findings in 113 I. C. C. 38, found justified. Pursuant to findings in 21 I. C. C. 640, interstate distributive class rates were established generally in Washington and Oregon, but because of potential, if not actual, water competition on the Columbia River, no advance was made in rates ing,which rates have longed been debetween points involved in this proceedpressed. Increases proposed place these which for similar distances are the same rates on the distributive scale basis as, or less than. scale of class rates prescribed in 74 I. C. C. 207 for application in same general territory. Class Rates Between Oregon and Washington, 128 I. C. C. 108.

(p) Proposed increased rates on sugar from New Orleans and other Louisiana refining points to points in southern and eastern Texas, and from Sugarland and Texas City, Tex., to Shreveport and other Louisiana points and to Vicksburg, Miss., and other Mississippi River crossings south thereof, found not justified in so far as they exceed those that will result from application of maximum reasonable rates prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203. Proposed rates are higher than those under distance scale prescribed in 77 I. C. C. 473, for application in same general territory and proposed rate to Houston without appropriate change in present ocean-and-rail rate from New York via New Orleans to Houston, would create an adjustment contrary to long-and-short-haul provision of section 4 of the act. Moreover, rates constructed on bases prescribed in Consolidated Southwestern Cases will provide reasonable, nonprejudicial, and nondiscriminatory rates between points involved. Sugar Between Louisiana and Texas Points, 128 I. C. C. 309.

(q) Respondents proposed increased rates on potatoes and other vegetables, in carloads, from Nebraska, Colorado, Utah, New Mexico, Wyoming, Idaho, Montana and Oregon to Arkansas, also to Memphis, Tenn., and a few other destinations in Tennessee and Kentucky. Respondents stated their only reason for publishing the proposed rates was their purpose to comply with the order in Arkansas Jobbers & Mfrs. Asso. v. C. R. I. & P. Ry., 120 I. C. C. 245. Respondents proposed to comply with the order by increasing the rates to Little Rock, Pine Bluff, Helena, Memphis, and points taking the same rates, rather than by reducing the rates to southern Arkansas points. HELD, proposed schedules not justified. Potatoes and vegetables from western points, 129 I. C. C. 652.

§15. Standard for Judging Advance.

See Evidence §55, §56; Relative Rates.

(a) Shippers in opposing a proposed revision in rates on an individual commodity estimated the annual increase in revenue which would be produced thereby, and introduced evidence to show increased prosperity of carriers with a view to showing that they were not in need of this additional revenue. HELD, Such evidence is of little or no force in determining the propriety of rate level on an individual commodity. See 263 U. S. 456, 482. Bananas from Gulf Ports, 109 I. C. C. 211, 219.

(b) Proposed increased rate on paper and paper articles from Holyoke, Mass., to Newark and Nutley, N. J., via the New Haven railroad, for purpose of establishing higher commodity rate at present in effect from and to same points via the Boston & Maine, found not justified. Equal commodity rates have applied via both lines, and the New Haven contends that cancellation of that rate by the Boston & Maine has removed any necessity for its further continuance via its own line. Contention, however, loses sight of the fact that route of the Boston & Maine is over 100 per cent greater than that of the New Haven and that former carrier is not the rate-making line. Moreover, no evidence was offered showing that present rate is unremunerative. Paper from Holyoke, 115 I. C. C. 336.

(c) N. C. & St. L., and other respondents proposed to make certain changes in the rates on agricultural implements, in carloads, from southeastern producing points to the Mississippi and Ohio rivers and to Mississippi valley territory, including New Orleans, La. According to respondents the proposed adjustment is part of the readjustment begun in 1923 and is intended to place the rates from and to the points under consideration on a level comparable with those established on July 1, 1923 on agricultural implements from the Ohio river crossings and other points to the Mississippi valley and the southeast. There is no uniformity in the commodity descriptions applying in

conjunction with the present rates, different rates applying to different descriptions. They are sixth class. The suspended rates vary from about 85 to 90% of the sixth class rates prescribed in 100 I. C. C. 513, 109 I. C. C. 300 and 113 I. C. C. 200. In official territory this commodity moves under fifth class rates. The suspended rates are lower than the scale prescribed in 77 I. C. C. 473. The record suggests the necessity for a comprehensive readjustment of all rates on this commodity within the south, but there is nothing to indicate that the necessity for a revision in connection with rates to the Mississippi valley is any greater than that incident to those applying to, from, or within other subterritories of southern territory. HELD, suspended schedules not justified. Agricultural implements between points in southeast, 122 I. C. C. 191.

(d) This proceeding has to do with the rates on grain, including flaxseed, and grain products, in carloads, throughout an extensive territory in the northwest. In this territory there are ordinarily three groups of commodities taking the grain and grain product rates, or rates directly related thereto, wheat and articles taking wheat rates, coarse grain and articles taking like rates, and flaxseed and articles taking like rates. The coarse grain rates are 90% of the wheat rates. The flaxseed rates from North Dakota are from 0.5 to 3c higher than the wheat rates, the maximum excess being 110%. Distance scales are provided to apply in the absence of specific rates, but there are specific rates from most of the shipping points to the large terminal markets. The suspended schedules include interstate rates from, to, and between points in Minnesota, North Dakota, South Dakota, Iowa, Wisconsin and Illinois. The carriers lines in the territory involved form two distinct groups, and these will be referred to respectively as the northern and southern lines. PROPOSALS OF THE CARRIERS. The carriers now propose a general distance scale. From North Dakota the Important rates are to Minneapolis and Duluth. The rates to Chicago from North Dakota, a large portion of Minnesota, and the more northerly part of South Dakota are made on the Minneapolis combination. It follows that all increases proposed in the rates from such points to Minneapolis will be reflected in the rates to Chicago. From the remainder of the territory involved the rates to Chicago are lower than the Minneapolis combination. COMPARATIVE RATES. The carriers principal reliance is upon rate comparisons tend ing to prove that the present rates from Minnesota and North Dakota are unduly low, and that even if the proposed rates are in general lower than the rates which move most of the grain to the primary markets from other producing sections. The rates from Minnesota points to Minneapolis and Duluth are generally on a lower level than the rates to these markets from North Dakota points. It is shown that the proposed rates are in general substantially lower mile for mile than the rates which the Commission prescribed from South Dakota. One explanation of the fact that the unit earnings of the northern lines compare so well with the earnings of the lines in western trunk line and southwestern territories is that the latter certainly move a considerably greater portion of coarse grain under rates 90% of the wheat basis, and that they probably move a large proportion of the lighter loading grain products. But this, of course is not an explanation of the earnings on wheat separately. A further explanation which applies to wheat as well as to grain and grain products generally is the fact that the northern lines, with the possible exception of the Soo, move relatively much less grain and grain products from the primary markets on proportional rates. The bulk of their movement is from the farms to the markets. There is reason to believe that the proportional rates from the markets are in general on a substantially lower level than the inbound rates, due to the pressure of competitive influences which do not affect the movement from the farms. COST OF SERVICE. In these proceedings the carriers have made no attempt to estimate the cost of service in connection with grain traffic or to compare such cost with the revenue received. They have, however, introduced evidence tending to show that there are special services incident to this traffic and that the transportation is attended, to some extent, by unfavorable conditions. No attempt was made by the carriers to show how these unfavorable conditions and special services affect the cost of service as a matter of dollars, nor to make comparison with the similar services and conditions attending the movement of other traffic. The Commission

knows that there are comparatively few kinds of traffic as to which the carriers are unable to show so-called special services of more or less importance. While there undoubtedly is a marked peak in the movement of grain to the northern primary markets, it is also true that there is a substantial movement in every month of the year. Grain moves in box cars which are also used for many other commodities. Respondents did not attempt to determine to what extent grain is responsible for empty box car movement. COMPARATIVE EARNINGS. Nowhere in their testimony did the carriers touch upon the ton mile or car mile earnings of the rates in issue, nor attempt to compare these earnings with those derived from other forms of traffic. The Minnesota scale is considerably lower relatively for the long hauls than for the short and medium hauls. HOCH-SMITH RESOLUTION. When the carriers in an investigation and suspension proceeding propose what in substance amounts to a general increase in rates over a large area on agricultural commodities which have been shown to be affected by depression, they must clearly demonstrate that such increase is justified under the law including the provisions of the resolution. CONCLUSIONS AS TO SUSPENDED RATES. The carriers attempted justification of the suspended rates depends primarily and chiefly upon rate comparisons. Considering this showing alone, they have made out a strong case. The comparisons are very numerous, cover a wide range, and include many rates which the Commission has fixed. They warrant the conclusion that, judged by other rates from the grain fields of the western territory to primary markets, the present rates on grain and grain products from North Dakota and Minnesota points to Minneapolis and Duluth are in general low, and that the proposed rates are in general not unduly high. It is significant, however, that the carriers case practically ends with this showing. They have, indeed, endeavored also to show that the movement of grain from the North Dakota and Minnesota farms is attended by various unfavorable transportation conditions. But little attempt has been made to translate these conditions into terms of cost of service or to show that they are essentially more burdensome than the conditions which attend the movement of many other important forms of traffic. No evidence was offered by the carriers, such as they frequently present in rate cases, with a view to showing that the earnings of the rates which they are seeking to increase are either intrinsically low, or low by comparison with the earnings derived from the rates on other commodities. No attempt was made to show the actual or the relative cost of service. HELD, respondents have not sustained the burden of justifying the proposed increases. It is evident, especially in the light of the Hoch Smith resolution that the rate structure in the northwestern and western trunk line regions requires an analysis and investigation of a more thorough and fundamental character than it has yet received. It is also clear from the record in this case that the rates on grain and grain products, particularly to the primary markets, are deserving of a consideration, from the standpoint of relative earnings and fair share of the transportation burden, which perhaps has not hitherto been sufficiently given them. THE COMPLAINT PROCEEDINGS. The rates on grain and grain products from South Dakota and to a lesser extent from North Dakota are relatively higher than the corresponding rates within Minnesota. The Commission has recognized in past cases that the rates from the more sparsely settled and less well developed western portions of the Dakotas may properly be higher, relatively, than the rates from the eastern portions, and it also appears that traffic density within South Dakota and from points in that state to the Minnesota terminals is less than in the case of North Dakota. But even if allowance be made for these conditions, the disparity between the Minnesota rates and those from points in these adjoining states seems in many cases to be undue. The issue which is dominant is section 1. If the Commission should undertake to correct disparities by prescribing rates on the present Minnesota level throughout the regions here involved, other and equally serious disparities would by that action be created elsewhere. The rate comparisons presented by the carriers have made that plain. Moreover, the record does not warrant the prescription of rates on that basis. While the carriers have not justified rates in excess of the Minnesota level neither have complainants sufficiently shown that the Commission can lawfully reduce interstate rates to that level. Under all the circumstances, the Commission believes

that the interests of both carriers and shippers will be better served if the issues in these complaint proceedings are reserved for disposition in the general investigation. If complainants and the carriers, however, differ with this conclusion, and desire these issues to be determined upon this record without further delay and upon a basis which may be temporary in view of the general investigation, they may so advise the Commission and this matter will be given further consideration. Except as to the relatively small portion which is consumed at Minneapolis and Duluth, grain or its products received at these terminals is reshipped east for export or domestic consumption. The demand for proportional rates is thus in practical effect a demand for reductions in the general rate level from North Dakota and South Dakota. There are no proportional rates direct from the grain producing fields to the Missouri river or other primary markets. Undoubtedly if granted to Minneapolis and Duluth similar rates could not properly be withheld from competing markets. HELD, the conclusions herein, in respect to both the proposed rates and the complaint proceedings, are without prejudice to any different conclusions that may be reached in the general investigation. Grain and grain products, 122 I. C. C. 235.

IV. REASONABLENESS OF ADVANCED RATES.

§17. In General.

See Absorption of Charges §3 (a); Any Quantity Rates I (e) (g); Baggage Car Service; Blanket Rates §18; Branch Lines §1 (t); Differentials §8 (3i); Emergency Rates (c); Equalization of Rates §3 (h) (i); Refrigeration §3½ (d), §4 (k) (l); Through Routes and Joint Rates VI.

(a) Proposed increased commodity rates on common black powder from Fairchance, Pa., to Carney's Point, N. J., and points taking same rates, designed to restore parity of relationship formerly existing between commodity rate and first-class rate from and to these points, found not justified as to c. l. traffic but justified as to l. c. l. shipments latter being satisfactory to all parties concerned. Black Powder from Fairchance, Pa. 104 I. C. C. 45.

(b) Proposed increased rates on grain and products and alfalfa meal from Colorado common points and points grouped therewith to destinations in Wisconsin and Upper Peninsula of Michigan, found justified except where such rates exceed combinations of local to and proportionals beyond Omaha. Grain and Products from Colorado, 104 I. C. C. 281.

(c) Proposed increases from the El Dorado-Smackover field in Arkansas, in domestic rates on crude petroleum and fuel oil and in export and coastwise rates on crude petroleum and refined, gas, fuel, and road oils, to New Orleans-Baton Rouge district in Louisiana, and in export and coastwise rates on crude petroleum and fuel gas oils to Texas ports, found not justified. While the record lacks detailed information as to degree in which present rates, established to meet an emergency when industry was in a state of depression, yields profits to carriers, facts tend to support conclusion that circumstances and conditions surrounding movement are so unusually favorable to economical handling of traffic as to be almost unique. Petroleum from Arkansas, 104 I. C. C. 651.

(d) Proposal to increase rates on apples from points in Virginia on Washington division and Manassas-Harrisonburg branch of Southern Ry., and from points on Washington Old Dominion Ry. to eastern destinations, by restoring rates previously in effect, found justified, except where proposed rates exceed existing fifth-class rates c. l., and third-class l. c. l., built on official classification level as applied from the Shenandoah Valley and found reasonable in 31 I. C. C. 145. Apples from Virginia Points, 107 I. C. C. 349.

(e) Respondents proposed to increase the rates on grain and its products, in carloads, from Omaha and South Omaha, Neb., and Council Bluffs and Des Moines, Ia., when from beyond, and from stations on the I. C., to stations on the former J. L. C. & E., now a part of the Frisco, and to cancel the transit arrangement at Cairo, Ill., now in effect on traffic from points on the I. C. The J. L. C. & E. in the northeastern section of Arkansas, runs in an eastwardly direction from Jonesboro to Barfield, about 63.9 miles, through Nettleton, Leachfield, and Blytheville. It connects with the Cotton Belt at Jonesboro and Blytheville and M. P., at Nettleton. The present through proportional rates from Omaha of 28.5c

on wheat and 26.5c on coarse grain are applicable over I. C., to Gale, Ill., Cotton Belt to Jonesboro and J. L. C. & E. The lowest combination rates would be 31.5c on wheat and 28c on coarse grain except to Blytheville and Wilson, which are on the Frisco's direct line from St. Louis, Mo., to Memphis, Tenn. To these points the combination rates would be 25 and 23.5c. The I. C. permits transit at Cairo on grain, and introduced no evidence to sustain the proposed cancellation of the transit agreement. The respondents have not sustained the burden of justifying the proposed rates. HELD, proposed schedules not justified. Grain and its products at Arkansas, 113 I. C. C. 209.

(f) Proposed increased rates on sand, gravel, and crushed stone from points on C., B. & Q., in eastern Nebraska to points in Iowa and Missouri, by cancellation of the combination rule, thereby leaving applicable the full combinations, found not justified. While the proposed rates are too high, it is shown that present rates are on rather a low basis and could well be increased to some extent. Schedules ordered canceled without prejudice to filing of others naming rates in conformity with those herein approved. Combination Rule on Sand, Gravel, and Stone, 112 I. C. C. 231.

(g) Respondents proposed to increase the rates on petroleum and petroleum products carloads from New Orleans and Baton Rouge, La., and other Mississippi River crossings and also from Ohio River crossings, to Carrollton, Ky. Carrollton is on the Ohio and Kentucky Rivers, and is also the northern terminus of the Carrollton & Worthville a railroad 10 miles in length. Worthville, Ky., its southern terminus is the point of interchange between that road and the L. & N. The increased rates are proposed to eliminate the existing fourth section departures at Worthville and other intermediate points on the L. & N. Respondents have not justified the proposed increases. The record indicates and the Commission concludes that the present rates to Carrollton of 26.5c from Evansville, Ind., and 30.5c from the Illinois points are not out of line; that the rates from points grouped with Cincinnati and Louisville should not exceed 19.5c and the rates from points grouped with New Orleans and Baton Rouge should not exceed 43.5c. HELD, suspended schedules not justified without prejudice to the filing of new schedules not in conflict with conclusions shown herein. Petroleum to Carrollton, 113 I. C. C. 587.

(h) Respondents proposed increased rates on canned goods, carloads, form La Crosse, Wis., Winona, Minn., and points grouped therewith to Danville and Springfield, Ill., St. Louis, Mo., and points taking same rates. The origin groups are mostly in western Wisconsin west and north of Madison, Wis. The present rates from these points to Danville, Springfield, St. Louis are 24.5c. From Madison, Milwaukee and other intermediate points the rates generally to the same destinations are 28.5c on canned fruits, meats and vegetables and 24.5c on canned milk. Apparently this results in fourth section violations by some routes, although respondents state there is none by the direct routes. It is proposed to increase the rates on all canned goods from the La Crosse-Winona group to 28.5c except in a few instances where this would exceed the fifth class rate of 28c. Compared with rates on canned goods applying generally from Wisconsin to other destination territory and with those in effect generally in central territory, the proposed rates do not appear to be unreasonable. HELD, suspended schedules justified. Canned goods to Illinois and Missouri, 115 I. C. C. 289.

(i) Respondents proposed to increase the carload rates on paper and paper articles, except building or roofing, toilet and tissue paper, classified fifth class or lower in the official classification and exceptions thereto, from Holyoke, Mass., to Newark and Nutley, N. J. The present rate on traffic originating on the New Haven from Holyoke to Newark and Nutley is 22.5c the same as the sixth class rate from Springfield, Mass., to the same destinations. Holyoke is 8 miles north of Springfield, and is served by the New Haven and the B. & M. Nutley is local to the Erie 4.5 miles north of Newark, which latter point is on the Erie, D. L. & W., Pennsylvania, L. V. and C. of N. J. On traffic to Nutley, originating on the New Haven, a route via the Poughkeepsie Bridge through Danbury, Conn., and Campbell Hall, N. Y., is specified, while to Newark it may be routed either via Poughkeepsie Bridge or by way of New York Harbor in connection with the Pennsylvania, L. V. or C. of N. J. out of Jersey City. A commodity rate of 22.5c was established and maintained by the B. & M. and its connections from Holyoke to Newark

from Dec. 31, 1918 to Sept. 25, 1924, on which date it was canceled, leaving in effect the sixth class rate which applied until May 31, 1926 of 28.5c when a 27c commodity rate was established. It is this latter rate, which is also applicable to Philadelphia that the New Haven desires to place in effect in lieu of the 22.5c rate. Respondent adduced no evidence tending to show that the present rate is unremunerative and the record does not warrant approval of the proposed increased rates. HELD, schedules not justified. Paper from Holyoke, 115 I. C. C. 336.

(j) Respondents proposed to increase the rates on salt, in carloads, from Pomeroy, O., and Hartford, Mason City and Malden, W. Va., to Louisville, Ky., and Jeffersonville and New Albany, Ind., from 13c to 16c. Of the points of origin, Pomeroy, Hartford and Mason City located on the Ohio River, Pomeroy on the north bank and Hartford and Mason City on south bank, all within a few miles of each other; Malden is about 6 miles east of Charleston, W. Va., or about 70 miles by rail southeast of the other points named. The shortest distance from any point of production named to Louisville is 282 miles from Mason City via Kenova, W. Va., using the B. & O. to that point and C. & O. beyond. Present rates, however, apply by many routes, the single haul of the B. & O. from Mason City to Louisville being 389 miles and the general average of all the reasonably direct routes from all points of origin to the points of destination being about 315 miles. HELD, rate of 16c justified for local application but when used as proportional rates on shipments moving beyond, not justified. Salt from Ohio and West Virginia, 115 I. C. C. 370.

(k) Respondents proposed to establish a rate of 17.5c, carload minimum weight 80,000 pounds, on railway car material from Chicago, Ill., and certain stations on the E. J. & E. in Illinois and Indiana to St. Louis, Mo., and Mt. Vernon and East St. Louis, Ill. These commodities now move from and to these points under a rate of 22c, minimum 36,000 pounds, the rate applicable on articles generally in the iron and steel list, and the rate proposed would result in a lower basis of charges on carloads loaded in excess of 64,000 pounds. The contention that the schedules in question would not result in undue prejudice seems fully supported by the evidence. In other words, there appears to be no competition between car material and other iron and steel articles. On the other hand, while there is intense competition between the freight car manufacturers, the only freight car building plants in this territory are found in the Chicago switching district and in the destination district here. Such manufacturers in the Chicago districts have no ground of complaint, as the rates paid by them on car material are extremely low compared to the rate here proposed. No shippers have appeared in opposition to the change proposed and apparently the manufacturers of railway car material in the Pittsburgh territory have no interest in the rate under consideration inasmuch as the St. Louis manufacturers have never purchased their car material in Pittsburgh territory. HELD, schedules justified. Railway car material, 118 I. C. C. 105.

(l) Respondents proposed to increase the rates on newsprint and poster paper from Camas, Wash., to Oregon City and West Linn, Oreg., to certain destinations in Washington, Oregon and Idaho. Camas is on the north bank of the Columbia River, 14 miles east of Vancouver, Wash., and is served by the S. P. & S. Oregon City is on the east bank of the Willamette River, 15 miles south of Portland, Ore., and West Linn is directly across the river. The present and proposed rates from Camas to points in Washington apply over the intrastate route of the S. P. & S. They also apply interstate over the boat line of the W. T. Co,. to Portland and the rail line of the O. W. R. R. & N. beyond. To most destinations the present rate is 40c, proposed 54.5c. It is evident that the Millwood plant is entitled to any advantage that results from the proximity of its location to Spokane and other nearby consuming points. The record clearly shows that the rate from Millwood to Tacoma and Seattle has resulted from competitive influences beyond respondents control. HELD, schedules justified. Paper between North Pacific coast and Spokane, 118 I. C. C. 123.

(m) Proposal to increase rate on phosphate rock from points in Florida to Roanoke, Ala., by restoring Group 5 rate previously in effect, found not justified. Roanoke at present enjoys rate applicable to points in Group 4, which reduction was made for purpose of placing that point on a parity with points in the Atlanta-La Grange group. Moreover, dis-

tance to Roanoke is less than that to most points in Group 4, and while element of distance is disregarded to a greater or less extent in establishment of group rates and is not necessarily controlling in determining reasonableness of such rates, it may be a very important factor where a system of group rates exists, in determining the group in which a particular point belongs, and it is clear that Roanoke properly belongs in Group 4. Phosphate Rock from Florida, 115 I. C. C. 229.

(n) Proposed increased rates on cream and related articles, moving in baggage cars on passenger trains, between points on the C. & E. I., by cancelling present rates based on the so-called Beatrice scale, and putting into effect rates based on distance scale prescribed in 46 I. C. C. 601, for application generally in c. f. a. territory, found justified. Although a few carriers have voluntarily published cream rates lower than the c. f. a. scale, that is the basis of rates prevalent in this territory on interstate shipments and there is nothing of record to justify requiring carrier to maintain lower rates over its line than those found reasonable for application over other roads in this territory. Cream and Related Articles, 115 I. C. C. 447.

(o) Principal reason advanced by protestant against a proposed increased rate was that the municipality will shortly let a contract for construction of an expensive courthouse and they desire no change in rates until that contract is awarded. HELD: Contracts of this nature can not control establishment of reasonable rates. Iron and Steel to Shreveport, 115 I. C. C. 612, 614.

(p) Upon contention that tariff reference mark indicating an increase in rate contemporaneously with a change in wording of an item was an admission by carriers that shippers prior to that change were entitled to lower rates, HELD: No such admission may be implied from use of an increase mark or symbol, as such symbols do not affect validity or applicability of items to which they refer. See 50 I. C. C. 207. General Motors Truck Co. v. G. T. W., 118 I. C. C. 99, 102, 103.

(q) Proposed increased rates on paper, newsprint and poster, from Camas, Wash., and Oregon City and West Linn, Oreg., to destinations in Washington, Oregon, and Idaho, found justified. Evidence presented by protestants is meager, their allegation of discrimination which will result from shavings, involving both increases and reproposed rates being shown to result from competitive influences beyond control of carriers here involved. Respondents, on the other hand, point out that they are merely restoring basis of rates which formerly existed and which, except for general rate changes, remained in effect for many years without complaint; also that proposed rates and earnings compare favorably with those on numerous commodities from Portland to same destinations. Paper between North Pacific Coast and Spokane, 118 I. C. C. 123.

(r) Proposed increased class rates between points in Wyoming on one hand, and Nebraska and South Dakota, on other, found not justified. Protestant entered no appearance at hearing and carrier merely offered an explanation of proposed advances rather than justification therefor, indicating that no increase in rates was intended and that it is willing to republish rates so as to preserve existing level. Class Rates between Wyoming and Nebraska and South Dakota, 118 I. C. C. 237.

(s) Prior to the 1920 increases, rate on bulk corn from Blue Island and Chicago, Ill., and Hammond, Ind., to various points contiguous to Portland, Me., carried a 2-cent differential over rate to New York. In applying horizontal increases the 2-cent differential was continued to Portland and other points in this territory, whereas to destinations here involved a 40 per cent increase was applied disrupting the rate parity. Subsequently the equalization was restored. Upon complaint seeking damages on shipments moving during the interim, HELD: The general increases resulted in disturbances to rate relationships and differentials in various instances, but neither that fact nor showing here made establishes unreasonableness of rate charged. Nor did complainant establish damages by reason of discrimination or prejudice which was removed by voluntary reduction. Paris Flouring Co. v. N. Y., C. & St. L., 118 I. C. C. 291.

(t) Horizontal increases in freight rates in 1920, resulted in disturbances to rate relationships and differentials in various instances, but that fact in and of

itself does not establish unreasonableness. Paris Flouring Co. v. N. Y. C. & St. L., 118 I. C. C. 291, 292.

(u) Proposed changes in rates on cotton linters and cottonseed-hull fiber or shavings, involving both increases and reductions, increases predominating, from the Southwest to Missouri, Mississippi, and Ohio River crossings and northern, eastern, and western points, found not justified. Under schedules proposed, maladjustments would be created, origin relationships disturbed, and instead of removing fourth-section departures as intended, new departures would be created. Moreover, carriers here arbitrarily propose to put the whole industry on a rate plane made to fit the highest grade commodity produced by protesting shippers without having given consideration as to whether the traffic could bear the radical increases proposed, and in view of unqualified testimony of every oil-mill operator that traffic could not stand the increases, their ultimate result would be to kill the traffic and thus reduce existing revenues of carriers. Cotton Linters from Southwest, 118 I. C. C. 419.

(v) Respondents proposed to increase the rates on gravel, crushed stone, and sand, in carloads, between certain points in Oklahoma and certain points in Kansas. The rates are on a distance basis and the scale applies over routes made up of not more than three lines. Respondents propose to restore the provision limiting the application to no more than two lines. HELD, schedules not justified. Gravel between Kansas and Oklahoma, 120 I. C. C. 523.

(w) Proposed increased rates on cotton from Tennessee River landings between Florence, Ala., and Paducah, Ky., served by the St. Louis & Tennessee River Packet Co., to New Orleans, La., found not justified, evidence failing to show any justification for maintaining rates from boat landings on a higher basis than joint-line rates applicable from rail points in same territory. Cotton from Tennessee River Landings, 120 I. C. C. 51.

(x) Proposed increased rates on gravel, crushed stone, and sand between points in Oklahoma and points in Kansas, resulting from a proposal of carriers to restrict rates which are on a distance basis so that they will not apply where the haul is over more than two lines, found not justified. No justification is shown of record for maintenance between points in Kansas and points in Oklahoma of a basis of rates on these commodities higher than those applying intrastate in Kansas and Oklahoma, other than those prescribed as reasonable in Memphis Southwestern Investigation, 77 I. C. C. 473. Gravel Between Kansas and Oklahoma, 120 I. C. C. 523.

(y) Proposed increased rate on spelter from Blackwell, Okla., to Greencastle, Ind., by permitting the joint rate now in effect to expire by limitation, leaving in effect a higher combination of intermediates based on East St. Louis, Ill., found justified. Joint rate in effect to Greencastle is same as that in effect to Chicago, having been established on short notice under authority of rule 77 of Tariff Circular 18-A. Carriers showed that for many years the basis of rates from southwestern smelters to points east of the Indiana-Illinois State line was based on the East St. Louis combination and that the Chicago rate is depressed. Moreover, proposed rate compares favorably and is in line with rates from and to various other points for comparable distances. Spelter from Blackwell, 120 I. C. C. 576.

(z) Respondents proposed to increase rates on cement from Alabama, Tennessee and Georgia to destinations on the Tallulah Ry., and respondents C. & O. and its connections proposed to increase their rates on cement from Fordwick, Va., to destinations on the Elkin & Alleghany R. R. E. & A. is an independent short line extending northwest 15 miles to Veneer, N. C., from its junction at Elkin, N. C., with the Southern. Fordwick is a local point on the C. & O., 317 miles from Elkin. The Tallulah Falls is a short line extending north from its junction at Cornelia, Ga., with the Southern to Franklin, N. C., 57 miles. It is proposed to publish rates to all destinations on the E. & A., on a basis of 60 cents over the junction point. HELD, suspended schedules not justified. Cement rates from Southern Points, 122 I. C. C. 195.

(aa) Respondents proposed to increase the rates on grain and grain products, carloads, between points in Kansas and points in eastern Oklahoma points over interstate routes. The suspended schedules represent a proposed adjustment of rates on grain and grain products between points in Kansas and Oklahoma on the Rock Island, and points in Oklahoma on the Frisco, and a few short

line connections of the latter carrier. Since Jan. 15, 1923, specific rates on grain and grain products equivalent to the rates between Kansas City and the Oklahoma destinations have applied between the points here considered. In certain instances the rate from the point of origin in Kansas to Kansas City is higher than the rate from Kansas City to the Oklahoma destination. The effect of the suspended schedules is to cancel the joint through rates on grain moving from points of origin in Kansas and Oklahoma to Wichita and other milling points in Kansas, there manufactured into grain products and shipped to destinations in Oklahoma, and to substitute therefor a higher level of group rates based on a distance scale. As routing through Kansas City would be eliminated, combination rates much higher than the joint rates now in effect would apply on shipments moving through that point. HELD, suspended schedules not justified. Grain and Grain Products, 122 I. C. C. 301.

(bb) Respondent, Southern Ry., proposed to increase its local interstate rates on tanning extract, in carloads, from Lynchburg, Va., to Norfolk, Pinners Point, and Portsmouth, Va., and to increase its interstate rate on this commodity, in carloads, from Lynchburg and Charlottesville, Va., to the same ports on traffic for transshipment through the Panama canal to destinations on the Pacific coast. Pinners Point and Portsmouth are in the vicinity of Norfolk, and from Lynchburg and Charlottesville are accorded the same rates as those to the latter port. Lynchburg is on the main line of respondent, 64 miles northeast of Danville, Va., and 59 miles south west of Charlottesville. It is also served by the C. & O. and N. & W. Short line distance is over the N. & W., 204 miles. Shortest distance over respondents line is through North Carolina 271 miles. There is no movement of tanning extract from Lynchburg or Charlottesville to Norfolk proper. On Jan. 31, 1923, respondent established a rate of 19.5 cents to Norfolk. It states that this rate was intended to apply on export traffic only, but that through oversight, it was not so restricted and became applicable on export, local, and coastwise shipments. The proposed adjustment would result in a higher interstate rate over respondents line from Lynchburg to Norfolk proper than over the direct lines, but there is no movement to Norfolk proper. The rate from Charlottesville to Norfolk proper is 24 cents, and Lynchburg is intermediate to Charlottesville by way of respondents line to Norfolk. If the proposed rate of 28 cents from Lynchburg to Norfolk proper were established a violation of the fourth section would result. HELD, proposed rate from Lynchburg to Norfolk proper, Pinners Point proper, and Portsmouth proper has not been justified, but other proposed increased rates have been justified. Tanning Extract from Lynchburg, 122 I. C. C. 647.

(cc) Proposed rates on agricultural implements, from producing points in the Southeast to Mississippi and Ohio River crossings, including St. Louis and Mississippi Valley territory, found not justified. Proposed revision contemplates a much higher basis of rates from producing points to Mississippi Valley than is now in force from same producing points to points in the Southeast. With the exception of Florida peninsula, there is nothing to justify maintenance of different levels of rates between or within subterritories comprising southern territory, and as shippers at New Orleans compete with those at south Atlantic ports in distribution of agricultural implements in the Southeast, it is obvious that proposed adjustment will result in undue prejudice as between New Orleans' shippers on the one hand and those located at south Atlantic ports on the other. Agricultural Implements in Southeast, 122 I. C. C. 191.

(dd) Proposed increased rates on cement from Birmingham, Ala., and other southern cement-producing points, to destinations on the Tallulah Falls Ry., and from Fordwick, Va., to destinations on the Elkin & Alleghany R. R., found not justified. Proposed rates to stations on the Tallulah Falls are practically as high as Scale IV rates which constitute the highest rates prescribed in 48 I. C. C. 201; 52 I. C. C. 225; 69 I. C. C. 644, for application in western territory, and those proposed to stations on the Elkin & Alleghany are even higher. Moreover, rates proposed by both shippers and carriers in a pending proceeding for application in same territory are materially lower than those here in issue. Cement Rates from Southern Points, 122 I. C. C. 195.

(ee) Proposed rate changes, mainly increases, on grain and products, including flaxseed, between Minnesota, the Da-

kotas, Iowa. Wisconsin, and Illinois, principally North Dakota, and Minnesota to the large terminal markets, found not justified. While carriers showed that present rates are low and proposed rates not unduly high; and that unfavorable transportation conditions attend the movements from North Dakota and Minnesota, these conditions were not translated into terms of cost of service or a showing made that they are more burdensome than conditions attending the movement of other important traffic. Nor did carriers show that earnings under present rates are low, either intrinsically or by comparison with those on other commodities. On other hand, shippers' evidence as to relative earnings and cost of service warrants conclusion that present rates are by no means unremunerative, and that earnings thereunder compare favorably with those on other traffic and with earnings derived by other carriers in the western group. Grain and Products, 122 I. C. C. 235.

(ff) Proposal to increase rates on grain and grain products from points in South Dakota to Omaha, Nebr., in order that they may reflect the differentials which now obtain, Sioux City, Iowa, over Omaha, on traffic to the South and the Southwest, found not justified. Grain and Grain Products from South Dakota, 122 I. C. C. 393.

(gg) Proposed increased rates on anthracite coal from mines in Pennsylvania to Albany-Utica-Syracuse group in northern New York, found not justified. Generally carriers proposed to reduce spread in rates between short single-line routes from Wyoming region mines and more circuitous joint-line routes from Lehigh and Schuylkill regions south thereof by increasing rates from former and reducing those from latter. Wyoming region, however, is logical source of anthracite coal for delivery at points in Albany group and coal from mines south thereof over circuitous routes may well take somewhat higher rates than over direct routes from Wyoming region, and while some of proposed rates from Lehigh and Schuylkill mines have been prescribed herein as reasonable, routes were selected by carriers themselves and upon this record the commission is not prepared to find them uneconomical. Anthracite Coal Investigation, 122 I. C. C. 527.

(hh) Proposed increase in basis of rates on paving and roofing pitch, paving and roofing tar, coal tar, and oil tar from 70 to 80 per cent of sixth class in c. f. a. territory, the basis applicable on asphalt, found not justified. While a review of conclusions in 61 I. C. C. 719, wherein 80 per cent of sixth class was prescribed in official classification territory on these commodities justifies carriers' attempts to replace the pitch and tar rates on a parity with those on asphalt is so far as reasonableness of rates is concerned, such an adjustment would produce a disparity in rates between producers at Cincinnati, and St. Louis and Chicago in favor of competing plants at latter points, resulting in undue prejudice to Cincinnati producers. Pitch and Tar in C. F. A. Territory, 122 I. C. C. 573.

(ii) Proposed increased rates on tanning extract from Charlottesville and Lynchburg, Va., to Norfolk, Pinners Point, and Portsmouth, Va., for transshipment through Panama Canal to destinations on Pacific coast, found justified. Such rates are same as those over other lines between same points and compare favorably with rates to various other destinations for comparable distances. Tanning Extract from Lynchburg, 122 I. C. C. 647.

(jj) Proposed increased rates on lumber from Chicago, Ill., and adjacent points to destinations in Illinois and Wisconsin, found justified. Proposed adjustment is an endeavor of respondents to increase their rates from Chicago to level of corresponding rates now in effect over other carriers' lines, record showing that they are not unreasonable as compared with rates to other destinations for comparable distances. Moreover, protestant acquiesced in establishment of similar rates by other carriers and failure to protest such increases has created a situation as between intrastate and interstate rates that might unduly prefer users of the latter. Adjustment proposed will not only remove such possibility but will improve existing conditions. Lumber from Chicago, 122 I. C. C. 726.

(kk) Respondents proposed a general increase of about 20% in their interstate rates on milk and cream, carloads, and less carloads, in passenger and freight train service, between points in New England and from certain points in northern and eastern New York on the Rutland, D. & H. and G. & J. to points in New England. The present rates on milk and cream in New England and to New England from the points in northern and eastern New York which, for the purpose of this case, will be included in the New England group are those established in

New England Milk Case 40 I. C. C. 699, and subsequently increased 25% in 1918 and 20% in 1920 under the general increases in those years. It is unquestionably true that the car foot mile does not constitute an ideal single unit of measure for apportionment of a number of the individual accounts carrying expenses common to different services, but in an ascertainment of this kind it is not a question of selecting the most desirable basis for apportioning the various individual expenses, but of making use of those which are available or which it is practicable to obtain and which are reasonably satisfactory for the purpose. The divisions from rates on perishable traffic received by some of the New England roads do not afford a sound basis upon which to judge the reasonableness of the rates on milk throughout New England. The respondents in the present case contended that milk and cream are not products of agriculture, but the Commission is of the opinion that they are and that they come within the class of products with which the Hoch Smith resolution specifically deals. The effect upon the production of milk and cream in New England of a further increase in rates is difficult to predict. The increase of 20% sought by respondents may have a harmful effect and ultimately result in a decrease in production, although from the experience during the past 10 years in New England the conclusion may seem warranted that there will be little effect upon the total shipments. It is one of the last remnants of agricultural pursuits in some sections of New England and the showing presented in this case justifies protestants appeal for application of the congressional declaration contained in the Hoch Smith resolution that rates for the movement of agricultural commodities be reduced to the lowest lawful level consistent with the maintenance of adequate service. The Commission has held that the lowest possible lawful rates must allow something more than out of pocket expenses. HELD, respondents have shown that some increase in their present rates is justified, and rates for distances up to, but not including, 100 miles should be increased 20%, but for distances 100 miles and over rates equal to those now in effect under the distance scale of rates to New York City and Philadelphia should be established. The application of the scale as a general distance scale with the 20 mile block arrangement now in effect in New England, and the maintenance of rates on milk in freight cars moving in freight trains at not to exceed 75% of the rates on milk moving in passenger train service may be continued, there being no evidence of the necessity for or the desirability of changes in these respects. Milk and Cream between New England points, 126 I. C. C. 39.

(ll) Respondents proposed to increase their joint rates on newsprint paper and wall paper, blank, unfinished, in carloads, from Port Arthur, Fort Willim, West Fort, and Kenora, Ont., Can., to Albia, Centerville, Fort Madison, Mount Pleasant, Oskaloosa, Ottumwa and Washington, Ia. The destinations under consideration are in southeastern Iowa and are reached by direct short route over all lines, except that traffic over the Burlington moves through Galesburg, Monmouth, Burlington, Ottumwa and Oskaloosa when destined to Des Moines. All traffic moves through Minnesota Transfer, Minn., to Des Moines. The distance from Minnesota Transfer to Des Moines is 266 miles over the Rock Island and 593 miles over the Burlington. The distances to destinations other than Des Moines are proportionately greater over the Burlington than over the other and more direct lines. Present rate to Des Moines is 34c. To the intermediate points on the Burlington the rate is 36c, a departure from the fourth section. HELD, Burlington has justified the increased rates proposed except for the 37.5c rate to Fort Madison, which should be 36c. Other respondents have not justified the proposed increased rates. Newsprint and wall paper, 126 I. C. C. 166.

(mm) Respondents proposed to increase the interstate rates on lignite coal from mines in North Dakota to destinations in North Dakota, South Dakota and Minnesota. Previous report found in Lignite coal from North Dakota, 89 I. C. C. 726. It need only be said that the value of a commodity is only one of the elements to be considered in determining the reasonableness of the rate; that the transportation cost to the carrier is not less because of the low heat value of lignite; that due consideration must be given to the transportation conditions surrounding the handling of the traffic; and that the testimony indicates a substantial reduction in the territory in which lignite can be sold would increase its unit cost of production and diminish the volume of tonnage offered the carriers for transportation. The Commission can not, however, disregard the value of the service

to the shippers; that is, what rates the commodity can bear without curtailing the movement. HELD, reasonable rates would result from the application of the so-called conference scale modified by the subsequent general increases and reduction, and extended at the same rate of progression for distances over 400 miles, with the addition of 20c per ton for joint line hauls. Lignite coal from North Dakota, 126 I. C. C. 243.

(nn) Proposed increased interstate rates on milk and cream between New England points and from New York points to points in New England, in passenger and freight-train service, found not justified, except that rates for distances up to, but not including, 100 miles should be increased as proposed, but for distances 100 miles and over, rates equal to those now in effect under distance scale to New York City and Philadelphia prescribed in 45 I. C. C. 371, and 45 I. C. C. 412, respectively, should be established, with continued maintenance of rates on milk in freight cars moving in freight trains at not to exceed 75 per cent of corresponding rates when moving in passenger-train service. Milk and Cream Between New England Points, 126 I. C. C. 38.

(oo) Proposed increased rates on slate, crushed, from Esmont, Arvonia, Dutch Gap, and Rockfish, Va., to Mobile, New Orleans, and Vicksburg, found justified. Present rates were published to permit producers at Esmont to compete with producers at Tellico Plains, Tenn., and Fairmont, Ga., and yield earnings considerably less than rates found not unreasonable in 115 I. C. C. 605, from Whiteford, Md., and Slate Hill, Pa., distance considered. Rates are also low as compared with those on animal manure, coke, lumber, and other articles prescribed in various cases, and with those prescribed in 88 I. C. C. 543, on brick, a commodity of comparable value. Slate from Virginia Points, 126 I. C. C. 70.

(pp) Proposed increased class and commodity rates between certain points in Iowa and South Dakota and in Colorado and Utah, found not justified. Proposed rates would increase all class rates as well as commodity rates on grain and products and other articles. As there is a surplus of coarse grain in South Dakota and Iowa which must be moved, proposed rates would naturally greatly affect if not completely destroy this movement. Moreover, in 109 I. C. C. 27, a similar proposal was found not justified and protestants urge that no such readjustment as proposed should now be made in view of investigation proceedings now pending. Rates from Iowa and South Dakota, 126 I. C. C. 81.

(qq) Proposed increased rates on tobacco, unmanufactured, from points in central Kentucky, to St. Louis, Mo., and East St. Louis, Ill., found justified. Present rates are and have been for many years in violation of long-and-short-haul provision of section 4, and are lower than those found reasonable in 81 I. C. C. 184, from points in Ohio to St. Louis for comparable distances, whereas proposed rates would be relatively reasonable and would remove fourth-section departures now existing. Unmanufactured Tobacco from Kentucky, 126 I. C. C. 93.

(rr) Proposed increased rates on newsprint paper and wall paper, blank, unfinished, from Canadian points to destinations in Iowa, over lines of various carriers found not justified, except that increases proposed by the C., B. & Q., found justified to all destinations except Fort Madison. Distances to various destinations are greater over the Burlington than over other lines which now enjoy same rates as those proposed by that carrier, and record tends to show that proposed rates are reasonable and will remove existing fourth-section departures. Moreover, in 113 I. C. C. 343; 120 I. C. C. 251, joint rates on newsprint paper from Ontario, Canada, to various States, including Iowa, were found unreasonable. Newsprint and Wall Paper, 126 I. C. C. 166.

(ss) Proposed increased and reduced rates on fruits, melons, and vegetables, from points on the L. & N. south of Montgomery, Ala., in Alabama, Florida, Louisiana, and Mississippi to Memphis, Tenn., found not justified. Proposed rates considerably exceed present rates to Nashville, Tenn., from same points and while hauls to latter point are over a single line and those to Memphis over two lines, that should not make much difference considering the slight difference in distance in favor of Nashville when compared with length of haul. Moreover, movement to Memphis under rates proposed to be canceled is almost negligible as it is ordinarily supplied from points over short-line routes and no reason appears for requiring respondents to meet this competition. Fruits and Vegetables to Memphis, 126 I. C. C. 226.

(tt) Proposal of the L. & N. R. R. to

increase its single-line rates on Forest products, from Decatur, Ala., and related points to Nashville, Tenn., in order to place Decatur on same rate basis as Florence and Sheffield, Ala., found not justified. While proposed rates are low as compared with joint-line rates from points on other lines for comparable distances, are not high as compared with rates to Ohio River cities, and compare favorably with those prescribed in 104 I. C. C. 15 for joint-line hauls of comparable distance, such rates are higher than the distance scale of single-line rates on lumber prescribed for application between Meridian, Miss., and points on the Southern, Alabama Great Southern, and Mobile & Ohio railroads. Forest Products from Decatur, 126 I. C. C. 252.

(uu) Proposed increased rates on coarse grains from points in Texas to points in Mississippi and Alabama found not justified. Both present and proposed rates are made on basis of locals or proportionals to and from Memphis, Vicksburg, or other lower Mississippi River crossings under appropriate tariff provisions the rates so made through any of the gateways are generally applicable through all. Proposed increases would be brought about solely by increasing factors east of the Mississippi and proposed factors east of Vicksburg will equal or approximate present reshipping rates east of Memphis, although distances are only one-third or one-fourth as great. Carriers rely upon 81 I. C. C. 96 in which rates on coarse grain from Texas to the southeast were in issue, but that decision has no application to points here involved and contains no authority for proposed increases. Grain and Grain Products, 126 I. C. C. 454.

(vv) Proposed rates on hay between points in Texas and between those points and points in the Shreveport, La., group, based on a composite scale observing as minima the rates prescribed in 48 I. C. C. 312, or those under distance scale prescribed in 101 I. C. C. 116, whichever are higher, plus differentials when through Texas differential territory; using as maximum a rate now applicable as a maximum blanket rate between points in Texas common-point territory, found not justified. In 101 I. C. C. 116, commission stated that whatever rates would be ultimately prescribed between Texas points should be applied between Texas points and Shreveport, but because of loss involved respondents have been unwilling to extend this intrastate adjustment beyond 350 miles. The proposed rates are in nature of a compromise, are apparently satisfactory to no one, and to extent they exceed those constructed in accordance with distance scale prescribed in last cited case, would be unreasonable and many of them unduly prejudicial. Hay Between Points in Tex., La., and Ark., 126 I. C. C. 524.

(ww) Proposed increased rates on terne metal from Newark and Brills, N. J., to Buffalo, N. Y., and Buffalo rate points and other destinations in c. f. a. territory found justified under section 1 of the act, but not justified under section 3. Terne metal is now subject to same rates as tin, and this relationship will be disrupted if the terne-metal rates are advanced as proposed. Rates on tin plate and terne plate are the same practically everywhere, these commodities are used for precisely the same purpose, except that terne plate may not safely be used in making food containers, and competition exists between tin and terne metal in sufficient degree to make unlawful the maintenance of higher rates on terne metal than on tin. Moreover, the very cheapness of terne metal indicates that if there is to be any difference terne metal should reasonably have lower rates than tin. Former decision in 113 I. C. C. 487, modified. Federated Metals Corp. v. C. R. R. Co. of N. J., 126 I. C. C. 703.

(xx) Respondents proposed to change the commodity description applicable in connection with certain commodity rates maintained on stone, in carloads, from Champaign, Ill., to Ohio, Michigan, Indiana, New York, West Virginia and Pennsylvania. The rates named in the item are inapplicable on protestants shipments. HELD, since the proposed schedule does not effect a change in the rates on granite, discussion of the evidence pertaining to the propriety of these rates is unnecessary. HELD, schedules justified. Stone from Champaign, Ill., 128 I. C. C. 21.

(yy) Proposal to establish increased combination rates on grain and products from stations on Chicago & Eastern Illinois in Illinois and Indiana to destinations on St. Louis-San Francisco in Arkansas and to cancel present joint rates, found not justified. While combination basis is generally applied from Illinois and Indiana points to Arkansas destinations on the Frisco and proposed rates compare favorably with those to Arkansas destinations on other lines of

the Frisco, lower joint rates apply over lines other than the Frisco to northeastern Arkansas. Moreover, while proposed rates approximate those prescribed in 101 I. C. C. 116 for application between Oklahoma and Texas, no sufficient reason appears for judging proposed rates by any rates here instanced because about half of haul here considered is in Illinois where a much lower basis of rates applies than in the Southwest. Grain and Products to Arkansas, 128 I. C. C. 29.

(zz) Respondents proposed to increase their rates on grain and grain products, in carloads, from Illinois and Indiana to Arkansas. Origin points are on the C. & E. I. Destinations are on the former J. L. C. & E. now part of the Frisco. The increases would be brought about by canceling the present joint rates and applying local rates to East St. Louis, or Tebes, Ill., and proportional rates beyond. The proportionals are from 3.5 to 4.5c lower than the locals. The proposed rates would be 1.5c higher than the joint through rates previously published. The present rates have been in effect only since Oct. 25, 1926. The combination basis is generally applied on grain and grain products from points in Illinois and Indiana to destinations on the Frisco in Arkansas, the present rates representing apparently the only exception. The proposed rates compare favorably with the rates from these points of origin to destinations in northeastern Arkansas on other lines of the Frisco. From Illinois and Indiana points to destinations in Arkansas served by carriers other than the Frisco joint rates lower than the combinations prevail and to those destinations, the rates are lower than those proposed. The burden of justifying these increased rates rests upon respondents. They have not sustained it. HELD, suspended schedules not justified. Grain and grain products from Illinois, 128 I. C. C. 29.

(3a) Proposed increased rates on grain and products from Montana points on Great Northern Ry. to destinations on the Goldendale branch of Spokane, Portland & Seattle Ry., found not justified. The Goldendale branch points are part of a large destinations group. Respondents propose to cancel blanket rate to Goldendale branch points and to establish rates made by addition of arbitraries to the junction-point rate. No arbitraries now apply on traffic from Montana to this branch and in 66 I. C. C. 330, 336, it was stated that when blanket rates apply over an extensive area, fact that branch-line points lie within that blanket does not argue as strongly that there should be a branch-line differential as when rates are applied upon a graded basis, for in an extensive blanket a branch-line haul loses its significance unless it is much more expensive than main-line operations. Here, although operating conditions are more difficult and expensive than on main line, the markedly shorter total haul required with higher earnings, and fact that rates to other more distant branch lines will continue to be accorded the group basis, greatly offsets this showing. Grain from Montana, 128 I. C. C. 123.

(3b) Proposed increased rates on sugar from New Orleans and other Louisiana refining points to points in southern and eastern Texas, and from Sugarland and Texas City, Tex., to Shreveport and other Louisiana points and to Vicksburg, Miss., and other Mississippi River crossings south thereof, found not justified in so far as they exceed those that will result from application of maximum reasonable rates prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203. Proposed rates are higher than those under distance scale prescribed in 77 I. C. C. 473 for application in same general territory and proposed rate to Houston without appropriate change in present ocean-and-rail rate from New York via New Orleans to Houston, would create an adjustment contrary to long-and-short-haul provision of section 4 of the act. Moreover, rates constructed on basis prescribed in Consolidated Southwestern Cases will provide reasonable, nonprejudicial, and nondiscriminatory rates between points involved. Sugar Between Louisiana and Texas Points, 128 I. C. C. 309.

(3c) Proposed increased rates on grain and products between Sioux City, Iowa, and points grouped therewith and A., T. & S. F. Ry., stations in Kansas, Oklahoma, and Colorado, to be effected by cancellation of joint rates, leaving existing higher combination rates in effect generally, found not justified. While respondents contend that proposed cancellation will not be detrimental to Sioux City shippers because lower combination of proportional rates will be available, such proportional rates apply only on shipments originating beyond

Sioux City proper and cancellation of joint rates would therefore impair position of shippers at other points in Sioux City group. Moreover, record indicates that existing Santa Fe basis on flour northbound is same as that maintained by other important originating lines and present rates on flour to Sioux City from Kansas points on the Santa Fe compare favorably with rates from same points to St. Louis, although distance to latter point is greater. Grain Between Sioux City Group and Kansas, 128 I. C. C. 434.

(3d) Proposed increase in interstate single-line rate on sand from Pleasant Lake, Ind., to Chicago switching district under purported authority of 118 I. C. C. 633, prescribing rates on sand, gravel, and other commodities from points within the district and within 150 miles of Chicago, found not justified. While proposed rate compares favorably with numerous rates to destinations in Indiana, Michigan, and Ohio, transportation and other conditions are not shown to be similar. However, in case cited, a differential over single-line rates was prescribed for connecting-line rates and rates based on that finding appear to be justified here. Sand from Pleasant Lake, 128 I. C. C. 439.

(3e) Respondent proposed to increase its single line rate on sand from Pleasant Lake, Ind., to the Chicago district from 80 to 96c. HELD, schedules not justified, but rate of 90c is justified, following Chicago Gravel Co. v. A. T. & S. F. Ry., 118 I. C. C. 633. Sand from Pleasant Lake, 128 I. C. C. 439.

(3f) Respondents proposed to increase the rates on ground iron ore, carloads, from East St. Louis, Ill., Chattanooga, Tenn., and certain other points in Tennessee and designated points in Virginia and Alabama to Beaumont, Galveston, Houston and Orange, Tex., and destinations taking the same rates. Ground iron ore is a manufactured article in that it has been dried and crushed and is used as a coloring ingredient in brick and metallic paint. Joint commodity rates, subject to a minimum of 15 long tons, are published on the commodity based on the then existing New Orleans combination. Respondents proposed to cancel these commodity rates, leaving applicable the higher commodity rates now published in another section of the tariff on paints and paint material, including ground iron ore. Under Consolidated Southwestern cases, 123 I. C. C. 203 the Commission authorized for application on dry paints, the class rates therein prescribed, and the maximum class C rates prescribed for application from Chattanooga are 66c to Galveston and Houston and 63c to Beaumont. HELD, proposed schedules not justified without prejudice to filing new schedules containing rates no higher than those authorized in Consolidated Southwestern Cases. Ground Iron Ore from Points in Virginia, Tennessee, Alabama, and East St. Louis, Ill., to Points in Texas, 129 I. C. C. 557.

(3g) In the original report, Fruits and Vegetables between Pacific Coast states, 104 I. C. C. 66, division 2 found the proposed rates on fruits and vegetables, in carloads, between points in California and points in Oregon, Washington, Idaho, Utah and Montana not justified. The record shows that the operating conditions in the territory here involved are no more difficult than from California to Arizona and New Mexico; that the traffic moves in regular manifest trains, generally to large consuming centers, and in much greater volume than from and to those states; that practically all equipment used in this traffic is used for traffic moving in the opposite direction; and that the return of empty equipment is negligible. The present rates, as modified by the general increases and reduction, have been maintained for many years. The base rate is that between California group 1 and the Portland group, 49.5c. HELD, schedules not justified. Fruits and vegetables between Pacific coast states, 129 I. C. C. 569.

(3h) Burlington and M. P., respondents, proposed to cancel the present commodity rates on baled straw, in carloads, from points on their lines in Illinois, taking Cairo, Thebes, or East St. Louis, Ill., rates, to destinations in Indiana and Ohio and to establish higher fifth class rates. Baled straw, in carloads, is rated fifth class in official classification, minimum 20,000 pounds, subject to rule 34. Except where specific commodity rates have been published to points at which strawboard mills are located, fifth class rates apply generally on baled straw within central territory. The record indicates that in some instances the car mile earnings yielded by the present rates are unduly low, but respondents have not justified the substantial increases which would result from the proposed cancellation and which in some instances ap-

pear unwarranted. HELD, suspended schedules not justified, without prejudice to filing of other schedules not inconsistent with the views herein expressed. Straw to Indiana and Ohio, 132 I. C. C. 85.

(3i) Upon contention that general increases of 1918 and 1920, and processes of readjustment since that time, have eventuated in greater increase on commodity involved relative to pre-war level of rates than on other commodities, in violation of section 3 of the act, FOUND: Similar contention was made and answered adversely in 58 I. C. C. 701, 706. California Growers' & Shippers' Protective League v. S. P., 129 I. C. C. 25, 40, 41.

(3j) Fact that spread between rates to more distant destinations increases instead of decreases in accordance with the general principle may be offset by fact that a higher level of rates is justified in a territory of relatively low traffic density. National Canners Asso. v. B. & O., 129 I. C. C. 269, 278.

(3k) Proposed increased rates on ground iron ore from points in Virginia, Tennessee, and Alabama, and East St. Louis, Ill., to specific points in Texas and destinations taking same rate, found not justified. Rates are not normal and necessity for depressed basis has passed. Proposed rates at minimum weight are higher than those prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203, and rates and earnings thereunder are higher than those on the same and analogous commodities between same and various other points for comparable distances. Schedules ordered canceled, without prejudice to filing new schedules at rates and minima no higher than those prescribed in cited case. Ground Iron Ore to Texas Points, 129 I. C. C. 557.

(3l) Finding in original report, 104 I. C. C. 66, that proposed rates on fruits and vegetables between points in California and Oregon, Washington, Idaho, Utah, and Montana, involving both increases and reductions, had not been justified, affirmed. Circumstances and conditions under which commission prescribed or found not unreasonable higher rates on like traffic are too dissimilar in too many important respects to entitle such comparisons to much weight and evidence does not indicate that present rates are depressed by real or potential water competition or that they are not remunerative. Fruits and Vegetables Between Pacific Coast States, 129 I. C. C. 569.

(3m) Proposed increased rates on potatoes and vegetables from points in Nebraska, Colorado, Utah, New Mexico, Wyoming, Idaho, Montana, and Oregon, to destinations in Arkansas, Tennessee, and Kentucky, in purported compliance with findings in 120 I. C. C. 245, found not justified. Carriers propose to remove prejudices therein found to exist by increasing rates to Little Rock, Pine Bluff, Helena, Memphis, and points taking same rates, rather than by reducing the rates to southern Arkansas group. Proposed increases would both create and increase fourth-section violations. Furthermore, the reasonableness of present rate on potatoes is involved in several cases now pending, in which the need of a general revision of rates is indicated. Potatoes and Vegetables from Western Points, 129 I. C. C. 652.

§18. Circumstances and Conditions.

(2) Water Competition.
See Water Competition.

(a) Rates on lumber from points in Maine to destinations in New England, found reasonable in 43 I. C. C. 641, but reduced by carriers to allow lumber interests to compete with Pacific coast shipments via Panama Canal, were subsequently increased to former level. Upon contention that such increase was in violation of section 4 (2) of the act, FOUND: Purpose of section 4 (2) is to prevent carriers from increasing rates after water competition has been eliminated by reduced rates. Here, voluntary reductions was not to destroy competition but to preserve it, but since it has continued undiminished, restoration of rates to former basis does not fall within prohibition contained in that section. See 249 U. S. 557. Moreover, in 85 I. C. C. 270, commission stated it would not adjust rates from competing producing territories in order to equalize manufacturing costs. Woodstock Lbr. Co. v. B. & A., 129 I. C. C. 255.

V. DISCRIMINATION THROUGH ADVANCE.

§19. In general.

See Discrimination.

(a) Proposed rates on pig iron between points in c. f. a. territory, found justified, except that those from Chicago district to St. Joseph, Benton Harbor, and Bridgman, Mich., and to Goshen, North Manchester, Huntington, and Wabash, Ind., found unduly prejudicial and ordered canceled, and proposed removal of Logansport, Ind., from its present destination group on traffic from Toledo, found not justified. While generally a readjustment of such wide scope as here considered requires justification by rate comparisons or cost studies, and such meager evidence as offered by respondents would ordinarily be insufficient to justify such a readjustment, protestants are primarily interested in rate relationships, have offered little evidence bearing upon reasonableness per se of proposed rates, and proposed adjustment is an improvement over that now existing. Pig Iron in C. F. A. Territory, 126 I. C. C. 111.

(b) Proposed increased rates on terne metal from Newark and Brills, N. J., to Buffalo, N. Y., and Buffalo rate points and other destinations in c. f. a. territory found justified under section 1 of the act, but not justified under section 3. Terne metal is now subject to same rates as tin, and this relationship will be disrupted if the terne-metal rates are advanced as proposed. Rates on tin plate and terne plate are the same practically everywhere, these commodities are used for precisely same purposes, except that terne plate may not safely be used in making food containers, and competition exists between tin and terne metal in sufficient degree to make unlawful the maintenance of higher rates on terne metal than on tin. Moreover, the very cheapness of terne metal indicates that if there is to be any difference terne metal should reasonably have lower rates than tin. Former decision in 113 I. C. C. 487, modified. Federated Metals Corp. v. C. R. R. Co. of N. J., 126 I. C. C. 703.

(c) Respondents proposed to increase rates on furniture, in carloads, from Fort Smith, South Fort Smith and Van Buren, Ark., to Birmingham, Ala., from 82c to $1.24 in purported compliance with the order in Florence Chamber of Commerce v. L. & N. R. R., 122 I. C. C. 367. In that case the Commission found the rate on furniture, in carloads, of 124c from Fort Smith to Florence, Ala., and destinations in the Florence group unduly prejudicial to extent it exceeded the rate to Birmingham. HELD, rates from Fort Smith, Ark., to Florence, Sheffield and Tuscombia, Ala., unreasonable to extent they exceeded $1.04 and unduly prejudicial to extent they are less than 7c lower than the rates to Birmingham. HELD, suspended schedules not justified. Furniture to Birmingham, 132 I. C. C. 263.

VIII. TARIFFS AND PUBLICATION.

See Tariffs II.

§24. Construction.

(a) Commission suspended schedules proposing increased rates for interstate transportation of papermaker's clay and scrap or waste paper and provided that use of such rates be deferred on interstate traffic pending hearing and decision. Terms "interstate transportation" and "interstate traffic" technically do not comprehend import traffic, i.e., foreign commerce, and carriers, so construing them, charged increased rates on imported clay and waste paper. Increased rates so assessed found unreasonable to extent they exceed rates on this traffic in effect immediately prior to date when the increases were made effective. Various Commodities between New England Points, 113 I. C. C. 44.

AGENCY

See Bills of Lading §5a (a); Crimes §15; Tariffs §3 (2); Terminal Facilities §3½; Undercharges §2 (a).

(a) Shipment originated on nonfederally controlled line and moved to point on a line under Federal control, illegal charges being collected by director general who forwarded voucher covering his portion of overcharges to initial carrier, who failed to refund them to shipper. Contention by director general that payment of the voucher to initial carrier was payment to complainant inasmuch as complainant, by letter, conferred authority upon initial carrier to act as its agent, not accepted. Having filed an overcharge claim with initial line, the letter in question is considered only as a statement of basis of settlement which was then acceptable to complainant. Bowers & Co. v. Director General, 107 I. C. C. 305, 307.

ALASKA

See Adjacent Foreign Country; Control and Regulation; Foreign Commerce.

ALLOWANCES

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
§2. Power to prescribe.
§3. Effect of orders.

II. PUBLICATION AND TARIFFS.
§4. Obligation to file.
§5. Effect of publication.
§6. Construction.

III. DISCRIMINATION.
§7. Obligation to treat alike.
§8. Particular allowances.
(½) Car ferry and cars.
(1) Cotton compressing.
(2) Cooperage and grain doors.
(2¼) Dunnage.
(3) Elevation.
(3⅛) Furnace allowances.
(3¼) Lateral allowances.
(3½) Leakage.
(4) Lighterage.
(4½) Lining and padding.
(4¾) Shrinkage.
(4⅞) Loading and unloading.
(4⅞a) Motor truck or wagon transfer.
(5) Spotting and delivering cars.
(6) Staking and bulk heads.
(7) Transfer.
(7a) Trap car service.
(8) Yardage and wharfage.
(9) Insurance.
(10) Icing.
(11) Weighing.

IV. LEGALITY OF ALLOWANCES.
§9. In general.
§10. Transportation service performed by shipper.
§11. Transportation facility.
§12. What is not transportation service.
(1) Accessorial or incidental.
(2) Operation of plant facility.

V. REASONABLENESS OF ALLOWANCES.
§13. In general.
§13½. Retroactive application.

VI. DAMAGE AND REPARATION.
§14. In general.
§14½. Court proceedings.

VII. AS REBATES.
§15. In general.

VIII. CRIMINAL LIABILITY.
§16. In general.

CROSS REFERENCES

See Common Carrier §9; Divisions; Facilities and Privileges; Ferry Charges; Industrial Railroads; Lighterage III; Mails; Tap Lines §4, §6½, §9; Terminal Facilities; Weights and Weighing §8.

II. PUBLICATION AND TARIFFS.

See Tariffs II.

§4. Obligation to File.

(a) Service over private tracks or plant facility tracks by a common carrier subject to the act is neither compelled nor prohibited under the act. To furnish it or withhold it is within the discretion of the carrier. In either event the statutory inhibition against unjust discrimination or undue prejudice must be observed. Moreover, where the defendants have elected to perform the service they should publish tariffs to cover it. American Fuel Co. v. A., T. & S. F. Ry., 123 I. C. C. 101, 112.

III. DISCRIMINATION.

See Discrimination.

§8. Particular Allowances.

(1). Cotton Compressing.

See Compress Companies and Charges; Facilities and Privileges.

(a) In original report, 98 I. C. C. 619, failure of carriers to absorb out of applicable rates the entire compress charge on cotton originating at and forwarded from Jonesboro, Pine Prairie, and Mamou, La., compressed at Alexandria, and reshipped to New Orleans, was not found unreasonable, it being shown that compression was

not "at the expense of the carrier" as provided by tariff. Upon further hearing, original report reversed, as under terms of the tariff carrier extended to shipper the protection of the through rate, not only in event that compression was "by and at the expense of the carrier," but also when, as here, after compression, it was redelivered to originating carrier, irrespective of whether compression was done by carrier or some other agency. In either instance the carrier would obtain entire haul from point of origin to destination, and transportation facilities accorded would be identical. Reparation awarded. Haas & Co. v. Director General, 123 I. C. C. 121.

(b) Carriers make allowances to shippers who, in lieu of switching, dray their cotton from uptown warehouses to ship side, which cotton carriers are under obligation to transport under transit arrangements. Upon contention of water-front warehouses that inasmuch as city-delivery and ship-side rates are to be equalized such allowance should be discontinued or allowance made for handling cotton from water-front warehouses to ship side, HELD: No reason appears for condemning reasonable allowances for drayage, such drayage being a substitute for rail transportation, but they must not be more than reasonable and must not be used as a cloak for unlawful preferences to shippers furnishing such substitute service. This applies equally to barging where barging is used as a substitute for switching. Rates on Cotton to Gulf Ports, 123 I. C. C. 685, 696.

(c) Hand or electric trucking of cotton, or movement by overhead trolley from warehouse or compress to the wharf, is not a substitute for rail transportation but is an intraplant movement just the same as the handling of commodities from the interior of a warehouse to the railroad car or dray and no allowances may lawfully be made therefor. Rates on Cotton to Gulf Ports, 123 I. C. C. 685, 696, 697.

(d) Upon contention of port interests that as many interior shippers of cotton are stockholders in interior compress companies, profits from carriers' compression allowance gives them an unreasonable and unlawful advantage over port shippers and compress companies, and that such companies render services to interior shippers either free or at less than reasonable charges, HELD: Since selection of compress point rests entirely with carriers, shippers, whether stockholders or not, can secure no favor or advantage not accorded any other shipper. If they direct carriers to compress their cotton at a point beyond the first compress point in route, they must not only bear compression charge but are assessed a higher rate on the uncompressed cotton. Prior reports 77 I. C. C. 388, 100 I. C. C. 159. Rates on Cotton to Gulf Ports, 123 I. C. C. 685, 700, 701.

§8. (2¼). Dunnage.

See Dunnage.

(a) Complaint alleging overcharges because of failure of carriers to make dunnage allowance on lumber shipments as provided in the tariff, dismissed for lack of sufficient proof. Evidence failed to show that allowance was not made on any specific shipment or that stakes or braces were used on all shipments. While carrier's records show that in a few instances allowance was made, they do not show whether it should have been allowed in instances where it was not. As the case has stood submitted for more than five years and record is still deficient, no sufficient reason appears for holding it open on the docket for a longer period. Parry & Co. v. B. M. Ry., 118 I. C. C. 193.

§8. (5). Spotting and Delivering Cars.

See Facilities and Privileges §12½; Spotting.

(a) Upon further hearing, based upon cost of performing the service, reasonable maximum allowances for service of spotting certain interstate shipments at complainants' plant at West Hammond, Ill., determined and reparation awarded. Previous reports, 60 I. C. C. 523 and 73 I. C. C. 100. United Chem. & Organic Products Co. v. Director General, 112 I. C. C. 687.

(b) Carriers make allowances to shippers who, in lieu of switching, dray their cotton from uptown warehouses to ship side, which cotton carriers are under obligation to transport under transit arrangements. Upon contention of water-front warehouses that inasmuch as city-delivery and ship-side rates are to be equalized such allowance should be discontinued or allowance made for handling cotton from water-front warehouses to ship side, HELD: No reason appears for condemning reasonable allowances for drayage, such drayage being a substitute for rail transportation, but they must not be more than reasonable and must not be used as a cloak for unlawful preferences

to shippers furnishing such substitute service. This applies equally to barging where barging is used as a substitute for switching. Rates on Cotton to Gulf Ports, 123 I. C. C. 685, 696.

(c) In Carnegie Steel Co. v. Director General, 96 I. C. C. 527, the Commission found that the delivery charge assessed on ex lake iron ore in carloads at complainants plant at Youngstown, O., was applicable and not unreasonable but that to charge complainant for a service in excess of the line haul service while furnishing a similar excess service free at the Youngstown and Haselton plants of its competitor, the Youngstown Sheet & Tube Co., constituted undue prejudice to complainant and undue preference of such competitor. It further found that the undue prejudice and preference should be removed by locating the points of interchange at the Youngstown and Haselton plants within a reasonable distance of the points of connection of the rails of the line haul carriers with the industry tracks; or, if that be impracticable, then it should be considered that constructive delivery has been made at the plant entrance and a reasonable charge for the haul thence to the point of actual delivery or interchange should be assessed. Whether or not a terminal charge should be established was intended to depend upon the amount of service rendered within the plant in reaching the point where delivery is finally made, whether that be termed the interchange point or the unloading point. It is well understood that the line haul service within a given district is fairly uniform but that the plant service required varies widely. HELD, previous finding affirmed. Carnegie Steel Co. v. Director General, 132 I. C. C. 689.

§8. (6) Staking and Bulk Heads.

(a) Complainant alleged charges assessed on piling and poles, in carloads, shipped since April 1, 1923 from points on the Mississippi Southern to interstate destinations have been and are unreasonable and unduly prejudicial in that defendants have failed to provide an allowance for the weight of stakes, strips, and bearing timbers used in binding the loads on open cars. Mississippi Southern is a short line owned by the Edward Hines Yellow Pine Trustees, one of complainants. These articles together with wire and nails to bind the load, are furnished and installed by and at the expense of the shipper. The cost of the material and labor for installing is estimated by complainants to be from $3 to $12 for the various kinds of loads. The material is usually removed and retained by the consignee and not used a second time. The shipper receives no compensation for it. Piling and poles take the lumber rates. Generally speaking a dunnage allowance of 500 pounds per car subject to the carload minimum is authorized on shipments of piling and poles when loaded in open cars and originating in official and western territories, but as a rule no allowance is authorized on this traffic when originating in southern territory. However, an allowance on piling and poles is authorized by a few carriers in the latter territory. HELD, defendants failure to provide an allowance for the weight of dunnage material on shipments of piling and poles in open cars is unreasonable and an allowance of 500 pounds per car should be established, reparation denied. Hines Yellow Pine Co., v. A. C. & Y. R. R., 132 I. C. C. 626.

§8 (7a). Trap Car Service.

See Trap Cars.

(a) The term trap or ferry, generally speaking, is applied to a car placed at an industry or commercial house having a private siding and there loaded by a shipper with less than carload shipments, and hauled by a carrier to its local freight or transfer station for handling and forwarding of contents; and also it applies to a car loaded with less than carload shipments which is hauled to and placed upon the private track of an industry or commercial house by the carrier from a local freight or transfer station. Columbia Mills v. D. L. & W. R. R., 118 I. C. C. 112, 117.

(b) Defendant is under no duty or obligation to "farm out" the work of and incident to receipt or delivery of less than carload freight handled in the usual way, and such traffic as is accorded the service of a trap or ferry car, received or delivered upon private sidings remote from the carriers own terminal facilities, is for obvious reasons loaded or unloaded by the consignors or consignees. Columbia Mills, Inc. v. D. L. & W. R. R., 118 I. C. C. 112, 117.

IV. LEGALITY OF ALLOWANCES.

§9. In General.

See Common Carrier; Legality of Rates.

(a) The delivery of goods to a car-

rier and the receipt of goods from a carrier are duties devolving upon the shipper, for which the carriers can not be compelled to pay. For carriers to undertake to make to shippers allowances based upon the performance by the shippers for themselves of services which they are legally bound to do for themselves is for the carriers to violate the act. Drayage absorptions of S. W. M. R. R., 113 I. C. C. 179, 184.

(b) The Commission has repeatedly applied the settled doctrine that a carrier has the right to complete a service included within its rates, and that when by action of a shipper it is deprived of opportunity to do so it can not be held to make compensation therefor. Columbia Mills, Inc. v. D. L. & W. R. R., 118 I. C. C. 112, 116.

(c) Section 15 (13) of the act, contemplates an allowance only to the "owner of property transported" and for a service rendered or instrumentality furnished in aid of the transportation within a carriers duty. Such an allowance is optional with the carrier, and the Commission is empowered to fix merely the maximum that may be paid. Columbia Mills, Inc. v. D. L. & W. R. R., 118 I. C. C. 112, 116.

(d) An allowance for transportation services rendered by shippers covered by section 15 (13) of the act, contemplates an allowance only to "owner of property transported" and for a service rendered or instrumentality furnished in aid of transportation within a carrier's duty. Such an allowance is optional with carrier and commission is empowered merely to fix the maximum that may be paid. See 61 I. C. C. 515, 517 and other cited cases. Cases in which commission may and may not make awards to owners of property transported are distinguished in 92 I. C. C. 270, 272, 273; affirmed in 102 I. C. C. 497. Columbia Mills v. D., L. & W., 118 I. C. C. 112, 116.

(e) A carrier has right to complete a service included within its rates but when by action of a shipper it is deprived of opportunity to do so it can not be held to make compensation therefor. Moreover, commission can not competently prescribe the compensation it is to pay where an agent, of its own volition and without request, intention, or desire performs a delivery service for carrier. Columbia Mills v. D., L. & W., 118 I. C. C. 112, 116, 118.

(f) Obligation is on switching line to pay mileage allowances on cars switched by it over its line unless line-haul carrier assumes them. Paragon Refining Co. v. A. & S., 118 I. C. C. 166, 168.

(g) Refusal of carriers to pay interest on complainant's investment in a privately owned or plant-facility track does not constitute a violation of the act. No such interest is paid to owners of other private lines in same district, and fact that carriers have purchased and low own certain branch lines which formerly had a similar status is not sufficient to bring this phase of the complaint within the purview of the laws administered by commission. American Fuel Co. v. A., T. & S. F., 123 I. C. C. 101, 113.

(h) The clause in section 1 (4) of the act providing "for reasonable compensation to those entitled thereto" has reference to compensation for common-carrier services rendered by shippers or interests of a private nature and not by other common carriers subject to the act. Minnesota-Atlantic Transit Co. v. C., St. P., M. & O., 123 I. C. C. 485, 491.

(i) Contract for compensation in excess of tariff rate for performing spotting service by special engine and crew is without consideration and illegal, in view of Interstate Commerce Act § 6(7), as amended, such service being covered by line haul charge under tariffs. Chesapeake & O. Ry. Co. v. Westinghouse, Church, Kerr & Co. Inc., 46 Sup. Ct. 220. Mellon, Director General of Railroads v. Same, 46 Sup. Ct. 220.

§10. Transportation Service Performed by Shipper.

See Transportation §1, §11.

(a) Failure or refusal of carrier to compensate complainant, out of line-haul rates, for interchange switching performed by latter on c. l. shipments between points within its industrial plant at Minetto, N. Y., and points of interchange at that place, found not to violate the act. Here complainant of its own volition elected to perform service which carrier formerly performed, and does not seek or desire its resumption, but seeks compensation only. The settled doctrine, however, is that carrier has right to complete service included within its rates and when deprived of that opportunity by action of shipper, it can not be required to pay compensation therefor. Moreover, allowances contemplated by

section 15 (13) are optional with carriers and commission is empowered to fix merely the maximum that may be paid. Columbia Mills v. D., L. & W., 118 I. C. C. 112.

(b) Failure or refusal of carrier to compensate complainant, out of line-haul rates, for services performed by latter in checking, weighing, loading and unloading l. c. l. shipments delivered to or forwarded from its industrial plant at Minetto, N. Y., in trap or ferry cars, found not to violate the act. Here shipper voluntarily elected to perform such services without request, intention, or desire of carrier, who expressed a preference to handle such shipments through its own terminals. It was carrier's privilege to perform these services itself and commission can not competently prescribe compensation it is to pay to a voluntary agent (here the complainant) for performing them. Columbia Mills v. D., L. & W., 118 I. C. C. 112.

(c) An allowance for transportation services rendered by shippers covered by section 15 (13) of the act, contemplates an allowance only to "owner of property transported" and for a service rendered or instrumentality furnished in aid of transportation within a carrier's duty. Such an allowance is optional with carrier and commission is empowered merely to fix the maximum that may be paid. See 61 I. C. C. 515, 517 and other cited cases. Cases in which commission may and may not make awards to owners of property transported are distinguished in 92 I. C. C. 270, 272, 273; affirmed in 102 I. C. C. 497. Columbia Mills v. D., L. & W., 118 I. C. C. 112, 116.

(d) A carrier has right to complete a service included within its rates but when by action of a shipper it is deprived of opportunity to do so it can not be held to make compensation therefor. Moreover, commission can not competently prescribe the compensation it is to pay where an agent, of its own volition and without request, intention or desire, performs a delivery service for carrier. Columbia Mills v. D., L. & W., 118 I. C. C. 112, 116, 118.

§12. What is not Transportation Service.

(2). Operation of Plant Facility.

See Common Carrier §9; Industrial Railroads; Tap Lines §4; Transportation III.

(a) Complainant alleged that it has been subjected to unreasonable transportation charges by reason of defendants failure or refusal to make it, complainant, proper allowances for services performed by it in moving carload shipments between points within its plant and the point of interchange with defendant, and in checking, weighing, loading and unloading less than carload shipments delivered to or forwarded from the plant in trap or ferry cars. For some years prior to 1914 defendant performed the interchange switching service. Apparently because of defendants train schedules, complainant found the service, performed principally by road haul engines, inconvenient and unsatisfactory. Also, in 1914 material additions to the plant tracks were planned and made. While the weight of the evidence is that to a greater or less extent the plant tracks are unsuitable for locomotives thereover, it is unnecessary operation of defendants more modern to review that question at length. Primarily and principally in the interest of a more satisfactory interchange service, supplemented perhaps by projected track extensions over which defendant was unwilling to undertake operations, complainant voluntarily and upon its own initiative took over the switch service, and has since continued to perform it, in connection with its intraplant switching. Defendant was thereupon relieved of any duty it may have owed complainant in that behalf. At no time since has complainant demanded or asked that defendant resume the service, except in emergencies; nor, it appears, did it prior to Feb. 1925, ask defendant for an allowance to cover the interchange switching. It does not now seek a resumption of the service by defendant, and apparently does not desire it. So far as a consignors or consignees own traffic is concerned the respective services of the carrier and the shipper—at least those of the latter—are in the general practice taken into account in the applicable line haul rates. HELD, defendants failure or refusal to compensate complainant, out of the line haul rates, for the services performed by the latter in switching carload shipments between points within its plant and the point of interchange with defendant, and in checking, weighing, loading, and unloading less carload shipments delivered to or forwarded from the plant in trap or ferry cars, not shown to violate any provision of the

act, complaint dismissed. Columbia Mills, Inc. v D. L. & W. R. R. 118 I. C. C. 112.

ALTERNATIVE RATES

I. ESTABLISHMENT AND REASONABLENESS.

See Released Rates.

(a) Shipments from Wilmington and Modesto, Calif., to Jacksonville, Fla., were routed by shipper and a joint through rate assessed. Governing tariff contained alternative rule providing for application of aggregate-of-intermediate rates when less than the through rate, and a lower combination, unrestricted as to routing, applied via Memphis. Upon contention that under rule 5 (b) of Tariff Circular 18-A such lower combination was applicable. HELD, Only application of rule 5 (b) is when "no joint rate applies," or "in the absence of a specified rate," and therefore had no application in the situation here presented. Moreover, had shipments moved via Memphis, an out-of-line haul of more than 1,000 miles would have resulted. Joint rate assessed found applicable. Rosser & Fitch v. Director General, 109 I. C. C. 724.

(b) Marine-engine parts from Hamilton, Ohio, to Oakland, Calif., were assessed class A rates. Governing tariff provided for alternative application of any lower aggregate of intermediates. A lower aggregate of intermediates was in effect, but one factor thereof was limited to specific kinds of machinery, marine-engine parts not being specifically named. Upon contention that marine-engine parts are embraced in description "Motors," or "Stationery engines," or both on which the lower commodity rate factor applied, HELD: While shipments as a whole constituted marine engines they were not shipped in complete units, each shipment consisting of marine-engine parts only. It follows, therefore, that the class A rates assessed were applicable. Moore Shipbuilding Co. v. C., I. & W., 118 I. C. C. 3.

(c) Schedules proposing alternative rates on railway-car material lower than present applicable rates but with higher c. l. minima (a) from Chicago and certain related points to St. Louis, Mo., and Mt. Vernon and East St. Louis, Ill., and (b) between Mt. Vernon, on the one hand, and East St. Louis and Belleville, Ill., and St. Louis, on other hand, found justified except where such schedules name rates on car wheels and axles which are lower than basis proposed between same points on other car material. Present rates are those applicable on articles generally in the iron and steel list. Carriers showed that usual practice is to maintain rates on car material on a basis lower than corresponding rates on iron and steel articles generally, that proposed rates are not unduly low, and that no undue prejudice or discrimination will result from their establishment. Railway Car Material, 118 I. C. C. 105.

(d) Full aggregates of intermediate rates were assessed under an alternative rule providing that if such rates made less than joint through rates they would be applied. Contemporaneously tariff carried the combination rule which provides a specific method for constructing through rates made on combination. Upon contention that lower rates constructed in accordance with that rule should have been assessed, FOUND: In 89 I. C. C. 356; 100 I. C. C. 219, it was stated that the product of intermediate rates treated by a rule which results in less than the aggregate is not the aggregate within meaning of the alternative rule. Therefore, it is the alternative rule which specifies what rate shall apply in place of the joint rate, and when that rule designates a lower aggregate of intermediates as displacing the joint rate, it means the full aggregate of intermediates and not the product of intermediate rates treated by the combination rule. Rates assailed were therefore legally assessed. Calif. Dressed Beef Co. v. A., T. & S. F. 128 I. C. C. 607, 609, 610.

(e) Joint commodity rate assessed on printing presses from Vancouver, British Columbia, to Orlando, Fla., found inapplicable to extent it exceeded lower combination of locals contemporaneously applicable under an alternative provision contained in tariff. Refund of overcharges directed. Duplex Printing Press Co. v. B. C. E., 128 I. C. C. 692.

(f) Fourth-class rate, minimum 30,000 pounds, on shipments of varnish weighing less than 33,000 pounds, found not unreasonable as compared with fifth-class rate, minimum 36,000 pounds, contemporaneously applicable on paint. Under an intermediate clause, a lower commodity rate on varnish, minimum

40,000 pounds, would have been applicable to shipments had not an alternative rule provided for application of rate and minimum producing lowest charge. Transportation qualities of paint and varnish are not shown to be similar and fourth-class rate was prescribed on paint, between the same points, in 123 I. C. C. 203. Peaslee-Gaulbert Co. v. S. Ry., 129 I. C. C. 611.

(g) Rates charged on cotton fabrics, l. c. l., from North Carolina points to Galveston, Tex., found inapplicable. Governing tariff stated that it was subject to western classification, "Except as otherwise provided," and provided for alternative application of rates in section 2 or 3, whichever were lower. No minimum weight was provided in connection with lower rates under section 3, and rates were there applicable to actual weight of shipments. However, since rule 15 of the western classification provided for assessment of separate loading and unloading charges on l. c. l. freight moving at c. l. rates, and rule 13 required a minimum charge of $15 per car, these rules must be considered in determining rates applicable to various shipments. Refund of overcharges directed on basis indicated. Southern Traffic & Audit Asso. v. I.-G. N., 129 I. C. C. 723.

ANALOGOUS COMMODITIES

See Classification §17.

ANTI-TRUST ACT

See Evidence §10.

(a) Provisions of section 10 of the Clayton anti-trust act found not to have been violated in purchase by New York Central lines of automatic train-stop or train-control apparatus of the General Railway Signal Co., no officer or employee of carrier being shown to have or hold any "substantial interest" in the Signal Company as that expression is used in section 10. Automatic Train-Control Devices, 112 I. C. C. 259, 267, 268.

(b) Under section 10 of the Clayton anti-trust act commission is simply required to furnish the Attorney General the evidence it secures when it believes such evidence shows a violation of the section together with its views or findings regarding the transaction involved. Automatic Train-Control Devices, 112 I. C. C. 259, 269.

ANY QUANTITY RATES

I. REASONABLENESS AND APPLICATION.

(a) Complainant attacked first class any quantity rate of 74.5c charged on nine cars of humidors shipped between June 30 and Aug. 24, 1923 from Swanton, O., to Chicago, Ill., as unreasonable. Humidors are receptacles ordinarily used for storing cigars and tobacco for the purpose of maintaining a proper percentage of moisture. Shipments moved N. Y. C., from Swanton, a local point on that line to Chicago thence C. J., to Union Stock Yards, 215 miles. Effective Aug. 25, 1923 commodity rate of 37.5 was published same as fourth class rate. Considering the weight density and value of humidors, it is a fair inference that the first class any quantity rating was intended primarily for application to less carload shipments, and that a lower rating for carloads was not provided because of the supposed absence of any carload movement. Although there are many exceptions, third class is generally the carload rating assigned to articles rated first class in less carloads. Third class rate was 50c. HELD, rate charged unreasonable to extent it exceeded 50c, reparation awarded. Swift & Company v. N. Y. C. R. R., 112 I. C. C. 554.

(b) Complainant attacked any quantity rates charged from April 1, 1922 to Feb. 14, 1924 on shipments of cotton denims from Greensboro, N. C., to Ullahoma, Tenn., as unjust, unreasonable, unduly prejudicial and in violation of section four. Shipments routed by consignor moving via Southern to Atlanta, Ga., and N. C. & St. L., beyond 573 miles. Short line is over Southern to Chattanooga, Tenn., and N. C. & St. L. and beyond 511 miles. Charged joint fourth class any quantity rate. On Feb. 14, 1924 a joint commodity rate of 67.5c was published. Class rate to Tullahoma of 93.5c exceeded the rate of 67.5c to Nashville, Tenn., a point beyond, this departure from the fourth section being protected by appropriate application. HELD, rate attacked unreasonable to extent it exceeded 75c prior to July 1, 1922 and 67.5c thereafter, reparation awarded. Tennessee Overall Co. v. Southern Ry., 112 I. C. C. 616.

(c) Complainant attacked commodity rate of $4 on dry goods, n. o. s. any

quantity, charged on a carload of cotton warp olive drab shirting, shipped from Chicago, Ill., to San Francisco, Calif., on June 19, 1924 as unjust and unreasonable. Prior to June 1, 1922 a rate of $5.355 was in effect on dry goods, n. o. s., which included the commodity in question, from Group D, including Chicago to San Francisco, reduced on that date to $4.82 and on Dec. 12, 1923 present rate was established. There was contemporaneously in effect a rate of $1.58 on dry goods in bales or otherwise including shirtings wholly of cotton, from Group D points. There was also in effect a rate of $2.33 on clothing, etc., in bales, or cases, shirts, not underwear, linen, cotton or woolen, boxed in carloads, minimum 20,000 pounds. HELD, rate attacked unreasonable to extent it exceeded $2.33 reparation awarded. Greenebaum Weil & Michels v. C. & N. W. Ry., 112 I. C. C. 655.

(d) Complainant attacked commodity rates on uncompressed cotton linters, carloads, from Texas, Louisiana west of the Mississippi river, Oklahoma, and Arkansas to numerous destinations in the United States as unreasonable, unjustly discriminatory and unduly prejudicial. With the exception of the subsequent reduction no evidence bearing on the unreasonableness of the rates was adduced. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Burton Dixie Corp. v. A. T. & S. F. Ry., 113 I. C. C. 384.

(e) Proposed increased all-rail rates on cotton fabrics, any quantity, from Monticello, Ark., to certain Atlantic seaboard cities, by cancellation of the present joint rates, making applicable the combinations on Memphis, found justified. Monticello is the only point in the Southwest from which there are joint all-rail rates on cotton fabrics to Atlantic seaboard cities, such rates having been established to meet rail-and-ocean rates through the Gulf ports from Texas and Oklahoma points to same destinations. It is the purpose of the all-rail lines to abandon traffic to the rail-and-ocean lines and if proposed cancellation is permitted, protestant will still have available the rail-and-ocean rates and will be on an absolute parity with Texas and Oklahoma points. Moreover, inadvertently created departures from long-and-short-haul rule of section 4 of the act will be corrected. Cotton Fabrics to Atlantic Ports, 112 I. C. C. 280.

(f) Any-quantity rates on cotton from stations south of Montgomery, Ala., concentrated and compressed at that point and reshipped to Mobile, Pensacola, and New Orleans, found not unreasonable under section 1 of the act. The transit service, voluntarily established by carriers, embraces a back haul from transit point, thus entailing a situation deprecated by the commission in former cases. While transit on cotton has been so long in effect and so widely accorded as to become practically an inherent incident in the transportation of that commodity, that fact does not lessen the application to it of the general observations that transit arrangements represent a departure from ordinary transportation service, involving as it does two separate and distinct local movements to and from the transit point with all the accompanying physical handling and the keeping of necessary records in connection therewith. Montgomery Cotton Exch. v. L. & N., 112 I. C. C. 325.

(g) Proposed increased rates on cotton, cotton linters, and regins, in any quantity, from stations south of Montgomery and Selma, Ala., concentrated and compressed at those points and reshipped to Mobile, Pensacola, and New Orleans, found not justified. The transit arrangement at Montgomery and Selma is of many years' standing, is a commercial necessity in handling the business, and should not be lightly disturbed. While necessity for back hauls may be regarded as a disability due to location of these transit points, and may properly be reflected in some difference in rate as compared with points from which no backhauls are necessary, the disturbance of relations to extent that would be produced by proposed rates is not warranted and would result in undue prejudice to points from which increases are proposed. Montgomery Cotton Exch. v. L. & N., 112 I. C. C. 325, 333, 335.

(h) First-class any-quantity rate charged on humidors from Swanton, Ohio, to Chicago, Ill., found unreasonable to extent it exceeded third class. First-class rating was intended for application to l. c. l. shipments and no rating was provided for carloads until after movement when carriers published a rating of fourth class in carloads for a limited period. Articles rated first class, l. c. l., are generally assigned a third-class rating in carloads and repara-

tion awarded to that basis. Swift & Co. v. N. Y. C. R. R. 112 I. C. C. 554.

(i) Any-quantity fourth-class rates on cotton denims from Greensboro, N. C., to Tullahoma, Tenn., found unreasonable as compared with lower rates contemporaneously in effect from numerous other cotton-denim manufacturing points to other destinations in the South for comparable distances, and to extent they exceeded joint commodity rate subsequently established which was equal to rate in effect to Nashville, a farther distant point. Reparation awarded. Tennessee Overall Co. v. S. Ry. 112 I. C. C. 616.

(j) Rate on dry goods, n. o. s. any quantity, applied on cottonwarp olive drab shirting found unreasonable to extent it exceeded lower rate contemporaneously in effect on clothing, etc., in bales or cases, and on shirts, not underwear, linen, cotton or woolen, boxed. Reasonable rate for future prescribed and reparation awarded. Greenebaum, Weil & Michels v. C. & N. W., 112 I. C. C. 655.

(k) Rates on uncompressed cotton linters from points in Texas, Louisiana west of the Mississippi River, Oklahoma, and Arkansas, to numerous destinations in United States and Canada, found not unreasonable or otherwise unlawful as compared with rates on cotton, any quantity, cottonseed hull fiber, and cotton motes. Complainant's position in assuming that any-quantity rates on cotton are proper basis for l. c. l. shipments only is untenable for that commodity generally moves in the Southwest on any-quantity rates. Carriers have regarded cotton motes and other mills waste as similar in transportation characteristics to hull fiber rather than to linters and record is not convincing to the contrary. Moreover, no specific attack is made on rates from and to particular points except those from a point located on the Kansas City, Mexico & Orient, a weak line whose rates are subject to special consideration. Burton-Dixie Corp. v. A., T. & S. F., 113 I. C. C. 384.

(l) First class rating and rates on bed sacks, any quantity, under southern classification, found not unreasonable or otherwise unlawful because in excess of second class rating and rates found reasonable on barrack bags in 85 I. C. C. 214 and 100 I. C. C. 402. Barrack bags are easily identified and widely used as shipping containers, whereas bed sacks are not commonly known or used and belong to the innumerable variety of textile articles covered by the generic term "dry goods, n. o. i. b. n." Separate classification descriptions and ratings for all or any considerable number of dry goods articles would complicate billing and packing and create many policing difficulties. Moreover, the existing grouping has been in effect without substantial modification for many years and commission is not persuaded that it should be disrupted. Former findings in 101 I. C. C. 687, affirmed. Triad Corp. v. C. of G. 113 I. C. C. 663.

(m) Complainant attacked any quantity rates charged on cotton from Geiger, Ala., to Rossville, Ga., as unjust, unreasonable and inapplicable. Shipments moved A. T. & N. to York, Ala., A. G. S. to Chattanooga, Tenn., and C. of Ga., to Rossville between July 1, 1922 and Oct. 6, 1924 and combination rate of 95.5c and 92.5c were collected. The tariff of the orginating line provided for reference to the combination rule, but the tariff naming the other factor did not. HELD, rates charged inapplicable, applicable rate was 75.5c, reparation awarded. Peerless Woolen Mills v A. T. & N. Ry., 115 I. C. C. 577.

(n) Complainant attacked commodity rates charged on two carload and numerous less carload shipments of furniture forwarded between June 7, 1922 and July 5, 1924 from Wisconsin to Chicago as inapplicable. Shipments moved either over the Northwestern or Soo Line. Complainants concede that no overcharge existed on the two carload shipments, nor on less carload shipments moving over the Northwestern prior to August 25, 1923. Complainants view of the tariff situation is that, although the rates were restricted to "carload, except as otherwise specified" the words "any quantity" wherever they appeared in the items, constituted an exception and made the rates applicable to either carload or less carload shipments. As long as the tariff items were specifically made applicable to shipment in any quantity, or until April 26, 1924, the carload classification rating could and should properly be used in determining the commodity rates applicable to less carload shipments. If defendant Northwestern has collected higher commodity

rates, based on the use of the less carload rating, overcharges have resulted. With the omission of the words "any quantity" from the items on April 26, 1924, the application of the rates was again controlled by the caption of the tariff and was thereafter limited to carload shipments. Defendant Northwestern will be expected to refund with interest any overcharges existing on shipments moving between Aug. 25 1923 and April 26, 1924 and defendant Soo Line on shipments moving between June 7, 1922 and July 5, 1924, complaint dismissed. Amber Furniture Co. v. C. & N. W. Ry., 115 I. C. C. 640.

(o) Complainant attacked any quantity rates charged on 453 bales of cotton shipped from certain Tennessee river landings between Florence, Ala., and Paducah, Ky., to New Orleans in Oct., and Nov. 1924 as unreasonable and unduly prejudicial and in violation of section 6. The St. Louis & Tennessee river Packet Co., gathered the shipments in varying numbers of bales from the different landings and carried them in its boats to Riverton, Tenn., where they were assembled and shipped out in nine cars over the Northern Alabama to Riverton Jct., Southern to Florence, NA to Birmingham, AGS to Meridian, Miss., and N. O. N. E. beyond. Complainants prepaid the shipments to the packet company through to New Orleans at a rate of 76c, shown in the bills of lading, which also showed routing over the NA from Riverton. At New Orleans the N. O. N. E. collected additional charges on the basis of rates ranging from $1.15 to $1.61 contending that the 76c rate was not applicable over the route of movement because of the nonconcurrence of the NA in the applicable tariff. The 76c rate was admittedly applicable over the packet company to Johnsonville or Danville, Tenn., and rail lines beyond. Rates applicable over route of movement was 35c to Riverton and 84c beyond. These shipments were through shipments, and the 128 bales not compressed in transit would have been entitled to the 76c rate if the NA had been shown as a concurring carrier in the packet tariff. In view of the nonconcurrence of that carrier, the rate applicable on all of the 453 bales was the combination rate of $1.19. If the packet company had advised complainants that the packet companys tariff did not, as it purported on its title page to do, apply via Riverton, the record indicates that complainants unquestionably would have directed rerouting via Danville or Johnsonville. HELD, shipments misrouting by packet company, reparation awarded basis of 76c. Florence Chamber of Commerce v. N. O. N. E. R. R., 118 I C. C. 228.

(p) Respondents proposed: first, a general revision in their any quantity and carload commodity rates on cotton linters from points in Arkansas and Louisana to Missouri, Mississippi, and Ohio river crossings, and points in so-called defined territories, including points in trunk line territory; and second, a general cancellation of their carload commodity rates minimum 30,000 pounds, on second cut linters and cottonseed hull fiber or shavings, not bleached or dyed, from Arkansas, Louisiana, Oklahoma and Texas to the same destination territory, substituting in lieu of the canceled rates the revised carload rates, minimum 20,000 pounds on cotton linters. The proposed changes would result in increases and reductions in rates on cotton linters and in heavy increases in every instance in rates on second cut linters and cottonseed hull fiber or shavings. No uniformity now obtains with respect to rates on linters from points in Arkansas and Louisiana to the destination territory under any of the present descriptions. From some points in these states to a large portion of the territory the any quantity uncompressed or flat rates over some lines are the same as the any quantity carriers privilege rates, but between other points on the same lines and between all points on other lines the any quantity uncompressed rates are normally higher by varying amounts, usually 12c, than the corresponding any quantity carriers privilege rates. In a great many instances there are also different rates on all four descriptions between the same points over competing lines. The any quantity compressed rates are usually 12c lower than the any quantity carriers privilege rates, and the uncompressed carload rates are also lower than such rates but higher than the any quantity compressed rates, although not by any fixed amounts. Unlike those from Arkansas and Louisiana, the rates on linters from Oklahoma and Texas are uniformly consistent, one with another and as between the several descriptions, and also the same rates apply between the same points over different routes. The

only discrepancy in these rates is in the differential as between the any quantity carriers privilege rates and the any quantity compressed rates. The suspended schedules do not propose any changes in rates on linters from Oklahoma and Texas but from points in Arkansas and Louisiana it is proposed to remove the inconsistencies in the present rates by establishing the same rates between the same points over all lines serving such points, and by further establishing any quantity compressed rates lower to all points by 18c from Arkansas and 12c from Louisiana than the any quantity carriers privilege rates, thereby conforming the rates from Arkansas with those from Oklahoma and those from Louisiana with those from Texas. Except at points in southern Arkansas and Louisiana where it is proposed to hold the Texas common point rates as maxima, the general procedure in revising the any quantity linter rates was to increase, where now lower, such rates over all lines to the level of the any quantity cotton rates, where such are published. While this part of respondents proposal is a step in the right direction to the extent that it would produce a more consistent rate structure than the existing one it must be condemned because of the new fourth section departures which would be created thereby. In addition to the rates on cotton linters, a complete line of carload commodity rates, minimum 30,000 pounds, is also maintained from and to the same points on uncompressed second cut linters and cottonseed hull fiber and shavings. These rates are about 40% from Arkansas and Oklahoma, 43% from Louisiana and 52% from Texas, of the contemporaneous rates carloads on uncompressed linters, minimum 20,000 pounds. The suspended schedules propose to cancel the carload commodity rates and tariff description on cottonseed hull fiber or shavings and second cut linters, minimum 30,000 pounds, and to amend the description in connection with the carload rates on linters, minimum 20,000 pounds to include cottonseed hull fiber or shavings, thereby increasing to the full revised linter basis the carload rates on cottonseed hull fiber and second cut linters. The transportation characteristics of linters and hull fiber and shavings differ in several respects from those of cotton. The former always move in uncompressed form in carloads at carload rates, are loaded and unloaded by shippers, and do not usually require transit, whereas cotton while moving in compressed form in carloads from concentration points moves at any quantity rates, is loaded and unloaded by or at the expense of the carriers and almost always requires transit. These respondents arbitrarily proposed to put the whole industry on a rate plane made to fit the highest grade commodity produced by protestants, and this, too, apparently without having given any consideration as to whether the traffic could bear such radical increases. Either they would kill the traffic and thus reduce existing revenues or else they would greatly increase them. HELD, proposed rates not justified. Cotton linters from southwest, 118 I. C. C. 419.

(q) Complainant alleged that official classification rating of first class, any quantity, on flat cotton twine is unreasonable and unduly prejudicial and a third class any quantity rating is asked. Flat cotton twine is a narrow flat cotton tape. It is used for tying bolts of cloth in bleacheries and dye houses, millinery boxes, bunches of asparagus and celery, and other articles or packages which would be subject to injury by abrasion if ordinary twisted twine were used. The movement is wholly in less car loads. In Sub. 1, complainant alleged that on round braided twine first class any quantity rating is unreasonable and unduly prejudicial. Complainant testifies that this commodity is used solely for tying purposes, largely by the meat packers for tying wrappers on hams and strips of bacon. The rating asked is one class lower than applies in western classification territory on ordinary cotton twine. HELD, rating attacked not unreasonable, unduly prejudicial or otherwise unlawful, complaint dismissed. Fall River Chamber of Commerce v. B. & O. R. R., 122 I. C. C. 100.

(r) First-class, any-quantity rating under official classification on "flat cotton twine" under official and western classifications on "round braided twine" found applicable and not unreasonable as compared with lower rating on ordinary twine. As between these commodities there is a marked disparity in favor of ordinary cotton twine both as to weight, density, and value, and while spread in rates between commodities involved and ordinary twine is rather pronounced, differences in their classification character-

istics and relatively large l. c. l. movement of ordinary twine indicates that lower rating on that commodity affords no basis for a finding that rating on flat and round braided twine is either unreasonable or unduly prejudicial. Fall River Chamber of Commerce v. B. & O., 122 I. C. C. 100.

(s) Respondents proposed to increase certain commodity rates on unmanufactured tobacco from points in central Kentucky to St. Louis, Mo., and East St. Louis, Ill. Unmanufactured tobacco, in hogsheads, minimum 20,000 pounds, subject to rule 34, is rated fourth class in official southern and western classifications. In official territory, it moves ordinarily on class rates, and in that part of southern territory under consideration, by exceptions to the classification, it moves at sixth class rates in the absence of specific commodity rates, The rates here considered, with unimportant exceptions, are specific commodity rates applying any quantity or loose in carloads, minimum 22,000 pounds. The rates from all the producing points under consideration except three apply only through Louisville. The rates from those three apply only through Cincinnati. Rates to St. Louis on this commodity are 42.5c from Cincinnati and 39.5c from Louisville, distances 340 and 275 miles. For many years rates on unmanufactured tobacco from central Kentucky to St. Louis have been in violation of the long and short haul clause of the fourth section. The schedules now suspended propose rates of 42.5c, which, for distances ranging from 350 to 400 miles and routes through Cincinnati would be relatively reasonable and would remove the fourth section departures now existing. HELD, suspended schedules justified. Unmanufactured tobacco from Kentucky, 126 I. C. C. 93.

(t) Complainant alleged that the any quantity ratings maintained on rugs manufactured from cloth or fabric, value released to not exceed $125 per 100 pounds, when shipped in carloads, and on carpets manufactured from cloth or fabric in carloads, and the resulting charges, have been, are and for the future will be unreasonable and unduly prejudicial. Rated first class any quantity. Complainants sought carload ratings of fourth class in official and southern and third class in western applicable on matting, mats, and rugs made of fibre, grass, or straw. During the period here concerned less than 25% of the movement to complainants was in carload quantities and it appears that at most not more than 50% of their shipments would move in carloads were separate carload and less carload ratings established with a reasonable spread between them. This being true with complainants, who are among the largest dealers in floor coverings in the country, it appears that the benefit, if any, of a reduction in the carload ratings would be limited, and that any increase in the less carload ratings would adversely affect the large majority of shippers. In view of the very substantial difference in the value of fabric and fibre rugs the Commission is not persuaded that the difference in the freight charges at first class and fourth class rates operates as an undue preference of the fibre rugs. HELD, ratings and charges attacked not unreasonable or otherwise unlawful, complaint dismissed. Carson Pirie Scott & Co., v. A. T. & S. F. Ry., 129 I. C. C. 446.

(u) Complainant alleged that commodity rates charged on shade cloth, carloads, from Chicago, Ill., to Atlanta, Ga., since May 29, 1924 were and are unreasonable. Charged $1.725 prior to April 15, 1925, $1.55 from that date to Oct. 12, 1925 and $1.405 subsequently. Alleged reasonable rate 81c. No joint rates apply and rates assailed were and are combinations on Ohio river. The ratings on shade cloth, any quantity in official and southern classifications are, rule 25 and third class. Rule 25 is defined in the classification as 15% below second but not less than third class. A spread of two classes is a normal spread between carload and less carload rates in the range of classes second to fifth, and, considering that the any quantity ratings were designed to cover a movement principally in less than carloads, the Commission is of opinion that a reasonable carload rate would lie between fourth and fifth class rates. Fourth and fifth class rates were $1.36 and $1.075. HELD, rate charged unreasonable to extent it exceeded 94c, reparation awarded. Western Shade Cloth Co., v. A. & W. P. R. R., 132 I. C. C. 118.

(v) Any quantity rates established to apply to a movement that is preponderately less than carload may well be unreasonable when applied to a regular carload movement. Western Shade Cloth Co., v. A. & W. P. Ry., 132 I. C. C. 118, 120.

(w) As in the case of less than car-

load commodity rates, there are probably few, if any, circumstances under which the Commission would be justified in requiring the maintenance or establishment of any quantity ratings. Western Shade Cloth Co., v. A. & W. P. Ry., 132 I. C. C. 118, 120.

(x) Complainant alleged that unreasonable rates were charged on numerous any quantity shipments of cotton, in bales, from Texas and Oklahoma to Galveston, Tex., for export. Original report, 92 I. C. C. 363. HELD, reparation awarded. Houston Cotton Exchange v. A. & S. R. R., 132 I. C. C. 615.

(y) Rates, rules, and regulations on cotton, any quantity, shipped uncompressed to be compressed by and at carrier's expense, from points in Pecos Valley of New Mexico on the Santa Fe to Texas Gulf ports and beyond, moving over that line via Pecos, Tex., with option of concentration at that point, thence over Texas & Pacific to Sweetwater, Tex., and Santa Fe beyond, found not unreasonable as compared with lower rate contemporaneously in effect over Santa Fe system's longer route via Clovis, N. Mex., and Sweetwater, with option of concentration at either Pecos, Tex., or Roswell, N. Mex.; or with rates from Texas stations on the T. & P., Fort Worth & Denver City, and Santa Fe for comparable hauls. Record fails to show that Santa Fe route is unreasonably long or results in wasteful transportation. See also 98 I. C. C. 183, 252. Smith-Wilson & Co., v. A., T. & S. F., 129 I. C. C. 65.

(z) First-class any-quantity ratings on fabric carpets and rugs in official, southern, and western territories, found not unreasonable nor unduly prejudicial as compared with lower ratings on fiber matting, mats, and rugs, nor with lower commodity rates on fabric carpets between points in New York, New England, and Texas. Lower commodity rates are shown to be forced by competitive conditions and in view of great difference in price between fabric and fiber rugs, evidence is not persuasive that lower rating on fiber rugs are unduly preferential of that commodity. Moreover, since commodities involved generally move in l. c. l. shipments, benefit derived from reduction in c. l. rating would be limited and an increase in l. c. l. rating would adversely affect large majority of shippers. Carson, Pirie, Scott & Co. v. A., T. & S. F., 129 I. C. C. 446.

APPEAL

See Courts II; Interstate Commerce Commission VII.

APPLICATION OF RATES

See Absorption of Charges I; Accounting II, §5; Basing Points and Lines I; Bills of Lading III; Class Rates I; Classification §3½, V; Commodity Rates I, II; Differentials II; Long and Short Hauls III; Minimums I; Proportional Rates I; Released Rates II; Through Routes and Joint Rates §18.

ARBITRATION

See Jurisdiction of Commission.

(a) Letter from Interstate Commerce Commission in answer to submission of controversy respecting liability for railroad's claim for car demurrage, stating that the car involved was subject to demurrage while waiting export license, and that it was shipper's duty to furnish such license, HELD not an arbitration award between parties, but merely an opinion concerning an abstract proposition of law, at most informal and advisory only, in view of Interstate Commerce Act Feb. 4, 1887 (24 Stat. 397), as amended (U. S. Comp. St. § 8563 et seq.). Davis, Director General of Railroads, v. Rochester Can Co., 221 N. Y. S. 666.

(b) Under Interstate Commerce Act Feb. 4, 1887 (24 Stat. 379), as amended (U. S. Comp St. § 8563 et seq.), Interstate Commerce Commission has no jurisdiction to determine disputed claims for money due from a shipper to a transportation company, either as a court or arbitrator, but such matters are left for determination by the courts. Davis Director General of Railroads, v. Rochester Can Co., 221 N. Y. S. 666.

(c) At common law and under statute, a natural person may at request of disputants arbitrate their differences; but such power cannot, even by consent, be conferred on a corporation, for it has no entity outside its appointed corporate powers, or those necessarily incident thereto. Davis, Director General of Railroads, v. Rochester Can Co., 221 N. Y. S. 666.

ASSIGNMENTS

See Loss and Damage §5¾.

ASSOCIATION

(a) Complaint filed by an association for and in behalf of its members failed to name one member as a party complainant. Such member filed an intervening petition but same was not received by commission until after expiration of statutory period of limitation. HELD: As to shipments on which reparation is claimed by this particular member, statute of limitations was not tolled by the complaint as filed by association. See 27 I. C. C. 302. South Carolina Cotton Mfrs. Asso. v. C., C. & O., 112 I. C. C. 683, 686.

(b) Complainant, an association, sought inclusion in reparation award of commission of those members who were parties to complaint, but who failed to appear at hearing to prove fact of shipment and payment and bearing of freight charges, and expressed a willingness to establish such facts by presentation of receipted freight bills or affidavits. HELD: Although commission has on numerous occasions permitted shippers to furnish proof by affidavit as to shipments moving subsequent to hearings, such permission has at all times been subject to objections of carriers, and while commission is not disposed to deny complainant members of the association who failed to appear an opportunity to do so, it does not feel justified, under the circumstances, in suggesting that carriers waive their right of cross-examination. Upon request therefore the case will be set for further hearing on the question of reparation. Jamestown Chamber of Commerce v. P. R. R., 120 I. C. C. 372, 377.

ASSORTING PACKAGES

See Additional Charges and Services; Proportional Rates IV.

ATTORNEY'S FEES

See Overcharges §6; Procedure Before Commission §9.

(a) Provision of Federal Control Act (Comp. St. 1918, Comp. St. Ann. Supp. 1918, § 3115¾a et seq.) that no defense shall be made in actions at law, or suits in equity, on ground that carrier is instrumentality of federal government authorizes imposition of costs and attorney's fees against Director General in action on reparation award, under Interstate Commerce Act, § 16 (Comp. St. § 8584). Empire Refining Co., v. Davis, Director General, 6 Fed. (2d) 305.

(b) Taxation of costs, including reasonable attorney's fees, under Interstate Commerce Act, § 16 (Comp. St. § 8584) in favor of plaintiff, suing to enforce award of Interstate Commerce Commission, should not be made until judgment becomes final. Empire Refining Co. v. Davis, Director General, 6 Fed. (2d) 305.

(c) Claim for attorney's fees, first set up in amendment to petition in action to enforce reparation award of Interstate Commerce Commission, does not set up new cause of action, barred by limitation. World Pub. Co. v. Davis, Agent; Tulsa Paper Co. v. Same. Democrat Printing Co. v. Same, 16 Fed. (2d) 130, 131.

(d) Taxation of costs and reasonable attorney's fees under Interstate Commerce Act, § 16 (Comp St. § 8584), in favor of plaintiff, suing to enforce reparation award of Interstate Commerce Commission, should not be made until judgment becomes final. World Pub. Co., v. Davis, Agent; Tulsa Paper Co. v. Same; Democrat Printing Co. v. Same, 16 Fed. (2d) 130.

(e) Wheat was shipped from Shelton, Neb., to Baker, Kan., and there unloaded into the consignee's elevator under a schedule giving him the privilege of shipping within a year to Atchison, Kan., without further charge. The next day he loaded a like quantity of wheat from his elevator, together with a small amount additional, and shipped it to Atchison; the only further charge being for such additional amount, which was paid. He recovered a judgment against the carrier for $47.02 because of a shortage in the delivery at Atchison, together with $50 as an attorney's fee allowed by the Kansas statute. It is HELD, that the shipment was interstate, and for that reason the Kansas statute did not apply, and the allowance of the attorney's fee was error. Harrington v. Missouri Pac. R. Co. (Kan., 1927) 254 Pac. 379.

(f) Under Interstate Commerce Act, §§ 8, 9, 22 (U. S. Comp. St. §§ 8572, 8573, 8595), considered together, attorneys' fees may be recovered as part of costs of general recovery for overcharge on freight-shipment. W. L. Shepherd

Lumber Co., v. Atlantic Coast Line R. Co., (Ala., 1927) 112 So. 323.

(g) Interstate Commerce Act, §8 providing for recovery of counsel fees from carriers, HELD to cover damage caused by charging unlawful rate or charge on lawful shipment of freight. Lothrop v. Spokane, P. & S. Ry. Co., 10 Fed. (2d.) 225. Same v. Oregon-Washington R. & Nav. Co., 10 Fed (2d) 225. Same v. Southern Pac. Co., 10 Fed (2d.) 225.

(h) Where plaintiff submitted testimony as to reasonableness of attorney's fees, and no counter testimony was presented, and defendants in neither arguments nor briefs questioned reasonableness of claim, court will allow attorney's fees as prayed. Lothrop v. Spokane, P. & S Ry. Co., 10 Fed. (2d.) 225. Same v. Oregon-Washington R. & Nav. Co., 10 Fed. (2d.) 225. Same v. Southern Pac. Co. 10 Fed. (2d.) 225.

AUCTION COMPANY

(a) Complainant brings in issue the propriety of defendant according to the Union Fruit Auction Co., the use of certain space in a warehouse owned by defendant located in its produce yards at Pittsburgh, for the unloading, displaying, and selling at auction by the Union Co., of carloads of fruit and vegetables arrived over defendants line, while refusing to accord like use of the same property to the Independent Company. Previous decisions Andrews Co. v. P. R. R., 38 I. C. C. 165 and Storage rules on fruits and vegetables, 95 I. C. C. 87. Defendant now handles approximately 95% of the fruits and vegetables consigned to Pittsburgh. About 10% of the carload shipments coming into the produce yards are sold at auction. The furnishing of facilities for the conduct of an auction has no relation to the transportation service which a carrier holds itself out to perform. A carrier is not required, as part of its transportation service, to furnish warehouse space to all shippers of fruits and vegetables for the unloading, sorting, displaying, auctioneering, and delivery of carload shipments, in less carload lots, to purchasers thereof. This is a trade service. Generally speaking, shippers are required to unload carload freight and it does not appear that, with the traffic here considered, there is any duty upon defendant to do more than furnish suitable delivery trucks for the unloading service. Even if it be conceded that, by the publication of the storage tariff defendant, in effect, made the warehouse a part of its terminal facilities it does not follow that the use of the premises in the transportation service could not properly be discontinued if defendants facilities were not thereby rendered inadequate to meet reasonable requirements. In the opinion of the commission the warehouse property leased has been, at least since the cancellation of the storage charges, the private property of defendant and not a part of its transportation facilities devoted, or necessary to be devoted, to public use. The general rule that a carrier is free to grant an exclusive lease of such property to anyone it elects, whether he is a shipper or not, is well settled. A carrier may not lease its property in such a manner as will result indirectly in a violation of some section of the act. HELD, the terms and conditions of defendants lease of parts of the warehouse to the Union Company, including the annual rental of $10,000 are not shown to be so favorable as to amount to a refund or remission of any portion of the published rates, nor is it established that the action of defendant in leasing said property to the Union Company pursuant to said lease while failing and refusing to accord like use of the same property to the Independent Company on like terms and conditions, results or will result in any violation of the act, complaint dismissed. Andrews Bros. Co. v. P. R. R., 123 I. C. C. 733.

(b) Carrier's action in leasing warehouse space and track facilities in its Pittsburgh produce yards to the Union Fruit Auction Co., for unloading, displaying, and selling at auction fruit and vegetables, while refusing to accord like use of same property to the Independent Fruit Auction Co., not shown to result in any violation of interstate commerce act or other statute administered by the commission. A carrier is free to grant an exclusive lease of such property to anyone it elects, whether shipper or not. See 199 U. S. 279, and other cited cases. This general rule is subject to exception, however, that carrier may not lease its property in such a manner as will result indirectly in a violation of some section of the act or related acts, for in such instances the commission has indirect authority over the lease. See 73 I. C. C.

673, 682. Prior proceedings 38 I. C. C. 165; 95 I. C. C. 87. Andrews Bros. Co. v. P. R. R., 123 I. C. C. 733.

(c) The furnishing of facilities for the conduct of an auction has no relation to the transportation service which a carrier holds itself out to perform. Andrews Bros. Co. v. P. R. R., 123 I. C. C. 733, 738.

(d) A carrier is not required, as part of its transportation service, to furnish warehouse space to all shippers of fruits and vegetables for unloading, sorting, displaying, auctioneering, and delivery of c. l. shipments in l. c. l. lots, to purchasers thereof. This is a trade service. Generally speaking, shippers are required to unload c. l. freight and it does not appear that there is any duty upon carrier to do more than furnish suitable delivery tracks for the unloading service. Andrews Bros. Co. v. P. R. R., 123 I. C. C. 733, 739.

(e) Following 123 I. C. C. 733, refusal of carriers to lease to complainant a section of a certain building owned by them at Alanta, Ga., for the sale of produce, while leasing similar sections to its competitors, found not discriminatory, unduly prejudicial, or otherwise in violation of the act. William-Thompson Co. v. A. & W. P., 126 I. C. C. 417.

(f) Contention of carrier that commission can not require it to establish an express terminal at Piers 20 and 21, New York, which have been regarded as its freight terminal not sustained. Evidence does not show that handling of express shipments through auction conducted on the piers differs in any respect from handling of freight shipments. Amer. Fruit & Veg. Shippers Asso. v. Amer. Ry. Exp. Co., 128 I. C. C. 651, 660.

AUTOMATIC TRAIN CONTROL

See Anti-Trust Act (a); Safety Appliances.

(a) Upon complaint alleging that New York Central R. R., in awarding its contract for installation of an automatic train-stop system upon its line to the General Railway Signal Co., subjects complainant, Sprague Safety Control & Signal Corp., to undue prejudice in violation of section 3 of the act, HELD: That section of the act does not apply to making of contracts by a carrier for purchase of equipment, and fact that equipment is apparatus for automatic train-stop or train-control devices which commission has authority, under section 26 of the act, to require a carrier to install in accordance with prescribed specifications and requirements, does not extend applicability of prohibitions of section 3 to matters connected with selection or purchase of such equipment. Automatic Train-Control Devices, 112 I. C. C. 259, 260.

(b) Upon complaint alleging that section 26 of the act and commission's specifications and requirements are being violated by New York Central R. R., because of latter's failure to include speed control in its installation of an automatic train-stop system and its employment of a forestalling device in connection with that system, HELD: Allegation has no basis under provisions of the commission's orders. Selection and installation of a plain automatic-stop device without speed control is permissible and always has been. Carriers are given a choice as between a plain automatic stop and an automatic stop with automatic speed control and these features may be included separately or in combination. The use of a forestalling feature is also permitted, and there are no restrictions, in so far as traffic or operating conditions are concerned; so that a carrier whose line is one of heavy traffic density may install a device without speed control. Automatic Train-Control Devices, 112 I. C. C. 259, 261, 262.

(c) Upon contention that automatic train-stop or train-control specifications of commission which provide that "The apparatus shall be so constructed as to conform to established clearances for equipment and structures" means that train-control equipment installed on tracks and locomotives shall not encroach upon standard clearances established and approved for rolling stock and tracks, HELD: Commission's requirements do not set up any standard clearances, that being left to judgment of operating officials or carriers. Although requirement mentions established clearances, it does not mean that such clearances may not be changed in connection with installation of an automatic train-control device. All that it means is that, whatever clearances are established, train-

control device shall conform to them. Automatic Train-Control Devices, 112 I. C. C. 259, 263, 264.

(d) It can not be found that the automatic train-stop or train-control system of the intermittent inductive type of the General Railway Signal Co., does not comply with commission's requirements with respect to clearances and operation. These may be demonstrated only after the device is installed and in operation. The same is true with respect to requirement that apparatus shall be so constructed that it will, so far as possible, perform its intended function if a break, cross, or ground occurs in electric circuits. Automatic Train-Control Devices, 112 I. C. C. 259, 263, 266.

AVERAGE DEMURRAGE PLAN

See Demurrage §13.

BACK HAUL

See Evidence §5½; Facilities and Privileges §7.

BAGGAGE CAR SERVICE

See Expedited Service.

(a) Proposed increased rates on newspapers shipped in baggage cars on passenger trains between points in trunk-line and C. F. A. territories, found justified. While there are no previous decisions with respect to this class of traffic to guide commission in determining reasonable rates, facts that none of the general rate increases have been applied to this traffic, that proposed rate represents but a small increase over rate in effect in 1900, in comparison with large increases in operating costs since that year, and that local and out-of-town retail prices of newspapers have been advanced generally since that time by different amounts, indicate that newspapers have not borne their relative share of increases in revenue and increased costs of transportation. Newspapers in Baggage Cars, 104 I. C. C. 527.

(b) Characteristics surrounding transportation of newspapers in baggage cars are so varied as to weights and revenue per shipment, length of hauls, volume of tonnage, and methods of handling and diffusion, that it is impracticable to attempt to determine reasonableness of a flat charge by allocations of costs of transportation. Newspapers in Baggage Cars, 104 I. C. C. 527, 533.

(c) Baggage-car service in transporting newspapers is superior to express service. Newspapers in Baggage Cars, 104 I. C. C. 527, 535.

(d) The usual service required for milk and cream in baggage cars is so unlike usual service accorded newspapers in same kind of equipment, as to make a comparison of rates charged for the two kinds of services lacking in probative value. Newspapers in Baggage Cars, 104 I. C. C. 527, 536.

(e) In an endeavor to show unreasonableness in rates on newspapers in baggage cars publishers offered extensive studies of revenue from newspapers with revenue derived from the Government for carriage of closed-pouch mail. FOUND, Incidents of this traffic in handling and in methods of computing charges are so different from any other traffic that any comparison with rates for railway-mail service are valueless. Newspapers in Baggage Cars, 104 I. C. C. 527, 536, 537.

(f) Baggage-car service for newspapers is different from any other freight or passenger service rendered by railroads in several important characteristics, and for this reason many ordinary tests used in determining reasonable rates for transportation services, such as comparisons with rates on other commodities for corresponding distances, can not be employed. Newspapers in Baggage Cars, 104 I. C. C. 527, 537.

(g) Respondents endeavored to affect the excess baggage charge when the excess baggage is checked in the regular baggage service instead of being carried in special baggage cars, when special baggage cars have been engaged. The present schedules need clarification. Rule 11, in connection with the baggage tariff therein referred to, clearly permits the checking of 150 pounds of baggage in regular service (1) by each of the 25 passengers traveling in regular service, to whom a special baggage car is furnished without charge above the 25 adult fares; (2) by each of the 25 passengers traveling in private passenger cars, who are charged 8⅓ fares for the special baggage car, in addition to the 25 adult fares, minimum $42 plus the surcharge, charged for the private passenger car, equipped with sleeping cars; and (3) by each of the 10 passengers traveling in regular service on 10 of the 18⅓ fares charged for a special baggage car. Rule 7 on the other hand is not clear. Whatever may be said as to the purchaser of the 25 adult tickets, for use in regular service, to whom a special baggage car

is furnished without further charge, certainly the owner of a private passenger car, equipped with sleeping berths, who pays 8⅓ fares, minimum $30, for each special baggage car, in addition to 25 adult fares, minimum $42 plus the surcharge, for his private passenger car, is not being accorded a free movement of baggage car within the meaning of that rule. HELD, respondents present schedules, construed together do not warrant denial of the baggage checking privileges granted by rule 11. HELD, respondents general tariff provisions governing the transportation of private or chartered passenger cars and special baggage cars should be clarified. Schedules not justified. Baggage from and between southern points, 112 I. C. C. 717.

(h) Complainant attacked rates charged on cream after Dec. 22, 1922, to Sioux City Ia., from stations Winthrop, Minn., to Leola and LeBeau, S. D., on M. & St. L., moving over that line to Hanley Falls, Minn., and G. N., beyond as unreasonable and unduly prejudicial. M. & St. L. does not reach Sioux City but shipments of cream which it originates may move in connection with G. N., at Watertown, S. D., or by dray transfer at Hanley Falls, Minn.; in connection with C., St. P., M. & O., at St. James, Minn.; with C., M. & St. P., by dray transfer at Bradley and Mellete, S. D.; with Rock Island at Watertown and with Northwestern at Northville, S. D., and Watertown all of which either reach Sioux City by their own lines or by their connections. Milk and cream are generally handled in baggage service, the bulk of movement being single line hauls. M. & St. L. and some other roads have by contract permitted the express company to handle all of this traffic over their lines. Others permit the express company to handle only the interline traffic. As a general rule interline traffic is handled by the express company. The G. N., however, handles both its local and interline traffic. In 15 I. C. C. 109, the Commission prescribed a distance scale, for the movement of cream by express or in baggage cars. This scale, subject to the general increases and reductions applies over the routes via Watertown, except in connection with the G. N. The express company and the G. N. apply their local rates based on the Beatrice scale on shipments moving via Hanley Falls. The combination rate via Hanley Falls is considerably higher than the continuance mileage rates via the other junctions. HELD, rates unreasonable to extent they exceed, plus a drayage charge of 6c per can, minimum 15c, rates ranging for 25 miles 45c on ten gallon can, 40c on eight gallon can, 31c on five gallon can to 340 miles 83, 75 and 68c respectively, reparation awarded. Hanford Produce Co. v. Amer. Ry. Exp. Co., 113 I. C. C. 523.

(i) Complainant attacked rates on milk and cream in cans, from New Mexico to Wichita, Kan., as unreasonable to extent they exceed rates on milk and cream from Texas to Wichita and that certain rates from New Mexico to Wichita are violative of fourth section. Distances range from 430 to 775 miles. Express rates between Texas and Kansas, including Wichita, are, with a few exceptions on the Beatrice scale, which applies throughout the middle western states on interstate traffic. The record is not sufficient to establish the unreasonableness of the rates attacked. When it is considered that the intermountain scale and the Beatrice scale apply over extensive territories, in which traffic, operating, and transportation conditions vary, the unreasonableness of one scale in a particular portion of the territory in which it applies is not established by a showing that it is higher than the other scale in a contiguous portion of the territory in which the latter scale applies. HELD, rates attacked not unreasonable, complaint dismissed. Wichita Chamber of Commerce v. American Ry. Express Co., 115 I. C. C. 729.

(j) Complainant alleged that the rates charged for movement of cream shipped since Aug. 12, 1923 in 10 gallon cans, in baggage cars in passenger train service, from North Dakota and South Dakota over two lines of railroad to Aberdeen, S. D., were and are unjust, unreasonable and unduly prejudicial. The applicable rates charged were, and the present rates are, made up of combinations of the single line interstate distance rates of the carriers for the distance to and from the respective junction points. Additional drayage charges were and are accrued for the transfer between depots at some of those junctions. HELD, rates assailed were not and are not unduly prejudicial but are unreasonable to the extent they exceed a distance scale ranging from 57c per 10 gallon can for 80 miles to 77c for 265 miles, with the addition of drayage

charges, where drayage is necessary in order to transfer shipments between separate passenger depots of the defendant carriers at those junction points, of 6c per can, minimum charge 15c, for distances of 0.5 mile and under, and 8c per can minimum charge 20c for distances over 0.5 mile, reparation awarded. Beatrice Creamery Co., v. C. M. & St. P. Ry., 129 I. C. C. 375.

BARGE SERVICE

See Allowances §8 (5) (b); Through Routes and Joint Rates §11 (2) (aa), §13 (5m); Water Carriers §6½.

(a) Tug and barge company, accepting business from public generally, except where financial responsibility of customer was not satisfactory or service involved undue hazard, HELD a "public carrier." State v. Washington Tug & Barge Co., (Wash., 1926) 250 Pac. 49.

(b) Complainant alleged that the refusal of the carriers, all of which connect with the barge line at Dubuque, Ia., to join with the barge line in through routes and joint rates between the Twin Cities, Fargo, N. D., and points on their lines in Indiana, Illinois, Missouri and Iowa is unreasonable. The basis of rates sought by the barge line is similar to that which has been followed in establishing rail-barge and rail-barge-rail rates on the lower river, namely, to make them lower than the all rail rates between the same points by differentials equivalent to 20% of the all rail rates between Dubuque and the Twin Cities. The barge lines port to port rates are, in general, 80% of the all rail rates. A water carrier of its character must be able to secure traffic to and from interior points if it is to prosper, and in the case of the barge line, with its slow and inferior service, such traffic can not be secured without resort to differential rates. The record justifies the conclusion that the establishment of rail-barge and rail-barge-rail rates in connection with the barge line between Dubuque and Twin Cities is desirable in the public interest. Taking account of the fact that the barge haul under the proposed rates is shorter than that which the barge line generally performs in connection with rail-barge routes on the lower Mississippi and of the general level of the all rail rates on which they would be based, the Commission is of the opinion that the so-called 20% basis of differentials would here be improper and that the Commission would not be justified in approving differentials greater in amounts than 15% of the all rail Dubuque-Twin Cities rates. HELD, upon consideration of the evidence relating to divisions the Commission is of the opinion that the first class rate prorate basis affords the only fair and practicable method of dividing the joint rates here under consideration. Use of a factor for the barge line based on 80% of the all rail rates seems equitable under all the circumstances for the purpose of fixing divisions, even though the differential has been based on a different percentage. Inland Waterways Corp., v. C. G. W. R. R., 129 I. C. C. 521.

(c) In prescribing reasonable joint rates over new through routes the Commission is warranted in prescribing rates which are relatively reasonable measured by the rates in effect over existing through routes between the same points. Furthermore, in prescribing such reasonable rates over a barge-rail route they may properly be made somewhat lower than the rates in effect over the competitive all-rail routes, provided the shrink is borne by the barge line. Inland Waterways Corp. v. C. G. W. R. R., 129 I. C. C. 521, 531.

(d) Rates on cotton and linters for export or coastwise movement from points west of Mississippi River to Mobile, Ala., by rail to Alabama ports on Warrior River and barge beyond, found not unduly prejudicial as compared with rail-and-barge rates contemporaneously in effect from same points to New Orleans via Memphis, Tenn., or Vicksburg, Miss. Evidence submitted fails to show similar transportation costs over route sought via Cordova, Ala., or that traffic would move over that route if established. However, certain carriers have agreed and will be excepted to publish rail-and-barge rates from western Tennessee, western Kentucky, and Mississippi through Cordova or some other Warrior River port to Mobile, based on principles laid down in 77 I. C. C. 317; 100 I. C. C. 491. Mobile Chamber of Commerce v. A. & V., 129 I. C. C. 103.

(e) Through routes and joint rail-barge and rail-barge-rail rates between St. Paul and Minneapolis, Minn., and Fargo, N. Dak., and points in Illinois, Indiana, Iowa, and Missouri, in con-

nection with barge line between Dubuque, Iowa, and St. Paul and Minneapolis, found desirable in the public interest, such joint rates to be constructed by subtracting from contemporaneous all-rail rates between same points differentials equivalent to 15 per cent of contemporaneous all-rail rates between Dubuque and Twin Cities, and divisions thereof to be arrived at by rate prorate basis, using as factors contemporaneous first-class rail rate between Dubuque or Twin Cities and the interior point and contemporaneous first-class barge rate between Dubuque and Twin Cities. Inland Waterways Corp. v. C. G. W., 129 I. C. C. 521.

(f) A water carrier of barge-line character must be able to secure traffic to and from interior points if it is to prosper, and in case of a barge line, with its slow and inferior service, such traffic can not be secured without resort to differential rates. Inland Waterways Corp. v. C. G. W., 129 I. C. C. 521, 527, 528.

(g) In prescribing reasonable rates over a barge-rail route they may properly be made somewhat lower than rates in effect over the competitive all-rail routes, provided the shrink is borne by the barge line. See 92 I. C. C. 528, 546, 547. Inland Waterways Corp. v. C. G. W., 129 I. C. C. 521, 531.

BASING POINTS AND LINES

I. APPLICATION.
§1. In general.

II. ESTABLISHMENT.
§2. In general.

III. REASONABLENESS.
§3. In general.

CROSS REFERENCES

See Advanced Rates §8½a (b); Classification II; Crimes §25; Discrimination §14; Evidence I, §5; Passenger Fares and Facilities §3, §4½; Percentage Rates; Rail and Water Rates (3h); Routing and Misrouting §4, §8; Through Routes and Joint Rates §15; Undercharges §5; Weights and Weighing IV.

I. APPLICATION.

See Application of Rates.

§1. In General.

(a) Contention that so-called combination rule applies only by its own terms at junction points, and not at a basing or rate-breaking point, not sustained. As the term "junction point" is used in tariffs here involved, it must be construed to include such well-established rate-breaking points as Mississippi River crossings, which is in keeping with long recognized and universal practice followed by carriers of breaking rates at these points. North Packing & Provision Co. v. Director General, 104 I. C. C. 607, 613.

(b) For many years the prevailing basis for rate making to points south of the Ohio river has been the combination on crossings. In 100 I. C. C. 513 the Commission found that through class rates lower than the combination rates to and from the boundary line should be established between official and southern territories. Birmingham Traffic Bureau v. Director General, 115 I. C. C. 33, 37.

(c) For many years the present method of making through rates upon the combination of local or proportional rates to and from the Mississippi river has been the generally prevailing basis. In a number of cases the Commission has approved this method of rate construction. Nebraska Tire & Rubber Co. v. B. & O. R. R., 115 I. C. C. 99, 102.

(d) The general basis of making rates from points in c. f. a. territory to Carolina destinations is by combination, either on Ohio River crossings or on the Virginia cities. Fairfield Paper Co. v. A. C. L., 115 I. C. C. 43, 44.

(e) Meridian, Miss., and Mobile, Ala., are border-line points between Mississippi Valley and southeastern territories and are considered Mississippi Valley points for rate-making purposes. Teague Hardware Co. v. C., B. & Q., 118 I. C. C. 221.

(f) When practicable rates through important grain markets should break into definitely known inbound and outbound components. Minnesota-Dakota Transit Millers v. A. A. R. R., 118 I. C. C. 585, 595.

(g) Complainant alleged that combination rates charged on iron and steel rails and other articles, including reinforcement concrete bars, from Huntington, W. Va., to Kentucky, Tennessee, and Virginia were and are unreasonable and unduly prejudicial. Huntington, on the south bank of the Ohio river, is served by the C. & O. and B. & O. The ship-

ments were tendered unrouted. About one half moved C. & O. to Covington, Ky., just south of Cincinnati, 161 miles, thence L. & N. or Southern. Remainder moved C. & O. to Winchester, 120 miles, or Lexington 138 miles, thence L. & N. or Southern. To some of the destinations joint rates are published, but the rates on rails generally are based upon the Cincinnati or Winchester combinations whichever are lower. A commodity rate of $3.28 is published to Winchester and class N by exception beyond. The combination basis on rails has been in force since 1889 from Huntington and other points in central territory to the destinations in southern territory. Joint commodity rates are maintained on reinforcement concrete bars to points on the eastern Kentucky division. Complainant seeks joint maximum rates on iron and steel rails of $4.80 to points on the Southern and L. & N. except eastern Kentucky division, and Bristol, to which points rates of $4.45 and $4.40, respectively, are sought. On reinforcement concrete bars, it seeks distance rates not in excess of those prescribed in Jones & Laughlin Steel Corp. v. B. & O. R. R., 96 I. C. C. 682. Effective March 15, 1926 rates on reinforcement concrete bars from Huntington to Louisville and Lexington were reduced to 22.5c per 100 pounds. HELD, rates attacked not unduly prejudicial but unreasonable to extent they exceed $4.40 per long ton plus factors 10 miles and under 20 120c per long ton, up to 180 miles of 400c per long ton; via Elkhorn City; rates attacked on iron and steel rails unreasonable to extent they exceeded $2.50 per long ton plus the same factors beyond Winchester; on reinforcement concrete bars unreasonable to extent they exceeded 22.5c per 100 pounds to Winchester plus rates ranging from 10c per 100 20 miles and less to 25c for 200 miles, reparation awarded. West Virginia Rail Co., v. C. & O. Ry., 128 I. C. C. 153.

II. ESTABLISHMENT.

§2. In General.

(a) The basing-point system of rate making has become obsolete, due to practical elimination of interior waterway competition out of which it largely arose, and because of changed railroad competitive situation and changes in the fourth section of the act and its administration. Southern Class Rate Investigation, 109 I. C. C. 300, 314.

(b) Rates through important grain markets should break into definitely known inbound and outbound components. This is the general method of constructing through rates on grain and grain products. The commission has also repeatedly expressed the view that through rates should normally be lower than the combination of local rates to and from any intermediate point; but obviously where through rates are made up, as they generally are in the case of grain and grain products, of factors to and from an intermediate market, this result can not be secured unless one of the factors is made lower than the corresponding local rate, or unless both are so made. In the case of grain and grain products rates the custom has been to make the outbound factor, but not the inbound factor, a proportional rate lower than the local. Grain and Grain Products, 122 I. C. C. 235, 270.

(c) Complainant attacked rates on lumber and other forest products in carloads, from points on the Indian Creek Valley Ry. to interstate destinations in trunk line and central territories have been and are unreasonable, unjustly discriminatory and unduly prejudicial. Indian Creek Valley connects at Indian Creek, Pa., with the main line of the B. & O. and extends northward through Indian Head to Jones Hill, Pa., 19 miles. Road is now controlled by the B. & O. Through rates from points on the Indian Creek Valley are made by adding a differential of $1.39 to the blanket rates from Group 3 on shipments destined to trunk line and central territories. The Commission finds nothing of record in this case which warrants a differential on lumber and lumber products from points on the Indian Creek Valley to trunk line or central territories. HELD, rates attacked unreasonable and unduly prejudicial to extent they exceed Group 3 rates, reparation awarded. Indian Creek Valley Lumber Co. v. B. & O. R. R., 126 I. C. C. 161.

(d) In passing upon the allegation of undue prejudice the fundamental issue, as the Commission has stated in many previous cases is whether carriers which have equalized rates on lumber and lumber products to certain destinations from all their main line and branch line points, which are located within a producing territory of some extent, may, without being guilty of undue prejudice, refuse to extend similar blanket rates to producing points within such territory which are

located on other branch lines which they control. Indian Creek Valley Lumber Co. v. B. & O. R. R., 126 I. C. C. 161, 165.

III. REASONABLENESS.

See Discrimination; Reasonableness of Rates.

§3. In General.

(a) In 92 I. C. C. 722, division 1, found that the class rates from western trunk line, central, and trunk line territories and rates on various commodities, in carloads, from points in the same territories and from Ohio river crossings and New Orleans, La., to Virginia, Minn., were not unreasonable or unduly prejudicial and dismissed the complaint. Virginia is served from Duluth by four railroads, distances over those lines from Duluth are by D. M. & N. 73 miles, D. W. & P. 78 miles, D. & I. R. 92 miles, and G. N. 136 miles. With few exceptions, class and commodity rates from all points in western trunk line, central, and trunk line territories to Virginia are made by using the combination on Duluth. The factors from Duluth to Virginia are the Minnesota intrastate class rates for 73 miles, also applicable on interstate traffic. It is recognized that the much pleaded factor of depressing water competition does exist at Duluth and that it has been met by the rail carriers. HELD, previous report affirmed, complaint dismissed. Virginia Chamber of Commerce v. A. A. R. R., 118 I. C. C. 195.

(b) Fact that commission may not have found the combination basis of charges between points east and west of Mississippi River unreasonable in certain past cases dealing with various commodities is not conclusive as to a particular commodity where the issue concerns measure of charges, the method of their construction being incidental. Russellville Compress Co. v. G., M. & N., 120 I. C. C. 481, 485.

(c) Complainant attacked commodity rate charged on casing head gasoline, carloads, from Delaware, Okla., to Los Angeles, Avon and Martinez, Calif., from August 25, 1920 to March 28, 1922 as unreasonable and unduly prejudicial. Delaware is 20 miles south of Coffeyville, Kas., and shipments moved Union Traction to Coffeyville and connecting lines beyond. Applicable rates were combinations on Coffeyville. Blanket rates apply generally from the midcontinent oil field. It is to the basis of those rates, which were 94.5c prior to August 26, 1920 and $1.26 thereafter, the complainant seeks reparation. Subsequent to the movement the Union Traction Co., became party to the blanket rate. HELD, rates attacked unreasonable to extent they exceeded those subsequently established. Reparation awarded. Henderson Co., v. A. T. & S. F. Ry., 128 I. C. C. 59.

(d) Upon contention that a combination of three locals is an unreasonable basis for making of rates, and in conflict with views expressed in Southern Class Rate Investigation, 100 I. C. C. 513, 661, FOUND: This depends upon whether local rates making up the combination are normal or depressed. Duplex Printing Press Co., v. B. C. E., 128 I. C. C. 692, 693.

BEATRICE SCALE

See Advanced Rates §11½ (d).

BILLS OF LADING

I. CONTROL AND REGULATION.
- §1. Jurisdiction of Commission.
- §1a. Federal legislation.
- §2. Recommendation of certain forms.

II. DUTY OF CARRIER TO ISSUE.
- §2½. In general.
- §3. Rail-and-water transportation.
- §4. At transit points.
- §5. One lading for several shipments.
- §5a. Exchange bills.

III. CONSTRUCTION.
- §6. In general.
- §7. Statement of weight.
- §8. Statement of shipping point.
- §9. Conflicting provisions.
  - (½) In general.
  - (1) Between rate and route.
  - (2) With tariff.
  - (3) With shipping ticket.
- §9½. Inspection.
- §10. Route designated by shipper.

IV. LIMITATION OF LIABILITY.
- §11. In general.
- §11½. Miscellaneous provisions.

V. ORDER-NOTIFY SHIPMENTS.
- §12. In general.

VI. REPARATION AND DAMAGES.
§13. In general.
§14. Correction of bill of lading.

CROSS REFERENCES
See Export Rates and Facilities II; Water Carriers §5½.

II. DUTY OF CARRIER TO ISSUE.

See Through Routes and Joint Rates §12.

§5a. Exchange Bills.

(a) Where carrier on diverting shipment failed to rely on rule giving right to refuse to divert and merely act as plaintiff's agent in securing bill of lading, but instead issued its own exchange bill of lading, it was bound by new contract, and other contrary or equivocal terms of original contract, if more favorable, were waived thereby. W. L. Shepherd Lumber Co., v. Atlantic Coast Line R. Co., (Ala., 1927) 112 So. 323.

III. CONSTRUCTION.

§10. Route Designated by Shipper.

See Routing and Misrouting §7.

(a) Bill of lading was prepared by initial carrier's agent who inserted therein the route but no rate, such bill of lading being submitted to complainant's representative who signed it on his behalf. Upon contention that misrouting resulted due to existence of a lower rate via a route other than route of movement, HELD: Complainant adopted the routing when bill of lading was executed by his representative and shipment, therefore, was not misrouted. Peppard Seed Co. v. A., T. & S. F., 113 I. C. C. 309.

BLANKET RATES

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.

II. ESTABLISHMENT OF GROUP RATES.
§2. In general.
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VIII. REGROUPING.
§20. In general.

IX. ADVANCED RATES.
§21. In general.

CROSS REFERENCES
See Classification §20; Differentials; Discrimination; Distance Rates; Express Companies §11 (4); Long and Short Hauls; Percentage Rates; Switch Tracks and Switching IV; Through Routes and Joint Rates.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Jurisdiction of Commission.

(a) Group rates are largely result of voluntary action by carriers serving the group points in disregarding, for competitive reasons, the element of distance, and commission can not compel them to disregard distance unless in their rate adjustments they commit some violation of the act. Louisville Cement Co. v. S. Ry., 104 I. C. C. 456, 458.

II. ESTABLISHMENT OF GROUP RATES.

See Legality of Rates.

§2. In General.

(a) Group rates are largely result of voluntary action by carriers serving

group points in disregarding, for competitive reasons, the element of distance, and commission can not compel them to disregard distance unless in their rate adjustments they commit some violation of the act. Louisville Cement Co. v. S. Ry., 104 I. C. C. 456, 458.

(b) Commission has frequently approved maintenance of a group adjustment when it appears on the whole to be reasonable and not unduly preferential or prejudicial. Class and Commodity Rates between Western Points, 104 I. C. C. 578, 586.

(c) The fixing of groups necessarily requires that consideration be given to locations of points to be grouped, their transportation and commercial relationships, and the rail routes. Midcontinent Oil Rates, 1925, 112 I. C. C. 421, 448.

(d) Groups long maintained are presumably fair and will not be disrupted unless substantial justice clearly requires it. Indiana State Chamber of Commerce v. A. A. R. R., 115 I. C. C. 650, 657.

(e) The commission has frequently approved the group or blanket system of rate making, particularly when applied to limited areas containing natural resources, and where a rate basis is sought which would disrupt an existing adjustment, a comprehensive record should be developed. Standard Lbr. Co. v. A. C. L., 118 I. C. C. 703, 706.

(f) In the creation of large groups distances must, to a certain extent, be disregarded. Hanna Furnace Co. v. N. Y. C., 123 I. C. C. 627, 630.

(g) Complainant alleged that the commodity rates on lumber, shingles, posts and siding, carloads, from Idaho, Montana, Oregon and Washington to Gordon, Irwin, Merriman and Eli, Neb., were and are unreasonable. Destinations are on the C. & N. W. in the northwestern part of Nebraska. The line of that carrier enters Nebraska west of Crawford which is a connecting point with the Burlington. The Northwestern receives most of its lumber shipments from the above groups at Crawford, but some are delivered to it by the U. P. at Orin, Wyo. The fact that the territory on the Northwestern between the Colorado common point group and the Missouri river group is as extensive as the similar territories on the Burlington and U. P. does not establish the unreasonableness of the rates on the Northwestern. HELD, rates from Groups 1, 2 and 3 to Gordon, Irwin, Merriman and Eli, were, are, and for future will be unreasonable to extent they exceeded on shingles 70c, 58c on lumber from Group 1, 71 and 59c to Irwin, 72 and 60c to Merriman, and 73 and 61c to Eli and from Groups 2 and 3 66.5 and 54.5c to Gordon, 67.5c and 55.5c to Irwin, 68.5 and 56.5c to Merriman and 69.5 and 57.5c to Eli, proper relationship to be maintained between the competing origin groups in the territory covered by this complaint, reparation awarded. Walrath & Sherwood Lumber Co. v. C. & N. W. Ry., 126 I. C. C. 97.

(h) The Commission has often expressed the view that all groupings are more or less arbitrary; that group lines generally have the appearance of injustice to some point just across the line, but once established, groups should not be lightly or unnecessarily disturbed. Such grouping, however, should be established in such a manner as not to jeopardize unduly the right of shippers just across the line, or in close proximity thereto, to just and reasonable rates. Shelton Gasoline Corp. v. W. F. R. & F. W. R. R., 126 I. C. C. 125, 129.

(i) An extensive group or blanket adjustment necessarily disregards, to some extent, differences in distance and other elements which go to make up cost of service, and when arbitraries over group rates for comparatively short branch-line hauls are proposed the essential issue to be determined is not so much the reasonableness per se of the through rates which would result, as the propriety of the proposed arbitraries in the light of the extensive group adjustment voluntarily maintained by the carriers. Grain from Montana, 128 I. C. C. 123, 124, 125.

(j) Grouping is but one of the various elements to be considered in passing upon the reasonableness of rates to or from a given point. Iroquois Pulp & Paper Co., v. A. A. R. R., 128 I. C. C. 187, 191.

§3. Justification.

(a) Group rates are largely result of voluntary action by carriers serving group points in disregarding, for competitive reasons, the element of distance, and commission can not compel them to disregard distance unless in their rate adjustments they commit some violation of the act. Louisville Cement Co. v. S. Ry., 104 I. C. C. 456, 458.

(b) There is perhaps greater warrant for the group or blanket system of rate making when applied to areas con-

taining natural resources than in any other case. Chicago Gravel Co. v. A. T. & S. F. Ry., 118 I. C. C. 633, 645.

(c) It does not follow that average distances over all routes should not be considered in determining propriety of an adjustment which involves general level of rates to a considerable territory as well as relationship between destination groups. While each group is entitled to benefit of its short-line distance, it would be unfair to base rates upon that distance alone. See also 46 I. C. C. 66. Indiana State Chamber of Commerce v. A. A. R. R., 115 I. C. C. 650, 654.

(d) Groups long maintained are presumably fair and will not be disrupted unless substantial justice clearly requires it. Indiana State Chamber of Commerce v. A. A. R. R., 115 I. C. C. 650, 657.

(e) All groupings are more or less arbitrary, group lines generally having appearance of injustice to some point just across the line, but once established, groups should not be lightly or unnecessarily disturbed. Such groupings, however, should be established in such a manner as not to jeopardize unduly the right of shippers just across the line or in close proximity thereto to just and reasonable rates. Transcontinental Oil Co. v. B. & O., 118 I. C. C. 518, 521.

(f) There is perhaps greater warrant for the group or blanket system of rate making when applied to areas containing natural resources than in any other case. See 33 I. C. C. 33. Groups long maintained are presumably fair and are not to be disrupted unless substantial justice clearly requires it. Dissatisfied producers deprived of benefit of their proximity to a common market must show that they are actually injured by an unjust and unlawful discrimination. See 40 I. C. C. 311. Chicago Gravel Co. v. A., T. & S. F., 118 I. C. C. 633, 645, 646.

(g) The commission has frequently approved the group or blanket system of rate making, particularly when applied to limited areas containing natural resources, and where a rate basis is sought which would disrupt an existing adjustment, a comprehensive record should be developed Standard Lbr. Co. v. A. C. L., 118 I. C. C. 703, 706.

(h) All grouping for rate purposes is necessarily more or less arbitrary. Group lines generally have the appearance of injustice to some point just across the line. Yet the line must be drawn somewhere or the grouping abandoned. Once established, groups should not be lightly or unnecessarily disturbed. Black Servant Coal Co. v. I. C. R. R., 120 I. C. C. 604, 606.

(i) The Commission has recognized the practice of group adjustments under special circumstances as proper. The practice of embracing many points within the same group or zone has been so generally adopted by the carriers and so frequently recognized as proper by this Commission that its general propriety can hardly be challenged. The application of a common rate to a number of points in the same general territory effects an equality or opportunity which is usually most desirable. Humble Oil & Refining Co. v. B. S. L. & W. Ry., 126 I. C. C. 717, 722.

§4. Public Benefit.

See Evidence §44½.

(a) The Commission has frequently approved the group or blanket system of rate making, particularly when applied to limited areas containing natural resources. Where a rate basis is sought which would disrupt an existing adjustment a comprehensive record should be developed. Standard Lumber Co. v. A. C. L. R. R., 118 I. C. C. 703, 705.

(bc) Group adjustments are of advantage to the public and long-established groups should not be lightly or unnecessarily disturbed. Hanna Furnace Co. v. N. Y. C., 123 I. C. C. 627, 630.

(d) Complainant attacked commodity carload rates charged on bituminous coal from Illinois, Indiana and western Kentucky to points in Iowa generally; also from Illinois and western Kentucky to Hannibal, Mo., as unreasonable and unduly prejudicial. These are the first cases in which the general adjustment of coal rates to Iowa points has been considered primarily from the standpoint of the consumer. Previous cases have embraced only individual rates, or were considered chiefly from the standpoint of the operators, who are interested more in the rate relationships at points of origin than in the measure of the rates. THE RATES IN GENERAL. Rates on coal in the territory embraced in these proceedings, as elsewhere in the country, are generally published to apply from and to rather large groups. By far the most important origin group, so far as Iowa destinations are concerned, is the

southern Illinois group. This is now considered as the basic group. The rates from the other groups on lump coal are generally related to the basic group according to certain fixed differentials. The existing differentials are not directly attacked. In many instances the differential basis is not applied on fine coal. Due to carrier and commercial competition and other economic forces, distance has in the past been largely disregarded by the carriers in fixing rates on coal. For, regardless of the various motives which may have led to the establishment of the rate structure under discussion, it is obvious that in determining its reasonableness distance is a factor of major importance. This is none the less true by reason of the group adjustment. The difficulty with such an adjustment is to determine the proper distances to be used. RATES ON FINE COAL. To most of the important Iowa points, the rates on fine coal are lower than those on lump coal. Fine coal is of considerably less value than lump coal. It loads heavier, the average per car in this territory being about 49 or 50 tons while the average for lump coal is probably 44 or 45 tons. Due to the heavier loading of fine coal the charges per car are in many instances greater than those on lump coal notwithstanding the difference in rates. The maintenance of lower rates on fine than on lump coal is quite general in western trunk line territory. To most Illinois and many Wisconsin points however, the rates on fine coal are the same as those on lump coal. Dubuque alone of the more important Iowa destinations has the same rates on fine as on lump coal. Fine coal constitutes a large percentage of the coal shipped to this point. The rates to Dubuque appear to be in line with the rates on lump coal to the other river cities, and the record contains no satisfactory explanation of the failure to accord to it similar treatment with respect to fine coal. RATES TO MISSISSIPPI RIVER CITIES. Burlington, Davenport, Dubuque and other Mississippi river cities seek rates relatively on the same basis as is applied to Chicago. RATES TO INTERIOR EASTERN IOWA. Cedar Rapids, Waterloo, Ottumwa, and other interior cities in eastern Iowa complain that the rates they pay are relatively higher than those to the upper river cities. The latter are affected by the highly competitive rates to Chicago, which, by observance of the long and short haul rule, are blanketed west almost to the Mississippi river. As the traffic density is much greater in Illinois than in Iowa there is ground for urging a higher basis of rates to interior Iowa than to Illinois points. However the coal traffic from the producing points in question is heavier in eastern Iowa than in western Iowa and heavier to the larger cities, like Cedar Rapids, than to small communities. From an operating and traffic density standpoint no reason appears for relatively higher rates to Iowa than to Wisconsin and Minnesota points, but the rates to the Wisconsin and Minnesota points are affected by lake competition to a much greater extent than the rates to Iowa points. RATES TO SIOUX CITY. While the principal movement to Sioux City is over the routes through northern Illinois, the shortest of which is about 717 miles, much if not most of the coal is produced at points from which there are routes through St. Louis that are over 100 miles shorter, but not open to the public. The distance over the shortest open route through St. Louis is about 682 miles. RATES TO COUNCIL BLUFFS. To Council Bluffs the rates, made on basis of proportionals to East St. Louis and local rates beyond, are relatively higher than those to Kansas City. It is not necessary for the carriers from Illinois, Indiana, and Kentucky to maintain as low rates to Council Bluffs to meet competition as they do to Kansas City. RATES TO LINWOOD AND BUFFALO. To Linwood and Buffalo, Iowa, situated 7 and 9 miles southwest of Davenport, the rates on coal at the time of the hearing were slightly higher than those to Davenport. HELD, excepting on fine coal to Dubuque, the attacked rates to the Mississippi river cities and to Linwood, Mason City, Council Bluffs, and Sioux City, rate on fine coal from southern Illinois group to Cedar Rapids, not unreasonable or otherwise unlawful, and to Buffalo not unreasonable. Attacked rates on fine coal to Dubuque unreasonable to extent they exceed rates 17c less than rates on lump coal. HELD, rates from southern Illinois group unreasonable to extent they exceed $2.79 on lump and $2.60 on fine to Ottumwa, $3.04 on lump to Cedar Rapids, $3.15 on lump and $2.96 on fine to Des Moines, $3.15 on lump and $2.96 on fine to Waterloo, and $3.56 on lump and $3.37 on fine to Fort Dodge, other groups to be related on present fixed differentials. Iowa R. R. Commis-

sioners v. A. & S. R. R., 128 I. C. C. 293.

§5. Custom.

See Customs; Evidence §19½.

(a) The commission has recognized the practice of group adjustments under special circumstances as proper. See 36 I. C. C. 109 and other cited cases. Humble Oil & Rfg. Co. v. B., S. L. & W. Ry., 126 I. C. C. 717, 722.

(b) An extensive group or blanket adjustment necessarily disregards, to some extent, differences in distance and other elements which go to make up cost of service, and when arbitraries over group rates for comparatively short branch line hauls are proposed the essential issue to be determined is not so much the reasonableness per se of the through rates which would result, as the propriety of the proposed arbitraries in the light of the extensive group adjustment voluntarily maintained by the carriers. Grain from Montana, 128 I. C. C. 123, 124.

III. EXTENSION OF ZONE.

§6. In General.

See Basing Points and Lines §2 (d).

(a) Proposals of carriers and shippers embodying changes in oil-rate groups of the mid-continent field in Kansas, Missouri, Oklahoma, Arkansas, Louisiana, and Texas on traffic to and beyond Kansas City and St. Louis, disapproved. No important group changes should be made unless supported by the strongest reasons requiring removal of unlawful situations. Group rearrangement here proposed by shippers is designed basically to serve interests of Oklahoma and Texas but consideration must be given to interests of all who would be affected and their proposal would not serve best interests of the mid-continent refineries as a whole. Carrier's proposal is subject to somewhat the same comment, their effort having been to regroup and realign rates in a manner which would reflect transportation element to a somewhat greater extent than at present. Mid-continent Oil Rates, 1925, 112 I. C. C. 421.

§8. Proximity to Established Group.

(a) Complainant atttacked commodity rate of $4.62 per ton on phosphate rock, carloads, from Florida producing points served by the ACL and SAL to Roanoke, Ala., as unreasonable and unduly prejudicial. Respondents proposed to restore the rate of $4.62 formerly in effect. Rock loads heavily, moves in great volume and loss and damage claims are negligible. Roanoke is on the AB & A and C of Ga. 24 miles west of La Grange, Ga., over the line of the former carrier and 38 miles north of Opelika over the latter. Roanoke is located within the boundary lines of respondents group 5, and it took the same rate as other points in this group for about 10 years prior to the reduction of April 18, 1925. Since the latter date the rate to Roanoke has been $4.39 which is that applicable to points in group 4. It satisfactorily appears from the evidence that the attacked and the proposed rate of $4.62 was not and would not be unreasonable in and of itself. However, circumstances and conditions have brought about a group adjustment of rates in the territory under consideration and Roanoke is entitled to its proper place in such adjustment. It is clear that Roanoke properly belongs in group 4. HELD, suspended schedules not justified, complaint dismissed. Phosphate Rock from Florida, 115 I. C. C. 229.

(b) All groupings are more or less arbitrary; that group lines generally have the appearance of injustice to some point just across the line, but once established, groups should not be lightly or unnecessarily disturbed. Such grouping should be established in such a manner as not to jeopardize unduly the right of shippers just across the line, or in close proximity thereto, to just and reasonable rates. Transcontinental Oil Co. v. B. & O. R. R., 118 I. C. C. 518, 521.

(c) Complainant attacked commodity rates on bituminous coal, carloads, from Elkville, Ill., to Missouri, Iowa, Kansas, Arkansas, Colorado, Montana, Nebraska, Oklahoma, South Dakota and Wyoming as unreasonable and unduly prejudicial to extent they exceeded rates from the Du Quoin group. Elkville is 6.9 miles south of Du Quoin, Ill., on the I. C. For many years certain of the mines have been included in the Du Quoin group. There is actual or potential competition between complainant and the operators at Du Quoin, Dowell and other points where mines are now in operation, but com-

plainant has been able to dispose of its coal only at destinations taking the Du Quoin group rates from Elkville. It is clear that Elkville should be included in the Du Quoin group rather than the Southern Illinois group on this traffic. HELD, rates attacked unreasonable and unduly prejudicial to extent they exceed rates from points in the Du Quoin group. Black Servant Coal Co. v. I. C. R. R., 120 I. C. C. 604.

(d) Complainant attacked rates charged on grain and grain products, in carloads, from Memphis, Tenn., Cairo, Ill., St. Louis, Mo., Louisville, Ky., Evansville, Ind., Cincinnati, O., and points taking the same rates to Florence, Sheffield and Tuscumbia, Ala., as unjust, unreasonable and unduly prejudicial. Florence, Sheffield and Tuscumbia form one business community. They are located on the Tennessee River, an average distance of 154 miles east of Memphis and are served by the Southern and L. & N. Florence jobbers are in competition with jobbers at Memphis, Tenn., and Corinth, Miss., for the trade in the surrounding territory. The jobbers at Memphis and Corinth have a much lower basis of rates on grain and grain products from the Ohio and Mississippi River crossings than is maintained to Florence, which together with the outbound rates enable the Memphis and Corinth jobbers to deliver goods at practically all points in the common trade territory at a less aggregate rate than Florence jobbers must pay. Memphis and Corinth are both border points in the so-called Mississippi Valley territory, Corinth being 94 miles east of Memphis and Florence is about 60 miles east of Corinth and in southeastern territory. The rates to Florence are blanketed to all common points on the Memphis division of the Southern Ry. as far east as Chattanooga, Tenn., except from Cincinnati. Except on rare occasions when a carload sale is made, flour and grain products are shipped to Florence in carloads and then distributed in less carload quantities in the trade territory. The commission has frequently said that the rates prescribed to the Mississippi Valley were not designed as standards of reasonable maximum rates, but primarily to bring the rates in harmony with the fourth section, and at the same time return to the carriers substantially the same revenue as earned under the adjustment theretofore maintained. The reshipping rates to Memphis and Corinth also reflect competition of the west side lines to Memphis. They are merely the proportions the southern carriers receive from the river points of the through rates from Kansas City, Mo. The rates to the Mississippi Valley points are therefore not a proper basis by which to measure the rates to Florence. HELD, rates attacked on grain and grain products, in carloads, to Florence, Sheffield and Tuscumbia, Ala., are for future unreasonable to extent they exceed 16 cents from Memphis, Tenn., 22 cents from Cairo, Ill., Evansville and Mt. Vernon, Ind., and Louisville, Ky., and 25 cents from Cincinnati, O., and St. Louis, Mo., on traffic originating beyond; and 18, 24, 25, 25, 25, 28 and 27 cents on traffic originating at those points. HELD, further rates attacked unduly prejudicial to Florence, Sheffield and Tuscumbia to extent they exceed by more than 2 cents the rates applied on like traffic to Corinth. Florence Chamber of Commerce v. I. C. R. R., 122 I. C. C. 653.

(e) Where two territories in which rate levels and classifications vary widely, lie contiguous for long distances no plan of through rates can avoid some anomalous situations. Groups constitute a practical way of avoiding many of the difficulties and where this method is impracticable without undue sacrifice of revenue, the situation may be met, either by appropriate fourth-section relief or by establishment of rates over certain of the higher-rated routes that conform to the fourth section but do not in all cases meet the rates of ower-rated routes to and from relatively unimportant competitive points. Southern Class Rate Investigation, 128 I. C. C. 567, 577.

§9. Grading Rates.

See Distance Rates.

(a) When points distributed over an extensive area are grouped and a blanket rate applied to or from all such points, the fact that points lying within that blanket are on a branch line does not argue as strongly that there should be a branch line differential as when the rates are applied upon a graded basis. The question of whether or not there should be such a differential in connection with blanket rates depends in a large measure upon how extensive the blanket is. In an extensive blanket a branch line haul of 30 miles loses its significance unless it is made to appear that the branch line operation is much more expensive than

main line operations from remoter parts of the blanket. Grain from Montana, 128 I. C. C. 123, 127.

§10. Differentials.

See Advanced Rates §2½ (e); Differentals.

(a) Rates on baled hay from Arizona points to Mississippi River crossings, Memphis and south thereof, found unduly prejudicial to extent they exceeded contemporaneous rates from El Paso to same crossings by more than 6 cents from Thatcher group, 10 cents from Phoenix group, and 13 cents from Yuma group. Arizona Hay Traffic Asso. v. A. E., 107 I. C. C. 591, 599.

(b) Complainant attacked commodity rates on newsprint paper, carloads, from Espanola, Ont., to destinations in Wisconsin, Minnesota, Illinois, Missouri and Iowa, and to Omaha, Neb., as unjust and unreasonable, unjustly discriminatory and unduly prejudicial. Espanola is north of Georgian Bay, on the Canadian Pacific Ry., 137 miles east of Sault Ste Marie, Ont., and 98 miles west of Sturgeon Falls, Ont. Newsprint paper moves from Espanola to the destinations here considered over the C. P., either to the west through the Soo to Sault Ste Marie, Mich., and D. S. S. & A., or Soo Line and Sudbury, Ont., and thence south and west through Toronto, Ont., to Detroit, Mich., and connecting lines beyond. The origin and extent of the eastern rate blanket are set forth in 38 I. C. C. 120. With certain exceptions the rates from all points within this extensive area to any given point in the destination territory are the same and the short line workable route is through the Detroit gateway. Joint rates apply to prorating territory and rates to the other points are made on the lowest combinations, basing usually on Chicago, Milwaukee or Mississippi river points. Western differential basis was established pursuant to 66 I. C. C. 571, 73 I. C .C. 113. The rates from Espanola are not constructed upon a uniform basis. To all points in prorating territory Espanola is treated as an eastern mill and takes the eastern blanket rates. These are joint rates that apply only through the Detroit gateway, except that to Milwaukee, Chicago and Joliet, Ill., they apply through the Soo gateway. To other destination points the rates apply through the Soo gateway but they are not related to the eastern or western adjustment. To many important points they are joint rates, either specifically published or applicable under intermediate rules, and to the remaining points are combination rates basing on Soo Mich., or Minneapolis, Minn. Complainant asks for rates to all points 4c higher than the rates from the Soo. From the eastern blanket to prorating territory the distances favor Espanola by from 281 to 439 miles, but the rates are the same. To the western adjustment the rates from Espanola to all destinations range from 9 to 22.5c, and average about 17.5c higher than the rates from the Soo for a uniform excess in distance of 137 miles. The record furnishes no justification for the disparities with respect to Espanola. The average distance from Espanola to prorating territory is 703 miles. This is less by 361 miles than the average from the eastern blanket, but only 183 miles greater than the average from western mill points. The shortest average distance from any point in the eastern blanket is 825 miles, and from any western mill point, 287 miles. From the evidence of record it appears that Espanola lies well within the range of the western differential adjustment to the entire destination territory, and that from a transportation standpoint it is related to that adjustment in much greater degree than it is to the eastern blanket. HELD, rates attacked, in so far as the transportation takes place within the United States, unreasonable and unduly prejudicial to extent said rates exceed by more than 4c the rates from Sault Ste Marie, Ont., to the same destinations. Spanish River Pulp & Paper Mills v. A. & W. Ry., 113 I. C. C. 343.

(c) Complainant attacked commodity rates on printing paper, wrapping paper and paperboards, carloads, from Maine, New Hampshire, Vermont and Massachusetts to Baltimore and Washington as unjust and unreasonable, unduly prejudicial of mills on the Maine Central in the so-called Brunswick group and on the B. & M. Points of origin are located on the lines of the Maine Central, Boston & Maine, and New Haven. The rates on paper within trunk line territory and from New England to trunk line territory have long been in a chaotic condition. With some exceptions, sixth class rates or commodity rates equivalent thereto apply on paper from New England to trunk line territory, the rates being blanketed from and to extensive

origin and destination groups. The trunk line group which includes Baltimore extends as far west as Pittsburgh. In 98 I. C. C. 339, the Commission found the rates on newsprint to Washington were unreasonable to extent they exceeded the rates to Baltimore by more than 2 c. HELD, rates attacked to Baltimore not unreasonable but to Washington are unreasonable to extent they exceed rates to Baltimore by more than 2 c, reparation awarded. New England Paper & Pulp Traffic Asso. v. M. C. R. R., 113 I. C. C. 353.

(d) Group rates on fuel oil and other low-grade petroleum products from points in midcontinent field of Missouri, Kansas, Oklahoma, Arkansas, Louisiana, and Texas, to destinations in western trunk-line territory, Illinois, Indiana, and northern peninsula of Michigan, found unreasonable to extent they exceed 80 per cent of contemporaneous rates on gasoline between same points, fractions of a cent to be resolved to the nearest half cent. Midcontinent Oil Rates, 1925, 112 I. C. C. 421, 474.

(e) If the differential is to be preserved the increase in the rates from the nearer distant points while generally the same in amount must be greater in percentage than the increases from the farther distant points and consequently greater in percentage than rates on other commodities not on a group or differential basis. Chicago Gravel Co. v. A. T. & S. F. Ry., 118 I. C. C. 633, 642.

(f) A differential adjustment represents a combination of the group and distance method of making rates. Chicago Gravel Co. v. A. T. & S. F. Ry., 118 I. C. C. 633, 642.

(g) Rates on spelter by-products from points in c. f. a. territory, and from western termini points, not including Pittsburgh, to Trenton, N. J., found not unreasonable or otherwise unlawful. Trenton takes rates 2 cents higher than to Philadelphia, Palmerton, and Phillipsburg, this basis being in accordance with the general group adjustment between c. f. a. and eastern trunk-line territories which has obtained for many years. In the adjustment of class and commodity rates from Pittsburgh and points west thereof, Philadelphia, Palmerton, and Phillipsburg are located in Philadelphia group, to which rates are generally based on a differential of 2 cents under New York group, in which Trenton is located, and commission has hitherto refused to disturb this adjustment. See 23 I. C. C. 195, 198; 23 I. C. C. 684, 686. Lissberger & Co. v. P. R. R., 115 I. C. C. 521.

(h) It is the common practice of jobbers and manufacturers to make allowances in prices, and thus reduce their profits, where necessary to meet the prices of competitors enjoying freight rates on lower bases. A shippers enforced absorption of an unjustified difference in freight rates in the sale of his products results in undue prejudice to him. The undue prejudice is more pronounced when a rate maladjustment precludes him from doing business in which he might engage if rates were equitably related. Consolidated Southwestern cases, 123 I. C. C. 203, 211.

(i) Group rate on coal from Dante and Clinchfield, Va., points on the C., C. & O., in the Clinchfield Group 1, to Lambert Point, Va., for transshipment, found unduly prejudicial to extent it exceeds rate contemporaneously in effect from Carbo and St. Paul, Va., competing points located in the Clinch Valley district 2, to same destination for transshipment. The spread in rates between the two groups makes it impossible for mines in Clinchfield Group to successfully compete with those in Clinch Valley district and deprives them of opportunity to market coal in large consuming regions beyond Lambert Point. Moreover, Dante and Clinchfield are located near the center of the Clinch Valley district 2 but were not included therein, due to exclusion by the Norfolk & Western of all mines not located on its own rails when the group boundaries were drawn. The resulting group has thus become unnatural and distorted and its continuance can not be sanctioned by commission. Nonprejudicial rate relationship prescribed for future. Clinchfield Coal Corp. v. C., C. & O., 122 I. C. C. 37.

(j) In original report, Ogden Grain Exchange v. A. E. R. R., 126 I. C. C. 255, the Commission found that certain rates on grain and grain products, carloads, from Idaho, Montana, Oregon, Utah, Wyoming and Colorado to north Pacific coast and California terminals were not unreasonable except from and to the points shown in the report. Rates on the same commodities from the same points of origin to interior California, the Imperial Valley, and Arizona were found unreasonable. Present rates on

flour from this origin territory to California destinations, except the Imperial Valley, are generally 5c higher than the rates on wheat. To the Imperial Valley and Arizona the differential is generally 7c or greater. HELD, original report modified to reflect this differential in the rates to the territories mentioned. Ogden Grain Exchange v. A. E. R. R., 128 I. C. C. 490.

(k) Original decision and modifications, Southern Class Rate Investigation, 100 I. C. C. 513, 109 I. C. C. 300 and 113 I. C. C. 200. RATES VIA OHIO RIVER CROSSINGS. There are circumstances bearing upon the rates between central territory and the Carolinas via the Virginia cities which do not affect the rates between central territory and southern territory generally via Ohio river crossings. The cumulative effect of the proposed changes in the amounts and in the method of applying the differentials would be to increase materially the through rates which were prescribed. The Commission has shown that recognition must be given to the more favorable transportation conditions and the lower class rate level in official territory, and that rates over routes partly through official territory which are lower than rates for the same distances wholly within southern territory are not necessarily unduly prejudicial or preferential. In previous reports the Commission has repeatedly stated that where two territories in which rate levels and classifications vary widely lie contiguous for long distances, no plan of through rates can avoid some anomalous situations. That such situations would arise under the findings the Commission knew. Nothing in the petition is persuasive that groups do not constitute a practical way of avoiding many of the difficulties, or that where this method is impracticable without undue sacrifice of revenue, the situation may not be met, either by appropriate fourth section relief or by the establishment of rates over certain of the higher rated routes that conform to the fourth section but do not in all cases meet the rates of lower rated routes to and from relatively unimportant competitive points. Nothing presented justifies material changes in the bases heretofore prescribed for application to traffic via Ohio river gateways. Finding 17 will be amended to provide that in constructing through rates to and from points in southern territory the contemporaneous rates between the points in official territory and the gateway on the route in question may be observed as minima. Appendix Q will be revised by making the differential scales apply according to the haul in southern territory in each particular case and by prescribing two additional scales, both somewhat higher than scale 1, the first to apply to and from points within 30 miles of the gateways, and the second to and from points more than 30 miles but not more than 100 miles therefrom. Southern Class Rate Investigation, 128 I. C. C. 567.

(l) Complainant alleged commodity rates charged on lumber and forest products taking the same rates, in carloads, from Brunswick, Ga., to destinations shown in Agent Glenns eastern lumber tariff No. 7, I. C. C. A. 471 were and are unreasonable and unduly prejudicial to Brunswick and unduly preferential of Bainbridge and Savannah, Ga., and other points of origin. The evidence deals, for the most part, with the origin relationship which seems to be the real cause of complaint. Brunswick is served by the Southern and the A. B. & C. and is and since July 20, 1924 has been in what is called the lower Georgia main line group, which includes a part of Florida and all that part of Georgia south of Atlanta, Athens, Augusta and Savannah, except a small portion along the coast south of Savannah called the eastern Georgia or Allenhurst group. Bainbridge and Jacksonville, Fla., are also in the lower Georgia main line group. Under the present relationship the rates from Savannah are 2.5c under Brunswick to all the points. Under the former relationship the rates from Brunswick were 3.5c under the rates from Bainbridge to all of those points except New York, where the difference in favor of Brunswick was 4c and Pittsburgh and Buffalo where there was no difference. Bainbridge is about 160 miles farther than Brunswick from the Virginia gateways, through which traffic from Brunswick ordinarily moves. HELD, rates assailed not unreasonable or unjustly discriminatory but for future will be unduly prejudicial to extent they exceed by more than 1c the rates from Savannah to the same destinations, reparation denied. Brunswick Traffic Bureau v. A. C. L. R. R., 132 I. C. C. 621.

(m) Combination rates on structural steel from Indiana Harbor, Ind., a Group D point to Blythe, Calif., a Group 1 point, based on transcontinental factor from Group D to Group 3, plus a branch-line arbitrary to Group 1, found not unreasonable. Facts that other branch-line points were on the main-line basis and that Blythe was subsequently accorded the Group 3, or main-line basis, do not warrant a conclusion that the rate charged was in excess of a maximum reasonable rate. Illinois Steel Bridge Co. v. A., T. & S. F., 129 I. C. C. 87.

IV. REASONABLENESS.

§10½. In General.

See Advanced Rates §5 (2) (s); §9½ (f), §17 (m); Percentage Rates; Reasonableness of Rates.

(a) Rate on corn and oats from certain Nebraska Group G points to Portland, Oregon, found unreasonable to extent it exceeded lower rate contemporaneously in effect from other points in same group, which lower rate was established from points here involved subsequent to movement. Reparation awarded. See also 64 I. C. C. 461. Albers Bros. Milling Co. v. Director General, 104 I. C. C. 330.

(b) Rates on coal from Ohio and Crescent districts to certain points in Lower Peninsula of Michigan and to Elkhart, Ind., found not unreasonable or otherwise unlawful as compared with rates to Toledo, Detroit, and Jackson. Spreads between assailed and compared rates are not sufficiently out of line to warrant finding of undue prejudice and complainant's case, built entirely on distance, fails to take into consideration different conditions which render compared rates unacceptable as the foundation upon which to construct rates on a distance basis. Radical changes are sought in group adjustment which has existed for many years with commission's approval. However, evidence adduced deals with only a relatively small portion thereof and record fails to indicate how proposed changes will react on the group adjustment as a whole. Kalamazoo Chamber of Commerce v. C. & O., 107 I. C. C. 291.

(c) Complainants bring in issue the lawfulness under Sections 1, 2 and 3 of the act, of the rates on petroleum products in carloads, from Missouri, Kansas, Oklahoma, Arkansas, Louisiana, and Texas to western trunk line territory and to Illinois, Indiana taking Chicago rates, and Upper Peninsula of Michigan. The primary issue is that of origin relationships, although the questions of the reasonableness of the rates to particular destinations and of relationships of destination points are within the scope of the complaints. OUTLINE OF RATE STRUCTURE, OIL DEVELOPMENT PRODUCTION, ETC. The territory of origin is for the most part divided into rate groups. The more important groups are Group 1, Kansas City, Mo., Atchison and Leavenworth, Kan., and St. Joseph; Group 2, embracing all other refining or shipping points in Kansas and also Joplin, Mo.; Group 3 extending across the state of Oklahoma and embracing all shipping points in that state, except Devol, which is in the extreme southwestern portion of the shipping area; the Burkburnett or north Texas group in northern Texas; the Ranger group in Texas immediately south and west of the north Texas group; the south Texas group, embracing Houston, Beaumont, Port Arthur, and other points in that vicinity the New Orleans-Baton Rouge group in Louisiana; and the Shreveport-El Dorado group in Louisiana and Arkansas. There are in addition San Antonio and nearby points in Texas, Alexandria, La., and Fort Smith, Ark., which are of somewhat less importance as refining centers or points than are the groups just enumerated. First important case was 36 I. C. C. 109, Midcontinent Oil rates. The competitive conditions have resulted in practically but two origin blankets on traffic to St. Louis and Chicago, the rates from Kansas, Oklahoma, Arkansas and Louisiana being the same, and those from the north Texas, Ranger, and south Texas groups 2.5c higher. There are two natural gateways through which the traffic from the southwest moves, namely, Kansas City and St. Louis, and the rates to points beyond are related to the rates to those gateways. Except to some points east of the Mississippi River, however, St. Louis is not a gateway for traffic originating at Kansas City, from which point the routes generally radiate to the different destinations. The foregoing indicates the close rate relationships which exist between the origin groups. A possible exception is in the instance of the rates from Kansas City, or group 1. The rates from this group

are lower by varying amounts, depending upon the destination, than those from the nearest midcontinent group, Group 2, and are actually the lowest, although relatively the highest, rates here under consideration. Apparently they have never borne a definite or fixed relationship to the midcontinent adjustment and have never been passed upon by the Commission. Prices of gasoline are uniformly quoted on the Tulsa, Okla., Group 3 basis. That is, regardless of the point of shipment, the delivered price quoted is that obtaining at Tulsa plus the freight from Tulsa. Group 3 is regarded as the base group in this adjustment, and the rates from other groups are generally viewed in their relation to the rates from that group. Another element which has an influence upon the level of the rates which the rail carriers may maintain from this territory is that of pipe line competition. All important crude oil sources in the southwest are served by pipe lines which extend to Kansas City, St. Louis and Chicago. These pipe lines serve refineries at or in the vicinity of the points named, and the carriers must take into account the competition of these refineries, located near the market, which draw their crude oil in at less than the cost of rail transportation, and maintain rates which will enable the refineries located in the producing area to ship by rail and meet that competition. Petroleum products move in tank cars furnished by the shippers and on which the carriers pay a mileage allowance of 1.5 c. for the loaded and empty movement. The empty movement averages at least 100%. The arrangement simplifies the matter of furnishing or obtaining adequate equipment and appears to be mutually advantageous to both the shippers and the carriers. 15584 and 15585. It is readily apparent, that the adjustment of oil rates is not constructed upon a basis which takes into full account the relative transportation conditions. These complainants, although much of their evidence consists of comparisons of rates and distances from this territory in their relation to each other, do not contend that distance is the only guiding element, but would recognize advantages or disadvantages of location as reflected by differences in average distances in relating the groups one to another. The substitution of the 4.5 c increase on petroleum and its products in 1918 in lieu of the 25% increase generally applied to other traffic, has resulted in rates today which generally are lower than they would have been under the 25% increase. THE PROPOSED GROUP CHANGES. The territories of origin and destination here dealt with are, respectively, important refining and consuming areas. Western trunk line territory is to a large extent dependent upon oil produced in the southwest, and in turn the refineries in the latter territory are in keen competition for this business. The interests of all concerned require that rates be so adjusted that the producing interests throughout this origin territory may within reasonable limits have access to this outlet. The business is highly competitive and the comparatively narrow margin of profit limits the amount of rate disadvantage which may be absorbed and still permit distribution at a profit. There are features of the competitive situation, both from the commercial and the transportation standpoints, which are peculiar to the petroleum traffic. All parties to these proceedings recognize that reasonable groupings of the origin territory are proper if indeed not necessary. There are refineries scattered practically throughout the midcontinent field. Scarcely an important group change could be made without harmful effects upon some shipping point. With a few exceptions, the present groupings have been in effect for some time and an important commerce has been built up thereunder. While changes in the groups might result in some technical improvement in the rate adjustment there are many factors pointing to the desirability of leaving the present groupings unchanged. HELD, present groupings not unlawful and should not be changed. FUEL OIL. In the Midcontinent case the Commission prescribed reasonable maximum rates on fuel oil and other low grade oils to St. Louis and Chicago based on a differential of 5 c under the refined oil rates, and same suggestions to other destinations, this differential now being 6.5 c. Fuel oil differs from gasoline in the two important transportation respects of value and weight, in addition to the differences in commercial influences. The value of fuel oil is not more than one-fourth that of gasoline. The respective estimated weights used for the assessment of transportation charges are 7.4 and 6.6 pounds per gallon. It is proper that the rates on fuel oil should be lower than those on gasoline. It is desirable that a minimum difference between the rates on fuel and refined oils

should be adopted in order to bring about an adjustment of rates which will remove this source of complaint. A percentage relationship would produce a slightly increasing difference in rates and in charges per car as the rate on gasoline increases. HELD, a maximum basis of 80% of the rates on refined oil commends itself more than any basis suggested. HELD, rates attacked on gasoline and other so-called refined oils now taking the same rates, carloads, are as a whole not in excess of reasonable maximum rates, but said rates are unduly prejudicial as between the various origin groups and also as between the various destination points. HELD, rates for future to typical points are those set out below. Rates from group 2 to St. Joseph, Mo., unreasonable and unduly prejudicial to extent they exceed rates to Kansas City, Mo. Rates on fuel oil unreasonable to extent they exceed 80% of rates on refined oil. No change in existing rates to North Dakota and South Dakota, Minnesota beyond St. Paul and in northern group of Michigan. From Group 3 to Kansas City 27 c, Des Moines 33c, Cedar Rapids 35.5 c, Fort Dodge, 36.5 c, Mason City 38 c, Omaha 33 c, Lincoln 33 c, Sioux City 36 c, Sioux Falls 40 c, St. Louis, Mo. 32 c, Keokuk 33.5 c, Dubuque 38 c, Peoria 36 c, Chicago 39 c, Milwaukee 42 c, Wausau 46 c, St. Paul 42 c, Duluth 47 c, rates from the other groups varying differences under or over group 3. Midcontinent oil rates, 1925, 112 I. C. C. 421.

(d) In 96 I. C. C. 485 complainant attacked commodity rates on petroleum products, carloads from Tulsa, Okla., and grouped points to Indiana as unreasonable. In 96 I. C. C. 485 reasonable rates were prescribed. HELD, in view of the substantial similarity of the transportation conditions, in Indiana and Illinois, there is no warrant for the maintenance of higher rates to points in western Indiana than to Chicago and other Illinois points taking the same rates. The Commission is of the view that other factors warrant higher rates on the average to Indiana destination than to Chicago, distances considered. HELD, rates attacked unreasonable to extent they exceed 39 c, 41 c, 43 c, 45 and 45.5 c, to Indiana destinations west to east, fuel oil rates to be 80% of refined oil basis. Indiana State Chamber of Commerce v. A. T. & S. F. Ry., 112 I. C. C. 481.

(e) Complainant attacked commodity rates on coal, carloads from mines in the southwestern producing district of Kansas, Missouri, Arkansas and Oklahome to Lincoln and Havelock, Neb., as unjust, unreasonable and unduly prejudicial to extent they exceed the rates to Omaha, Neb., by more than 20 c per ton prior to July 1, 1922, and 18 c per ton thereafter, and for future to extent they might exceed the rates to Omaha. In 101 I. C. C. 759, division 2 found the attacked rates not unreasonable but unduly prejudicial to extent they exceed the rates to Omaha. In 89 I. C. C. 73, the Commission found rates on coal from these southwestern mines to Omaha and other Missouri river cities unreasonable and prescribed reasonable maximum rates. All routes named in the tariffs apply through Kansas City, Mo. From Kansas City the direct routes to Lincoln and Omaha are the Burlington and M. P., distances about 200 miles to both cities over either route. Havelock is on the Rock Island and Burlington about 5 miles east of Lincoln. Over the present authorized routes the average distance to Lincoln from all mines on all lines is from 10 to 31 miles shorter than to Omaha, and over the shortest practicable routes the average distance to Lincoln would be shortened by 44 miles. HELD, attacked rates to Lincoln and Havelock unreasonable to extent they exceed the rates to Omaha. Fourth section order granted relief to Rock Island. Lincoln Chamber of Commerce v. A. C. R. R., 113 I. C. C. 161.

(f) Complainant attacked commodity rates charged on fresh meats, and packing house products, carload and less carload, from Pueblo, Colo., to New Mexico as unreasonable, discriminatory, and, as compared with rates on like traffic from El Paso and Fort Worth, Tex., Oklahoma City, Okla., Wichita, Kan., and Cactus, Ariz., to the same destinations, unduly prejudicial and preferential. Complainant seeks the establishment to New Mexico points of rates on fresh meats and packing house products on basis of the scale now in effect in Arkansas, Oklahoma, Texas and New Mexico, 1716 scale, originally prescribed in 22 I. C. C. 160, and modified by the subsequent general increases and general reduction. Defendants offer to establish the scales provided in 81 I. C. C. 115 and 100 I. C. C. 4, the latter being about 20% higher than the 1716 scale. The movement from Pueblo is over a line of difficult operating conditions. HELD, rates attacked unreasonable to extent they exceed rates ranging

on fresh meats 47 c carload and 71 c less carload for 160 miles, packing house products 39.5 c carloads and 52 c less carload to 158 c on carloads and 240 c less carloads on fresh meat and 131 c carload and 171 c less carloads on packing house products for 1,000 miles, reparation awarded. Nuckolls Packing Co. v. A. T. & S. F. Ry., 113 I. C. C. 229.

(g) Complainant attacked commodity rates on newsprint paper, carloads, from Merrill, Wis., and other producing points in Wisconsin and Minnesota to Keokuk, Ia., since Jan. 13, 1922, as unreasonable and unduly prejudicial as compared with rates to Peoria and Chicago, Ill., Fort Madison and Burlington, Ia. Origin relationships were prescribed in 66 I. C. C. 571. Merrill is in the Fox River group. Keokuk, Ft. Madison and Burlington are on the Mississippi River. Keokuk is 171 miles north of St. Louis, 24 miles south of Ft. Madison and 43 miles south of Burlington. Keokuk was in the St. Louis group and Ft. Madison and Burlington in the Peoria group, rate to St. Louis 22.5 c and to Peoria 20.5 c. HELD, rates attacked not unreasonable but unduly prejudicial to extent rates to Keokuk exceed the rates to Ft. Madison, reparation denied. Keokuk Shippers Asso. v. B. Ry. of Chicago, 113 I. C. C. 286.

(h) Group rates on gasoline and other so-called refined oils now taking the same rates from points in the mid-continent field of Missouri, Kansas, Oklahoma, Arkansas, Louisiana, and Texas, to destinations in western trunk-line territory, Illinois, Indiana, and northern peninsula of Michigan, as a whole, found not in excess of reasonable maximum rates, but said rates are unduly prejudicial or preferential as between various origin groups and also as between various destination points. Reasonable and non-prejudicial rates or bases of rates prescribed. Midcontinent Oil Rates, 1925, 112 I. C. C. 421.

(i) Speaking generally, rate groups under section 15a should be designated having two tests in mind, (a) the practicability of determining the rate of return of the carriers constituting the group, and (b) the suitability of the territory for grouping for rate-making same rate group. Revenues in Western District, 113 I. C. C. 3, 27.

(j) If carriers in certain portions of any rate group designated under section 15a of the act are in a more prosperous condition than those in remainder, this fact may be considered in determining relative levels in different portions of same rate group. Revenues in Western District, 113 I. C. C. 3, 27.

(k) Complainant attacked commodity rates on articles in the uniform brick list from Johnsonburg, Pa., group to Atlantic Seaboard cities as unreasonable and unduly prejudicial as compared with rates from the Clearfield, Pa., group. The rates on brick to Atlantic seaboard cities and grouped points from the Clearfield, Johnsonburg and other producing groups in western Pennsylvania are made differentially under Pittsburgh, Pa. The Clearfield group takes a differential of 20c, Johnsonburg, Brookville and Johnstown groups 10c and Connellsville group 5c. Rate from Pittsburgh to New York is $4.20, Boston is 40c over, to Philadelphia and Baltimore 40 and 60c under New York. Prior to Nov. 1, 1918 the Johnsonburg group took the same rates as the Clearfield group and since that date it has taken the same rates as the Brookville group. HELD, rates attacked are properly aligned with the rates from other producing points, rates attacked not unreasonable or unduly prejudicial. Complaint dismissed. Alumina Shale Brick Co. v. B. & O. R. R., 113 I. C. C. 496.

(l) Rates on peaches and grapes from producing points in California to Hibbing, South Hibbing, Ely, Aurora, Virginia, Eveleth, Chisholm, and Gilbert, Minn., found unreasonable to the extent they exceeded lower blanket rate contemporaneously in effect to Duluth. Reasonable rate prescribed for future and reparation awarded. Hansen-Peterson Co. v. A. T. & S. F., 113 I. C. C. 575.

(m) Rates on bituminous coal from points in the Brazil-Clinton, Linton-Sullivan, Princeton, and Booneville groups in Indiana, to Hoopeston, Ill., found unreasonable as compared with rates from other Indiana and Illinois mines for comparable distances, rates from the Brazil-Clinton and Linton-Sullivan groups particularly being too high when tested by the Holmes & Hallowell scale prescribed in 69 I. C. C. 11, for application in a higher-rated territory. Reasonable rates prescribed for future and reparation awarded. Iliff-Bruff Chemical Co. v. C. & E. I., 113 I. C. C. 606.

(n) Rates to two competing points or groups may be within the range of reasonableness, and thus not in violation of section I of the act, but may be, nevertheless, improperly related and result in undue prejudice in violation of section 3. In such case commission may, where warranted by the record, prescribe specific rates to one or both of the competing points in order to remove undue prejudice. Ridenour-Baker Mercantile Co. v. A., T. & S. F., 113 I. C. C. 629, 634.

(o) Complainant attacked commodity rate of $4.92 charged on numerous cars of slack coal between June 1 and Sept 20, 1923, from Colorado on the D. & S. L., to Superior, Neb., as unreasonable to extent it exceeded $4.30. Complainants shipments originated at Milner, Haybro, McGregor and Mount Harris, points in Routt County in the Oak Hills district. Shipments moved D. & S. L., to Denver, Burlington beyond 617 miles. Rates on coal from producing points in Colorado and Wyoming are generally made the same as or with relation to rates from the Walsenburg group. HELD, rate attacked not unreasonable, complaint dismissed. Nebraska Cement Co. v. C. B. & Q. R. R., 113 I. C. C. 729.

(p) Complainant attacked commodity rate charged on various cars of crushed stone shipped from Marble Cliff, O., to Cairo, W. Va., from May to Sept. 1924 as unreasonable and unduly prejudicial to extent it exceeded $1.44. Marble Cliff is a local station on the Pennsylvania just outside of Columbus, O. Cairo is on the main line of the B. & O., 29 miles east of Parkersburg, W. Va., shipments moving through Wheeling, W. Va., about 298 mlies. Charged $2.25. The rate applicable is a group rate and group rates are in effect to Cairo on classes and other commodities from points in central territory. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. West Virginia State Road Commission v. Penn. R. R., 113 I. C. C. 740.

(q) Complainant attacked commodity rates on coal, bituminous, carloads, from coal mining districts in Ohio and from the so-called Inner Crescent region, embracing certain portions of Pennsylvania, Maryland, West Virginia, Tennessee, Virginia and Kentucky to all points in Indiana as unjust, unreasonable and unduly prejudicial. Although complainant insists that grouping of destinations has been based on considerations affecting coal producers and carriers without due regard to the interests of the consumer, examination of previous reports will show that the latter have not been lost sight of. HELD, rates attacked not unreasonable or unduly prejudicial, complaint dismissed. Indiana State Chamber of Commerce v. A. A. R. R., 115 I. C. C. 650.

(r) Complainant attacked commodity rates charged on 35 cars of muriate of potash shipped between July 1, 1920 and Feb. 1, 1921 from Salduro, Utah to Chicago Heights, Ill., as unreasonable. Salduro is on the W. P., 113 miles west of Salt Lake City, Utah. The applicable 61.5c combination is based on East Fort Madison, Ill. The applicable 84.5c and 74.5c combinations are based upon East St. Louis, Ill., and that of 69c upon Savanna, Ill., The shipments required no special equipment. Loss and damage claims on this commodity are negligible. Complainant contends that Chicago Heights, a group D point should have taken the same rates as St. Louis, a Group E point. Prior to Feb. 28, 1920, a rate of 75c applied on both grades of potash to both groups. On that date a rate of 62.5c to both groups was established on low grade potash. On Feb. 29, 1920, rates of 60c in high grade and 50c on low grade were established to group E. After these shipments moved the rates on high grade potash to Groups D and E and on low grade potash to group D were reduced to the level of the rate on low grade potash to Group E. HELD, rates charged inapplicable, not unreasonable, complaint dismissed. Armour Fertilizer Works v. W. P. R. R., 115 I. C. C. 684.

(s) Complainant attacked commodity rates charged on cars of coal to Hutchinson and Wichita, Kas., from western Arkansas and eastern Oklahoma, Oct. 1, 1922, to Oct. 25, 1924, as unjust and unreasonable. The great majority of the shipments upon which reparation is sought moved M. P., and Midland Valley principally from Arkansas with occasional participation by other defendant lines; and the rates attacked are those published by the Rock Island, the Midland Valley and the M. P. The rates attacked bear favorable comparison in general with rates from the originating groups to points in Kansas, and from

Murphysboro, Ill., to Missouri and Arkansas. Some of the lines serving certain of the important groups of origin are not made parties and a readjustment along the lines proposed, upon unconfirmed and incomplete distance bases, would also make no provision for many of the producing points and might undesirably disrupt the present groups. HELD, rates attacked not unreasonable, complaint dismissed. Bunte v. C. R. I. & P. Ry., 118 I. C. C. 66.

(t) Complainant attacked commodity rates charged on gasoline, carloads, from Texas and Oklahoma to Bradford, Pa., as unreasonable and in violation of the fourth section. Bradford is 78 miles southeast of Buffalo, 98 miles southwest of Rochester, N. Y., and 208 miles northeast of Pittsburgh, served by the B. R. & P., Pennsylvania and Erie. Applicable rates were 71.5c prior to May, 1924, and 70c thereafter, corresponding rates to Buffalo were 65.5c and 64c, from Oklahoma, 67c to Bradford and 60.5c to Buffalo. Bradford is in trunk line territory and rates thereto from Texas and Oklahoma are and have been for many years on the Rochester basis. The Buffalo rate applies to points west of the line dividing central and trunk line territories. HELD, rates attacked not unreasonable. complaint dismissed. Kendall Refining Co. v. A. & V. Ry., 118 I. C. C. 689.

(u) Rates on bituminous coal from mining districts in Ohio and from the so-called Inner Crescent regions, to all points in Indiana found not unreasonable or unduly prejudicial as compared with rates from same origin points to destinations in western Ohio, the southern peninsula of Michigan, and in Illinois; nor does grouping of Indiana destinations result in undue prejudice to certain localities and undue preference of others. The history and propriety of general adjustment of coal rates from the Inner and Outer Crescents and in Ohio were exhaustively considered in various cases and were found not unreasonable or otherwise unlawful. Moreover the groups have been long maintained and evidence of record does not warrant a disturbance of the present adjustment. Indiana State Chamber of Commerce v. A. A. R. R., 115 I. C. C. 650.

(v) Rates on bituminous coal from Spadra and Greenwood groups in western Arkansas, and Oolagah and McAlester groups in eastern Oklahoma, to Wichita and Hutchinson, Kans., found not unreasonable as compared with those from same territories to Kansas City, Mo.-Kans., prescribed in 89 I. C. C. 73; 113 I. C. C. 161. Rates assailed compare favorably, distance and earnings considered, with those in same general region; from origin groups to Kansas points and from Illinois points to Missouri and Arkansas; also with single-line and joint-line intrastate scales in Kansas, Missouri, Oklahoma, and Arkansas. Moreover, while rates are apparently not related throughout as they should be, a readjustment to basis sought would make no provision for many producing points and might disrupt present groups. Bunte v. C., R. I. & P., 118 I. C. C. 66.

(w) Complainant attacked commodity rates on bituminous coal, in carloads, from origin groups in Arkansas and Oklahoma to Topeka and Lawrence, Kas., as unreasonable, unjustly discriminatory and unduly prejudicial. The record indicates that the maintenance of rates to Kansas City, Leavenworth, Atchison and St. Joseph from the Arkansas-Oklahoma and Spadra groups lower than rates from the same groups to Lawrence and Topeka affects the complainants only indirectly. The record indicates that the present rates are too high. HELD, rates attacked on lump and slack coal from the Arkansas-Oklahoma group and the Spadra, Ark., group to Lawrence are unreasonable to extent they exceed $2.80 per ton on lump and $2.40 per ton on slack from the Arkansas-Oklahoma group and $3.05 on lump coal and $2.40 on slack coal from the Spadra group. Rates on slack coal from the same points of origin to Topeka not unreasonable but rates on lump coal from the said points of origin to Topeka unreasonable to extent they exceed $2.95 from the Arkansas-Oklahoma group and $3.20 from the Spadra group. Reparation awarded. Albert Silk Coal Co. v. A. T. & S. F. Ry., 120 I. C. C. 69.

(x) Case was reopened for further hearing solely for the purpose of developing the facts with respect to the lease of the C. C. & O. by the L. & N. and the A. C. L., and the effect thereof upon the rate situation. Complainant attacked rates on coal from Appalachia and Dante districts, Va., to North and South Carolina, Georgia and Florida. HELD, rates attacked to Jacksonville and to points in Florida basing on Jacksonville unduly prejudicial to extent the rate from the Appalachia and Dante districts to Jack-

sonville exceeds the rate from the Harlan County district group 4 to Jacksonville, and other rates attacked not unduly prejudicial. Virginia Coal Operators Asso. v. A. & R. R. R., 120 I. C. C. 283.

(y) Complainant attacked commodity rates on lumber and forest products taking the same rates, in carloads, from Virginia, North Carolina, South Carolina, Georgia and Florida and in Alabama east of the L. & N., Southeast, to Jersey City, Weehawken, Bayonne, Perth Amboy, Newark, Harrison, Trenton and New Brunswick, N. J. as unreasonable. The instant proceeding is one of destination relationship, complainant contending they do not reflect the proper spread under the rates to New York. It is not unusual for a general adjustment such as that resulting from 85 I. C. C. 270, to include increases as well as reductions in rates. The fact that the spread in the rates to Jersey City and Trenton under New York is less than that formerly existing does not demonstrate that the rates attacked are unreasonable nor is there other evidence of record which would justify such a finding. HELD, rates attacked not unreasonable except that rates for D. L. & W. and Erie deliveries at Newark and Harrison and for Erie delivery at Weehawken are unreasonable to extent they exceed the rates prescribed in 85 I. C. C. 270. New Jersey Lumbermens Com. v. A. C. L. R. R., 120 I. C. C. 329.

(z) Sixth-class rates and minimum weights on spelter from Trenton, N. J., to Atlanta, Birmingham, and Chattanooga, and points grouped therewith, found unreasonable as compared with lower commodity rates taking a higher minimum contemporaneously in effect from spelter-producing points in eastern Pennsylvania relatively close to Trenton, to same destinations; also with those from and to various other points for comparable distances. Reasonable rates and minimum weights prescribed for future. Federated Metals Corp. v. P. R. R., 120 I. C. C. 181.

(aa) In considering group rates, distance alone is not controlling, for the very nature of such rates usually involves some disregard for distance. Virginia Coal Operators' Asso. v. A. & R., 120 I. C. C. 283, 292.

(bb) Rates on bituminous coal from Elkville, Ill., to destinations in Missouri, Iowa, Kansas, Arkansas, Colorado, Montana, Nebraska, Oklahoma, South Dakota, and Wyoming, found unreasonable and unduly prejudicial to extent they exceed corresponding rates from Dowell, Ill., and other points in so-called DuQuoin group. Except for slightly greater distance, transportation and other conditions from Elkville are substantially similar to those applying from DuQuoin group, and Elkville should be included therein rather than in the southern Illinois group. Reasonable and nonprejudicial rates prescribed for the future. Black Servant Coal Co. v. I. C., 120 I. C. C. 604.

(cc) Complainant attacked commodity carload rate of $3.83 on phosphate rock, from Brewster, Fla., to Pelham, Ga., as unreasonable. Pelham is in southwestern Georgia on the A. C. L., and Brewster is on that line 12 miles from Bartow, Fla., distance 342 miles from Pelham. Rock loads heavily and moves in great volume. Loss and damage claims are negligible. Rates on rock are grouped, both from the producing sections and to the principal southeastern consuming points. $3.83 is applicable from Group 2 and a rate of $2.93 is applicable from Group 1. It should be borne in mind that by far the greater portion of the haul is in Florida, where there is a lack of through or overhead traffic and a generally lighter traffic density and higher rate level than in the case of hauls through the territory north of that state. HELD, rate attacked not unreasonable, complaint dismissed. Pelham Phosphate Co. v. A. C. L. R. R., 122 I. C. C. 509.

(dd) Complainant attacked commodity rates on grain and grain products, in carloads, from all points in Utah and from points on the O. S. L. and U. I. C., in Idaho, Montana, Oregon and Wyoming to Utah, Colorado, Nebraska, Kansas, Oklahoma, Texas, Minnesota, Iowa, Missouri, Arkansas, Louisiana, Wisconsin, Illinois, Indiana, Kentucky, Tennessee, Mississippi and Alabama as unjust and unreasonable and unduly prejudicial as compared with rates from California, Colorado, Montana, Oregon and Washington and in violation of section four. RATES TO MISSOURI RIVER EAST AND SOUTHWEST. From points west of a line drawn from Duluth, Minn., through Minneapolis, Minn., Omaha and Kansas City in general the rates on grain to the east are based on combinations to and from one or more of the markets named. Wheat from the west through

Omaha the outbound proportional rates from that point are 13.5 cents to St. Louis, Mo., 15.5 cents to Peoria, Ill., 16.5 cents to Minneapolis, and 17.5 cents to Duluth and Chicago. This differential relationship of markets does not apply on traffic from the territory west of Colorado common points. From the north Pacific coast terminals and from a considerable territory in Washington and Oregon the rates on wheat are blanketed both as to points of origin and as to points of destination. The universal application of transit privileges in connection with the rates on grain has resulted from the policy of equalizing various mills, whether located near points of production or in the consuming territories. The great preponderance of the tonnage handled by defendants in the intermountain territory finds neither origin nor destination therein, but is simply handled through in what is practically an unbroken movement. On these long hauls there is a minimum of terminal expense incurred within the borders of Idaho, Utah, Wyoming and Colorado. The intermountain states are entitled to receive some benefit, and do benefit from the enormous volume of traffic which passes through them on its way to and beyond their borders, but the volume of traffic contributed by the intermountain territory does not entitle it to all of the benefit claimed from this situation. HELD, rates on grain to points in Colorado are not unreasonable or otherwise unlawful, except that to Colorado common points the rates from the following points in Utah are unreasonable to extent they exceed 41.5 cents on wheat and 37.5 cents on coarse grains from Utah common points, and from Morgan, Cisco, Green River and Price; 49.5 cents and 44.5 cents, respectively, from Delta; 54 and 48.5 cents from Milford; and 54.5 cents and 49 cents from Wendover. The rates on grain and grain products, carloads, from Colorado common points to Texas, Oklahoma, Arkansas, Louisiana and Mississippi are unreasonable to extent they exceed certain specified rates to specific destinations. To other points in the states named to which rates are attacked in the complaint the carriers will be expected to make such changes in the rates as may be necessary to place them on a basis consistent with the rates herein prescribed. The rates on grain from Colorado common points to other destinations here considered are not unreasonable. The rates on grain and grain products, in carloads, from Utah, Idaho and Oregon to all destinations to which rates are attacked, except to Utah and Colorado, will be unduly prejudicial to extent they exceed the rates from Denver by more than named differentials. Rates on flour to Colorado common points from the rest of the origin to destinations, and from the whole of that territory, including Colorado common points, to the entire destination territory, are unreasonable to extent they exceed the rates on wheat. Rates to Utah and Colorado on the Rio Grande not unjust or unreasonable. Ogden Grain Exchange v. A. & S. Ry., 122 I. C. C. 691.

(ee) Complainant attacked charges collected on 300 cars of fertilizer shipped from Philadelphia to destinations on Long Island, N. Y., from Jan. 19 to Aug. 1, 1924, as unreasonable. Shipments moved to Long Island groups A, B, C, and D for average distances of 117, 123, 140 and 185 miles, charged 18.5, 21, 22, and 25 cents. On Dec. 6, 1924 these rates were reduced to 16.5 cents, 19, 20 and 22.5 cents. The commodity rates from Baltimore were 3.5 cents less than the sixth class rates. The rates charged were the same as the sixth class rates. HELD, rates attacked unreasonable to extent they exceeded the subsequent published rates, reparation awarded. Tunnell & Co. v. Pennsylvania R. R. 123 I. C. C. 581.

(ff) Complainant alleged that commodity rates on salt, in carloads, from Kansas, Michigan and Ohio to Mason City, Ia., were unreasonable. Charged 31 cents minimum 80,000 pounds from the Kansas group; 29 cents minimum 37,500 pounds from the Michigan group and 31 cents minimum 37,500 pounds from the Ohio groups. Reparation is asked to the basis of the commodity rates of 25.5 cents from the Kansas field, 26 cents from the eastern Michigan and Ohio fields and 24.5 cents across lake from Ludington and Manistee, Mich., minimum 45,000 pounds. In Salt from C. F. A. to Western Trunk Line destinations, 74 I. C. C. 409, the commission explained at some length that the proposal to reduce the 29 cent rate from the Michigan group to Des Moines and Harvard, Ia., to 25.65 cents without likewise reducing the rate of 29 cents to Mason City was obviously unjustifiable. HELD, rates attacked unreasonable to extent

they exceeded those established May 23, 1925, reparation awarded. Decker & Sons v. U. P. R. R., 123 I. C. C. 621.

(gg) Fifth-class rates assessed on petroleum products from Bayonne and Tremley Point, N. J., to Fresh Pond, N. Y., all Group A points, found unreasonable as compared with commodity rates from various refining points to destinations in eastern trunk-line and New England territories; as compared with commodity rates contemporaneously in effect from Point Breeze, a Philadelphia group point, to Fresh Pond, established in compliance with commission's findings in Transcontinental Oil Co., 89 I. C. C. 738; and to extent it exceeded lower rate subsequently made effective to all Group A points, some of which involve a materially longer haul than to Fresh Pond. Reparation awarded. Transcontinental Oil Co. v. C. R. R. Co. of N. J., 122 I. C. C. 61.

(hh) Group rate on phosphate rock from Brewster, Fla., to Pelham, Ga., found not unreasonable as compared with lower group rate to Valdosta and Blackshear, Ga. In a group adjustment, such as that under consideration, there must be dividing lines, and where one point is located on or near this dividing line and another point just across that line in a higher rated group there will be a difference in rates. Along the border lines between groups the comparative situation is necessarily more acute than in case of average difference between points in two adjoining groups. Moreover, on phosphate rock from Brewster to Pelham, the greater portion of the haul is in Florida, where there is a lack of through or overhead traffic and a generally lighter traffic density and higher rate level than in case of hauls through territory north of that State. Pelham Phosphate Co. v. A. C. L., 122 I. C. C. 509.

(ii) Ordinarily where rates are made on a group basis, rates from an origin group to a destination are the same over all routes from the group. Mere fact that a route is a joint-line haul does not in itself warrant a rate higher than is reasonable for a single-line haul. Anthracite Coal Investigation, 122 I. C. C. 527, 535.

(jj) Carriers participating in circuitous routes under similar circumstances and conditions may reasonably expect to charge higher rates than over the short route, but extent of such circuity which would justify a difference in rates may depend upon methods of construction. Where grouping is extensively employed at both origin and destination, and where reasons of sound public policy exist for treating rates and routes collectively rather than individually, substantial differences in distance over routes whose use public convenience and necessity require may reasonably be disregarded; but fact that rates are to be applicable over all such routes must be given due weight in fixing their level. Anthracite Coal Investigation, 122 I. C. C. 527, 536.

(kk) Upon reconsideration, former report 115 I. C. C. 667, modified so as to provide that rates on rosin and turpentine, and articles taking same rates from producing points in southwestern group to Kansas City, Mo., are and will be unreasonable to extent rates on rosin and turpentine exceed those approved in 87 I. C. C. 740; 89 I. C. C. 634; and to destinations in c. f. a., territory, unreasonable and unduly prejudicial to extent they exceed maximum reasonable and nonprejudicial rates prescribed in original report. Turpentine & Rosin Producers Asso. v. A. & V., 122 I. C. C. 549.

(ll) The Houston—Galveston group embraces a strip of territory extending along the Gulf coast for approximately 100 miles, and takes in such ports of call as Galveston, Houston, Beaumont, Port Arthur, and Orange. Consolidated Southwestern Cases, 123 I. C. C. 203, 336, 337.

(mm) Rates on pig iron from Buffalo, N. Y., and Punxsutawney and Du Bois, Pa., to destinations in New England, found not unduly prejudicial to Buffalo or unduly preferential of Punxsutawney and Du Bois. While complainants contend that their business has decreased because their competitors, situated a greater average distance from same general market, pay the same rates, record indicates that complainant's shipments have increased for several years. While Buffalo has a longer haul at same rate on traffic to New York, Du Bois, and Punxsutawney have a longer haul at same rate on traffic to New England. Moreover three points named are and always have been grouped as to pig-iron rates to New England destinations and New York rate points and no reason appears for disturbing this adjustment. Hanna Furnace Co. v. N. Y. C., 123 I. C. C. 627.

(nn) In the creation of large groups distances must, to a certain extent, be

disregarded. Hanna Furnace Co. v. N. Y. C., 123 I. C. C. 627, 630.

(oo) Complainant alleged that the rates on grain and grain products, carloads, from points on the O. S. L. in Oregon, Idaho, Montana, Utah and Wyoming, from points in Utah on the Bamberger Electric, the D. & R. G. W., L. A. & S. L., S. P., U. P., U. I. C., and W. P., and from points on the main line of the Rio Grande in Colorado west of and including Salida, to points in Arizona and California, and to Portland and Astoria, Oreg., and Seattle, Wash., as unjust and unreasonable, unduly prejudicial of complainant in that the rates on the same commodities from California, Colorado, Idaho, Kansas, Minnesota, Montana, Nebraska, Oklahoma and Texas are unduly preferential of competitors in those states, and in violation of section four. Rates on the same commodities from many of the same points of origin to eastern destinations were recently prescribed in Ogden Grain Exchange, v. A. & S. Ry., 122 I. C. C. 691. RATES TO CALIFORNIA. From all points on the O. S. L., Los Angeles and San Francisco take the same rates. Rates to Los Angeles established by the U. P. were duplicated by the S. P. and W. P. to San Francisco and points grouped therewith. Rates to interior California points are generally based on combinations over San Francisco, Stockton, Los Angeles or Colton. Where joint rates are in effect, generally speaking they do not exceed the transcontinental westbound rates. The transcontinental rates apply to practically all points in California. The rates from points farther east to California are widely blanketed. From Kansas the rate to San Francisco extends back through California, Arizona, and New Mexico to Albuquerque, N. M., on the Santa Fe, a distance of more than 1,100 miles. The same is true of points on the S. P. west of Deming, N. M., and points on the S. P., W. P., and U. P. west of Utah. The same rates, namely 68c on wheat and 75c on flour, apply from Kansas, Nebraska, Missouri river cities, Oklahoma and Texas. The same rate applies to California from Kansas City as from Amarillo, Tex. RATES TO OREGON. From the Missouri river and Kansas a blanket rate of 68c and from Colorado common points a rate of 59c apply to Portland and Seattle. Certain definite relationships now exist from the origin territory to the north Pacific terminals. In all cases the rates on wheat to Tacoma and Seattle are 3c higher and to Astoria 5c higher than to Portland, although from the origin territory Seattle is about 180 miles and Astoria about 100 miles more distant than Portland. The relationship has resulted in part at least from the Columbia Basin case, 59 I. C. C. 321, 62 I. C. C. 633. RATES FROM MONTANA. Complainant shows that the rates attacked are higher, distance considered, to both California and the Pacific northwest than those from Montana to the same destinations. HELD, attacked rates to north Pacific coast and California terminals are not unreasonable except that from and to certain points specific rates are prescribed. The Commission shall expect the carriers to continue in the new rates the general relationships now existing between the rates on this traffic to Portland on the one hand and other north Pacific coast points on the other. HELD, from all points of origin to destinations in interior California, the Imperial Valley, and Arizona the rates attacked are unreasonable to extent they exceed rates indicated. Ogden Grain Exchange v. A. E. R. R., 126 I. C. C. 255.

(pp) In considering the reasonableness of group rates, distances and ton mile earnings between selected points can not be regarded as controlling. The reasonableness of such rates must be judged by average conditions. Humble Oil & Refining Co. v. B. S. L. & W. Ry., 126 I. C. C. 717, 720.

(qq) Rates on bituminous coal from mines in Pennsylvania and West Virginia to points in the Warren district in Pennsylvania, which is included in the Buffalo, N. Y., rate group, found not unreasonable or unduly prejudicial as compared with those from same points to Buffalo rate group as a whole. Buffalo group adjustment is not maintained solely with respect to Pittsburgh district and any reduction in rates to Warren district would require similar reductions throughout a large portion of the group. Rates are not out of line with those for similar hauls from other Pennsylvania groups to points in the east and in view of delicacy of coal-rate adjustment in this territory and long-continued maintenance of the Buffalo group, evidence is not sufficient to require a disruption of that group. National Petroleum Asso. v. B. & O., 126 I. C. C. 11.

(rr) Rates on lumber and related articles from points in coast, Spokane, and Oregon groups (Group 1, 2, and 3)

to Gordon, Irwin, Merriman, and Eli, Nebr., found unreasonable to extent they exceeded rates based on distance scale prescribed in 104 I. C. C. 695, for application in same general territory. Carriers required to preserve the existing competitive relationships between the various groups as pointed out in 78 I. C. C. 746, in publication of rates in conformity with that scale. Reasonable rates prescribed for future and reparation awarded. Walrath & Sherwood Lbr. Co. v. C. & N. W., 126 I. C. C. 97.

(ss) Rate on wrapping paper from Bastrop, La., to Dallas and Wichita Falls, Tex., found not unreasonable as compared with rates to Dallas from Kansas City, St. Louis, and Chicago for comparable distances, or with lower rate contemporaneously in effect from Elizabeth, La., to Dallas subsequently established over route of movement. Latter rate was not applicable via Bastrop, whereas rate assailed applied from Bastrop, New Orleans, and other Louisiana points grouped therewith to all Texas common points, and record contains no evidence of improper grouping. Dallas Paper Co. v. A. & L. M. Ry., 126 I. C. C. 739.

(tt) Rates on casing-head gasoline from Delaware, Okla., to Los Angeles, Avon, and Martinez, Calif., found unreasonable to extent they exceeded blanket rates contemporaneously in effect between same points. Blanket rates apply generally from mid-continent oil field to California, but combination rate was assessed due to failure of one participating carrier to become a party to blanket rate until subsequent to movement. Reparation awarded. Henderson Co. v. A., T. & S. F., 128 I. C. C. 59.

(uu) Proposed revision of rates on coal from mines in southern Illinois, western Kentucky, and the Birmingham district of Alabama, to destinations in Mississippi Valley, in purported compliance with findings in 109 I. C. C. 740, found justified as to destinations west of the Mississippi River, but not east thereof, except as to that portion covered by the zoning plan described in the report, provided that if slight changes in rates are necessary to comply with findings as to rates within the respective zones, such changes are authorized. However, investigation reveals the fact that no change can be made in adjustment of proposed rates in eastern part of Mississippi Valley territory which would not involve changes at other points and thus produce conflicts with section 4 of the act. Coal from Illinois, Kentucky and Alabama 128 I. C. C. 113.

(vv) An extensive group or blanket adjustment necessarily disregards, to some extent, differences in distance and other elements which go to make up cost of service, and when arbitraries over group rates for comparatively short branch-line hauls are proposed the essential issue to be determined is not so much the reasonableness per se of the through rates which would result, as the propriety of the proposed arbitraries in the light of the extensive group adjustment voluntarily maintained by the carriers. Grain from Montana, 128 I. C. C. 123, 124, 125.

(ww) It is unfair to consider only the shortest possible routes in measuring an established group rate which applies from points on a number of originating carriers and over various routes. Iowa R. R. Commissioners v. A. & S., 128 I. C. C. 293, 298.

(xx) All grouping for rate purposes is necessarily more or less arbitrary. Group lines generally have the appearance of injustice to some point just across the line. Yet the line must be drawn somewhere or the grouping abandoned. Once established, groups should not be lightly or unnecessarily disturbed. Sand from Pleasant Lake, 128 I. C. C. 439, 440.

(yy) While commission has often approved blanket rates covering substantial areas, such approval has been contingent upon presentation of adequate reasons therefore, and it has heretofore stated that in making a blanket adjustment, burden rests upon carriers to provide rates that shall not be unreasonable. In establishing rates on commodities moving in large volume from port cities to inland points of consumption a certain amount of latitude should be permitted in blanketing those rates, but to justify a blanket the lengths of the hauls from its edge to points within ought to bear a reasonable relation to entire haul. See 33 I. C. C. 33. International Paper Co. v. B. & M., 128 I. C. C. 466, 469.

(zz) Upon further argument, findings in former report in No. 15061, 107 I. C. C. 245, that rates on articles in uniform brick list from Danville, Ill., to points in Wisconsin, Michigan, Minnesota, and North Dakota were not unreasonable but unduly prejudicial, affirmed, but finding that the Wabash Valley group should be

divided into two subgroups in making rates to destination territory involved, modified so as to include Danville in the Wabash Valley group in accordance with findings in 68 I. C. C. 213. While evidence supports finding in original report that rates were not unreasonable, the relative adjustment complained of, under which differences in rates of Danville over competing Illinois points are greater than differences in distances warrant, clearly subjects Danville to undue prejudice and disadvantage. Nonprejudicial relationships of rates prescribed for future. Western Brick Co. v. N. Y. C., 128 I. C. C. 479.

(3a) Complainant attacked commodity rates on grain and grain products, in carloads, from Oklahoma to destinations in Louisiana, Mississippi, Tennessee, Alabama, Georgia, Florida, North Carolina and South Carolina as unreasonable and in violation of section four. The general basis of rates on grain and grain products from points west of the Mississippi river to southern territory is the combination to and from Mississippi or Ohio river crossings. Under this basis the through rates from the producing territory north of Oklahoma are equalized via the different gateways, but from Oklahoma there is no such equalization, the lowest combination in the great majority of instances making on Memphis, Tenn. The rates to Memphis are to a considerable extent grouped from a large part of Oklahoma, the present group rates being 31.5c on wheat and flour and 28.5c on corn. As a general rule, the rates from points located on lines which do not reach Memphis are on a higher basis, and in some instances on a combination over the junction point. They are also on a higher basis from points on all lines in the extreme western portion of the state. The trend of the recent decisions has clearly been against combination rates between territories. As a rule, in the case of these combination through rates on grain and grain products the factors which apply from the primary markets are proportionals which are lower than the corresponding local rates. In some measure, therefore, the principle is recognized that through rates should be lower than the combination of intermediate local rates. In view of the long continuance of the present method of constructing interterritorial rates and the support which the Commission has given to that method in prior decisions, the Commission is not prepared on the limited record in this case to find that it ought to be discontinued from a single state in the grain producing territory west of the Mississippi river. RATES TO WESTERN LOUISIANA. Local and joint rates on grain and grain products are in effect generally from Oklahoma to points in Louisiana on and west of the Mississippi river. HELD rates attacked on grain and grain products in caroads from points in Oklahoma to destinations in Louisiana west of the Mississippi river, including points on the west bank thereof, and to Mississippi river crossings in Mississippi and Louisiana on the east bank thereof are, and for the future will be, unjust and unreasonable to the extent they exceed on wheat and flour the column 20 rates, and on coarse grain rates the column 17½ rates, as set forth in Appendix 13 to the report in the Consolidated Southwestern cases. Oklahoma Millers League v. A. & M. R. R., 128 I. C. C. 523.

(3b) Fifth-class rates on green salted hides from various points to Ludlow, Pa., a Rochester group point, found not unreasonable as compared with lower rate contemporaneously in effect to Buffalo group points, or with rates between various other points for comparable distances. While complainant sought extension of Buffalo group rates to include Ludlow and contended that rates on green salted hides to other points were lower than the normal basis generally applicable on other traffic, it was not shown that hides are entitled to preferential rates, that class basis in not proper, or that disturbance of relative adjustment by extending Buffalo group rates to include Ludlow would be proper solution of question involved, as inconsistency between class rates arises from fact that rates within c. f. a. and trunkline territories are characterized by groups which were in effect long before establishment of c. f. a. scale. Curtis Leather Co. v. P. R. R., 128 I. C. C. 627.

(3c) Complainant attacked commodity rate charged on 49 cars of pine lumber shipped between July 5 and Sept. 11, 1922 from Bend, Ore., Sand Point, Coer d'Alene and Potlatch, Ida., and Missoula, Mont., to Bayport, Minn., as unreasonable and unduly prejudicial. Points of origin with the exception of Bend, are in the Spokane group. Bend takes an arbitrary over the Spokane group rates. The distances

from Spokane to St. Paul and Bayport are 1,504 miles, and 1,522 miles, and from Bend, 1,927 and 1,944 miles. Bayport, formerly South Stillwater, is 18 miles east of St. Paul and about 8 miles off the main lines of the N. P., the delivering carrier. The movement from the main line junction points to complainants plant involves a switching service. The mere fact that the rates assailed exceeded the rates to St. Paul has little probative force, as evidence of unreasonableness. The subsequent increase in the rates to St. Paul would seem to indicate that those rates were out of line. HELD, rates attacked not unreasonable or unduly prejudicial, complaint dismissed. Andersen Lumber Co. v. N. P. Ry., 128 I. C. C. 633.

(3d) Rate on fresh peaches from Palisade, Colo., to Syracuse, N. Y., found not unreasonable or otherwise unlawful as compared with those from Georgia points to Syracuse or from California points. Distance considered, rate attacked is on a relatively lower basis than those from Georgia, and as it is blanketed from Colorado to the Pacific coast, the alleged violation of long-and-short-haul provision of section 4 is without merit. Caruso, Rinella, Battaglia Co. v. D. & R. G. W., 128 I. C. C. 687.

(3e) Combination rate on printing presses from Vancouver, British Columbia, to Orlando, Fla., a point taking Group K rates, found not unreasonable as compared with Group A rates contemporaneously maintained from Pacific coast terminals to New York. Earnings under latter rates as well as those under rates from various producing points to Orlando, compare favorably with those under rates assailed for comparable distances. Duplex Printing Press Co. v. B. C. E., 128 I. C. C. 692.

(3f) Complainant alleged rates on canned goods, in straight or mixed carloads, from Mobile, Ala., to Georgia, Mississippi, Tennessee, Kentucky, Ohio Illinois and Missouri are unreasonable. The rates under attack were the result of a revision of rates by defendants on July 1, 1923 following fourth section order 7836 under which they were required to revise their rates on canned goods and certain other commodities from and through the Ohio river crossings so that the rates to destinations in southeastern territory should not exceed those to more distant destinations in Mississippi valley territory. The Mississippi valley lines elected to publish rates to Mississippi valley points no higher than those which they had originally proposed and which were superseded by the rates approved in Mississippi valley case 64 I. C. C. 306, less the general reduction of 10%. On this basis, the rate from St. Louis to Memphis was 42c and this rate was used as the key of the revision in the Mississippi valley which became effective July 1, 1923. HELD, rates assailed in so far as they apply on fruits, vegetables, and fish, including shrimp, in packages straight or mixed carloads, are for the future unreasonable to extent they exceed class 7 rates approved in Southern Class Rate Investigation, 113 I. C. C. 200 from and to the points in question. Mobile Chamber of Commerce v. A. & V. Ry., 129 I. C. C. 147.

(3g) Complainant alleged combination rates charged on six cars of potatoes shipped during June 1924 from points on the Washington & Vandemere in North Carolina to Youngstown, O., is unreasonable, unduly prejudicial and in violation of section four. Charged commodity and class rates composed of 42.5c to Richmond or Petersburg, Va., and 74.9c beyond. The origin points here involved are known as rate group 25, Washington and nearby points as rate group 20, and Warsaw, N. C., and nearby points as rate group 21. On Jan. 15, 1925 the rates from Groups 20 and 21 to Youngstown were made the same as those to Cleveland, but from Group 25 the rate remains as when the shipments moved, while the through commodity rate to Cleveland is 83c. HELD, rate assailed unduly prejudicial and unreasonable to extent it exceeded 83c, reparation awarded. Frank v. A. C. L. R. R., 132 I. C. C. 258.

(3h) In 122 I. C. C. 527, the Commission found the adjustment of rates then existing on prepared sizes of anthracite coal, in carloads, from the Wyoming, Lehigh and Schuylkill regions in Pennsylvania to Albany, Troy, Mechanicville, Utica, Syracuse, Geneva, Hornell, N. Y., over one or more routes to be unreasonable and unduly prejudicial. The L. V. states that competition of the mines served by it with mines in the same regions now paying the rate of $2.65 demands that the same rate be established from the mines which it serves. HELD, publication approved. Rates, charges, regulations and practices governing transportation of anthracite coal, 132 I. C. C. 419.

(3i) Complainant alleged carload rates, commodity, charged on two cars of potatoes, in barrels, shipped from Mount Olive and Bethel, N. C., to Lehighton, Pa., on June 19, 1924 and June 23, 1926, were and are unreasonable, unjustly discriminatory, and unduly prejudicial. Shipments moved over A. C. L. to Richmond, Va., R. F. & P. to Potomac Yard, Va., Pennsylvania to Tomhicken, Pa., and L. V. beyond, charged 87 and 84c. The record shows that Phillipsburg, 42 miles east of Lehighton, is in a large destination group extending from Hagerstown, Md., on the west to New York, on the east, and including Wilmington, Del., and Philadelphia, Pa. This group will be referred to as the Philadelphia group. Lehighton, Allentown and Mahoney City, Pa., take the Pittsburgh rates. The rates are to these groups, to Philadelphia group 68 and 60c, Pittsburgh 87 and 84c, and Pottsville group 78 and 75c. At the time of movement the applicable rate from Mount Olive to Lehighton was unrestricted. Over the route of movement the latter point is intermediate to Phillipsburg. Effective May 20, 1926 the rate to Phillipsburg was restricted to apply over routes other than by way of Tomhicken and the L. V. HELD, rates assailed were, are, and for future, will be unreasonable and unduly prejudicial to extent they exceed 78c from Mount Olive and 75c from Bethel, reparation awarded. Freeby v. A. C. L. R. R., 132 I. C. C. 602.

§11. Reasonableness of Group.

See Reasonableness of Rates.

(a) The fixing of groups necessarily requires that consideration be given to locations of points to be grouped, their transportation and commercial relationships, and the rail routes. Midcontinent Oil Rates, 1925, 112 I. C. C. 421, 448.

(b) Generally speaking, class rates for longer distances in trunk-line territory are not on a mileage basis, but are grouped, and some of these rate groups are quite extensive. Cardiff Green Marble Co. v. M. & P., 113 I. C. C. 655, 657.

(c) Groups long maintained are presumably fair and are not to be disrupted unless substantial justice clearly requires it. Indiana State Chamber of Commerce v. A. A. R. R., 115 I. C. C. 650, 657.

(d) Complainant attacked commodity rates charged on pig iron, carloads, from Buffalo and Charlotte, N. Y., and Punxsatawney and Du Bois, Pa., to Connecticutt, Massachusetts, New Hampshire, Rhode Island and Vermont as unduly prejudicial to Buffalo and unduly preferential of Charlotte, Du Bois, Punxsatawney and competitors there. Present rates are $4.91 from Buffalo, Du Bois and Punxsatawney, and $3.65 from Charlotte. Complainants rely largely on the fact that the average distance from their plants in Buffalo to New England is less than the average distance from Du Bois and Punxsatawney. Here we have rates applying from Buffalo, Du Bois and Punxsatawney to a destination group extending 200 miles north and south and 214 miles east and west which have been in effect for 25 years. Obviously, in the creation of such a group adjustment distances must, to a certain extent, be disregarded. HELD, rates assailed not unduly prejudicial, complaint dismissed. Hanna Furnace Co. v. N. Y. C. R. R., 123 I. C. C. 627.

(e) Complainant alleged that the rates on bituminous coal, carloads, from Pennsylvania and West Virginia to destinations in the Warren, Pa., district are unreasonable, unjustly discriminatory and unduly prejudicial. The rates assailed are grouped as to origin and destination points. The Warren district is in northwestern Pennsylvania and within the Buffalo, N. Y., rate group, of which it forms part of the southern boundary. The Pennsylvania is the only defendant that serves the Warren district direct from the coal fields. Other originating carriers are the B. & L. E., B. R. & P. and P. & L. E. The Pennsylvania is the short line. Over that carrier the average distance from the Pittsburgh group to Warren and the Warren district is 210.3 miles, and 210.2 miles. The adjustment under which the Warren district is included in the Buffalo rate group has been in force over 25 years. The rate from the Pittsburgh district to the Buffalo group is $2.24. To Oil City, Pa., and Titusville, points on the Pennsylvania immediately south of the Buffalo group, the respective rates are $1.84 and $1.99. The interstate routes are more or less circuitous and in most instances materially longer than the intrastate routes. In view of the well recognized delicacy of the coal rate adjustment in this territory and the long continued maintenance of the Buffalo Group, the Commission is of opinion that the evidence is not suffi-

cient to require a disruption of that group as contended for by complainants. HELD, interstate rates not unreasonable or unduly prejudicial, complaint dismissed. National Petroleum Asso. v. B. & O. R. R., 126 I. C. C. 11.

(f) The Commission has often said that groups of long standing should not be disrupted unless the party seeking such action is actually damaged by discrimination resulting from the group adjustment, and unless substantial justice requires it. National Petroleum Asso. v. B. & O. R. R., 126 I. C. C. 11, 16.

(g) Commission has consistently declined to disrupt rate groupings of long standing unless preference and prejudice involved resulted in substantial injury to complaining shippers or localities. Carriers have not been required to depart from principle that every shipper or community is entitled to advantages of its location, but where carriers have voluntarily departed therefrom and such departure has not caused substantial injury, commission has not interfered, and even where injury is shown, preference or prejudice may be justified by competition. See 95 I. C. C. 539, 565, 567. However, where it is shown that extensive grouping or port equalization, voluntarily maintained by same carriers without justification by competition, has disregarded substantial differences in distance and resulted in injury to shippers or localities, it has been found unlawful and reasonable rates prescribed. See 57 I. C. C. 554; 59 I. C. C. 321. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349, 387, 388.

(h) In Western Brick Co. v. N. Y. C. R. R., 107 I. C. C. 245, division 1 found the rates on articles in the uniform brick list, in carloads, from Danville, Ill., to interstate points in Wisconsin, Michigan, Minnesota and North Dakota as not unreasonable but unduly prejudicial as compared with rates from a number of Illinois points and nonprejudicial relationship of rates was prescribed for the future. Respondents, in purported compliance with the order in that case, proposed a revision of the rates there dealt with and other related rates from various producing groups chiefly in Illinois and Indiana, and including a few points in Missouri and Iowa, to interstate destinations. The Commission is persuaded from a study of the original record and of the further evidence now before it that the integrity of the Wabash Valley group as fixed in the General Brick case should be preserved, and the conclusions in the original report in this case are accordingly modified. The evidence supports the finding in the original report that the assailed rates from Danville were not and are not unreasonable. HELD, rates from Danville not unreasonable but for the future unduly prejudicial to extent they exceed certain differentials over Chicago to the destinations involved. The rates proposed to destinations in Wisconsin and Minnesota are not unreasonably high. The Commission fails to find warrant in the record for greater increases to Michigan destinations than to Wisconsin destinations. Respondents have not justified the proposed increase in the spread between the rates to St. Paul on the one hand and Duluth on the other. The Commission can not determine whether or not St. Louis should have a differential of less than 50c over Chicago to the Twin Cities and grouped points but it is of the view that the difference should not exceed this amount and, accordingly, that the present and proposed differential of 70c is excessive and out of line with other present and proposed differential relationships. As the rates from Iowa points are not before the Commission in these proceedings it can express no opinion as to this situation. other than to say that the present adjustments may be presumed to represent respondent's views as to the proper competitive relationships to be maintained between the rates from Iowa and from Illinois, and that respondents should give consideration to the question of the relationship to be observed between the rates from these producing points in connection with such revised adjustment as may be proposed from Illinois points. HELD, schedules not justified without prejudice to the filing of new schedules in conformity with the findings herein. Western Brick Co., v. N. Y. C. R. R., 128 I. C. C. 479.

§12. Reasonableness of Individual Rate.

See Reasonableness of Rates.

(a) Upon further hearing, former report, 93 I. C. C. 593, reversed, and rate on rough staves and headings from Bonita, La., to Louisville, Ky., found unreasonable to extent it exceeded lower group rate contemporaneously maintained from a large number of stations to which Bonita is closely related, the lower rate being established by carriers from Bonita,

subsequent to movement. Reparation awarded. Louisville Cooperage Co. v. L. & N., 112 I. C. C. 228.

(b) Rates on potatoes from Pocomoke, Md., and various points on eastern shore of Virginia to Jacksonville, Fla., found unreasonable, as compared with rates from various origin points to same destinations for comparable distances, and to extent they exceeded lower group rate contemporaneously in effect from New York. Origin points here under consideration are usually located in New York group, and carrier subsequently established such rates therefrom. Reparation awarded. Hulsey-Bessent Co. v. P. R. R., 112 I. C. C. 317.

(c) Rate on crude sulphur from Freeport, Tex., to Elyria, Ohio, located in Detroit-Cleveland group, found unreasonable to extent it exceeded lower rate contemporaneously in effect to other points in that group, which lower rate was subsequently established to Elyria. Reparation awarded. Stauffer Chemical Co. of Tex. v. H. & B. V., 112 I. C. C. 495.

(d) Complainant attacked commodity rates on bananas, carloads, and bananas and coconuts, mixed carloads, from New Orleans, La., to San Antonio, Tex., as unreasonable. This traffic usually moves from New Orleans to San Antonio over lines of the S. P., and G. H. & S. A.; distance 592 miles, applicable rate was the Texas common point rate of $1.215 prior to and $1.095 on and after Jan. 1, 1922. Bananas are shipped in ventilated refrigerator cars and, with the exception of the summer months, do not require icing. They reach New Orleans in carload lots, and expeditious service to interior points is necessary. HELD, rate attacked unreasonable to extent it exceeded 97.5c on and after Sept. 15, 1923, reparation awarded. Gugenheim Goldsmith Co. v. G. H. & S. A. Ry., 113 I. C. C. 459.

(e) Complainant attacked commodity rates charged on soft coal, carloads, shipped since July 1, 1922, from Clinton, Coal Bluff, Latta, Midland, Seifert, Riley, Paxton, Sullivan, Petersburg, Lincoln City, Oakland City, and Enos, Ind., to Hoopeston, Ill., and that present rates are, unreasonable, unjustly discriminatory and unduly prejudicial. Hoopeston is located about 24 miles north of Danville, Ill., on the C. & E. I., between Evansville, Ind., and Chicago, Ill., and on the east and west line of the Nickel Plate, between Peoria, Ill., and Frankfort, Ind. Indiana mines are for rate making purpose divided into four main groups generally known as the Brazil-Clinton, Linton-Sullivan, Princeton and Booneville groups. Clinton and Coal Bluffs are in the Brazil-Clinton group; Latta, Midland, Seifert, Riley, Paxton, and Sullivan in the Linton-Sullivan group; Petersburg and Oakland City in the Princeton group; and Enos and Lincoln City in the Booneville group. The rates to Hoopeston are to some extent graded according to distance from these respective groups, but the record is not clear as to whether they have been adjusted on the basis of fixed differentials between the groups. Although the Indiana mines are grouped, all of the carriers serving the respective groups do not maintain, and apparently have not in the past maintained, uniform rates from each group to Hoopeston. HELD, rates attacked for future unreasonable to extent they exceed $1 per ton from Clinton and Coal Bluff, Ind.; $1.20 per ton from Latta, Midland, Seifert, Riley, Paxton and Sullivan, Ind.; $1.40 per ton from Petersburg and Oakland City, Ind.; $1.55 from Enos and Lincoln City, Ind., reparation awarded. Iliff Bruff Chemical Co. v. C. & E. I. Ry., 113 I. C. C. 606.

(f) Complainant attacked commodity rates on bituminous coal, carloads, from points in Southern Illinois and Western Kentucky to destinations in southeastern Missouri and northeastern Arkansas as unreasonable. Destinations are on the Frisco, Southwestern and M. P. Shipments originated at mines in southern Illinois and western Kentucky, of which the Herrin and Murphysboro groups on the M. P., the Southern Illinois, Belleville and west Kentucky groups on the I. C., and the Marion groups on the C. & E. I., are representative. They moved at joint rates over various routes to Thebes, Ill., thence over the Thebes bridge across the Mississippi river, and the rails of the three delivering carriers to the 23 destinations. Wyatt, Mo., on the Southwestern is the farthest destination point. In 62 I. C. C. 686, the Commission found rates on coal, carloads, from western Kentucky to points in southeastern Missouri and northeastern Arkansas unduly prejudicial to extent they exceed by more than 25c the rates from the Southern Illinois group. Rates from western Kentucky to these destinations are

now published on that basis in practically all instances, and any reduction in rates from southern Illinois would automatically result in rate reduction from western Kentucky. HELD, rates attacked from southern Illinois unreasonable to extent they exceed to Oran $1.44, Morley, Vanduser and Tanner $1.57, Sikeston $1.63, Dexter and Essex, $1.75, Libourn $1.93, Deventer and Wyatt $1.99, Kennett $2.05, and Piggott, $2.11, rates from western Kentucky unreasonable to extent they exceeded the above rates plus 25c, reparation awarded. Scott County Milling Co. v. Butler County R. R. Co., 113 I. C. C. 675.

(g) Complainant attacked commodity rates charged on dried fruits, carloads, shipped during the periods Oct. 14, 1918, to Feb., 4, 1920, and Sept. 15, 1921, to Sept. 10, 1923, from California to Ogden and Salt Lake City, Utah, as unreasonable and unduly prejudicial. The dried fruits under consideration are rated fourth class, in boxes and in sacks in carloads in western classification. They take alternative commodity rates based on 40,000 and 60,000 pound minima. HELD, rates attacked on dried fruit in boxes minimum 40,000 from Group 1 point prior to Nov. 25, 1923, were reasonable to extent they exceeded 75c, 94c and 84.5c, minimum 60,000 during the periods Oct. 14, 1918, to Feb 4, 1920, Sept. 15, 1921, to Dec. 31, 1921, and Jan. 1, 1922, to Nov. 25, 1923, and from group 3 point prior to March 20, 1924, unreasonable to extent they exceeded the combination of the established basing class of commodity rates from said group 3 points to Group 1 point, plus the rates above prescribed. Reparation awarded. Anderson Taylor Co. v. A. T. & S. F. Ry., 115 I. C. C. 313.

(h) Complainant attacked commodity rates on stone, in carloads, from Carthage, Mo., to Wichita, Kans., as unjust, unreasonable and unduly prejudicial, also that rates on stone from Bedford, Ind., to Wichita, are unreasonable. No. 17124. The rate from Carthage to Wichita is 11 c, short single line distance is about 192 miles over the Frisco, over the M. P., 223 miles. The rate applies on stone, rough or sawed, not further finished. The rate on other stone, cut planed, or polished is 12.5c. Defendants evidence indicates that the rate attacked compares favorably with the rates on rough or finished stone from Carthage to destinations in eastern and southern Kansas for similar hauls. HELD, rate attacked not unreasonable or unduly prejudicial, complaint dismissed. No. 17124-1. The rate from the Bedford district applies on stone, rough, sawed, or dressed, but not figured, lettered or polished. The 39c rate is 0.5c less than the combination rate on St. Louis. Rates from points east of the Mississippi river to destinations west thereof are generally made on the combination of locals, except where this basis has been broken down by water competition. The combination basis has received the approval of the Commission except in a few cases. Bedford stone is unique in character and very desirable. Defendants regard it somewhat as a luxury. The traffic is increasing materially in volume year by year. It is shipped freely throughout the country, apparently regardless of freight charges and notwithstanding the many sources of stone and other building materials nearer the points of consumption. HELD, rate attacked not unreasonable or otherwise unlawful complaint dismissed. Cuthbert Stone Co. v. St. L., S. F. Ry., 118 I. C. C. 69.

(i) Group rate on phosphate rock from producing points in Florida to Roanoke, Ala., found not unreasonable as compared with rate from Florida to other grouped points in same general territory or with rate subsequently established when the Roanoke rate was reduced for purpose of placing that point on a parity with points in the Atlanta-La Grange group. Phosphate Rock from Florida, 115 I. C. C. 229.

(j) Rates on oak staves and oak headings from Mississippi and Louisiana to California destinations found not unreasonable or otherwise unlawful as compared with contemporaneous rates on rough and dressed lumber. Staves and lumber do not constitute such "like traffic" that a different charge for their contemporaneous transportation is violative of section 2 of the act. See 50 I. C. C. 229. While equal rates are maintained on these commodities to various destinations a history of cooperage stock and lumber rates shows that no rigid rate relationship has been maintained between them. Therefore lumber rates are not determinative of reasonableness of rates on cooperage stock. Moreover, assailed rates compare favorably with those found reasonable by commission on various commodities for comparable

trans-continental hauls. Chess-Wymond Co. v. A. & V., 115 I. C. C. 703.

(k) Complainant attacked commodity rates higher on anthracite coal from Pennsylvania to northern New York over joint line route than maintained over single routes. Original report 101 I. C. C. 363, and 104 I. C. C. 514. The principal destinations to which changes are proposed are on the N .Y. C. along the Hudson River from Weehawken, N. J., to Troy, N. Y., thence west to Utica, N. Y., and Syracuse to a point about 50 miles west of Syracuse, thence south along the N. Y. C. to Furnace Run, Pa. The same rates that apply to the principal points also apply over one or more routes to Geneva and Hornell, N. Y., and other points. The present single line and joint line rates to Albany, Utica and Syracuse are generally $2.65 and $3.02, espectively, and the proposed rates $2.75 and $2.88. Generally respondents propose to reduce the spread of 37 cents now existing between the rates at common points in the destination territory over the single line routes on the one hand and joint line routes on the other by increasing the single line rates 10 cents and decreasing the joint line rates 14 cents, resulting in a spread of 13 cents. It is important to the consuming public that access be had to the greatest possible number of mines, especially in times of emergency. Where, as here, however, the distances over a number of the routes are unduly circuitous, fairness demands that such routes be disregarded in determining upon a basis for fixing reasonable rates for application over routes which are not unduly circuitous. Practically all originating carriers in the Wyoming region participating in the longer routes from those mines to the Albany-Utica-Syracuse group also participate in shorter routes. For competitive reasons it is highly desirable that the rate paid by a retail dealer on one route be as nearly as may be the same as the rate paid by a dealer on another route at the same point. Ordinarily carriers participating in routes of substantial circuity under substantially similar circumstances and conditions may reasonably expect to charge higher rates than apply over the short route. Where, as here, grouping is so extensively employed at both origin and destination, and where so many reasons of sound public policy exist for treating the rates and routes collectively rather than individually, substantial differences in distance over routes whose use public convenience and necessity require may reasonably be disregarded; but the fact that the rates are to be applicable over all such routes must be given due weight in fixing their level. HELD, proposed increased rates not justified. HELD, existing rates over one or more routes unjust, unreasonable and unduly prejudicial and preferential in the relation of such rates to each other. Just and reasonable rates for the future over one or more routes will be $2.65 per ton from all points in the Wyoming region on the line of each carrier serving such region, except the C. R. R. of N. J., L. V. and Pennsylvania, over all single line routes, and also over the shortest tariff route to each destination, determined by averaging the distances from all mines in the Wyoming region on each carrier to each destination; and $2.88 from all points in the Wyoming, Lehigh and Schuykill regions on the line of each carrier serving any of those regions, over all routes over which a rate of $2.88 per ton is proposed in the suspended schedules, other than those over which a rate lower than $2.88 will apply under the conclusions herein. HELD, except where inconsistent with the preceding findings, the proposed reduced rates have been justified. Rochester, N. Y., asks that the joint line rates and the single line rate of the Pennsylvania to that point be reduced to the level of the single line rates of the L. V. and Erie. HELD, rate of $3.15 to Rochester except over certain routes unreasonable to extent they exceed $3.02. Rate of $2.77 on pea and smaller sizes to Rochester except over certain routes unreasonable to extent it exceeds $2.65. RATES TO CARTHAGE AND CLAYTON. HELD, rates on prepared sizes and pea and smaller sizes to Carthage and Clayton from the same mines and over the same routes from and over which a rate of $3.28 now applies on prepared sizes to Watertown, including also the route of the N. Y. C., through Glenfield, N. Y., are unreasonable to extent they exceed $3.28 and $2.77 per ton to Carthage and $3.41 and $2.88 to Clayton. Anthracite Coal Investigation, 122 I. C. C. 527.

(l) Ordinarily where rates are made on a group basis the rates from an origin group to a destination are the same over all routes from the group. The mere fact that a route is a joint line haul

does not in itself warrant a rate higher than is reasonable for a single haul. Anthracite Coal Investigation, 122 I. C. C. 527, 535.

(m) Complainant attacked rates charged on green salted cattle hides, carloads, from Indianapolis and Indiana Harbor, Ind., St. Louis, St. Joseph, and Kansas City, Mo., Waukegan, East St. Louis, Chicago, Ill., Milwaukee, Wis., Wichita, Kas., Ottumwa and Sioux City, and South St. Paul, Minn., to Ludlow, Pa., were and are unreasonable to extent they exceeded the rates to Buffalo, N. Y. Ludlow, a local point on the Pennsylvania, 85 miles southeast of Erie, Pa., and 20 miles southeast of Warren, Pa., is in the Rochester, N. Y., group, and near its western boundary on east bound traffic, except that on traffic from certain points on the Pennsylvania near the eastern boundary of central territory it is in the Buffalo group. The average distance by the shortest workable routes from Chicago to all destinations in the Rochester group is a fraction over 580 miles. The short line distances to Ludlow and Rochester are 520 and 591 miles, respectively. Rates from Chicago to the Rochester group are 74% of the Chicago-New York rates. Green salted cattle hides move at the fifth class rates east of Chicago. The fifth class rate from Chicago to New York is 56.5c, making the rate to Ludlow 42c. Buffalo and Salamanca, N. Y., are located near the eastern border of the Buffalo group. The short line distances from Chicago are 523 miles to Buffalo and 528 miles to Salamanca, and the average distance to all destinations in the Buffalo group is 500 miles. Green salted hides move in box cars, claims for loss and damage are negligible. HELD, rates attacked not unreasonable, complaint dismissed. Curtis Leather Co., v. Pennsylvania R. R., 128 I. C. C. 627.

§12½. Relativity of Group Rate.

See Relative Rates.

(a) Rates on bituminous coal from points in the Brazil-Clinton, Linton-Sullivan, Princeton, and Booneville groups in Indiana, to Hoopeston. Ill., found unreasonable as compared with rates from other Indiana and Illinois mines for comparable distances, rates from Brazil-Clinton and Linton-Sullivan groups particularly being too high when tested by the Holmes & Hallowell scale prescribed in 69 I. C. C. 11, for application in a higher-rated territory. Reasonable rates prescribed for future and reparation awarded. Iliff-Bruff Chemical Co. v. C. & E. I., 113 I. C. C. 606.

(b) Rates to two competing points or groups may be within the range of reasonableness, and thus not in violation of section 1 of the act, but may be, nevertheless, improperly related and result in undue prejudice in violation of section 3. In such a case commission may, where warranted by the record, prescribe specific rates to one or both of the competing points in order to remove undue prejudice. Ridenour-Baker Mercantile Co. v. A., T. & S. F., 113 I. C. C. 629, 634.

(c) Rate on crushed stone from Marble Cliff, Ohio, to Cairo, W. Va., found not unreasonable or otherwise unlawful as compared with lower rates contemporaneously in effect to Parkersburg and other West Virginia points. The Cairo rate is a group rate, similar group rates being in effect to that point on classes and other commodities from c. f. a. points. The lower rates are depressed, having been established by carriers to meet keen competition with sand and gravel dredged from the rivers and brought in by water. West Virginia State Road Commission v. P. R. R., 113 I. C. C. 740.

(d) It does not follow that the average distances over all routes should not be considered in determining the propriety of an adjustment which involves the general level of rates to a considerable territory as well as the relationship between destination groups. While each group is entitled to the benefit of its short line distance, it would be unfair to base rates upon that distance alone. Indiana State Chamber of Commerce v. A. A. R. R., 115 I. C. C. 650, 654.

(e) Rates on dried fruits, in sacks, from points in groups 1 and 3 in California, to Ogden and Salt Lake City, Utah, found not unreasonable as compared with rates contemporaneously in effect to Denver, Colo., and Butte, Mont., but rates on dried fruits, in boxes, to and from same points, found unreasonable to extent they exceeded lower rates voluntarily established by carriers subsequent to movements here involved. Reparation awarded. Anderson-Taylor Co. v. A., T. & S. F., 115 I. C. C. 313.

(f) Applicable combination rates on muriate of potash from Salduro, Utah, to Chicago Heights, Ill., a Group D point, found not unreasonable as compared with lower rates contemporaneously in effect to St. Louis, Mo., a Group E point. Complainant showed that same rates applied to both groups on a number of commodities and that prior to and subsequent to movement equal rates applied to both groups on potash. Carriers, on the other hand, contend that rates established were depressed and were made to meet competition with imported fertilizer materials from Atlantic ports, and showed that on a number of commodities the rates between Salt Lake City and Chicago are higher than those to or from St. Louis. Armour Fertilizer Works v. W. P. R. R., 115 I. C. C. 684.

(g) Rates on bituminous coal from Spadra and Greenwood groups in western Arkansas, and Oolagah and McAlester groups in eastern Oklahoma, to Wichita and Hutchinson, Kans., found not unreasonable as compared with those from same territories to Kansas City, Mo.-Kans., prescribed in 89 I. C. C. 73; 113 I. C. C. 161. Rates assailed compare favorably, distance and earnings considered, with those in same general region; from origin groups to Kansas points and from Illinois points to Missouri and Arkansas; also with single-line and joint-line intrastate scales in Kansas, Missouri, Oklahoma, and Arkansas. Moreover, while rates are apparently not related throughout as they should be, a readjustment to basis sought would make no provision for many producing points and might disrupt present groups. Bunte v. C., R. I. & P., 118 I. C. C. 66.

(h) Combination rates on gasoline from Texas and Oklahoma points to Bradford, Pa., found not unreasonable as compared with lower rates to Buffalo, N. Y. Although Bradford is directly intermediate to Buffalo over the Buffalo, Rochester and Pittsburgh, the average distance to Bradford over all routes is a few miles in excess of that to Buffalo. Beyond river crossings specific rates are published to destinations in c. f. a. territory in which Buffalo is located, while rates to destinations in trunk-line territory are made on basing points, Bradford taking the Rochester base rate. Carriers show that rates to Rochester group have always been higher than those to Buffalo group and that adjustment is one of long standing which should not be disturbed. Kendall Refining Co. v. A. & V., 118 I. C. C. 689.

(i) The various issues include, either as unreasonable or as otherwise unlawful, the interstate and intrastate rates within and between the four southwestern states, namely, Oklahoma, Texas, Arkansas, and Louisiana west of the Mississippi River, and further include, with some limitations and exceptions, the rates between them and designated Mississippi and Missouri River gateways and all points in the states to the north, northeast and east of the said southwestern states. The Southwest will mean Arkansas, Oklahoma, Louisiana, west of the Mississippi River, and Texas common point territory. The latter territory embraces all of Texas except the western and southwestern portions of the state, which constitute the differential territory. Southern Missouri will mean that part of the state lying south of the Missouri River, but not including Kansas City or St. Louis. Kansas and southern Missouri will be called Kansas-Missouri territory. Crossing on the Missouri River, Kansas City to St. Joseph, Mo., will be referred to as Missouri River cities. St. Louis, Mo., Cairo, Ill., Memphis, Tenn., Vicksburg, Miss., and New Orleans, La. will be termed southwestern gateways The balance of the country embraced will be treated as defined territories; the area north of Kansas-Missouri territory and the Missouri River cities and west of the Indiana-Illinois boundary line, western defined territories; the area east thereof, to and including the Buffalo-Pittsburgh line and north of the Ohio River, as eastern defined territories; the area east of the Buffalo-Pittsburgh territory and north of the Potomac River as trunk line territory; and the territory south of the two last named groups and east of the Mississippi River as southeastern defined territories. Rates applying from north Atlantic ports and from trunk line and eastern defined territories through north Atlantic ports via ocean to south Atlantic or Gulf ports and thence by rail to destinations in the southwest or Kansas-Missouri territory will be termed Ocean rail rates. THE COMMERCIAL SITUATION. The traffic covered by these cases consists principally of manufactured goods, largely of the higher grades. It includes groceries, hardware, furniture, iron and steel articles, and hundreds of other commodities in more or less general use. These

articles move from points of manufacture to points within and without the southwestern territory, principally in carloads. The interior southwest is not primarily a manufacturing center, but is developing along that line. There are manufacturers of brooms, cotton and burlap bags, fertilizer, packing house products, sulphuric acid, cotton piece goods, furniture, vinegar, glassware, and other commodities, as well as millers and petroleum refiners. In so far as goods consumed in that territory and in Kansas-Missouri territory are concerned, while there is some direct movement from points of manufacture to points of consumption, the principal movement is in carloads on commodity rates to jobbing points, from which the goods are distributed in less carload quantities on class rates to retailers or consumers. Owing to the small development of manufacturing in the southwest most of the commodities originate at points in other territories, principally the western, eastern, and southeastern defined territories and trunk line territory. Therefore, while naturally not every jobber or jobbing town competes directly with every other, there is general competition in the distribution of commodities throughout the territory. The relationships of the inbound and outbound rates entering into the competitive distribution in surrounding districts and in the territory as a whole are of commercial importance. To some extent there is competition between jobbers and manufacturers. There is keen rivalry between towns in the southwest for the location of new industries to meet the increased needs of the growing population. Until there is brought about a fairly uniform adjustment which will afford substantially equal rates for equal services and rates properly apportioned as between long hauls and short hauls, complaints of discrimination and prejudice will continue to arise. Moreover, aside from the strictly commercial phases of the situation, in so far as practicable all rates, intrastate and interstate, should contribute in fair proportion to the revenues of the carriers. Therefore, in a general territory where traffic and operating conditions are substantially similar the rates for given distances should be substantially the same. The relative inbound carload rates on many articles are of primary concern. On others the outbound rates, principally less carload, are of most importance. Usually both are important. The record discloses mutual competition under inequitable rate conditions between points in Oklahoma, Arkansas, western Louisiana, Texas, Kansas, and southern Missouri. As between cities in each state there are areas in which the efforts to obtain business overlaps, or in which, under rates appropriately related to the respective transportation services, the activities of rival manufacturers and jobbers would overlap. Where there is no movement of particular commodities or no active competition between commercial interests it is often because the freight rate situation prevents it. In other words, the opportunity to do business is sometimes foreclosed by freight rates. TRANSPORTATION CONDITIONS. Speaking, generally, the entire area consists of substantially level prairie country, without unusual operating difficulties, although some mountain operation is encountered in western Arkansas, eastern Oklahoma and southern Missouri. The freight revenue per mile of road in all of the southwestern states other than Louisiana is approximately equal to that of Nebraska. The density of traffic, as revealed by the revenue ton miles per mile of road, is only approximately 20% less than that in Iowa. This record abundantly supports the conclusion that transportation conditions throughout the southwest are substantially similar; and on the average they appear to be not greatly less favorable than those in Kansas Missouri territory or in Nebraska. DESCRIPTION OF THE RATE STRUCTURE. ALL RAIL CLASS RATES. In general, the class rates in the southwest, in Kansas Missouri territory, and between the latter territory and Oklahoma and Arkansas have been and are constructed on distance scales. OCEAN RAIL RATES. Through one factor ocean rail class rates, subject to the western classification, are generally applicable from points in trunk line territory east of the Buffalo Pittsburgh line, other than points in northern New York and northern New England, to the southwest and Kansas Missouri territory via steamship lines from north Atlantic ports to south Atlantic ports and Gulf ports and thence by rail. To Texas such rates are maintained only via Gulf ports. To Louisiana the adjustment is similar to that on Texas traffic, except that to the northern portion of the state, including Monroe and

Shreveport, though one factor rates also apply via south Atlantic ports. Via ocean and rail routes, Oklahoma, with the exception of a few points in the eastern part, is blanketed. Rates from north Atlantic ports are generally the same as from interior points in trunk line territory. Such rates apply both via Gulf and south Atlantic port routes. Practically all ocean rail traffic to Oklahoma moves via south Atlantic ports. Speaking generally, most of the ocean rail rates other than the combinations on Gulf ports were originally related differentially to the all rail rates. This relationship has now partially disappeared, but to a considerable extent the ocean rail rates are still influenced by the all rail rates. The latter being generally combinations on St. Louis, the ocean rail rates generally grade up from the northeast to the southwest, rather than directly from east to west in accordance with the principal south Atlantic port routes through Memphis, or from south to north in accordance with the lines from Gulf ports. As a result the present rate structure via the Gulf ports abounds in fourth section departures. COMMODITY RATES. Little carload traffic moving in material volume to, from, and between points in the South west and Kansas-Missouri territory, either all rail or ocean and rail is subject to class rates. Commodity rates between Kansas, Oklahoma and Texas, on the one hand, and the gateways, Missouri River cities, defined territories, and trunk line territory, on the other, are constructed substantially in the same manner as described with respect to class rates, except that on a number of commodities lower rates apply from St. Louis to certain points in northeast Texas, including Dallas and Fort Worth, than to the remainder of Texas common point territory. All rail rates from the defined territories to the same area are usually made differentially with relation to the rates from St. Louis, although in many instances combinations upon lower Mississippi River crossings result in lower rates. Distance commodity rates for single line and joint line application are generally applicable on numerous articles in carloads between Shreveport and Texas, and intrastate in Texas, Oklahoma, and Kansas. ALL RAIL CLASS RATES. THE SCALES. A very large percentage of the carload traffic in the southwest and between that territory and other territories moves on commodity rates. There is very little movement on the carload class rates, except in instances where particular articles have, by exceptions to the classification, been placed in classes lower than those in which they are rated in the western classification. Practically all articles in less carload quantities in the territory under consideration are found in the first four classes, and practically all such traffic, moves on class rates, although on a few articles, such as cotton piece goods, candy, chewing gum, and others, commodity rates or classification exceptions, resulting in lower ratings than are found in the western classification, apply. Considering the southwestern territory as a whole, it appears that practically all the intrastate rates and many of the interstate rates have been materially increased in recent years, apart from the general changes of 1918 and 1920. SPECIFIC CLASS RATES TO AND FROM GATEWAYS AND MISSOURI RIVER CITIES. It is clear that, from a tonnage and revenue standpoint, the St. Louis rates are many times more important than those to or from any of the other gateways. Rates from all the defined territories, except on and west of the Missouri River on traffic to Oklahoma, excluding such important points as Chicago, St. Paul, Minn., Pittsburgh, Pa., Cincinnati, O., and numerous others, are based differentially over the St. Louis rates. Comparatively few rates base over any other gateway. Next in probable order of importance from a tonnage and revenue standpoint are the Missouri River cities, followed by New Orleans, Memphis, and Vicksburg in the order named. The record indicates clearly that wide disparities exist in connection with the specific class rates between the gateways and points in the southwestern and Kansas-Missouri territories. ALL RAIL CLASS RATES TO AND FROM DEFINED TERRITORIES. These rates are generally made differentially over the rates to and from St. Louis. The factors east of the Mississippi River are generally the local rates. Those west of the river are also generally local rates, except to Kansas City and other Missouri River points to which lower proportional rates apply. Between points in Kansas-Missouri territory and the southwest and points in trunk line territory the rates are generally combinations of locals or of locals and proportionals on the gateways or on Chicago. From southeastern defined

territories to the southwest the rates are made differentially over St. Louis. As in the case of the rates between the gateways and points in the southwestern and Kansas-Missouri territories, wide disparities exist in the rates to and from the defined territories. CARLOAD CLASS RATES. The carload class rates in the southwest are materially higher than those in official, southern and western trunk line territories. CLASS PERCENTAGE RELATIONSHIPS. No uniform class percentages apply in connection with the specific rates between Missouri River cities and southwestern gateways, on the one hand, and points in Oklahoma and Texas, on the other. The first four classes in the western classification embrace primarily less carload traffic, practically all of which traffic is within those classes. Some freight in carloads also is so rated, principally fourth class. Owing to the high class percentages obtaining in the southwestern and Kansas-Missouri territories in connection with the carload classes, comparatively little carload traffic moves on class rates except in those instances where articles have been given by classification exceptions ratings lower than those in the classification itself. A similar situation appears to exist in southern territory, but in official territory and in the area north of the Kansas-Missouri territory and west of the Indiana-Illinois to and including the Colorado common points a much greater percentage of carload traffic moves on class rates. Uniform class percentages apply throughout central and New England territories, and those in the remainder of official territory are not widely divergent. The commission is persuaded that the interests neither of the public nor of the carriers are served by maintaining carload class rates on such high bases that they are rarely used, making it necessary to follow the practice which has prevailed for many years in the southwest of establishing commodity rates on practically all commodities which move in carloads in material volume. It is due to this practice that many of the discrepancies in rates which are the subjects of complaint have arisen. Existing widespread dissatisfaction with the complexity of tariffs in the southwest is discussed in a later section of this report. Much of this complexity arises out of the prevalence of commodity rates and the failure to adjust them on a basis which would fairly relate the various points which compete with one another. In the circumstances, the commission is of the opinion that it should follow the principle that carload class rates should be prescribed which are capable of moving many of the carload commodities, as is the case today in official and western trunk line territories, thus making it possible to eliminate from the tariffs thousands of commodity rates. COMMODITIES. The carload commodity rates speaking generally, differ widely as to levels in different parts of the southwest, and should uniform, commodity distance scales, or group rates based on uniform scales, be established throughout that territory on almost any basis, radical increases and reductions would of necessity result. It has been pointed out that, except where marked differences in traffic density, population per square mile and per mile of railroad, and so forth, point to the propriety of different rate levels, the territory here considered is homogeneous, both in respect of transportation and of marketing conditions, that a uniform scheme of rate making, based largely upon distance, and according to each community the advantage or disadvantage of its location, affords the only real remedy for the existing unlawful rate inequalities. It follows, also, that the prescription of such a basis will remove any undue prejudice and preference that exist, and from that reason it will not be necessary to discuss in detail the various instances disclosed. AGRICULTURAL IMPLEMENTS OTHER THAN HAND. Agricultural implements other than hand, in carloads move in large volume from manufacturing points in the defined territories and from St. Louis to points in Kansas-Missouri territory and the southwest. Agricultural implements, farm wagons, and most other articles contained in the commodity descriptions of such traffic to, from, and between points in western territory are generally rated class A, minimum 24,000 pounds for a 36 ft. car, with graduated minima for cars of larger sizes. A competitive situation exists as between the carload rates from the gateways and defined territories, particularly the western territories, to the jobbing points, from those jobbing points to destinations in Kansas-Missouri territory and the southwest, and from the gateways and defined territories direct to nonjobbing destinations in those territories. AGRICULTURAL IMPLEMENTS, HAND. Hand agricultural im-

plements move in limited quantities in carloads from St. Louis and from manufacturing points in defined territories to jobbing points at which wholesale hardware houses are located in the Kansas-Missouri and southwestern territories. They are rated class A minimum 24,000 pounds for 36 ft. car, with graduated minima. The class rates herein prescribed are reasonable for application on hand implements in carloads, and existing commodity rates may be canceled and the class rates applied. If, however, commodity rates are retained from one or more sources of supply or to one or more jobbing points in Kansas-Missouri territory or the southwest lower than the class basis, similar commodity rates, subject to the same commodity description and representing the same percentage proportions of the class basis, and to be applied to or from other sources of supply or jobbing points as the case may be, to avoid undue prejudice or preference. AMMUNITION, SMALL ARMS. Ammunition for small arms, including blank or loaded cartridges, is rated fourth class, minimum 30,000 pounds. While the fourth class rates hereinafter found reasonable for application to and from Oklahoma and Texas are in most instances somewhat lower than the present fourth class rates, those rates to Oklahoma will generally be higher than the present commodity rates on ammunition. There is nothing in this record to indicate that the fourth class rates herein prescribed would be unreasonable for application to ammunition in carloads. BAGGING AND TIES. This description embraces coarse hemp or jute bagging and iron or steel ties or buckles used in baling cotton. These articles are used in large volume throughout the southwest, but only to a very limited extent in Kansas-Missouri territory. Consequently, the rates to and from the latter territory, or the relationship between the rates to or from that territory and those to or from Oklahoma, need not be considered. Rating is fifth class, but commodity rates much below the class basis are general. It is clear that the Oklahoma rates from all the four principal sources of supply are materially higher than the corresponding rates to, from, and between Texas, Arkansas and western Louisiana points, interstate and intrastate, and that Oklahoma users of these commodities suffer undue disadvantage and prejudice as a result. The delivered cost of bagging and ties being an important element in the cost of baling cotton, the relationships between the rates on bagging and ties at each gin point from the important sources of supply and to the gin points from each such source of supply are of importance. The competition between the respective sources of supply is keen practically throughout the southwest. BAGS AND BAGGING. These articles are principally of burlap, gunny or cotton. Generally, however, the same commodity rates apply from and to points in Kansas-Missouri territory and the southwest on all these commodities and in nearly all cases are considerably below the fifth class basis. Bags are used by various industries, such as flour and feed mills, which operate throughout Kansas-Missouri territory and the southwest, and cotton oil mills, which are located at numerous points throughout the latter territory. Keen competition exists as between the respective sources of supply above described, and as between destination points throughout Kansas-Missouri territory and the southwest. BARRELS AND KEGS. Barrels and kegs move in carloads from St. Louis, Kansas City, Dallas, Texarkana and certain other points to various destinations in the Kansas-Missouri and southwestern territories at which vinegar factories, lime kilns, packing houses, and other concerns using such containers for the shipment of their products are located. Rated slack barrels third class and tight barrels and kegs fourth class. However, from and to points where carload movement exists commodity rates far below the class basis are generally in effect. The rates from all producing points to all consuming points in the southwest should be constructed upon the same distance scale of rates, or made upon a group basis under which rates to and from each group will be substantially the same as the average rate which would apply under a uniform scale applied from and to each point. BEVERAGES. These commodities are rated fifth class in the western classification. Where actual or potential movement exists, however, commodity rates materially less than the class basis are in effect throughout the southwest and to a somewhat less extent in Kansas-Missouri territory. Beverages generally load in excess of the minimum weight, although not as heavily as do canned goods. They are of much less value than many articles subject to canned goods rates. The

competition between the respective sources of supply, and to a less extent between destination points, indicates that a uniform adjustment of rates based on distance should apply throughout the southwest to avoid undue prejudice and preference. BRICK. Complainant attacked the rates on all commodities from and to the points covered by the complaints. Practically no evidence was introduced with respect as to brick except in 14416 which attacked the rates on brick of all kinds from Fort Smith and Little Rock to Texas as unreasonable and unduly prejudicial. Brick rates in this territory were prescribed in 107 I. C. C. 681. Enameled brick is rated class B in western classification. At the time of the hearings, from Little Rock and Fort Smith a blanket rate of 31.5 cents applied to Texas common points. This rate has since been reduced to 29.5 cents. There is no showing that Little Rock and Fort Smith manufacturers compete directly with manufacturers in Texas; and, while the attacked rates are alleged to violate section 3, they are not shown to be unduly prejudicial or preferential. In view of the lack of evidence with respect to rates on enameled brick other than those from Fort Smith and Little Rock to Texas, the commission will do no more than prescribe reasonable rates from those two points to Texas destinations. BROOMCORN. Broomcorn is rated third class in the western classification. Exceptions to the classification, applicable generally throughout the southwest, provide class A rates. However, the movement is generally on commodity rates which, especially for the longer hauls, are materially lower than the class A rates. The relatively high rates for short hauls and relatively low rates for long hauls to the Missouri river cities and gateways result in undue prejudice to broom factories in the southwest, depriving them of the natural advantage of their location in proximity to broomcorn producing points. The disadvantageous effect upon concentrating points in the southwest is less marked, because storage in transit is permitted at such points, under which provision broomcorn may be brought thereinto and later reshipped to the Missouri cities, the gateways, and defined territories on the through rates from points of origin to those of destination. Therefore, wherever the southwestern concentrating points are in direct line of transit they suffer no disadvantage from the relatively higher short haul rates into such points, but where the concentrating points are not in direct line of movement to the markets the high short haul rates and low long haul rates result in undue disadvantage to southwestern concentrating points. Rates on butter, eggs, and dressed and live poultry between points in the southwest and between points in that territory and the Missouri river cities, the gateways, and defined territories are embraced in these cases. BUTTER, EGGS AND DRESSED POULTRY. These commodities move in comparatively large volume from origins in the southwestern states to the gateways and to the eastern defined territories and trunk line territory, the movement of eggs being much greater than that of butter and dressed poultry combined. Butter, eggs and dressed poultry are rated third class. But for many years commodity rates on each of these products, lower than third class, have been quite generally in effect from Texas, Arkansas, and Oklahoma points, particularly to St. Louis and Chicago territories and to the southwestern gateways on traffic destined east thereof. The Commission finds nothing to change its view that the rates on dairy products should be higher than on fresh meats and fruits and vegetables. LIVE POULTRY. Live poultry moves largely in private cars specially constructed for its transportation, and a caretaker accompanies each shipment. It is rated second class. Rates on live poultry should be higher than on dressed poultry. CANNED GOODS. All these articles are rated fifth class, in western classification but differ widely in value and use. From all the gateways, Missouri river cities, and defined territories to the southwest and to Kansas-Missouri territory commodity rates materially lower than the class basis are generally applicable, while the movement from southwestern canneries to other territories, is also on commodity rates, often lower than the southbound rates. To assess rates on the necessary articles as high as are warranted on condiments, table sauces, olives and other table luxuries will result in rates too high on the former. On the other hand, to apply to the high grade articles rates which are proper for the staple articles would result in rates lower than such high grade traffic should

bear. COFFEE. Both green and roasted coffee are rated fifth class in the western classification, but commodity rates generally apply from the gateways and defined territories to destination in the southwest and Kansas-Missouri territory which are materially below the class basis. Green coffee is usually shipped in bags, and roasted coffee, ground, in fiber or tin cans, boxed. The rates on roasted coffee have usually been higher than on green coffee. No reason appears why this relative adjustment should not be continued. COTTON PIECE GOODS. Cotton piece goods, are cotton goods in the original piece, not including finished articles ready for use, and usually include, as well, shade cloth, cotton rope, twine, and yarn. Most of the articles in the cotton piece goods list are rated first class, any quantity Throughout western trunk line territory a classification exception of third class applies, while from the defined territories and gateways to southwestern destinations commodity rates materially less than the class basis apply. Nominally the northbound rates from the southwestern mills to the gateways and defined territories are in issue in these cases, but evidently the complainants did not have those rates primarily in mind. The existing northbound rates are not unreasonably high. There is nothing of record to show that the maintenance of rates northbound to meet special conditions than apply southbound results in undue prejudice or preference. FERTILIZER. Fertilizers are generally rated class E in the western classification, minimum 30,000 pounds, although some are rated higher. While rates in the southwest should be somewhat higher than in southern territory, there should be a reasonable relationship between the two territories, in which in many respects conditions are similar. Fertilizer, because of its beneficial effect on the land and its very immediate and great effect on traffic, should be kept on as low a level of rates as transportation will warrant. In the interest of uniformity and to avoid future complaints of undue prejudice or preference, it is recommended that the rates hereinafter found reasonable for interstate application be also applied on intrastate traffic. Although in southern territory nitrate of soda is included in the fertilizer list, in the southwest it generally takes rates on interstate traffic which are higher than on fertilizer. There is nothing of record to change the view of the Commission that rates on nitrate of soda in the southwest may well be somewhat higher than those on other fertilizer. FRUITS, MELONS AND VEGETABLES, DOMESTIC. In the western classification melons, potatoes, cabbages, and such dry vegetables without tops as onions, beets, carrots, and turnips, are rated class C. Apples, pears, and such fresh vegetables as beans, peas, corn in the husk, and carrots, beets, and similar vegetables with tops are rated fifth class. Light loading fruits are rated third and fourth class. In the southwest most vegetables rated fifth class and some rated fourth class are by exceptions reduced to class C. In addition there are many commodity rates which are lower than the class rates available either under the classification proper or under exceptions. On fruits, melons and vegetables, rated class C the class rates herein prescribed are maximum reasonable rates. Rates on other fruits and vegetables are hereinafter provided. The establishment of such class and commodity rates from and to points in the southwest will remove existing undue prejudice as between such points. There is, however, nothing of record to indicate that undue prejudice will result from the maintenance of relatively lower rates from southwestern producing points to the gateways and defined territories beyond than are generally applied throughout the southwest, or are applied on southbound traffic from the same gateways. Such rates may therefore be maintained or established, provided they are not exceeded at intermediate points on the direct routes and are not lower than are reasonably necessary to meet the competition at such gateways and markets from other producing regions. FRUITS DRIED. Dried fruits are rated fourth class. By exceptions apples and peaches are rated class C on traffic to and from western Louisiana. Dried fruits other than apples and peaches are by exception rated class A to and from Arkansas and western Louisiana. To most points in the southwest and in Kansas Missouri territory commodity rates lower than the class rates, whether obtained by the western classification or by exceptions, apply from the gateways, Missouri river cities and defined territories. For dried fruits other than peaches, apples and apricots, the fourth class rates herein-

after prescribed will be maximum reasonable rates, but for application on the three fruits named other rates are hereinafter provided. FURNITURE. The present rate adjustment on this commodity is in a chaotic condition, some rates being relatively far higher than others. There is nothing of record to show that the loading of furniture is materially in excess of the minimum. The Commission will at this time merely prescribe a readjustment of the furniture rates within the territory embraced, will correct the prevalent undue prejudice and preference which it finds to exist, the level of the readjusted rates not to exceed those hereinafter prescribed, without prejudice to such findings as may be reached in 18323. GLASS BOTTLES AND JARS. These commodities are manufactured in eastern Oklahoma, eastern Kansas, western Arkansas and western Louisiana. They are rated fifth class. The rates from southwestern manufacturing points to the gateways are lower, distance for distance, than those from manufacturing points in the defined territories, notwithstanding that the carriers have uniformly contended, and the Commission has generally found, that rates between points in the southwest may because of less favorable transportation conditions, be materially higher. Active competition as between the respective manufacturers of these commodities is shown to exist. There is also competition as between destination points. The Commission is of the opinion that the rates between all points in the southwest should be on the same basis, except that the rates from southwestern manufacturing points to the Mississippi river gateways may be lower, provided that they are not relatively lower than those from manufacturing points in the eastern and southeastern defined territories to the same points. All relief from the provisions of the fourth section will be denied; and such rates as defendants may maintain to the gateways or Missouri river cities, lower than the rates herein prescribed to other points in the southwest and Kansas-Missouri territory, distance for distance, must be maintained as maxima at intermediate points on the direct line. IRON AND STEEL ARTICLES. The principal movement is from the gateways and defined territories, particularly from St. Louis, Chicago, and Pittsburgh territories, from points in Ohio, and from the Birmingham district in Alabama. Butts, hinges and a number of similar articles are rated fourth class, the door hangers are rated fifth class, in the western classification. These articles move in comparatively small volume, usually from the defined territories. On this record there is no showing of sufficient movement of these articles to warrant the maintenance of commodity rates lower than the class basis prescribed. The defendants are therefore authorized to cancel the existing commodity rates on hinges, butts, door hangers, and similar articles and to apply the class rates hereinafter prescribed; but if lower commodity rates are maintained to one or more jobbing points in the southwest, proportionately lower rates should be maintained to all other jobbing points. From a transportation standpoint there appear to be comparatively small differences between most of the staple articles ordinarily considered as in the merchant, structural, and wire commodity lists. A number of articles, such as bars and plates, appear in both the merchant and structural lists. From a tariff standpoint it is simpler to have one scale than three. The chaotic condition of the present rates on iron and steel articles, and the wide spread undue prejudice and preference now existing, may be effectually corrected only by establishment of rates based on distance scales devised so as properly to apportion the charges for long and short hauls, thus affording to each manufacturing and jobbing point the rates to which it is entitled by its location and removing the artificial advantages and disadvantages which result from the present rates. Such scales should average somewhat higher than the rates prescribed in the Memphis Southwestern case. JUNK AND SCRAP IRON. In the western classification junk and scrap iron are rated class C and D respectively, but commodity rates much lower than class rates apply generally throughout the southwest and from that territory to Missouri river cities, the gateways, and defined territories. To correct the existing disparities and remove existing undue prejudice and preference a uniform basis of rates should be established between points in the southwest. The Commission is of the opinion that it should prescribe a general basis of rates throughout the southwest not materially different from the rates prescribed in the Memphis Southwestern

case. There is, however, nothing of record to show that undue prejudice and preference should result from the maintenance of somewhat lower rates from southwestern points to the gateways than are applied locally between points in the territory, provided that such rates are necessary to enable the marketing of junk and scrap iron produced in the southwest at the important markets on, north, and east of the Mississippi river, and provided that such lower rates are necessary to meet the competition of similar commodities from other territories reaching the same markets. MATCHES. The principal movement of matches covered by these proceedings is in carloads from the defined territories to jobbers at the gateways Missouri river cities, and at the larger cities in Kansas-Missouri territory and the southwest, and thence in less than carloads to consuming points. The rating in the western classification is fourth class, and carload commodity rates less than the class basis apply to points in central, southern, and western Oklahoma, in western Oklahoma, in western Louisiana and in Texas. To the remainder of the southwest, to most of Kansas-Missouri territory and to the Missouri river cities the fourth class rates apply. The fourth class rates hereinafter prescribed will be maximum reasonable rates for the transportation of matches, in carloads, to, from and between points in the southwest, and will constitute an adjustment free from undue prejudice or preference as between points in the southwest, and as between points in that territory, on the one hand, and points in Kansas-Missouri territory, on the other. Such rates will, however, result in undue prejudice to points in Arkansas and western Louisiana, to the undue preference of Memphis, Vicksburg, Natchez and New Orleans to the extent that rates to the latter points are maintained below the fourth class rates prescribed in Southern Class Rate Investigation, and to all jobbing points in the southwest will be excessive as compared with the present rates to Missouri river cities. PAINTS. In the western classification dry paints are rated class C; stain paints in oil, and putty fifth class; and varnishes, fourth class; local movement between points in the southwest or Kansas-Missouri territory or between the two territories other than from the gateways. The class rates hereinafter prescribed for application to and from points in the southwest will provide maximum reasonable rates for the transportation of these commodities and will remove the existing rate disparities and undue prejudice and preference as between southwestern points. But the conditions shown clearly warrant the conclusion that the present rates to Little Rock, Fort Smith, Shreveport, Alexandria, and other Arkansas and western Louisiana points are excessive as compared with the rates from the same points to Memphis and New Orleans, and that the present rates to Oklahoma points, such as Tulsa, Muskogee, and Oklahoma City, are excessive as compared with the rates to Kansas City, Coffeyville, Springfield, Joplin and various other points in Kansas-Missouri territory. In so far as the establishment of the class rates herein approved will result in higher rates to Oklahoma, Arkansas, and western Louisiana points than are now in effect, such increased rates will, without appropriate readjustments to the preferred points, increase the undue prejudice and preference now existing. PAPER. Paper of various kinds, including newsprint, wrapping, writing, and box board, are embraced in these proceedings. These articles are rated fifth class. Commodity rates materially less than the class basis are, however, general from and to points of movement. No attempt will be made to prescribe a general basis of rates thereon. The Commission can do no more than to find the rates from St. Louis, the Missouri River cities, Kansas-Missouri territory, and western and eastern defined territories via all rail routes unduly prejudicial to points in northeast Texas, such as Dallas, Fort Worth, and Paris, and unduly preferential of Oklahoma City, Shreveport, and Houston, and the rates from trunk line territory via ocean rail routes to northeast Texas points unduly prejudicial to such points, to the undue preference of Shreveport. For the future, rates to northeast Texas points via all rail routes should not exceed the contemporaneous rates to Shreveport by more than the fifth class differences resulting from the findings hereinafter made, and rates via Texas gulf port routes to northeast Texas points should not exceed rates constructed by deducting from the contemporaneous rates to Shreveport the fifth class differences resulting from the findings hereinafter made. The establishment of rates on these bases will apparently remove the

existing undue prejudice with respect to Oklahoma City, Houston and other destinations. HELD, further, that where the fifth class rates herein prescribed from, to, or between points in the southwest are lower than the existing rates on paper rated fifth class in the western classification, such fifth class rates should in the future be observed as maxima. Nothing in this report should be understood as authorizing an increase of any existing rates on paper up to the new fifth class basis where now lower. ROOFING AND PAVING MATERIALS. Practically all of these commodities are rated fifth class. Commodity rates far lower than the class basis have been applicable for many years throughout Kansas-Missouri territory and the southwest. Obviously in a general proceeding of this nature, where rates on practically all articles other than a few socalled basic commodities are in issue, the Commission should, in fixing the level of rates on any one article have reasonable regard for the relative transportation conditions of the respective articles and prescribe rates on each commodity fairly related to those prescribed on others with similar characteristics. HELD, rates based on distance must be established and maintained from the various sources of supply to the various southwestern jobbing points, in order to correct and avoid undue prejudice, and it is further of opinion that such rates should be somewhat higher than the Memphis Southwestern commodity scale. SOAP. Soap moves from Missouri river cities, the gateways and defined territories into Kansas-Missouri territory and the southwest and, to a less extent between points in those territories. Rating is fifth class. The labor of computing specific point to point rates on a strict distance basis in so large an area as the Southwest is great. If some one basis is used, the labor once performed may be utilized for other commodities. Without more uniformity in rates, the much desired tariff simplicity can not be attained. If the rates on substantially all of the commodities to and from the southwest are constructed in the same manner, simple tariffs may be expected, but without such uniformity the present confused tariff situation will continue. Rates should be slightly higher and constructed in harmony with those prescribed in this proceeding for the transportation of other commodities between the same points, and that rates to and from the defined territories in harmony therewith should also be prescribed and applied, such rates to be constructed by the same methods as are prescribed for class and commodity rates. SIRUP AND MOLASSES. The principal sources of supply of the sirup and molasses consumed in the southwest and in Kansas Missouri territory are St. Louis and points in various western defined territories, particularly points in Iowa, New Orleans, and other points in Louisiana, and south Texas points, such as Sugarland. They are rated fifth class. From practically all producing points to the Missouri river cities and all jobbing points in the southwest and Kansas-Missouri territory commodity rates much lower than the class rates apply. Sugar frequently moves in mixed carloads with sirup and molasses. The rates on the three commodities may be the same. STARCH. Starch moves principally from the gateways and defined territories, particularly western defined territories, to practically all jobbing points throughout the southwest and Kansas-Missouri territory at which wholesale grocery jobbing houses are located. This commodity is rated fifth class in the western classification, but commodity rates lower than the class basis are in effect from the gateways and points beyond. HELD, the fifth class rates herein prescribed are maximum reasonable rates for the transportation of starch in carloads, but that, in their relation to the commodity adjustments, such rates will be unduly prejudicial to points in Oklahoma to the undue preference of Kansas City; will be unduly prejudicial to points in Arkansas and western Louisiana and unduly preferential of New Orleans, Memphis, Vicksburg and Natchez: and, if the rates to and from the southwest are readjusted on the fifth class basis and the rates to and from Kansas-Missouri territory are related thereto in the manner herein found proper for fifth class rates, such rates to points in Kansas Missouri territory will be unduly prejudicial to such points and unduly preferential of Kansas City. STONEWARE. Stoneware is rated class B. The principal movement is from the defined territories, although there appears to be some local movement from manufacturing points in the southwest. Macomb and Monmouth, Ill., are important manufacturing points. Commodity rates materially lower than the class basis apply from the gateways and defined territories to practically all

points in the southwest. Speaking generally, the class rates apply to points in Kansas-Missouri territory and to Missouri river cities. The class rates hereinafter prescribed will be maximum reasonable rates for application throughout the southwest, and between that territory and the Missouri river cities, the gateways and defined territories. If rates to Texas lower than the maximum rates prescribed are maintained, rates from the same points of origin to points in Oklahoma, Arkansas and western Louisiana should be established proportionately lower than the maximum prescribed for application to such points. STOVES. Stoves, other than electric, are rated fifth class. In view of the relatively lower fourth and fifth class rates herein prescribed, the class rates herein prescribed for application to the transportation of stoves and articles taking the same rates will be maximum reasonable rates. SUGAR. Sugar is rated fifth class, but from and to points of movement commodity rates materially less than the fifth class rates are in effect. Sugar is one of the most important items in the grocery list. HELD, rates from Louisiana producing points to points in Texas other than the Houston-Galveston group are unreasonable; that the rates from Louisiana and trunk line territory via all rail routes, and the rates from trunk line territory via ocean rail routes, to the northeast Texas cities, in their relations to the rates from the same producing points to Shreveport, Lake Charles, Texarkana, Oklahoma City, Hugo, Durant, Ardmore and Altus are unduly prejudicial to northeast Texas points. It is the view of the Commission that the only practicable way in which the undue prejudice and preference found to exist may be satisfactorily corrected, the establishment of reasonable rates in lieu of those found unreasonable be accomplished, and the correction of the chaotic condition of sugar rates is through the establishment of all rail rates on a distance scale basis, or on grouped basis founded upon a distance scale, such scale properly to apportion the rates for the long and the short hauls, and of ocean rail rates from trunk line territory, based primarily upon the service performed, which will be fairly related to the all rail rates, thus affording from each producing point to each jobbing point rates which are fairly related, distance and transportation service considered. If grouping of origins is adopted, the group rates should be so constructed as to result in substantially the same average rates as if the scale were applied from each producing point separately. In determining such average rates, the river crossing arbitraries elsewhere approved should be used from points on the east bank of the Mississippi river, and the scale rates, without arbitraries, used from origins on and west of that river. Reasonable regard should also be given to the relative amount of tonnage moving from, or likely to move from, each producing point. This statement is not intended to require the application in the first instance of a traffic test to determine the relative movement from each point, but only to provide that an average, fair in accordance with known facts, be applied, rather than the use of the distances from the most distant points. SULPHURIC ACID. Sulphuric acid is rated fifth class, but the principal movement is on commodity rates which are far lower than, sometimes less than one fourth of, the class rates. The rates on shipments in tank cars are usually lower than on shipments in packages. It is apparent that the existing rates are made with little regard to distance or transportation conditions, and are the outgrowth of competition between carriers, each, with the exception of carriers serving Harrys, endeavoring to enable manufacturing points on its line to reach as many destinations as possible in competition with producing points off its line. Such an adjustment denies to some producing points their natural advantages of location with respect to particular markets, and unduly prefers other points by enabling them to reach on unduly favorable rates markets naturally tributary to the nearer points. It also results in gross inequalities as between the respective industries using sulphuric acid in their business and in undue prejudice to the users paying relatively higher rates and undue preference of those paying relatively lower rates. HELD, that maximum reasonable rates for the transportation of sulphuric acid in tank cars or in drums, carloads, to points in the southwest would be rates averaging substantially the same as the column 20 rates. In view, however, of the peculiar situation existing with respect to this commodity and of the fact that groupings somewhat different than those pre-

scribed in this proceeding for other commodities may more satisfactorily meet the situation with respect to this commodity, no order prescribing maximum reasonable rates on movements in tank cars or drums will be entered, but the carriers will be expected promptly to revise their rates to all points in the southwest to a basis which will approximate the column 20 rates herein prescribed. TIN ARTICLES. These articles are rated fourth class. On all the articles here considered, other than cans, drums, and articles grouped therewith, the Commission is of the opinion that the column 55 rates (fourth class) herein prescribed will be reasonable and unprejudicial as between the respective points of origin and destination. There is no evidence of record justifying an increase in the minimum weight, and accordingly in connection with such rates the present minimum of 18,000 pounds for a 36 ft. car, subject to rule 34 should be maintained. Other rates and minimum weights are hereinafter provided for application to tin cans. VINEGAR. This commodity is rated fifth class, but from practically all points of production to destinations in the southwest commodity rates much lower than the class basis apply, or the class D rates are applicable by exception. HELD, rates based on a scale somewhat higher than the Memphis-Southwestern single line scale should be prescribed and applied. WELL BORING OUTFITS AND OIL WELL SUPPLIES. They move from the gateways and defined territories to southwestern points and between the latter points. Rating is class A minimum 36,000 pounds. Except as indicated in the following paragraph, the class A rates hereinafter prescribed will constitute maximum reasonable rates for the transportation of these commodities from and to points in the southwest, and, so far as the record indicates, will remove all existing undue prejudice and preference. One of the commodities involved in the oil well supply commodity list is rig irons. In Parkersburg Rig & Reel Co. v. C. R. I. & P. Ry., 95 I. C. C. 181, 107 I. C. C. 182, rates on rig irons approximately 85% of the rates on oil well supplies were prescribed from Parkersburg, W. Va., and other points to destinations in Arkansas, Louisiana and to other points. Following that case, the rates on rig iron in straight carloads should be about 15% lower than the rates on oil well supplies. Rates substantially on that basis are hereinafter prescribed. WOODENWARE. The principal movement is from defined territories and St. Louis to the larger jobbing points. This commodity is rated fourth class. Generally speaking, the movement to the Missouri river cities and to points in Kansas and Oklahoma, other than those in the southern and western portions of the latter state, is on the class rates. To southern and western Oklahoma and to Texas commodity rates lower than the class rates apply. Establishment of the fourth class rates hereinafter prescribed will result in reasonable rates for the transportation of woodenware, in carloads, from and to points in the southwest free from undue prejudice, but such rates will be excessive as compared with the present rates to Kansas City, Memphis and New Orleans, unless the latter are appropriately readjusted, all of which last named points compete directly with jobbing points in the southwest. GENERAL DISCUSSION AND CONCLUSIONS. TEXAS COMMON POINT AND HOUSTON GALVESTON GROUP ADJUSTMENTS. The Texas common point area has existed for many years. Apparently, it arose primarily from two causes: (1) the fact that from the eastern defined territories and trunk line territory there are all rail routes into Texas through various gateways, including the Missouri river cities on the north, St. Louis on the northeast, Memphis and Vicksburg on the east, and New Orleans on the southeast; and (2) competition between ocean rail traffic from trunk line territory through Gulf ports with all rail traffic from the gateways and the eastern and western defined territories. The circuitous routes desiring to maintain the same rates as the direct routes and confronted with the necessity of observing the rates of the direct line as maxima at intermediate points on their respective routes or of obtaining fourth section relief, apparently chose the former alternative. It is clear that competition between carriers and shippers by ocean rail routes from trunk line territory and carriers and shippers by rail from the eastern and western defined territories was the principal cause of the creation of the blanket. Undoubtedly, competition exists between the respective routes and between the shippers located in the various territories of origin, but it does not follow that the desire of the carriers to com-

pete with one another may properly deprive the north Texas cities of their advantage of shorter routes from the gateways, Memphis and north, than exist to south Texas. Certainly, the desire of carriers can not be permitted to deprive the north Texas cities of rates reasonable for the service performed. Stated otherwise, the rates should not be kept above a reasonable basis in order to permit routes from the various directions to reach all points in Texas on a parity any more than should rates to all points in Indiana, Ohio, or any other state be made the same from all points competing for trade in such states in disregard of the service performed and of the natural advantages of the different cities concerned. The Houston-Galveston group is a strip of territory along the Gulf coast for about 100 miles, embracing Galveston, Houston, Beaumont, Port Arthur, and Orange, all ports of call. The traffic naturally tributary to the ocean lines is, of course, the traffic between trunk line territory and the Texas ports and points contiguous thereto. To permit the rail lines from St. Louis, Chicago, Pittsburgh and Cleveland and other points to maintain rates so low as to deprive such water carriers of the traffic naturally theirs is not in accord with the spirit of section 500. HELD, rates to and from the Houston Galveston group, lower than are warranted by the distances to and from such group points in their relations to the corresponding rates to and from Oklahoma and northeast Texas points, are unduly prejudicial to such Oklahoma and north Texas points and unduly preferential of the Houston Galveston group. Rates should be constructed based upon the relative distances to north Texas cities and Oklahoma, on the one hand, and Houston Galveston group on the other. OKLAHOMA VERSUS SURROUNDING STATES ON TRAFFIC TO OR FROM MISSOURI RIVER CITIES GATEWAYS AND DEFINED TERRITORIES. The class rates, and nearly all the commodity rates, between Missouri river cities, the gateways, and western defined territories, on the one hand, and points in Okahoma, on the other, are higher, distance for distance, than the rates between the first indicated points and points in eastern Kansas and southwestern Missouri. There is nothing of record to show that transportation conditions in central and southern Kansas are superior to those in the southwest. It does, however, appear that in many respects the northeastern portion of Kansas has conditions superior to those in the remainder of Kansas or in the southwest. The density of traffic is greater in most of southern Missouri than in the southeast, but on the average there appears to be little difference between the extreme southern portion of Missouri and the southwest. To apply the same level of rates through Kansas Missouri territory as in the southwest would ignore the fact that transportation conditions are more favorable in northeastern Kansas and in most of southern Missouri than in the southwest. Further, to apply in the area bordering on the Missouri and Mississippi rivers rates which would be reasonable for the southwest would result in serious "humps" at those rivers and places cities and towns in that area under serious handicaps in competing with the Missouri river cities, St. Louis and points north and east of the rivers. The Commission concludes that in central and western Kansas and in the extreme southern portion of Missouri the same level of rates should apply as in the southwest, but that in northeastern Kansas and in all of southern Missouri, except a strip in close proximity to the southern border, rates on a somewhat lower level should be prescribed. OKLAHOMA VERSUS KANSAS MISSOURI TERRITORY LOCALS. Practically all class rates, and most commodity rates, between points in Kansas are materially lower than the rates between Kansas points and Oklahoma. The class rates between southern Missouri and Oklahoma are substantially the same as the intrastate rates in southeastern Missouri, but between points in that part of southern Missouri lying west and north of the Frisco main line, St. Louis to Springfield, the class rates are generally on a basis materially lower than the southern Missouri Oklahoma rates. OKLAHOMA AND TEXAS INTERSTATE AND SHREVEPORT TEXAS RATES. While intrastate rates in Texas are not wholly on a blanket basis, nevertheless the common point system is still strongly reflected therein. On most commodities the rates are graded only for comparatively short distances and for all greater distances are blanketed. Rates from Oklahoma to Texas are unduly prejudicial to extent they exceed rates from Shreveport to Texas. LOCAL SOUTHWESTERN RATES VERSUS RATES

TO AND FROM MISSOURI RIVER GATEWAYS AND DEFINED TERRITORIES. The rates between Oklahoma and Arkansas, between Oklahoma and Texas, between Arkansas and Texas, between western Louisiana and Texas, and between western Louisiana and Oklahoma are on most commodities relatively higher than the rates between those states and the Missouri river cities, the gateways and defined territories. Finding No. 27. ARKANSAS INTRASTATE RATES. Between points in Arkansas the class rates and the rates on about 35 important commodities are based on the Memphis-Southwestern scale. Such class and commodity rates are in almost all cases materially lower, distance for distance, than the rates between Arkansas and Texas or between Arkansas and Oklahoma. WESTERN LOUISIANA INTRASTATE RATES. The situation with respect to western Louisiana intrastate rates, their relation to Texas-Louisiana and Oklahoma-Louisiana interstate rates is similar to that described with respect to the Oklahoma-Texas, Oklahoma-Arkansas and Texas-Arkansas adjustments. OCEAN RAIL RATES. Over Gulf routes via New Orleans, Beaumont, Galveston, and Houston through rates are generally applicable from all of trunk line territory, and to some extent from points in Virginia, to the entire southwest, including Texas differential territory, except that to Arkansas such through rates apply only from a strip of territory along the seacoast about 100 miles wide. Combination rates apply to Arkansas from the remainder of the territory ordinarily covered by through ocean rail rates, it apparently being the policy of the ocean rail lines to concede such traffic to the all rail lines on the theory that the ocean rail rates that would be needed to attract the traffic would be lower than they are willing to apply. From practically of all trunk line territory to points in Kansas-Missouri territory and to the Missouri river cities there are also through rates via Gulf routes, but they apply only via the Southern Pacific steamship line through New Orleans and Galveston. Via south Atlantic ports there are through one factor rates to the Missouri river cities, to Kansas-Missouri territory, and to all of the southwest, except Texas and the southern portion of Louisiana. To the excepted area much higher combination rates apply. As in the case of the Gulf routes, the rates to Oklahoma and Louisiana generally apply from all of trunk line territory, while to Arkansas they apply only from the north Atlantic ports and from a small strip of territory adjacent to the coast. It is generally accepted that where water hauls are long the ratio of water miles to rail miles may properly be greater than where the hauls are comparatively short. Generally speaking, terminal services are relatively more expensive in connection with water service than with rail service. On the other hand, what are termed line haul expenses of ocean carriers are relatively low for long hauls. The Commission is convinced that, considering the long rail hauls from the south Atlantic rail ports, the Gulf port routes are the more economical to practically all points in the southwest, with the possible exception of northeastern Arkansas. Certainly to Shreveport, the Gulf port routes represent less expensive service than do the south Atlantic ports or all rail routes. The general basis for constructing through rates over Gulf routes to Texas common point territory has been by addition of differentials to the rates from St. Louis to that territory. But departures from the general basis are the rule rather than the exception, due to the existence of numerous lower combinations on the Gulf ports. SOUTHWESTERN TARIFFS COMPLICATED AND UNSATISFACTORY—NONCONCURRENCE TARIFFS. HELD, nonconcurrence tariffs are unlawful and such tariffs containing rates from, to or between points embraced in these proceedings should be canceled at the time the rates are made effective pursuant to the findings herein; and the reasonable and nonprejudicial ocean rail rates between points in trunk line territory or in eastern defined territory, on the one hand, and Gulf ports and interior points in the Southwest and Kansas-Missouri territory over Gulf and south Atlantic port routes, on the other, should be published as joint through rates in accordance with the provisions of section 6 of the act and the tariff rules promulgated pursuant to that act. COMPREHENSIVE SYSTEM OF RATES BASED ON DISTANCE ONLY WAY TO CORRECT WIDESPREAD UNDUE PREJUDICE AND PREFERENCE AND BRING ORDER OUT OF SOUTHWESTERN CHAOS. Measure of the distance scale prescribed shown later. JOINT LINE VERSUS SINGLE LINE RATES—COMPUTATION OF DISTANCES. In

applying the distance rates and the distance arbitraries hereinafter provided for short or weak lines and to Texas and Oklahoma differential territories, the shortest route over which carload traffic can be moved without transfer of lading should be used; and that no differentials, arbitraries, or distance additions for joint line hauls should be provided, but that the absence of such additions and the short line method of computing distances prescribed should be given weight in determining the level of the base distance scale of scales. CONSTRUCTION OF THE SOUTHWESTERN SCALE. HELD, the maximum reasonable first class (column 100) scale to be used as a basis for the construction of interstate rates on standard lines between points in the southwest and between points in that part of Kansas-Missouri territory west and south of the line described in note 1 of finding 3, is and for the future will be, the distance scale of rates entitled "southwestern scale" set forth in appendix 18 herein; and that maximum reasonable first class (column 100) interstate rates on standard lines between points in the southwest and between points in that part of Kansas-Missouri territory west and south of the line described over routes lying wholly within the southwest or passing in part through Tennessee, Mississippi, or Louisiana east of the Mississippi river, are, and for the future will be, rates determined by the said distance "southwestern scale" applied in accordance with the provisions of finding 15 herein, SHORT AND WEAK LINES. Interstate rates to, from, and between points on the Fort Smith & Western Ry. are the column 100 rates plus arbitraries set forth in Appendix 18, such arbitraries to accrue to the Ft. S. & W. TEXAS AND OKLAHOMA DIFFERENTIAL TERRITORIES. The transportation and traffic conditions in Texas differential territory and in northwestern Oklahoma warrant higher rates than in Texas common territory or the remainder of the southwest. Reasonable differentials will be those shown in appendix 18. MISSISSIPPI RIVER BRIDGE ARBITRARIES AND CROSSING ALLOWANCES. HELD, in constructing maximum reasonable first class (column 100) rates between points in the Southwest, in Texas and Oklahoma differential territories, and in that part of Kansas-Missouri territory on and west of the line described in note 2 of finding 3, on the one hand, and Memphis, Vicksburg, Natchez, Angola, Baton Rouge, Harahan and New Orleans, on the other, there may be added 4c in the case of Memphis and 6c in case of the other east bank crossings named. RATES BETWEEN POINTS IN KANSAS-MISSOURI TERRITORY AND BETWEEN THAT TERRITORY AND THE SOUTHWEST. Same as southwest. RATES TO AND FROM MISSOURI RIVER CITIES GATEWAYS AND DEFINED TERRITORIES. While the record with respect to transportation conditions outside of the southwest and Kansas Missouri territory is far from complete, it is clear that such conditions in the entire area east of the Missouri river and north of the Ohio river are materially more favorable and warrant lower rate levels than in Kansas-Missouri territory or the southwest. Lower rates in southern territory than in the southwest are also warranted, but, speaking generally, the Commission sees no reason for material differences in rate levels as between southern territory and that part of Kansas-Missouri territory for which the Kansas-Missouri scale is herein prescribed. CLASSIFICATION AND EXCEPTIONS THERETO—CLASS PERCENTAGES—SIMPLIFICATION OF TARIFFS—BASES FOR COMMODITY RATES. Uniform class percentages throughout the southwest should be prescribed, and the same percentages should be used to, from, and between points in Kansas-Missouri territory. While a scale of 10 classes, with most carload traffic carried in but six, would not in opinion of the Commission constitute a sufficiently flexible basis to provide for all the commodities here under consideration, the Commission believes that much greater use should be made of the carload classes than has heretofore been the practice in the southwest, and that the class percentages to be adopted should be devised with that desideratum in mind. It is desirable that the rates on practically all the commodities embraced in these proceedings be revised in harmony with the specific class and commodity rates herein prescribed. Stated otherwise, the rates on most of the commodities for which no specific rates are provided, exclusive of commodities recognized as basic in character, such as products of mines and the like should be placed on the revised class rates prescribed, should be made subject to the commodity basis applicable to the most nearly analogous article, or an

additional basis should be provided therefor and be determined in the same manner as the bases provided in finding 24. Speaking generally, the application of the maximum reasonable class and commodity rates herein prescribed will make unnecessary the maintenance of further classification exceptions, but on carload traffic not specifically discussed in this report nothing here said should be construed as authority to cancel existing classification exceptions unless reasonable rates are provided for such commodities in harmony with the carload rates herein prescribed on other articles. FOURTH SECTION. Fourth section applications denied. IOWA CASE. Complainant asked that defendants be required to establish between Iowa and Texas points the same rates as apply to and from St. Louis, thus placing Iowa in the same rate territory on traffic to and from Texas as on traffic to and from Kansas-Missouri territory and Oklahoma. In practically all cases the distances from Iowa to Texas are greater than those from St. Louis to Texas. HELD, the establishment of the maximum reasonable through rates between the defined territories and Texas herein prescribed will afford rates between Iowa and Texas which are fairly related to the rates to and from St. Louis, the Missouri river cities and points in defined territories. Complaint dismissed. ROME CASE. Maximum reasonable rates via south Atlantic ports are herein prescribed both from Albany and Rome. Complaint dismissed. To the same extent that the desire of the defendants in the past to secure traffic from one another has been largely responsible for the present unsatisfactory conditions, they will now have it in their power, through uniform adherence to the bases herein prescribed, to perpetuate an adjustment which will be free from undue prejudice and preference. Neither the record nor the issues in the instant proceedings are sufficiently broad to warrant prescription of reasonable rates between the Missouri and Mississippi river cities and points in western trunk line official and southern territories, or the relationship which the rates from or to such river cities should bear to the rates from or to points within the Southwest and Kansas-Missouri territory. This fact, however, should not prevent the removal of the undue prejudice and preference found to exist within the area here directly involved or the correction of the chaotic rate and tariff situation existing therein. It is possible that many of the undue differences as between points within that area and contiguous competitive points will be corrected as a result of the pending proceedings. The bases of rates herein prescribed or approved are intended to supersede all adjustments heretofore prescribed by the Commission with reference to all or any of the rates in issue. The Commission will for the present leave to the appropriate state commissions and the carriers the matter of adjusting the interstate rates or bases which will harmonize with the rates prescribed or approved herein and will remove the undue prejudice and preference. Appendix 13 column 100 rates range from 33c to 362c; column 85, that percentage of column 100; column 70, that percentage, column 65, 60, 55, 50, 45, 41, 38, 35, 32½, 30, 27½, 25, 22½, 20, 17½, 16, their respective percentage of the column 100 rates. Class percentages shown in appendix 16 are 1st, 100%, second 85%, third 70%, fourth 55%, fifth 38%, class A 45%, class B 32½%, class C 27½%, class D 22½%, and class E 17½%. Appendix 18 shows southwestern scale 36c for 5 miles to 318c for 1500 miles. Kansas-Missouri scale ranging from 33c for 5 miles to 296c for 1500 miles. Differentials from Texas and Oklahoma differential territory ranging from 7c for 5 miles to 64c for 1560 miles. Differentials for Fort Smith & Western Ry. ranging from 5c for 5 miles to 25c for 500 miles. The Commodity rates apply on agricultural implements column 41, bagging and ties 25, bags and bagging 35, barrels and kegs, 41, beverages 35, brick, enameled 20, broom corn 41, butter and eggs 60, canned goods, condensed milk, vegetables, etc. 35, other canned goods 38, cans, drums, etc. 50 and 65, green coffee, 35, cotton fabrics 70, fertilizer, 16, dried fruits, 38, fruits and vegetables rated class C, 27½, rated fifth class 35, rated higher than fifth except berries 50, berries, 65, new furniture 60, glass bottles, jars, etc. 38, grape juice, 41, iron and steel articles 32½, scrap iron 17½, junk 32½, dressed poultry 60, live poultry 65, roofing materials 25, soap 35, soda nitrate of, 17½, starch 32½, sulphuric acid in carboys 38, sugar 30, sirup and molasses 30, vinegar 35, well boring outfits, oil well supplies, general 45, rig irons 38. Consolidated Southwestern cases, 123 I. C. C. 203.

(j) Rates on lumber and related articles from points in coast, Spokane, and Oregon groups (Groups 1, 2, and 3) to Gordon, Irwin, Merriman, and Eli, Nebr., found unreasonable to extent they exceeded rates based on distance scale prescribed in 104 I. C. C. 695, for application in same general territory. Carriers required to preserve the existing competitive relationships between the various groups as pointed out in 78 I. C. C. 746, in publication of rates in conformity with that scale. Reasonable rates prescribed for future and reparation awarded. Walrath & Sherwood Lbr. Co. v. C. & N. W., 126 I. C. C. 97.

(k) Complainants alleged that the rates on bituminous coal, carloads, from Illinois and Indiana are unreasonable and unduly prejudicial as compared with those from western Kentucky and in the socalled Inner and Outer Crescents in Pennsylvania, Maryland, Virginia, West Virginia, eastern Kentucky, and Tennessee to Chicago switching district. The Illinois and Indiana coals are generally competitive with the western Kentucky coals and to a considerable extent with Crescent coals in general. However, the Crescent coals have better heating qualities and leave less ash. Many industrial concerns that could use the various coals interchangeable find that considering rates, prices, heating qualities, and the cost of handling at the furnaces, it is more economical to use Crescent coals. The rates from the various groups of Illinois mines are differentially related to each other, and are in purported compliance with the Illinois Coal Cases, 1920, 62 I. C. C. 741, 64 I. C. C. 751. The rates from the various groups of Indiana mines are also differentially related to each other, but have not been fixed by the Commission. They are closely, if not differentially, related to the rates from the Illinois groups and are kept more or less in line with them. The rates from the western Kentucky group are differentially related to the rates north of the Ohio river. The rates from the Crescents are not differentially related to those from the Illinois, Indiana, or western Kentucky groups. Traffic from the Illinois and Indiana mines involves comparatively little assembling service due to the fact that the mines are located on or near the main line. Transportation to Chicago is performed over practically level terrain under very favorable conditions, and on lines of heavy traffic density. There are certain conditions that tend to keep the rates to Chicago at or below a reasonable maximum level. Chicago is the greatest coal market in the country and producers in all the districts directly or indirectly concerned in these cases seek to sell there. All rail and rail and lake carriers converging from different directions individually strive to participate in the traffic to the greatest extent possible. The rates attacked are not high compared with those on coal prescribed or approved by the Commission from many points in the Illinois, Indiana, Ohio and Crescent districts to destinations in central and western trunk line territories for hauls of similar length. Delivery expenses at Chicago are unusually heavy. The rates on lake cargo coal were in the nature of proportional rates to the ports for a part of the through movement to cross lake destinations, and for that reason, and because of its more favorable transportation characteristics, the rates on lake cargo coal had always been lower than the rates on socalled commercial coal destined to the lake cities proper. The rates here attacked are local rates and there is no return loading similar to the return loading of iron ore such as was disclosed in Lake Cargo Coal Cases, 126 I. C. C. 309. The rates from the western Kentucky group are 25c higher than those from the southern most groups in Illinois and Indiana, namely, the southern Illinois and Evansville groups, which are accorded common rates. The determination of what may be called the rate making distances from the various groups is a matter of great difficulty. The parties undertook to show average short line distances over one or more tariff routes from each group, average distances over all tariff routes, weighted average distances based on actual movements during certain periods, and distances from the nearest and most remote points in each group. These distances from any given group vary widely and, if distance is to be a controlling factor, much depends upon which distance is used. The principal short line and weighted average distances should be given primary consideration. It should also be stated that in seeking to determine the differences in distances from two or more original groups a great deal depends on the destination. As the Illinois and Indiana groups are all definately related to each other and the reationships are not here questioned, it seems that the most logical way to ap-

proach the matter of the propriety of the differentials against the western Kentucky groups from the standpoint of distance is to consider this group, particularly in its relation to the nearest important competing group, which is the southern Illinois group. A detailed study of the record is convincing that a mile of transportation between the western Kentucky mines and the Ohio river costs considerably more than a mile of transportation between the Illinois and Indiana mines and Chicago. However, on long haul traffic to the northwest this fact becomes of less relative importance as the lengths of the hauls increase. The same may also be said with respect to differences in distance. Over reasonable and practicable routes western Kentucky is at least 35 miles greater distance than southern Illinois on traffic to Chicago and about 129 miles on traffic to the northwest. The difference in distance to Chicago over the I. C., often said to be the controlling and rate making line, is about 88 miles. Altogether it appears that although a large volume of Crescent coal is sold in Chicago in competition with Illinois and Indiana coal the greater portion is not competitive. HELD, interstate rates to the Chicago switching district from the Danville, Brazil-Clinton, and Linton-Sullivan groups are unreasonable to extent they exceed $1.35, $1.55 and $1.65 per ton, respectively. HELD, further, interstate rates not otherwise unreasonable but relationship western Kentucky over Southern Illinois should be 35c per ton instead of 25c per ton. Illinois Indiana Coal Cases, 128 I. C. C. 265.

(l) Southern carriers, respondents, proposed a revision of the rates on lime, in carloads, from Alabama, Georgia, Kentucky, Tennessee and Virginia to southern territory. The present adjustment of rates on lime between points in southern territory is the result of the publication from time to time of specific point to point rates, made without regard to distance, to allow producers to meet the competition of other producers. The present adjustment was established before the present provisions of section 4 of the act were enacted. There has never been any general revision of the lime rates in the south, with the result that the rates are not uniform. There are many fourth section departures and there are numerous discriminations, because the rates from the various producing points are not properly related. The proposed revision was undertaken for the purpose of removing fourth section departures, of eliminating inequalities between producers, and of providing a uniform basis of rates to apply on lime between points in the south. Generally speaking, the proposed rates subject to the minimum of 30,000 pounds result in increases of the present rates; those subject to minimum of 50,000 pounds result, in most instances, in reductions in the present rates. HELD, proposed rates justified. Respondents will be expected to publish rates from the Martinsburg, W. Va., group to southern territory; from producing points in southern territory to Braithwaite, La., and to destinations in Louisiana territory west of the Mississippi river. Lime between southern points, 129 I. C. C. 635.

(m) The fact that these, like the rates assailed, are fifth class rates applying from lower percentage rate groups is no justification for the differences in the measure of the rates. In such situations the shipper is concerned only with the rates from the particular producing points and not with the question of whether such rates appear reasonable when applied to an extensive group containing many points from which there would be no movement. Jeffrey Dewitt Insulator Co. v. B. & O. R. R., 132 I. C. C. 423, 426.

V. DISCRIMINATION.

See Discrimination.

§13. In General.

(a) Complainant attacked through rates charged on 213 cars of lumber shipped from Foster, Oreg., to Colorado, Iowa, Kansas, Missouri, Nebraska, Utah and Wyoming between Aug. 1922 and March, 1923, as unduly prejudicial as compared with the rates from the coast group, including Independence, Oreg., and other points in Oregon and Washington, to the same destinations. Foster is on the Valley & Siletz R. R., 7.2 miles from Crisp, Oreg., and 18.8 miles from Independence, Oreg., connections with the S. P. The rates applicable were 1 c higher than from Independence and other points in the coast group. Complainant states that when the shipments moved it was in keen competition with various named lumber companies at Corvallis, Albany, Dallas, Portland and Salem, Oreg., and points in Washington, such as Tacoma and Seattle, and that in order

to sell its products it was obliged to base its quotations on the coast group rates and to absorb the difference between that basis and the higher basis exacted by defendants. In consequence of the order in 81 I. C. C. 505, rates were established from Foster on the coast group basis on Nov. 17, 1923. It is shown on this record that the rates from the coast group were the proximate cause of the injury which complainant sustained prior to the establishment of the coast group rate from Foster. HELD, rates attacked unduly prejudicial to Foster, reparation awarded on basis of coast group rates. Foster Lumber Co., v. V. & S. R. R., 112 I. C. C. 651.

(b) Group rates on gasoline and other so-called refined oils now taking the same rates from points in the midcontinent field of Missouri, Kansas, Oklahoma, Arkansas, Louisiana, and Texas, to destinations in western trunk-line territory, Illinois, Indiana, and northern peninsula of Michigan, as a whole, found not in excess of reasonable maximum rates, but said rates are unduly prejudicial or preferential as between various origin groups and also as between various destination points. Reasonable and nonprejudicial rates or bases of rates prescribed. Midcontinent Oil Rates, 1925, 112 I. C. C. 421.

(c) Rates on gasoline and other so-called refined oils from midcontinent Group 2 points to St. Joseph, Mo., found unreasonable and unduly prejudicial to extent they exceed rates contemporaneously maintained from same points of origin to Kansas City, Mo. Reasonable and nonprejudicial basis of rates prescribed. Midcontinent Oil Rates, 1925, 112 I. C. C. 421, 473, 474.

(d) Upon further consideration, original report 96 I. C. C. 485, modified and rates on gasoline from Tulsa and grouped points in Oklahoma to destinations in Indiana found unreasonable and unduly prejudicial as compared with rates from same origin points to Chicago and other Illinois destinations. In view of substantial similarity of transportation conditions in Indiana and Illinois, there is no warrant for maintenance of higher rates to points in western Indiana than to Chicago and other Illinois points taking same rates. Concurrently, rates on fuel oil and other products taking same rates from same origins to same destinations found unreasonable to extent they exceeded 80 per cent of the contemporaneous rates on gasoline. Reasonable and nonprejudicial rates prescribed for future. Indiana State Chamber of Commerce v. A., T. & S. F., 112 I. C. C. 481.

(e) Rates on lumber from Foster, Oreg., located on the Valley & Siletz R. R., to destinations in Colorado, Iowa, Kansas, Missouri, Nebraska, Utah, and Wyoming, found unduly prejudicial to Fostoria and unduly preferential of Independence, Oreg., and other competing points in Oregon and Washington accorded the coast group basis of rates. Reparation awarded. Foster Lbr. Co. v. V. & S., 112 I. C. C. 651.

(f) Rates to two competing points or groups may be within the range of reasonableness, and thus not in violation of section 1 of the act, but may be, nevertheless, improperly related and result in undue prejudice in violation of section 3. In such a case commission may, where warranted by the record, prescribe specific rates to one or both of the competing points in order to remove undue prejudice. Ridenour-Baker Mercantile Co. v. A., T. & S. F., 113 I. C. C. 629, 634.

(g) Complainant attacked commodity rates on potatoes, carloads, from points on the A. C. L., in North Carolina, South Carolina and Virginia, to Kalamazoo, Jackson, Battle Creek, and Sturgis, Mich., as unreasonable and unduly prejudicial as compared with the rates to Grand Rapids, Mich. Respondents proposed increased and reduced rates on potatoes, carloads, from North and South Carolina on the A. C. L. to these and other destinations in central territory. There are and have been in effect for a great many years a limited number of joint commodity rates on potatoes from North Carolina points to the larger consuming points in central territory for which there is no established basis. A general revision of the rates is now proposed, under which numerous fourth section departures existing in the present rates would be removed and relationships with rates from points in Virginia and in the vicinity of Charleston, S. C., would be observed. The present rates must be revised. Fourth section departures in the present rates are proposed to be removed by increases in the joint commodity rates in effect to the large consuming points and reductions to intermediate points and by increases in the rates to a level higher than that from intermediate Virginia cities. In the pro-

posal to maintain the same rate from all of the points of origin to Cincinnati and other Ohio river crossings, and maintain rates substantially higher from the southern than from the northern points of origin, to points north of those crossings, due consideration is not given to the differences in the distances. HELD, rates attacked unduly prejudicial to extent they exceed rates to Grand Rapids and unreasonable to extent they exceed distance rates ranging from 48c for 750 miles to 68c for 1,250 miles, reparation denied. Taylor Produce Co. v. A. C. L. R. R., 115 I. C. C. 633.

(h) Complainant attacked commodity rates on rosin and rosin dross, turpentine and pine oil, carloads, from Louisiana and Texas producing points to destinations in central and western trunk line territories, as unreasonable and unduly prejudicial as compared with rates from southeastern and Mississippi valley territories in Alabama, Florida, Georgia, Mississippi and Louisiana east of the Mississippi river; and that defendants failure to establish and maintain reasonable joint rates and through routes for this traffic is unlawful. Evidence in support of the complaint is predicated upon 87 I. C. C. 740, and 89 I. C. C. 634, that adjustment becoming effective August 20, 1924. Rosin is shipped in wooden barrels, is not inflammable, is not subject to deterioration from exposure, and requires only a low class of equipment. Claims for damages are rare. To some extent it comes in competition with greases and inedible oils produced in packing houses at Kansas City, Mo., and other points. It is used extensively in the manufacture of soap. Turpentine from the southwestern group is shipped almost entirely in tank cars. It is not subject to the regulations for the transportation of dangerous articles, and the risk of transportation is said to be no greater than any other liquid shipped in the same manner. HELD, rates attacked to central territory unreasonable to extent they exceed on rosin 35c to St. Louis, turpentine 55c, specific rates named to specific destinations. To Kansas City unreasonable to extent they exceed 36c on rosin and 56c on turpentine, rates to western trunk line territory should be revised in harmony with the rates to Kansas City and St. Louis, reparation denied. Turpentine & Rosin Producers Asso. v. A. & V. Ry., 115 I. C. C. 667.

(i) Complainant attacked rates on cereal beverages, carloads, from St. Louis, Mo., to Atlanta, Ga., two years prior to July, 1, 1925, as unreasonable, unduly prejudicial and unduly preferential of Montgomery, Ala., and Augusta, Macon and Savannah, Ga., and in violation of section four. The rates to the southeast are and have been for many years maintained on a group basis. Such a basis always results in prejudice to the nearest point in the group but it does not necessarily follow that the prejudice is due. It must appear that the nearest point is injured by the adjustment. Macon and Augusta now take the same rates as Atlanta; Montgomery and Savannah take lower rates. Atlanta is not intermediate to Montgomery over the direct routes. HELD, rate attacked not unreasonable or unduly prejudicial, complaint dismissed. Bradley & Woertz v. I. C. R. R., 118 I. C. C. 233.

(jk) Group lines generally have the appearance of injustice to some point just across the border, but having been established they should not be lightly or unnecessarily disturbed. Anderson-Taylor Co. v. A., T. & S. F., 115 I. C. C. 313, 320.

(l) Under group basis of rates the nearest point in the group is always prejudiced but it does not necessarily follow that prejudice is undue. It must appear that nearest point is injured by adjustment. Bradley & Woertz v. I. C., 118 I. C. C. 233, 235.

(m) Groups long maintained are presumably fair and are not to be disrupted unless substantial justice clearly requires it. Dissatisfied producers deprived of benefit of their proximity to a common market must show that they are actually injured by an unjust and unlawful discrimination. See 40 I. C. C. 311. Chicago Gravel Co. v. A., T. & S. F., 118 I. C. C. 633, 645, 646.

(n) Complainant attacked commodity rates charged on potatoes and vegetables, carloads, from Colorado, Idaho, Montana, Nebraska, Wyoming and Utah to Arkansas and Louisiana as unjustly discriminatory and unduly prejudicial of Little Rock, Pine Bluff and Helena, Ark., and Memphis, Tenn. From Colorado to this territory of destination the rates on potatoes and on other vegetables are the same. From the other states the rates on other vegetables are higher than on potatoes, but when there is a difference

it is uniform and applies alike to all of the destinations here considered. With a few unimportant exceptions the rates on potatoes in carloads to the north half of Arkansas and to Memphis are 76 cents from Colorado, Nebraska and Wyoming and 87 cents from Utah, Idaho and Montana. To destinations south, including complaining points in Louisiana, the rates are 88 cents and 100 cents. HELD, attacked rates not unduly discriminatory but are unduly prejudicial to extent they exceed to Little Rock, Pine Bluff, Helena and Memphis by more than 8 cents from Colorado, Nebraska and Wyoming, from which the rate is now 88 cents, and 7 cents from the points in Utah, Idaho and Montana, from which the rate is now 100 cents. Arkansas Jobbers & Mfrs. Asso. v. C., R. I. & P. Ry., 120 I. C. C. 245.

(o) In a group adjustment there must be dividing lines, and, naturally, where one point is located on or near this dividing line and another point just across that line in a higher rated group there will be a difference in rates. Along the border lines between groups the comparative situation is necessarily more acute than in the case of the average distance between the points in two adjoining groups. No group adjustment can effect exact justice in rate making, and the small disadvantages to one point or another incident to such adjustments do not constitute the undue prejudice made unlawful by section 3. In all cases of blanket or group rates there is of necessity more or less disregard for distance and varying degrees of inequality, but such inequalities are not necessarily unreasonable or unjust when the situation is viewed from every standpoint and all the circumstances and conditions are taken into account. In the absence of proof of tangible injury to complainants or of positive evidence that rates are unjustly discriminatory or unduly prejudicial a group adjustment should not be disturbed. Pelham Phosphate Co. v. A. C. L. R. R., 122 I. C. C. 509, 511.

(p) Group rate on coal from Dante and Clinchfield, Va., points on the C., C. & O., in the Clinchfield, Group 1, to Lambert Point, Va., for transshipment, found unduly prejudicial to extent it exceeds rate contemporaneously in effect from Carbo and St. Paul, Va., competing points located in the Clinch Valley district 2, to same destination for transshipment. The spread in rates between the two groups makes it impossible for mines in Clinchfield Group to successfully compete with those in Clinch Valley district and deprives them of opportunity to market coal in large consuming regions beyond Lambert Point. Moreover, Dante and Clinchfield are located near the center of the Clinch Valley district 2 but were not included therein, due to exclusion by the Norfolk & Western of all mines not located on its own rails when the group boundaries were drawn. The resulting group has thus become unnatural and distorted and its continuance can not be sanctioned by commission. Nonprejudicial rate relationship prescribed for future. Clinchfield Coal Corp. v. C., C. & O., 122 I. C. C. 37.

(q) As to all-rail traffic from Oklahoma, Arkansas, western Louisiana, Kansas-Missouri territory, Missouri River cities, Mississippi River gateways, and defined territories in Texas, and from Texas to Oklahoma, Arkansas, and western Louisiana, the Texas common-point rates on various articles found to result in undue prejudice to northeast Texas cities and in undue preference of other Texas points to the south and west, including the Houston-Galveston group. Consolidated Southwestern Cases, 123 I. C. C. 203, 342.

(r) Rates on pig iron from Buffalo, N. Y., and Punxsutawney and Du Bois, Pa., to destinations in New England, found not unduly prejudicial to Buffalo or unduly preferential of Punxsutawney and Du Bois. While complainants contend that their business has decreased because their competitors, situated a greater average distance from same general market, pay the same rates, record indicates that complainants' shipments have increased for several years. While Buffalo has a longer haul at same rate on traffic to New York, Du Bois and Punxsutawney have a longer haul at same rate on traffic to New England. Moreover three points named are and always have been grouped as to pig-iron rates to New England destinations and New York rate points and no reason appears for disturbing this adjustment. Hanna Furnace Co. v. N. Y. C., 123 I. C. C. 627.

(s) In grouping stations under a common rate the carriers must avoid undue preference and prejudice. The boundaries of a group should not be so drawn as to include certain producing points and exclude other points similarly

situated and circumstanced. Rates from Iowa and South Dakota, 126 I. C. C. 81, 86.

(t) Complainant attacked commodity rate of 45.5c charged on nine shipments of newsprint paper, carloads, from New Orleans, La., to El Dorado, Ark., subsequent to Oct. 13, 1924 also on shipments pendente lite, as unreasonable and unduly prejudicial. El Dorado is about 132 miles south of Little Rock, Ark., and 55 miles north of Ruston, La., on the Rock Island. It is also served by the M. P., E. L. D. & W., and L. W. & P. B. Prior to Oct. 5, 1924 when an import commodity rate of 45.5c was established, a fifth class rate of 74.5c applied. For a number of years an import commodity rate of 45.5c has applied from New Orleans to about 20 destinations in Missouri, Kansas, Oklahoma and Arkansas. This rate, which was not and is not published as a group rate, has been extended from time to time to apply to other destinations. It now applies to various destinations in different parts of a large territory, extending from El Dorado on the south to Kansas City and beyond on the north. HELD, rate attacked not unreasonable but for future unduly prejudicial to extent it exceeds the rate to Shreveport by more than 7c, reparation denied. El Dorado Chamber of Commerce v. C. R. I. & P. Ry., 126 I. C. C. 443.

(u) Complainant attacked rates on furniture, carloads, from St. Louis, Mo., and points in defined territories to Paris, Tex., were and are as compared with rates to Texarkana, Tex., unduly prejudicial. Paris is 91 miles west of Texarkana and 15 miles south of the Oklahoma-Texas state line. Prior to Dec. 12, 1925 the rate on furniture, in carloads, from St. Louis to Paris was $1.295 the rate to Texas common point territory. On that date a rate of $1.23 became effective. The rate to Texarkana is 82c, distance 493.4 miles. Distance St. Louis to Paris is 585 miles over the Frisco. Some readjustment is necessary. HELD, rates attacked unduly prejudicial to extent they exceed the rates which will result from Consolidated Southwestern cases, 123 I. C. C. 203. Reparation denied. Rodgers Wade Furniture Co. v. A. C. & Y. Ry., 126 I. C. C. 460.

(v) Complainant alleged that the combination rates on lumber and other forest products, in carloads, from points in the Puget Sound district of Washington to Montana, North Dakota, South Dakota and Minnesota are unreasonable, unjustly discriminatory and unduly prejudicial as compared with the joint rates from points from which the so-called coast group basis applies to the same destinations. Intervenor alleged that the combination rates from Elk River, Ida., to these destinations are likewise unlawful to the extent they exceed the Spokane basis of rates. The rates attacked apply from points on the N. P. to destinations on the G. N. and Milwaukee and from points on the Milwaukee to destinations on the G. N. and N. P. The combination rates attacked, made up of the locals of each carrier, range from 2.5c to 8.5c higher than those on the coast group basis, for single line hauls, from and to points in the same origin and destination territories. HELD, rates attacked not unreasonable but unduly prejudicial to extent they exceed rates from coast group. Rates attacked from Elk River not unreasonable or unduly prejudicial except those to points east of the Montana Dakota-state line, unduly prejudicial to extent they exceed the Spokane rates to the first points west of Minneapolis and St. Paul, Minn., and to Brach and Buford, N. D., 2.5c higher than Spokane, rates between the above destinations to be graded. Pacific States Lumber Co. v. G. N. Ry., 126 I. C. C. 471.

(w) Complainant attacked rates on zinc ore and concentrates, in carloads, from mines in the so-called Joplin-Miami or Tri-State field of southwest Missouri, southeast Kansas, and northeast Oklahoma to Cleveland, Lockland, Canton and Niles, O., Newcastle, Pa., and Clarksburg and Meadowbrook, W. Va., as unjust and unreasonable; and to De Pue, La Salle, and Peru, Ill., Grasselli and Terre Haute, Ind., Moundsville, W. Va., and Langeloth and Donora, Pa., as unjust, unreasonable and unduly prejudicial. In the western classification zinc ore and concentrates are rated classes D and C, respectively, but there is little movement, if any, under class rates. The same commodity rates generally apply on the ore and the concentrates. The traffic is desirable from a transportation standpoint, as it moves throughout the year and loads to the capacity of the cars used, and claims for loss are negligible. It is usually shipped in box cars but, not being subject to damage by the elements, may be transported in open top cars in times of car shortage. The Joplin-Miami district extends, generally speaking, from Waco, Mo., southward to Miami, Okla., and has been

the principal source of supply for concentrates for over 40 years. As the carriers spur tracks do not reach the mines, wagon hauls are necessary to move the concentrates to the railroad cars from the bins into which they are dumped after being mined, crushed and washed. Joint or local commodity rates are maintained on concentrates from the Joplin-Miami field to St. Louis, Mo., to consuming points in Illinois and to Grasselli, Ind. Complainants attack is primarily directed against initial factors, the rates to East St. Louis. The rates attacked are subnormal in the sense that they are as low as or lower than the rates in effect prior to August 26, 1920 whereas freight rates generally are from 12.5 to 36% higher than the rates in effect prior to that date. The removal of the general increase of 1920 was made by the carriers at the solicitation of shippers because of the condition of the industry, but it is not contended that the present economic condition of the industry requires a further reduction in these rates. On the other hand, the record shows a large increase in the value of concentrates since the general increase was removed, and defendants assert that it should now be restored. The Commission need not consider whether the general increase should be restored in these cases; but it can not materially reduce the carriers revenues from commodities which are able to bear the present rates, if it is to accord relief to agriculture and other industries in distress, as contemplated by the Hoch-Smith resolution. HELD, rates from Group 1 and short line points not unreasonable or otherwise unlawful, except that rates to De Pue, La Salle and Peru, Ill., are unduly prejudicial to those points and unduly preferential of Danville, Ill., to extent they exceed rates to Danville; that rates to Terre Haute, Ind., unduly prejudicial to that point and unduly preferential of Danville, Hillsboro and East St. Louis, to extent they exceed the rates to Danville, and exceed rates to East St. Louis and Hillsboro by more than 3.5c per 100 pounds; that rates to Grasselli, Ind., unduly preferential of Danville to extent they exceed the rate to Danville by more than 3c per 100 pounds, reparation denied. United Zinc Smelting Corp. v. B. & O. R. R., 126 I. C. C. 677.

(x) Rates on bituminous coal from mines in Pennsylvania and West Virginia to points in Warren district in Pennsylvania, which is included in the Buffalo, N. Y., rate group, found not unreasonable or unduly prejudicial as compared with those from same points to Buffalo rate group as a whole. Buffalo group adjustment is not maintained solely with respect to Pittsburgh district and any reduction in rates to Warren district would require similar reductions throughout a large portion of the group. Rates are not out of line with those for similar hauls from other Pennsylvania groups to points in the east and in view of delicacy of coal-rate adjustment in this territory and long-continued maintenance of the Buffalo group, evidence is not sufficient to require a disruption of that group. National Petroleum Asso. v. B. & O. 126 I. C. C. 11.

(y) Groups of long standing should not be disrupted unless the party seeking such action is actually damaged by discrimination resulting from the group adjustment, and unless substantial justice requires it. National Petroleum Asso. v. B. & O., 126 I. C. C. 11, 16.

(z) In grouping stations under a common rate, carriers must avoid undue preference and prejudice. The boundaries of a group should not be so drawn as to include certain producing points and exclude other points similarly situated and circumstanced. See 77 I. C. C. 607, 610. Rates from Iowa and South Dakota, 126 I. C. C. 81, 86.

(aa) Rates on lumber and products from points in Pennsylvania on the Indian Creek Valley Ry., to destinations in trunk-line and c. f. a. territories, found unreasonable and unduly prejudicial as compared with those contemporaneously in effect from Baltimore to various New York destinations for comparable distances, and to extent they exceeded those contemporaneously maintained from Group 3 points to same destinations. Latter rates are not depressed since they compare favorably with those from adjacent groups, and nothing of record warrants a differential from points on the Indian Creek Valley Ry. over Group 3 rates. Reasonable and nonprejudicial rates prescribed for future and reparation awarded. Indian Creek Valley Lbr. Co. v. B. & O. 126 I. C. C. 161.

(bb) Upon complaint seeking reduction in rate on grain from Aberdeen and contiguous territory in South Dakota within westbound transcontinental Group F, to points in Montana, Idaho, Washington, and Oregon, so as to permit complainants to transit grain at Aberdeen which now moves to Minneapolis and Sioux City from various points in Group

F for transit, thence reforwarded to north Pacific coast points at same rate as applies from Aberdeen, HELD: Record establishes that existing adjustment is a benefit rather than a disadvantage to South Dakota shippers and is advisable in view of investigations of terminal elevators at Minneapolis. Moreover, present group adjustment has been in effect for many years and to accord this particular section of Group F a lower rate than applies from remainder of that group would result in undue preference to shippers in that territory and eventually lead to demands for similar reductions from points generally in the group. Aberdeen Commercial Club v. C. P. R. R. 126 I. C. C. 498.

(cc) Showing that only 45 of 99 coal mines similarly situated on particular railroad in West Virginia enjoyed favorable blanket rates to the West HELD to sustain finding of undue prejudice by Interstate Commerce Commission. Virginian Ry. Co., v. United States. United States v. Virginian Ry. Co. 47 Sup. Ct. 222.

(dd) Relationship between rates on bituminous coal to points in Chicago switching district from Illinois and Indiana groups, on the one hand, and the Inner Crescent and Outer Crescent districts in Pennsylvania, Maryland, Virginia, West Virginia, eastern Kentucky, and Tennessee, on the other, found not unduly prejudicial to the Illinois-Indiana groups. Although a large volume of Crescent coal is sold in Chicago in competition with Illinois and Indiana coal, the greater portion is not competitive. Moreover, while rates from Illinois and Indiana mines have been subjected to greater percentage increase, the Crescent mines have been increased much more in cents per ton. Illinois Indiana Coal Cases, 128 I. C. C. 265, 282, 283.

(ee) The Commission has consistently declined to disrupt rate groupings, particularly where they have existed for many years, unless it was shown that the preference or prejudice which they involved resulted in substantial injury to complaining shippers or localities. The finding in such cases, where this has not been shown, has been that the preference or prejudice is not undue. In other words, the Commission has not taken the initiative in requiring carriers to depart from the principle that every shipper or community is entitled to the advantages of its location but where carriers have voluntarily departed therefrom and such departure has not caused substantial injury to any prejudiced party, it has not undertaken to interfere; and even where injury is shown, the preference or prejudice may, within limits, be justified by competition. But where it is shown that extensive grouping or port equalization, voluntarily maintained by the same carriers, without justification by competition, has disregarded substantial differences in distance and has resulted in substantial injury to shippers or localities, the Commission has found such grouping or port equalization to be unlawful, and in the latter class of cases have prescribed reasonable rate differences. Galveston Commercial Asso. v. G. H. & S. A. Ry., 128 I. C. C. 349, 387.

(ff) Commission has consistently declined to disrupt rate groupings of long standing unless preference and prejudice involved resulted in substantial injury to complaining shippers or localities. Carriers have not been required to depart from principle that every shipper or community is entitled to advantages of its location, but where carriers have voluntarily departed therefrom and such departure has not caused substantial injury, commission has not interfered; and even where injury is shown, preference or prejudice may be justified by competition. See 95 I. C. C. 539, 565, 567. However, where it is shown that extensive grouping or port equalization, voluntarily maintained by same carriers, without justification by competition, has disregarded substantial differences in distance and resulted in injury to shippers or localities, it has been found unlawful and reasonable rates prescribed. See 57 I. C. C. 554; 59 I. C. C. 321. Galveston Commercial Asso. v. G. H. & S. A. 128 I. C. C. 349, 387, 388.

(gg) Complainant alleged rates on scrap metals, in carloads, from Beaumont, Galveston and Houston, Tex., to St. Louis, Mo., were and are unreasonable, unduly prejudicial, from July 8, 1924 to April 26, 1926. The rate under consideration is the Texas common point group rate of 65.5c. HELD, rates assailed were not, are not, and will not be in excess of reasonable rates but were unduly prejudicial to extent they exceed those applicable from points in western Louisiana to St. Louis, and establishment of the rates prescribed in Consolidated Southwestern Cases, 123 I. C. C.

203 will correct the adjustment. Reparation denied, complaint dismissed. Southern Iron & Metal Co. v. B. S. L. & W. R. R., 132 I. C. C. 617.

(hh) Oregon and Washington points: Combination rates on lumber and other forest products from, to destinations on Minneapolis, St. Paul, and Sault Ste. Marie, in Minnesota, Montana, North Dakota, and South Dakota, found not unreasonable nor discriminatory but maintenance of lower joint rates from other points generally in the coast group to same destinations found unduly prejudicial. Undue prejudice ordered removed. West Coast Lumberman's Asso. v. C., M. & St. P., 129 I. C. C. 363.

VII. EVIDENCE.

§15½. In General.

See Evidence; Through Routes and Joint Rates §13½(u).

(a) Distance is not a controlling element in fixing group rates. Alexander Grocery Co. v. B., S. L. & W., 104 I. C. C. 155, 159.

(b) Where rates are blanketed over large areas there must be some hauls which are materially longer than others, or which are attended by more difficult and more costly operating conditions. Group rates must be judged by average conditions. Lumber from Pacific Points, 109 I. C. C. 104, 142.

(c) The fixing of groups necessarily requires that consideration be given to the locations of the points to be grouped, their transportation and commercial relationships, and the rail routes. Midcontinent oil rates, 1925, 112 I. C. C. 421, 448.

(d) All grouping for rate purposes is necessarily more or less arbitrary. Group lines generally have the appearance of injustice to some point just across the line. Yet the line must be drawn somewhere or the grouping abandoned. Once established, groups should not be lightly or unnecessarily disturbed. Keokuk Shippers Asso., v. Belt Ry. of Chicago, 113 I. C. C. 286, 288.

(e) If carriers in certain portions of any rate group designated under section 15a of the act are in a more prosperous condition than those in remainder, this fact may be considered in determining relative levels in different portions of same rate group. Revenues in Western District, 113 I. C. C. 3, 27.

(f) The commission is required under section 15a of the act only to adjust rates by rate groups to produce as nearly as may be a fair return for carriers as a whole in such rate groups. But it is evident that the principal purpose of that section was to afford the public adequate transportation service, and this end would clearly not be as adequately served by general increases throughout such a large rate group as the western district, applying alike to weak and strong lines, as by increases confined so far as possible to areas where rates appear to be on the lowest level and where the weakest roads are located. Revenues in Western District, 113 I. C. C. 3, 29, 30.

(g) A showing that one carrier is earning less than what the commission has fixed under section 15a of the act as a fair return to carriers as a whole with which it is grouped for rate-making purposes, is entitled to little or no weight in determining propriety of the rate level on two commodities. Various Commodities between New England Points, 113 I. C. C. 44, 47.

(h) The element of distance is disregarded to a greater or less extent in the establishment of group rates, and likewise is not necessarily controlling in determining the reasonableness of such rates, but where a system of group rates exists it may be a very important factor in determining the question as to the group in which a particular point belongs. Phosphate rock from Florida, 115 I. C. C. 229, 235.

(i) The element of distance is disregarded to a greater or less extent in establishment of group rates and likewise is not necessarily controlling in determining reasonableness of such rates, but where a system of group rates exists it may be a very important factor in determining the question as to the group in which a particular point belongs. Phosphate Rock from Florida, 115 I. C. C. 229, 235.

(j) It does not follow that average distances over all routes should not be considered in determining propriety of an adjustment which involves general level of rates to a considerable territory as well as relationship between destination groups. While each group is entitled to benefit of its short-line distance, it would be unfair to base rates upon that distance

alone. See also 46 I. C. C. 66. Indiana State Chamber of Commerce v. A. A. R. R., 115 I. C. C. 650, 654.

(k) In considering group rates, distance alone is not controlling, for the very nature of such rates usually involves some disregard for distance. Virginia Coal Operators Asso. v. A. & R. R. R., 120 I. C. C. 283, 292.

(l) Whether a group basis, a distance basis, or some other basis is proper, distance is necessarily an important consideration in determining the proper rate relationship between territories where there is no material difference in transportation conditions. Como Chemical Co. v. A., T. & S. F. Ry., 120 I. C. C. 517, 519.

(mn) Comparison of rates based upon distance alone have little probative value when rates compared are group rates, in the establishment of which the element of distance must to an extent be subordinated to other considerations. Cherry Co. v. C., M. & St. P., 123 I. C. C. 59, 61.

(o) The Houston-Galveston group is a strip of territory extending along the Gulf coast for approximately 100 miles, embracing Galveston, Houston, Beaumont, Port Arthur, and Orange, all ports of call. Consolidated Southwestern Cases, 123 I. C. C. 203, 336, 337.

(p) In considering the reasonableness of group rates, comparisons of rates and distances between selected points can not be regarded as controlling. Dallas Paper Co. v. A. & L. M. R. R., 126 I. C. C. 739, 740.

(q) Fact that territory on the Chicago & North Western between the Colorado common-point group and the Missouri River group is not as extensive as the similar territories on the C., B. & Q., and Union Pacific, does not establish the unreasonableness of rates on the North Western. Walrath & Sherwood Lbr. Co. v. C. & N. W., 126 I. C. C. 97, 100.

(r) Reasonableness of group rates must be judged by average conditions. Aberdeen Commercial Club v. C. P. R. R. 126 I. C. C. 498, 506.

(s) Complainant selected a point on the rim of an origin group and sought to have certain rates adjudged unreasonable without consideration of the whole group adjustment. HELD: In considering reasonableness of group rates, distances and ton-mile earnings between selected points can not be regarded as controlling but reasonableness of such rates must be judged by average conditions. See 83 I. C. C. 591. Humble Oil & Refining Co. v. B., S. L. & W., 126 I. C. C. 717, 720.

(t) In all rate-zoning plans there is inherent a greater or less degree of unfairness in the measure of rates as between points in adjacent zones and perhaps even as to points within the same group. Coal from Illinois, Kentucky, and Alabama, 128 I. C. C. 113, 116.

(u) Grouping is but one of the various elements to be considered in passing upon reasonableness of rates to or from a given point. Iroquois Pulp & Paper Co. v. A. A. R. R., 128 I. C. C. 187, 191.

(v) Rates from various eastern points to Dallas and Fort Worth, Tex., are same as those to Deming, N. Mex., a farther distant point, as well as to Los Angeles and other California ports. Rates not higher than rates to the coast necessarily are maintained to Deming in order to avoid unauthorized fourth-section departures; rates to Deming are for same reason observed as maximum at interior points such as Texas common points. Similar blanket applications frequently occur with respect to transcontinental rates and such rates are not necessarily determinative of reasonableness of rates to intermediate points. Nor does it follow that rates to Deming should be scaled back to intermediate points, particularly where showing is not sufficient to warrant such an adjustment. Apex Co. v. A. & V., 129 I. C. C. 283, 287, 288.

(w) Rate on bituminous coal from Castle Gate group mines in Utah to Seattle, Wash., and other north Pacific coast ports for transshipment beyond by water to Alaska or foreign countries, found not unreasonably low or otherwise unlawful. Complainant contends that since rate assailed is lower than rates prescribed in 80 I. C. C. 383; 89 I. C. C. 666, between same points, the rate relationship between the mines established by prescribed rates has been disturbed and burden is upon carriers to justify the reduced rate. However, rate assailed applies only for transshipment beyond by water and was not considered in those cases, nor is there anything to indicate that it is not remunerative or impairs other rate structures. Washington Coal Producers Asso. v. U. P., 129 I. C. C. 499.

§16. Burden of Proof.

See Burden of Proof; Evidence I.

(a) Proposal to increase class and commodity rates on grain and products and other commodities between certain Iowa and South Dakota points and points in Colorado and Utah by eliminating some origin points from Missouri River rate group and placing them in a higher-rated group, found not justified. While proposed rates compare favorably, distance considered, with rates shown in comparison, there is no showing as to whether origin points or destination from and to which comparative rates apply are group points, or as to other circumstances or conditions surrounding transportation under such rates. Neither is extent of proposed increases shown, other than rates on grain and products between Iowa points and western destinations, the burden being upon respondents to justify all increases proposed in suspended schedules. Grain and Products from Iowa and South Dakota, 109 I. C. C. 27.

(b) In considering group rates, distance alone is not controlling, for the very nature of such rates usually involves some disregard for distance. Virginia Coal Operators' Asso. v. A. & R., 120 I. C. C. 283, 292.

(c) Complainant attacked commodity rate of $4.54 per ton charged since Dec. 20, 1922 on numerous carloads of anthracite coal in prepared sizes, from points in the anthracite region of Pennsylvania to West Roxbury as unreasonable, unduly prejudicial and in violation of section four to extent it exceeds the rate of $4.16 contemporaneously applicable from the same points to Boston, Mass. HELD, rate to West Roxbury not unreasonable or unduly prejudicial. Rate to Boston between Oct. 2, 1922 and Oct. 9, 1923 was $4.22. During the same period defendant maintained rates of $4.48 to Roxbury and Boylston St. and $4.73 to Forest Hills. Effective Oct. 9, 1923 and for competitive reasons only as defendant says, the rates to the three destinations were reduced to $4.22 the present rate.. Complainant introduced no evidence to show that the earnings under the rates charged were unreasonable and they have named as defendant only the New Haven. The record falls far short of establishing that the rates charged were excessive and unreasonable for the transportation service rendered. Such evidence as is presented points toward undue prejudice rather than other elements of unlawfulness, but it is quite general in character and affords no basis for an award of reparation. HELD, rates attacked not unreasonable, complaint dismissed. Whittemores Sons v. N. Y. N. H. & H. R. R., 122 I. C. C. 451.

(d) While the Commission has often approved blanket rates covering substantial areas, such approval has been contingent upon the presentation of adequate reasons therefor, and it has heretofore stated that in making a blanket adjustment the burden rests upon the carriers to provide rates that shall not be unreasonable. In establishing rates on commodities moving in large volume from port cities to inland points of consumption a certain amount of latitude should be permitted in the blanketing of those rates, but to justify a blanket the lengths of the hauls from its edge to points within ought to bear a reasonable relation to the entire haul. International Paper Co. v. B. & M. R. R., 128 I. C. C. 466, 469.

§18. Comparisons.

See Comparative Rates; Evidence §12, §13; Relative Rates.

(a) The reasonableness of a group rate may not be measured by distance from the nearest point in the group. Furniture from Southern Points, 112 I. C. C. 302, 305.

(b) Distance is only one of the elements to be considered in measuring reasonableness of rates. Furniture from Southern Points, 112 I. C. C. 302, 307.

(c) The grouping of points makes distance comparisons of little value in determining the measure of a rate. Rates from Iowa and South Dakota, 126 I. C. C. 81, 83.

(d) Circumstances may justify an exception to the general rule that in fixing group rates it is unfair and improper to single out destinations near the edge of the group and compare them with the rates to the group as a whole. Walrath & Sherwood Lbr. Co. v. C. & N. W., 126 I. C. C. 97, 100, 101.

(e) Complainant selected a point on the rim of an origin group and sought to have certain rates adjudged unreasonable without consideration of the whole group adjustment. HELD: In considering reasonableness of group

rates, distances and ton-mile earnings between selected points can not be regarded as controlling but reasonableness of such rates must be judged by average conditions. See 83 I. C. C. 591. Humble Oil & Rfg. Co. v. B., S. L. & W. Ry., 126 I. C. C. 717, 720.

(f) In considering the reasonableness of group rates, comparisons of rates and distances between selected points can not be regarded as controlling. Dallas Paper Co. v. A. & L. M. Ry. 126 I. C. C. 739, 741.

(g) It is unfair to consider only the shortest possible routes in measuring an established group rate which applies from points on a number of originating carriers and over various routes. Iowa R. R. Commissioners v. A. & S., 128 I. C. C. 293, 298.

§19. Competition.

See Competition.

(a) Complainant attacked commodity rates charged on porcelain insulators, carloads, from Macomb, Ill., to Galveston and Houston, Tex., as unreasonable, unduly prejudicial and in violation of section four. The rates generally to the Houston-Galveston group and intermediate points in southwestern territory are now under consideration in 13535 and cases consolidated therewith. No finding as to undue prejudice can be made until it is determined whether water competition warrants the maintenance of lower rates from Pittsburgh and other eastern points than from or to intermediate points. HELD, rate attacked not unreasonable or unduly prejudicial, complaint dismissed. Illinois Electric Porcelain Co. v. A., T. & S. F. Ry., 120 I. C. C. 621.

(b) Conditions and circumstances peculiar to transportation of petroleum oil and its products are so unique as to force carriers to abandon most of the customarily employed elements or factors in establishing rates. Pipe-line competition among refiners and producers and water competition are elements chiefly responsible not only for subnormal or depressed rates, but have combined to force the forming of large origin and destination groups. This method has long been practiced in the Southwest, where competition is keen and where pipe lines are numerous. In order to share in the traffic carriers have been forced to establish depressed rates over wide blankets and this has brought about a disregard of the distance factor so commonly used in making rates under normal conditions. Humble Oil & Rfg. Co. v. B., S. L. & W. Ry., 126 I. C. C. 717, 721, 722.

§19¼. Prior Decision of Commission.

See Previous Decision of Commission.

(a) Upon further hearing, destination groupings and applicable rates prescribed in former report, 78 I. C. C. 746, on lumber and other forest products from points in north Pacific coast group to points in Southwest, readjusted. Original report modified and reparation denied. West Coast Lumbermen's Asso., v. A. & S., 104 I. C. C. 695.

(b) Following Miami Copper Co., 93 I. C. C. 221; 104 I. C. C. 467, rates on fuel oil from Burkburnett and Wichita Falls, Tex., and Beckett, Okla., found not unreasonable, discriminatory, or unduly prejudicial as compared with rates contemporaneously in effect from other points in same origin groups or with lower rate subsequently established. Globe Light & Power Co. v. A. E. R. R., 109 I. C. C. 405.

(c) Complainant attacked commodity rates charged on potatoes, carloads, from Minnesota, Wisconsin and North Dakota to C. F. A. and trunk line territory as unreasonable. Previous decisions on these potato rates are in 61 I. C. C. 680 and 74 I. C. C. 448. It is the view of the commission that the specific manner provided for the removal of the prejudice found to exist in the previous case was tantamount to stating a reasonable basis on and after the date of the finding Dec. 12, 1922, and rates charged in excess of those prescribed were unreasonable. HELD, rates attacked not unreasonable except that on shipments moving from Dec. 12, 1922, to June 1, 1923, unreasonable to extent they exceeded rates prescribed in 74 I. C. C. 448, reparation awarded. Beggs & Co. v. B. & O. R. R., 120 I. C. C. 115.

(d) In 102 I. C. C. 540, division 2 found the rates on salt, in carloads, from Anse La Butte, Avery, Salt Mine, Weeks Island and Jefferson Island, La., to points in Mississippi, and from Baldwin, La., to Jackson, Miss., unreasonable and unduly prejudicial and prescribed a distance scale of reasonable maximum rates from and to those points and permitted the

addition to the rates under that scale of 50 cents per ton in making rates to local points on the M. C., C. & G., and G. M. & N. With few exceptions the present rates from Louisiana mines to Mississippi destinations are joint rates based on the Mississippi River combination, composed of a proportional rate of $1.825 to the river and the local rates beyond. It would seem, therefore, that if the initial rate in the scale applying to the nearest Mississippi destination is on the proper level, and the grading in the scale for the hauls in the Mississippi Valley properly reflects the additional service in the latter territory, the fact that the total haul to one destination may reflect a greater percentage in southwestern territory than the total haul to another destination is immaterial. Apparently reductions would result to all, or practically all, points in Mississippi. The number of increases is insignificant compared with the number of reductions. The commission does not consider this a general readustment such as those in which it has for that reason denied reparation in other cases. HELD, original report affirmed except (1) that McLain will be eliminated as a point to which the prescribed distance scale will apply as maximum, and (2) that a differential of 60 cents instead of 50 cents per ton may be added to the distance scale in making rates to points on the M. C., C. & G., and G. M. & N., and N. O. G. N., and (3) fourth section relief granted to extent of 50% circuity. Mississippi Railroad Commission v. A. & V. Ry., 120 I. C. C. 569.

(e) In 112 I. C. C. 7 the commission prescribed reasonable maximum rates on lime, in carloads, based on a distance scale from Sandusky, Woodville and Carey, O., to destinations in central territory and stated that "in applying that scale existing groups of producing points, including the Sandusky, Carey and Woodville groups, should be continued and distances computed in the manner specified in Atlas Portland Cement Co. case, as modified by supplemental order." Although the Woodville, Sandusky and Carey groups are referred to in the record and elsewhere as separate entities such designation is misleading, for to a great majority of destinations in central territory the rates from all three groups are the same, the exceptions being chiefly nearby points in Ohio and Michigan. From the inception of the proceeding it seems to have been generally assumed by the Ohio shippers that the present parity of rates from the Woodville, Sandusky and Carey groups would be continued at whatever level of rates should be prescribed as reasonable. The unanimous desire on the part of the Ohio lime producers for a continuance of their present parity of rates is a valid reason for its retention, and the commission is unable to find that the use of a single group would unduly prejudice other shippers or would be inconsistent with the application of the distance scale previously prescribed. HELD, Sandusky, Carey and Woodville should be considered as a single group in computing the rates based on the distance scale prescribed not less than 100 miles from the nearest point in the group. Washington Building Lime Co. v. A. & B. B. R. R., 122 I. C. C. 105.

(f) Proposed revision of rates on coal from mines in southern Illinois, western Kentucky, and the Birmingham district of Alabama, to destinations in Mississippi Valley, in purported compliance with findings in 109 I. C. C. 740, found justified as to destinations west of the Mississippi River, but not east thereof, except as to that portion covered by the zoning plan described in the report, provided that if slight changes in rates are necessary to comply with findings as to rates within the respective zones, such changes are authorized. However, investigation reveals the fact that no change can be made in adjustment of proposed rates in eastern part of Mississippi Valley territory which would not involve changes at other points and thus produce conflicts with section 4 of the act. Coal from Illinois, Kentucky, and Alabama, 128 I. C. C. 113.

(g) Respondents proposed to establish rates on coal from mines in Alabama, western Kentucky and southern Illinois to destinations in the Mississippi valley, southeastern Arkansas, southeastern Texas and Louisiana west of the Mississippi river, in purported compliance with the decision in Alabama Mining Institute v. I. C. R. R. Co., 109 I. C. C. 740. In the original case, the Commission prescribed a differential of 5c per ton on coal in favor of the Alabama mines for each 25 miles or major fraction thereof in which the average distance from the western Kentucky-southern Illinois mines exceeded the distance

from certain mines in the Birmingham district of Alabama. The principal protestant withdrew its protest against the proposed rates to points west of the Mississippi river. The suspended schedules to points west of the Mississippi river will be allowed to become effective. It appears that the efforts of the carriers in attempting to comply with the original decision show that differentials based on a mileage scale in this particular territory with its network of lines radiating from the competing coal fields will not work out exactly as contemplated, owing to the provision of the fourth section. A zoning plan would at least possess the advantage of eliminating some of the fourth section difficulties which confronted the carriers in their attempt to comply with the findings in the original case and such a plan, therefore, as to perhaps one half of the destination territory will be presented herein. In prescribing this plan the Commission has followed quite closely the differential basis formerly recommended although slight increases in the differentials have resulted at certain points and slight reductions at others. It is believed, however, that an average of the differential basis as originally prescribed has been preserved. HELD, carriers have justified the suspended schedules in that part of Mississippi valley territory lying east of the I. C. running from Jackson, Tenn., to Jackson, Miss., and east of the G. & S. I. running from Jackson through Hattiesburg to Gulfport; provided, that if slight changes in the rates at certain points in this region are necessary in order to permit a proper compliance with the findings as to the rates within the respective zones hereinafter described such changes are hereby authorized. Three zones are prescribed and rates from Alabama are unduly prejudicial to the extent they exceed rates less than from western Kentucky-southern Illinois mines 35c in groups 1 and 2, 40c in zone 3 and 45c in zone 4. Coal from Illinois, Kentucky and Alabama, 128 I. C. C. 113.

(h) Upon further hearing present rates on crushed stone from Buffalo and Linwood, Iowa, to points in northern Illinois, found in many instances not in accord with findings in original report 89 I. C. C. 110, wherein reasonable and nonprejudicial rates were prescribed to 10 so-called key points and carriers were left to work out a schedule of properly related rates to all other destinations. As intention of original report was to prescribe rates that would eliminate disparity in rates from Iowa quarries and not to sanction blanketing of Key-point rates all the way back to Buffalo and Linwood or to next intermediate key point as has been done, to avoid further misunderstanding, carriers will be expected to publish rates in accordance with rates prescribed to points shown in appendix hereto and, to points not named in appendix, rate to nearest point named therein by shortest workable route. Such rates are in accord with original findings and will be reasonable for future. Dolese Bros. Co. v. A., T. & S. F., 128 I. C. C. 471.

(i) Upon further argument, findings in former report in No. 15061, 107 I. C. C. 245, that rates on articles in uniform brick list from Danville, Ill., to points in Wisconsin, Michigan, Minnesota, and North Dakota were not unreasonable but unduly prejudicial, affirmed, but finding that the Wabash Valley group should be divided into two sub groups in making rates to destination territory involved, modified so as to include Danville in the Wabash Valley group in accordance with findings in 68 I. C. C. 213. While evidence supports finding in original report that rates were not unreasonable, the relative adjustment complained of, under which differences in rates of Danville over competing Illinois points are greater than differences in distances warrant, clearly subjects Danville to undue prejudice and disadvantage. Nonprejudicial relationship of rates prescribed for future. Western Brick Co. v. N. Y. C., 128 I. C. C. 479.

(j) Combination rates on grain and products from Oklahoma points to destinations in southeastern and Carolina territories found unreasonable to extent that factors east of Memphis, Tenn., exceed rates based on and approximating the class 12 rates prescribed in Southern Class Rate Investigation 113 I. C. C. 200, and to extent that factors west of Memphis from all points exceed present group rates, computed as provided in Consolidated Southwestern Cases 123 I. C. C. 203, up to 610 miles and from points at greater distance from Memphis those graded up 1.5 cents on wheat and flour and made less by 10 per cent on coarse grains, for each 50 miles. Factors east of Memphis constructed as above should apply not only on Oklahoma traffic but also from other western States from

which through rates are equalized via the various gateways. Reasonable joint through rates prescribed for future. Oklahoma Millers' League v. A. & M., 128 I. C. C. 523.

(k) Rate on box shooks from Bend, Ore., to Port Arthur, Tex., found not unreasonable as compared with lower rate prescribed in 78 I. C. C. 746 on lumber products, including box shooks from the North Pacific Coast group, including Bend, to group points including Port Arthur, established subsequent to movement herein. Upon further hearing in 104 I. C. C. 695, reparation was denied upon the theory that where, as here, readjustment of rates is required throughout an extensive territory involving both increases and reductions and affecting shippers at many points, substantial justice would not be advanced by awarding reparation. Moreover, issues and contentions similar to those here presented were advanced in 100 I. C. C. 319, in which reparation was denied. Shelvin-Hixon Co. v. O.-W. R. & N., 128 I. C. C. 565.

§19½. Reparation.

See Reparation.

(a) Complainant attacked commodity rates on sugar and requested reparation on sugar, carloads, eastbound from Utah and Idaho. Reparation only is sought. Charged 93c to Texas common points and 96c and $1.145 to other grouped destinations in Missouri, Arkansas and Oklahoma. To Texas common points reparation is sought to basis of 87c which was established March 1, 1922, and to other destinations on basis ranging from 77c to 85c. The rate contended for by complainants is only 1c higher than the rate established June 25, 1918, following G. O. 28. Any undue prejudice which may have existed in the past has been removed and proof of damage due to the alleged violations of section 3 and 4 are lacking. HELD, rates attacked not unreasonable, complaint dismissed. To Minnesota, Wisconsin, South Dakota, Iowa and Michigan rates charged ranged from 76.5c to $1.07 and the basis upon which reparation is sought ranged from 77c to $1.04 prior to July 1, 1922, and these bases reduced 10% thereafter. HELD, reparation denied, complaint dismissed. Utah Idaho Sugar Co. v. C. R. I. & P. Ry., 118 I. C. C. 256.

(b) In 62 I. C. C. 147 the Commission found the rates on slack barrel staves, in carloads, from Crowder, Miss., to interstate destinations were not unreasonable, but were unduly prejudicial to the extent they exceeded the group rates from Batesville and Charleston, Miss., to the same destinations. HELD, complainant has not shown with reasonable certainty that it was compelled to forego profits solely because its freight rates from Crowder exceeded the rates available to its competitor at Charleston on like traffic, nor that the Charleston rates were the only or proximate cause of the injury alleged, complaint dismissed. Hollingshead Co. v. Director General, 120 I. C. C. 55.

VIII. REGROUPING.

See Evidence §66.

§20. In General.

(a) Proposals of carriers and shippers embodying changes in oil-rate groups of the midcontinent field in Kansas, Missouri, Oklahoma, Arkansas, Louisiana, and Texas on traffic to and beyond Kansas City and St. Louis, disapproved. No important group changes should be made unless supported by the strongest reasons requiring removal of unlawful situations. Group rearrangement here proposed by shippers is designed basically to serve interests of Oklahoma and Texas, but consideration must be given to interests of all who would be affected and their proposal would not serve best interests of the midcontinent refineries as a whole. Carrier's proposal is subject to somewhat the same comment, their effort having been to regroup and realign rates in a manner which would reflect transportation element to a somewhat greater extent than at present. Midcontinent Oil Rates, 1925, 112 I. C. C. 421.

(b) In previous cases the Commission has pointed out that group lines generally have the appearance of injustice to some point just across the border, but having been established they should not be lightly or unnecessarily disturbed. Anderson Taylor Co. v. A. T. & S. F. Ry., 115 I. C C. 313, 320.

(c) Group rates, when once established, should not be lightly or unnecessarily disturbed. Transcontinental Oil Co. v. B. & O., 118 I. C. C. 518, 521.

(d) Groups long maintained are presumably fair and are not to be disrupted unless substantial justice clearly requires it. Dissatisfied producers deprived of

the benefit of their proximity to a common market must show that they are actually injured by an unjust and unlawful discrimination. See 40 I. C. C. 311. Chicago Gravel Co. v. A., T. & S. F., 118 I. C. C. 633, 645, 646.

(e) Respondents proposed to change from Group 7, the Missouri river rate group to Group 8, stations on the C. M. & St. P. north of Sioux City, Ia., on the line through Elk Point, S. D., and Hawarden, Ia., to and including Calliope, Iowa; stations on the C. & N. W. north of Wren, Ia., to and including Hawarden, east of Sargents Bluff, Ia., to and including Correctionville, Ia., and Battle Creek. Danbury, Ricketts and Berne, Ia.; and stations on the I. C. north of Onawa, Ia., to and including Correctionville, Ia. It would result in increased rates on all classes and increased commodity rates on grain, grain products and other articles, between the stations affected by this change in boundary and Colorado common points, Utah common points, and other points in the west. The changed grouping would result in the application to or from Iowa stations thus excluded from the Missouri river group of combination rates on grain and grain products, made up of the local Iowa interstate distance rate to the nearest Missouri river rate point and the Missouri river rate beyond, subject to the Mississippi rate as a maximum. Except in cases where this maximum would apply the proposed change means that the present rate to or from the excluded stations in Iowa would be increased by the amount of the local Iowa distance rate to the nearest Missouri river rate point. HELD, proposed schedules not justified. Rates from Iowa and South Dakota, 126 I. C. C. 81.

(f) Complainant alleged that rates on corn, oats, barley, rye, speltz, and the food products of these grains, in carloads, from Aberdeen, S. D., and certain contiguous territory via direct routes to points in Montana, Idaho, Washington and Oregon were and are unreasonable. The origin territory embraces a more or less rectangular section extending from the North Dakota-South Dakota state line to a line running east and west through Mitchell, S. D., the eastern boundary extending somewhat west of Watertown, S. D., and including the Milwaukee stations of Summitt and Oldham, S. D., and the western boundary extending just west of Glenham, Pierre and Belvidere, S. D. It is within westbound transcontinental group F. Rate attacked is 59c, applicable from all of Group F and G territory. Minneapolis and Sioux City are large terminal markets. Under defendants tariffs coarse grain may be shipped from various points in Group F, accorded transit at those markets and the same or substituted tonnage forwarded to north Pacific coast points at the 59c rate. There are no grain marketing facilities in South Dakota, except the local country elevators, and complainants desire to establish a terminal market at Aberdeen. From the origin territory described a rate of 54.5c is sought, restricted in its application to the most direct routes. The present group adjustment has been in effect for many years and conforms to the westbound transcontinental grouping of rates on classes and other commodities generally. Rates are similarly grouped in the transcontinental adjustment to California. Necessarily distance has not been given consideration in large groups of this character. The present grouping is not shown to be improper or unreasonable. It appears that to carve out this particular section from group F and accord to it a lower rate than applies from the remainder of that group would result in fourth section departures. The record strongly indicates that the establishment of the basis asked would result in undue preference to shippers in that territory and eventually lead to demands for a similar reduction from points generally in groups F and G, which in turn would result in reductions from other groups. HELD, rates attacked not unreasonable, complaint dismissed. Aberdeen Commercial Club v. C. P. R. R., 126 I. C. C. 498.

(g) Groups of long standing should not be disrupted unless the party seeking such action is actually damaged by discrimination resulting from the group adjustment, and unless substantial justice requires it. National Petroleum Asso. v. B. & O. 126 I. C. C. 11, 16.

(h) Commission has consistently declined to disrupt rate groupings of long standing unless preference and prejudice involved resulted in substantial injury to complaining shippers or localities. Carriers have not been required to depart from principle that every shipper or community is entitled to advantages of its location, but where carriers have voluntarily departed therefrom and such departure has not caused substantial in-

jury, commission has not interfered; and even where injury is shown, preference or prejudice may be justified by competition. See 95 I. C. C. 539, 565, 567. However, where it is shown that extensive grouping or port equalization, voluntarily maintained by same carriers, without justification by competition, has disregarded substantial differences in distance and resulted in injury to shippers or localities, it has been found unlawful and reasonable rates prescribed. See 57 I. C. C. 554; 59 I. C. C. 321. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349, 387, 388.

IX. ADVANCED RATES.

See Advanced Rates.

§21. In General.

(a) Proposed increased rate on phosphate rock from points in Florida to Roanoke, Ala., by restoring group 5 rate previously in effect, found not justified. Roanoke at present enjoys rate applicable to points in group 4, which reduction was made for purpose of placing that point on a parity with points in the Atlanta-La Grange group. Moreover, distance to Roanoke is less than that to most points in group 4, and while element of distance is disregarded to a greater or less extent in establishment of group rates and is not necessarily controlling in determining reasonableness of such rates, it may be a very important factor where a system of group rates exists, in determining the group in which a particular point belongs, and it is clear that Roanoke properly belongs in group 4. Phosphate Rock from Florida, 115 I. C. C. 229.

(b) Respondents proposed to increase certain rates and make certain changes in the tariff descriptions and carload minimum, on rock salt, in bulk, in carloads, from New York state to points in trunk line territory, New England, western territory and Canada. UNIFORM DESCRIPTION AND CARLOAD MINIMUM. In 92 I. C. C. 388 the commission prescribed a uniform description for salt, and uniform minimum of 45,000 pounds through the United States. There is uncontradicted evidence in this record that salt in bulk generally and ordinarily is loaded to the capacity of the car furnished without regard to the established minimum; and that the establishment of the uniform minimum would not result in any general reduction in the average loading of either bulk or package salt. The commodity rates from producing points to large consuming points should be made in consideration of the volume of movement, average loading, and other transportation conditions, whatever they may be, and when this is done there will be no occasion for disrupting the uniformity in the description and minimum. The uniform minimum should be applied in this territory. RATES FROM NEW YORK POINTS. Respondents propose to place all salt rates on a uniform level to New York City, Philadelphia, Pa., and Baltimore, Md. The rates on salt from New York producing points to these principal destinations groups are and have been on a higher level than those prescribed by the commission in central and western trunk line territories. In view of the low value of salt, especially in relation to the average freight rate, the heavy average loading, the large volume of movement through out the year, the substantial length of average hauls, and the negligible susceptibility to loss and damage, the commodity rates on salt to these large eastern seaboard consuming cities ordinarily might be expected to yield less revenue than the average for all freight. The rate for the future on common salt from New York producing group to the New York-Baltimore group should not exceed 18 cents. Rate for future to Asbury Park and Barnegat, N. J., should not exceed 20 cents. To Atlantic City, N. J., not to exceed 21 cents, to Cape Charles, Va., not to exceed 23.5 cents, to Boston, Providence, R. I., and Portland, 22 cents, to Rutland, and other interior points known as the Springfield group, 19.5 cents, to Burlington, Vt., 21 cents, to Berlin, N. H., same as to Boston, to Bangor, Me., 27.5 cents, to Washington, D. C., 19.5 cents, to Virginia cities to be adjusted with relation to Cape Charles; to Scranton and Wilkesbarre, Pa., 12.5 cents from Ithaca district and 15.5 cents from Warsaw, district, to Tyrone, Pa., 15.5 cents; to Johnsonburg, Pa., 13 cents; to Luke and Piedmont, W. Va., 19.5 cents; to Covington, Va., 23 cents; to Niagara Falls, Ont., 10 cents. Eastern Salt Cases, 122 I. C. C. 21.

(c) Respondents proposed to increase their class rates between Portland and Astoria, Ore., and Aberdeen, Hoquiam, Chehalis, Plumpia, Tacoma, and Seattle, Wash., on the one hand, and stations in Oregon and Washington along the Columbia river from Portland to and includ-

ing Jordan, Ore., and Roosevelt, Wash., on the O. W. R. R. & N. and S. P. & S. on the other. Except as changed by subsequent general increases and reductions, class rates in Washington and Oregon generally are on the basis prescribed in Portland Chamber of Commerce v. O. R. R. & B. Co., 21 I. C. C. 640. The increases now proposed place these class rates on the same basis as now obtains generally between Portland and other distributing points in Oregon and Washington north of Portland, on the one hand, and all other points in Oregon and Washington, on the other, for hauls that involve similar distances. The record makes it clear that the present class rates between Portland and the other distributing points, on the one hand, and the Columbia river points, on the other, long have been on a depressed basis. HELD, proposed schedules justified. Class rates between Oregon and Washington, 128 I. C. C. 108.

(d) Respondents, G. N. and S. P. & S., proposed to increase their rates on grain and grain products, carloads, from Montana on the G. N. to destinations in Washington on the Goldendale branch of the S. P. & S. The Goldendale branch extends northeastward from Lyle, Wash., a point on the main line of the S. P. & S. 85 miles east of Portland, Ore., to Goldendale, Wash., 41.6 miles. At present, stations on the mine line of the S. P. & S. and its Goldendale branch take the same rates as Portland on grain and its products moving from points of origin on the G. N. in Montana. Respondents now propose to cancel the application of the blanket rate to destinations on the Goldendale branch on grain from Montana and to establish in lieu thereof rates made by the addition of arbitraries to the junction point rate. These arbitraries range from 7.5c at Klickitat, Wash., 13.4 miles from Lyle to 10.5c at Goldendale, the terminus of the branch. Grain rates from Montana to Washington and Oregon points are so extensively blanketed at both ends, and the hauls are so long, that the short branch line movement here considered loses much of its significance. Although the branch line haul here is somewhat longer than 30 miles, and operating conditions are more difficult, and therefore more expensive, than on the main line, the markedly shorter total haul required with consequent higher earnings, and the fact that rates to other more distant branch lines will continue to be accorded the group basis, in great measure offsets this showing. HELD, schedules not justified. Grain from Montana, 128 I. C. C. 123.

(e) Respondents proposed increased rates on sugar, in carloads, from New Orleans and other Louisiana refining points to southern and eastern Texas, and from Sugarland and Texas City, Tex., to Shreveport and other Louisiana points and to Vicksburg, Miss., and other Mississippi river crossings south thereof. The rates from Louisiana to Texas are grouped as to points of origin and destination. The Louisiana origin group consists of New Orleans and approximately 40 points within 100 miles west and northwest thereof. There are three Texas groups of destination, the greater part of common point territory, the so-called Houston Galveston group, in southeastern Texas, and a long narrow group lying immediately north of the Houston Galveston group and immediately west of the Louisiana Texas boundary, known as east Texas group. To Houston Galveston group rate is now 29c, to common point territory 67c and no one rate applies to east Texas group, usually combination bases. Respondents propose to increase the rate to Houston Galveston group to 47.5c. To east Texas group which now base on Houston Galveston group they propose to increase the rates to combinations made by use of the new 47.5c to Houston Galveston group, except that where such combinations would exceed the common point rate of 67c the latter basis is proposed. No changes are proposed to be made in rates to points to which the 67c common point rate now applies, or to points in the east Texas group to which the present rates are combinations on western Louisiana points. They propose to increase the rate from Sugarland to Shreveport to 44.5c. Increases are also proposed from Sugarland and Texas City to other points in Louisiana, to Lake Charles from 38.5c to 44.5c, to Monroe from 33.5c to 48c, and to Ruston from 41.5c to 48c. Complainant attacked all rail rates on sugar from New Orleans and river and rail rates from that point to Arkansas as unreasonable and unduly prejudicial. The rates attacked are based upon the 9702 scale, except that to the southern third of Arkansas lower through rates, based on locals to and from northern Louisiana points, apply. The river and rail rates from New Orleans to the Ar-

kansas points are usually, and perhaps uniformly, equal to the all rail rates from and to the points, minus 20% of the all rail local rates between the ports via which the river rail shipments move, but from interior Louisiana points combination rates apply and greatly exceed the all rail rates. Complainant attacked 30.5c rate on refined sugar from Sugarland to Shreveport, and 26c rate from New Orleans to Shreveport as unduly prejudicial. HELD, proposed increased rates not justified in so far as they exceed those that will result from the application of column 30 rates from and to the same points applied as provided in Consolidated Southwestern cases, likewise column 30 rates to be applied to rates under attack. Sugar between Louisiana and Texas points, 128 I. C. C. 309.

BRANCH LINES

I. REASONABLENESS OF RATES.
§1. In general.
§2. Compared with main lines.
§3. As part of system.
§4. In competition with main lines.

II. DUTY TO ROUTE.
§5. In general.

III. CONTROL AND REGULATION.
§6. Jurisdiction of commission.

IV. FACILITIES.
§7. In general.

CROSS REFERENCES

See Advanced Rates §12; Cars and Car Supply §21, §21½; Evidence §37.

I. REASONABLENESS OF RATES.

§1. In General.

See Basing Points and Lines §2 (d); Reasonableness of Rates.

(a) Sixth-class rates on empty steel shells from Penniman, Va., situated on a short branch line of C. & O., to Carnegie, Pa., and Canton, Ohio, found unreasonable to extent they exceeded lower commodity rate contemporaneously maintained from Williamsburg, Va., a mainline point to same destinations, which lower rate was established from Penniman subsequent to movements here involved. Reparation awarded. Hyman-Michaels Co. v. C. & O., 104 I. C. C. 749.

(b) Rates on crushed stone from Columbia, S. C., to Wilford, Edwards, and Dean Siding, N. C., destinations on the Washington & Vandemere, a short-line carrier under same management and control as Atlantic Coast Line, found not unreasonable as compared with single-line distance rates from same point of origin to same and other destinations, or with rates between numerous other points for application over two or more lines for approximately equal distances. Raleigh Freight Traffic Bureau v. A. C. L., 107 I. C. C. 156.

(c) Rates on lumber and forest products taking same rates, prescribed in original report, 85 I. C. C. 270, from points on short lines in southern territory to destinations in trunk-line and New England territories found not unreasonable as a whole; but such rates from points on the Atlanta & St. Andrews Bay Ry., found unduly prejudicial to extent they exceeded rates contemporaneously applied from Dothan by more than 3 cents from points north of Cottondale and 4 cents from Cottondale and points south thereof. Nonprejudicial basis of rates prescribed. North Carolina Pine Asso. v. A. C. L., 107 I. C. C. 190.

(d) Based upon light traffic density and unfavorable operating and financial conditions, certain independent short lines in southern territory granted authority to continue to charge lower rates on lumber and other forest products to trunk-line and New England territories from junction points with trunk-line connections than from intermediate points on their lines; provided rates from such intermediate stations shall in no case exceed lowest combination, and further provided that differences between rates from more distant junction points on the one hand, and intermediate points on short lines on the other, shall not be increased. North Carolina Pine Asso. v. A. C. L., 107 I. C. C. 190.

(e) Rates on bar iron from Knoxville, Tenn., to stations on Ohio & Kentucky Ry., a short-line carrier, found unreasonable as compared with rates from Pittsburgh and other points to same destinations, with rates between other points for comparable distances, and to extent they exceeded lower rate subsequently established. Reparation awarded. Knoxville Iron Co. v. L. & N., 107 I. C. C. 627, 633, 634.

(f) Rates on yellow-pine piling from Lumberton and Ansley, Miss., to Bamfield, Mich., situated on a branch of the Detroit & Mackinac Ry., found unreasonable to extent they exceeded lower blanket rate contemporaneously maintained to all main-line and most branch-line points of the Detroit & Mackinac, which lower rate was subsequently established to Comins, to which Bamfield is intermediate, subject to rule 77 of Tariff Circular 18-A. Reasonable rate for future prescribed and reparation awarded. Edward Hines Yellow Pine Trustees v. C., S. & M. R. R., 109 I. C. C. 387.

(g) Combination rates assessed on forest products and naval stores from Barth, Kiln, and Loretta, local points on the Mississippi Southern R. R., a short, line carrier, to interstate destinations, and on coal from interstate points to above-named stations, found not unreasonable as compared with lower blanket rates contemporaneously maintained from and to Lumberton, the junction point, and adjacent points in Mississippi Valley territory, which lower rates were subsequently established as through rates from and to Kiln, Barth, and Loretta. Reparation denied for any undue prejudice which may have existed in the past, no such proof of damage as is required to sustain an award of reparation under such a finding having been furnished. Hines Yellow Pine Trustees v. A. C. & Y. Ry., 109 I. C. C. 453.

(h) Rates on pulp wood from Minnesota points to Wisconsin Dam and Kings, Wis., points served exclusively by Marinette, Tomahawk & Western Ry.; when routed from Duluth or Missabe Junction over the Soo line via Bradley, Wis., thence over the Marinette, found unreasonable because of factor from Duluth or Missabe Junction to destinations. Reparation awarded and a reasonable proportional rate, which takes into consideration the financial condition of the Marinette and fact that movement requires a haul over two lines, prescribed for future. Tomahawk Kraft Paper Co. v. C. & N. W., 109 I. C. C. 517.

(i) Complainant attacked commodity rate charged on barrel staves and headings, carloads, from Camden, Ala., to Pensacola, Fla., as unreasonable and unduly prejudicial. Camden is on a branch of the L. & N., which extends 16 miles from Camden Junction, Ala. Traffic from Camden to Pensacola moves over the Camden branch 16 miles to Camden junction, thence over Selma branch to Flomaton, 64 miles, thence main line of L. & N., to Pensacola, 43 miles, total distance 123 miles. Generally the rates on lumber in southeastern territory apply on rough cooperage stock, including barrel staves and headings. Rate charged commodity of 11.5 c. The standard scale of defendant on lumber, staves and headings generally applied between points on its line is 16 c. for 123 miles, and based on such scale, the rates instanced by complainants are less than the normal basis in the southern territory. HELD, rate attacked not unreasonable or unduly prejudicial, complaint dismissed. Pensacola Cooperage Co. v. L. & N. Ry., 112 I. C. C. 401.

(j) Rate on coal, moving via a single line from Earlington and Morton, Ky., to a branch line point, found not unreasonable or otherwise unlawful as compared with rates to other points. In some instances involving joint-line hauls, shipments to Shawneetown must be switched into local trains which operate a greater expense than main line trains handling through shipments, and rates to alleged preferred points are shown to be depressed to meet competitive conditions not prevalent at Shawneetown. Evidence of complainant, consisting wholly of a showing of lower rates to the alleged preferred points, is not persuasive; on other hand, rate comparisons submitted by carriers, coupled with those prescribed by commission for comparable distances, demonstrate that the assailed rate is not unreasonably high. Clayton v. L. & N., 113 I. C. C. 747.

(k) Sixth-class rate on lumber from Masten and Laquin, Pa., situated on the Susquehanna & New York R. R., to destinations in New England, found not unreasonable as compared with lower commodity rate contemporaneously applicable from points on other short lines located in same general origin territory. Formerly equal rates applied from points on all these short lines, but due to general increases under the Fifteen Per Cent Case, 45 I. C. C. 303, this equalization was disrupted and subsequently restored. However, disruption of rate adjustment caused by general advances and subsequent establishment of rate sought afford no basis for award of reparation. Moreover, commission has recognized that lumber is rated sixth class in official

classification and generally moves intraterritorially on class rates. Central Pennsylvania Lbr. Co. v. S. & N. Y., 120 I. C. C. 239.

(l) Carrier in defending reasonableness of petroleum rates to destinations on the Missouri & North Arkansas Ry., stressed the poor financial condition of above-named road. HELD: That rate herein found reasonable as maximum includes the usual arbitrary for that carrier, because of its poor financial status. Bear State Oil Co. v. A., T. & S. F., 120 I. C. C. 301, 303, 304.

(m) Rates on cottonseed products from Tiptonville, Tenn., to northern and eastern destinations found not unreasonable but unduly prejudicial to extent they exceeded or may exceed lower rates contemporaneously maintained from Tyersburg, Tenn., a main-line competing point. Reparation awarded and undue prejudice ordered removed. Gannaway & Rice v. I. C., 120 I. C. C. 400.

(n) Sixth-class rate on textile machinery from Tallassee, Ala., located on the Birmingham & S. E. Ry., to Natchez, Miss., found not unreasonable as compared with lower rate prescribed for like distances in Southern Class Rate Investigation, 100 I. C. C. 513. In cited case the Birmingham & S. E. was designated as a weak line entitled to special-rate treatment, and it was found that joint rates between weak and standard lines should be somewhat higher than that prescribed for latter. The general class-rate revision can not properly be used as measure of reasonableness on shipments moving prior thereto. Moreover, general practice in southern territory is to apply to through movements the local rates of short lines to junction points plus standard-line rates beyond. The rate here charged compares favorably with numerous rates applicable from points in Alabama, Mississippi, and Tennessee for comparable distances, involving joint-line hauls, including one "relief" line. Cotton Mills Products Co. v. A. & V., 120 I. C. C. 473.

(o) Upon reargument, differentials which may be added to rates on salt under scale prescribed in original report, 102 I. C. C. 540, from Louisiana mines to local points on certain Mississippi short-line carriers, increased from 50 to 60 cents per net ton, and equidistant clause of fourth section of the act not required to be observed by these short lines in meeting more distant junction-point rates. Mississippi R. R. Comm. v. A. & V., 120 I. C. C. 569.

(p) Line-haul rate, plus switching charge, on crushed stone from points on Chicago, North Shore & Milwaukee Ry., within the Racine, Wis., switching limits, to Chicago and other Illinois points, found not unreasonable as compared with rates on other articles moving between numerous points in same territory for comparable distances, or with rates on gravel from Fontana, Wis., a similarly situated short-line point, to Chicago. Carriers show that sand and gravel rates are depressed, due to competitive conditions, and cite decisions in which higher rates have been prescribed in various sections of the country. Assailed rates do not appear unreasonable, and also apply from a group including North Milwaukee and Waukesha, Wis., competing points, to Chicago. Moreover, in 118 I. C. C. 633, present rate from Racine to Chicago, which does not include absorption of switching charges, was found not unreasonable. Racine Crushed Stone Co. v. C., M. & St. P., 120 I. C. C. 717.

(q) Upon further hearing, former reports, 83 I. C. C. 737, 96 I. C. C. 124, affirmed and rates on coal from mines on Greenbrier & Eastern R. R., to interstate destinations found unreasonable and unduly prejudicial to extent they exceeded district rates contemporaneously maintained from competing branch-line points in New River district. Reparation awarded. Nelson Fuel Co. v. C. & O., 120 I. C. C. 723.

(r) Complainant attacked combination rate charged on 7 cars of coal shipped in Feb., Mar., and April, 1924, from Straven and Aldrich, Ala., to Pensacola, Fla., as unreasonable. Points of origin are located on a branch of the Southern between Birmingham and Wilton, Ala. The distance from Straven to Pensacola via Birmingham and L. & N., is 303 miles, via Calera and L. & N. 245 miles, and via Kimbrough and Muscle Shoals 258 miles, from Aldrich over these routes 312, 236 and 249 miles. Shipments moved Southern to Birmingham thence L. & N. to Pensacola. Three from Straven were routed by the shipper over the Southern to Birmingham and L. & N. beyond. Remainder were tendered with no specific routing other than L. & N. Charged $2.59, composed of 79 cents to Birmingham and $1.80 beyond. Contemporaneously there was in effect a joint rate of

$1.80 from these points of origin to Pensacola over the Muscle Shoals. But due to a temporary cessation of operation that route could not be used. On April 30, 1924 defendants established a joint rate of $1.80 applicable from points in Alabama on the Southern, south and west of Birmingham, including Straven and Aldrich to Pensacola. HELD, rates attacked not unreasonable, complaint dismissed. Pensacola Gas Co. v. L. & N. R. R., 122 I. C. C. 326.

(s) Certain so-called short lines accorded arbitraries over rates prescribed for standard lines on sand, gravel, crushed stone, and slag, for uniform application from Montgomery, Ala., and Chattanooga, Tenn., to destinations in Georgia and Mississippi, between points in Georgia, and between points in Georgia and other points in southern territory, except Florida. Rates on Chert, Clay, Sand, and Gravel, 122 I. C. C. 133.

(t) Proposed increased rates on cement from Birmingham, Ala., and other southern cement-producing points, to destinations on the Tallulah Falls Ry., and from Fordwick, Va., to destinations on the Elkin & Alleghany R. R., found not justified. Proposed rates to stations on the Tallulah Falls are practically as high as Scale IV rates which constitute the highest rates prescribed in 48 I. C. C. 201; 52 I. C. C. 225; 69 I. C. C. 644, for application in western territory, and those proposed to stations on the Elkin & Alleghany are even higher. Moreover, rates proposed by both shippers and carriers in a pending proceeding for application in same territory are materially lower than those here in issue. Cement Rates from Southern Points, 122 I. C. C. 195.

(u) Short line, in seeking a common-carrier status, contended that it was organized in the hope that upon completion of construction it would be purchased by another railroad, and that such an agreement was entered into. HELD: That a discussion of this phase of the case would serve no useful purpose for reason that such an agreement, if in fact entered into, is properly cognizable by the courts and not by the commission. American Fuel Co. v. A., T. & S. F., 123 I. C. C. 101, 109.

(v) Combination rates to and from points on short lines run counter to theory that the financial necessities of weak lines should be met by liberal divisions of joint rates, because when rates are so constructed the trunk lines earn more for their hauls to and from junctions with short, weak lines than they would earn to and from same junctions on traffic to and from other trunk lines. Consolidated Southwestern Cases, 123 I. C. C. 203, 388.

(w) Rates to and from points on short lines should not be made by combining local rates to and from junctions with other lines. Combination rates of this character put the territory local to weak or short lines at an even greater disadvantage than that under which such points of necessity labor, and tend to hamper development of such roads and of industries and towns located thereon. Also, such combination rates run counter to theory that financial necessities of weak lines should be met by liberal divisions of joint rates, because when rates are so constructed trunk lines earn more for their hauls to and from junctions with short, weak lines than they would earn to and from same junctions on traffic to and from other trunk lines. Consolidated Southwestern Cases, 123 I. C. C. 203, 388.

(x) Combination rates on gluten feed from Rody, Ind., to Oneonta, Hobart, Stamford, Grand Gorge, and Bloomsville, N. Y., points on the Ulster & Delaware R. R., found unreasonable to extent that rate to Oneonta, the junction point of the Delaware & Hudson and Ulster & Delaware, exceeded lower joint rates contemporaneously in effect via other routes a number of which involve greater hauls than over route of movement, and to extent that rates to points beyond exceeded the joint rates to Oneonta plus the locals of the Ulster & Delaware. Reparation awarded. American Maize Products Co. v. N. Y. C. 126 I. C. C. 137.

(y) Rates on lumber and products from points in Pennsylvania on the Indian Creek Valley Ry., to destinations in trunk-line and c. f. a. territories found unreasonable and unduly prejudicial as compared with those contemporaneously in effect from Baltimore to various New York destinations for comparable distances, and to extent they exceeded those contemporaneously maintained from Group 3 points to same destinations. Latter rates are not depressed since they compare favorably with those from adjacent groups, and nothing of record warrants a differential from points on the Indian Creek Valley Ry. over Group 3 rates. Reasonable and nonprejudicial

rates prescribed for future and reparation awarded. Indian Creek Valley Lbr. Company v. B. & O., 126 I. C. C. 161.

(z) Proposal of carriers to provide for addition of arbitraries on traffic to and from branch lines of trunk-line carriers in official territory, not approved. Southern Class Rate Investigation, 128 I. C. C. 567, 584.

(aa) Upon further consideration in original report 113 I. C. C. 389, Nelson & Albemarle Railway Co., Linville River Railway Co., and Atlanta & St. Andrews Bay Railway Co., weak lines, permitted to charge rates on fertilizer and materials 50 cents per ton in excess of standard-line scale same as accorded other weak lines in original report. Similar permission sought by Louisville & Nashville on behalf of Glasgow Railway and Elkton & Guthrie Railroad, denied, upon showing that latter lines are operated as part of the Louisville & Nashville system and are not shown to be in financial difficulties. Fertilizer Between Southern Points, 129 I. C. C. 215, 217, 218.

§2. Compared With Main Lines.

See Comparative Rates; Evidence §57½; Reasonableness of Rates.

(a) Bamfield, Mich.: Rates on yellow-pine piling from Lumberton and Ansley, Miss., to, situated on a branch of the Detroit & Mackinac Ry., found unreasonable to extent they exceeded lower blanket rate contemporaneously maintained to all main-line and most branch-line points of the Detroit & Mackinac, which lower rate was subsequently established to Comins, to which Bamfield is intermediate, subject to rule 77 of Tariff Circular 18-A. Reasonable rate for future prescribed and reparation awarded. Edward Hines Yellow Pine Trustees v. C., S. & M. R. R., 109 I. C. C. 387.

(b) Proposal to cancel joint rates on grain and products between points on the Spearman branch of the Panhandle & Santa Fe Ry., and points in Kansas and Missouri on lines other than the A., T. & S. F., and apply combinations in lieu thereof, found not justified. Carriers contend that these joint rates were erroneously established in complying with commission's order in 101 I. C. C. 116, that joint rates from the branch-line points are considerably lower than from main-line points, and thus contrary to all theories of rate making, and that it has not been the practice of the Panhandle to publish joint rates between points on its lines and lines other than the Santa Fe for reason that demand for commodities consumed along the Panhandle can well be supplied from Santa Fe origins. Contention raised can not be sustained and last-named reason advanced in justification of proposed schedules does not establish their reasonableness. Grain and Products, 115 I. C. C. 615.

(c) Upon further consideration, authority to charge for transportation of fertilizers and materials, an arbitrary of 50 cents per net ton in addition to standard-line rates between points on certain additional so-called short or weak lines in the Southeast not considered in original report 113 I. C. C. 389, and between points on those lines and points on standard lines, such arbitraries to accrue solely to weak lines, found justified. Fertilizers Between Southern Points, 123 I. C. C. 193.

(d) Proposed increased rates on grain and products from Montana points on Great Northern Ry. to destinations on the Goldendale branch of Spokane, Portland & Seattle Ry., found not justified. The Goldendale branch points are part of a large destinations group. Respondents propose to cancel blanket rate to Goldendale branch points and to establish rates made by addition of arbitraries to the junction-point rate. No arbitraries now apply on traffic from Montana to this branch and in 66 I. C. C. 330, 336, it was stated that when blanket rates apply over an extensive area, fact that branch-line points lie within that blanket does not argue as strongly that there should be a branch-line differential as when rates are applied upon a graded basis, for in an extensive blanket a branch-line haul loses its significance unless it is much more expensive than main-line operations. Here, although operating conditions are more difficult and expensive than on main line, the markedly shorter total haul required with higher earnings, and fact that rates to other more distant branch lines will continue to be accorded the group basis, greatly offsets this showing. Grain from Montana, 128 I. C. C. 123.

(e) An extensive group or blanket adjustment necessarily disregards, to some extent, differences in distance and other elements which go to make up cost

of service, and when arbitraries over group rates for comparatively short branch-line hauls are proposed the essential issue to be determined is not so much the reasonableness per se of the through rates which would result, as the propriety of the proposed arbitraries in the light of the extensive group adjustment voluntarily maintained by the carriers. Grain from Montana, 128 I. C. C. 123, 124, 125.

(f) Proposal of carriers to provide for addition of arbitraries on traffic to and from branch lines of trunk-line carriers in official territory, not approved. Southern Class Rate Investigation, 128 I. C. C. 567, 584.

(g) Joint rates on naptha and gasoline in tank-car loads from Philadelphia to Sandyville, W. Va. a branch-line point, constructed on the basis of rates to Ravenswood, W. Va., plus arbitraries beyond, found unreasonable as compared with contemporaneous rates in opposite direction and with those to Spencer, W. Va., a farther distant point, subsequently made applicable to Sandyville; and rates from Meraux, La., and points in Kansas, Oklahoma, and Texas to same destination, found unreasonable to extent they exceed rates subsequently estalished. Reparation awarded. Virginian Gasoline & Oil Co. v. B. & O., 128 I. C. C. 621.

(h) Combination rates on structural steel from Indiana Harbor, Ind., a Group D point, to Blythe, Calif., a Group 1 point, based on transcontinental factor from Group D to Group 3, plus a branch-line arbitrary to Group 1, found not unreasonable. Facts that other branch-line points were on the main-line basis and that Blythe was subsequently accorded the Group 3, or main-line, basis, do not warrant a conclusion that the rate charged was in excess of a maximum reasonable rate. Illinois Steel Bridge Co. v. A., T. & S. F., 129 I. C. C. 87.

(i) Combination rates on relaying rails from Bellwood and Hartford, Ala., to Hellams, S. C., found unreasonable as compared with joint-line rate named in fourth-section committee's distance scale subsequently used by southern trunk lines, in revising rates on these commodities; with lower rates between other points in same general territory for similar distances; and to extent they exceeded single-line distance rates plus 60-cent differential, contemporaneously in effect, differential being basis employed in making rates to points on so-called weak or short lines on shipments of iron and steel articles from Birmingham, Ala. Reparation awarded. Rinehart & Dennis Co. v. C. of G., 129 I. C. C. 247.

§3. As Part of System.

See Evidence §57½.

(a) Rates on lumber from Flinn, Va., on Warm Springs Valley branch of the C. & O. Ry. Co., to destinations in c. f. a., trunk-line, and New England territories, found not unreasonable but unduly prejudicial to extent they exceed on eastbound traffic rates 2 cents lower, and on westbound traffic rates 2 cents higher, than like rates contemporaneously maintained from Marlinton and other points on C. & O.'s Greenbrier division. Original report, 92 I. C. C. 699, modified. Freehold Lbr. Co. v. C. & O., 118 I. C. C. 463.

(b) Muscle Shoals, Birmingham & Pensacola Ry., is now a part of the St. Louis-San Francisco, a strong system, and need for special treatment, accorded in 100 I. C. C. 513, no longer exists and and since it participates in traffic to Mobile and Pensacola, above carrier may be held responsible for the undue prejudice to Mobile. Mobile Chamber of Commerce v. M. S., B. & P., 129 I. C. C. 419, 421, 422.

§4. In Competition With Main Lines.

See Competition.

(a) C. & O. branch-line points: Class rates on fresh meats packing-house products, and other articles, in peddler cars, from Chicago and East St. Louis, Ill., to branch-line points on Big Sandy and Logan divisions of C. & O., found unreasonable and unduly prejudicial to extent they exceeded rates to main-line junctions plus differentials for hauls beyond, computed under distance scale prescribed herein. Reasonable and nonprejudicial class rates prescribed for future and reparation awarded. Wilson & Co. v. C. & O., 104 I. C. C. 641.

(b) Based upon light traffic density and unfavorably operating and financial conditions, certain independent short lines in southern territory granted authority to continue to charge lower rates on lumber and other forest products to trunk-line and New England territories

from junction points with trunk-line connections than from intermediate points on their lines; provided rates from such intermediate stations shall in no case exceed lowest combination, and further provided that differences between rates from more-distant junction points on the one hand, and intermediate points on short lines on the other, shall not be increased. North Carolina Pine Asso. v. A. C. L., 107 I. C. C. 190.

(c) Upon application of certain independent short lines in southern territory for authority to continue to charge lower rates on lumber and other forest products to trunk-line and New England territories from junction points with trunk-line connections than from intermediate points on their lines, relief sought being based solely on ground of water competition, FOUND: Considering the great difference between all-rail and water rates from south Atlantic ports to eastern port cities, and small volume of movement via eastern ports to interior destinations, the continued maintenance of lower rates from these ports than from intermediate points to this destination territory would divert or retain little, if any, traffic to rail carriers. Fourth section relief denied and original report, 85 I. C. C. 270, affirmed. North Carolina Pine Asso. v. A. C. L., 107 I. C. C. 190, 192, 193.

(d) Complainant attacked commodity rates charged on cotton seed products, carloads, shipped since Oct. 22, 1921, from Tiptonville, Tenn., to points east of Illinois and north of Tennessee and North Carolina, with the exception of Michigan, also to Cairo, Chicago and East St. Louis, Ill., St. Louis, Mo., Paducah and Louisville, Ky., as unreasonable and unduly prejudicial to extent they exceed the rates from Dyersburg Tenn. Tiptonville is on a branch line of the I. C. which extends from Dyersburg to Hickman, about 51 miles. Dyersburg is on the main line of the I. C. 30 miles south of Tiptonville. Ripley, Covington and Memphis, Tenn., points on the main line of the I. C. 24, 38 and 76 miles, south of Dyersburg take the Dyersburg rates. Tiptonville is a few miles farther distant from northern and eastern markets than Dyersburg and a few miles nearer the same markets from Memphis. The rates are about 40 cents per ton higher from Tiptonville. The rates attacked do not appear unreasonably high. In the sale of their products complainants are in competition with mills engaged in the same business at Dyersburg and other points, and they are compelled to observe the difference between the Dyersburg and Tiptonville rates. Complainants have shown that their products are sold in the same general competitive markets as are the like products manufactured and sold by their competitors at Dyersburg and adjacent points taking lower rates than Tiptonville; that in the sale of their products they were forced to meet their competitors prices; that they were compelled to forego certain profits solely because the freight rates from Tiptonville exceeded the rates available to their competitors and that as a result of the additional transportation charges paid they have suffered pecuniary loss. It follows, therefore, that the undue prejudice found to exist was the proximate cause of the injury sustained by complainants and that their damage is measured by the difference in these rates. HELD, rates attacked not unreasonable but unduly prejudicial to extent they exceeded the rates from Dyersburg, reparation awarded. Gannaway & Rice v. I. C. R. R., 120 I. C. C. 400.

(e) The commission may properly give sympathetic consideration to the financial circumstances of carriers when passing upon the propriety of establishing or continuing through routes and joint rates. See 107 I. C. C. 523. However, the financial status of a weak line is not of such importance that all other elements must be subordinated to it. Restrictions in Routing over S. L. & U., 122 I. C. C. 208, 212, 213.

IV. FACILITIES.

See Facilities and Privileges.

§7. In General.

(a) Tariff provided for assessing of charges for transferring fuel oil from standard to narrow gauge cars at Palisade, Nev., for transportation over the narrow-gauge line of the Eureka Nevada Ry Co., based upon an estimated weight of 7.4 pounds per gallon at full shell gallonage capacity of the car. Upon contention of shipper that transfer charges should have been based on weight per gallon of oil transported which aggregated less than weight based on full shell gallonage capacity of cars, HELD: Transfer charges being restricted in tariff to apply per carload, the contention is without merit. Mackintosh Mines Co. v. E. N. Ry., 120 I. C. C. 121.

BREAKING RATES

See Basing Points and Lines; Car Ferry; River Crossings.

BRIDGES AND TOLLS

I. REASONABLENESS.
- §1. In general.
- §1a. Constructive mileage.

II. DISCRIMINATION.
- §2. In general.

III. CONTROL AND REGULATION.
- §3. Jurisdiction of Commission.
- §4. State control.

CROSS REFERENCES

See Car Ferry; Floatage; River Crossings.

I. REASONABLENESS.
See Reasonableness of Rates.

§1. In General.

(a) In constructing interstate rates between points in the Southwest, in Texas and Oklahoma differential territories, and in portions of Kansas-Missouri territory, on the one hand, and Memphis, Vicksburg, Natchez, Angola, Baton Rouge, Harahan, and New Orleans, on the other, 4 cents in case of Memphis and 6 cents in case of the other east-bank crossings authorized to be added as maximum bridge arbitraries or crossing allowances. Consolidated Southwestern Cases, 123 I. C. C. 203, 390, 391.

BUNCHING

See Demurrage §10⅝.

BURDEN OF PROOF

See Advanced Rates §3; Discrimination §14; Evidence I; Reduced Rates §9; Restricted Rates (e); Through Routes and Joint Rates §13a; Undercharges §5; Weights and Weighing IV.

C. O. D. SHIPMENTS

See Transportation §2.

(a) Carrier's refusal to accept shipment of watermelons for transportation, charges collect, found not discriminatory or otherwise unlawful. Governing tariff specified that watermelons would be accepted freight "collect" only where carriers were protected by surety bond guaranteeing payment of freight charges. Complainant's telegram and certain bills of lading covering similar shipments from another point were only evidence offered by shipper as authority to ship on complainant's bond and agent considered this insufficient authority to cover shipment tendered. Moreover, determination of what constitutes sufficient evidence of authority must necessarily be left to discretion of agents, and it was not an abuse of such discretion to refuse to accept the telegram as general authority to ship on complainant's bond. Edgerton & Beers v. A. C. L., 126 I. C. C. 422.

(b) A "C. O. D. shipment" means that goods transported are only to be delivered by carrier on consignee's payment in cash of amount specified as a condition precedent to or concurrent with delivery of goods, and carrier accepts check instead of cash at its own peril. Joseph Moqul, Inc., v. C. Lewis Lavine, Inc., 221 N. Y. S. 391.

CABLE RATES

See Telephone and Telegraph Companies.

CANADA

See Adjacent Foreign Country; Through Routes and Joint Rates.

(a) Commission may not prescribe joint rates for future to Canadian points, but as to rates constructed on combination, such factors as apply wholly within United States are subject to its jurisdiction. In respect of joint rates, and likewise joint-rate factors used in constructing combination rates, American lines over which shipments move are subject to commission's jurisdiction and all carriers parties to such rates are jointly and severally liable for any damage resulting from their unlawfulness. See 83 I. C. C. 460 and other cases cited. Washington Publishers Asso. v. A. C. & H. B., 104 I. C. C. 4, 9.

(b) Where unreasonable rates are assessed on shipments moving from points in the United States to Canadian destinations, commission's order awarding reparation can be entered against the American lines only. Such action however, should not be construed as affecting any right of Canadian lines to participate in making reparation. Vera Chemical Co. v. A. C., 104 I. C. C. 408, 412.

(c) Proposed increased and reduced rates on newsprint paper from Shawinigan Falls, and other points in northeast Canada taking same or related rates to Nashville, Knoxville, and Memphis, Tenn., purporting to be in harmony with commission's findings in 78 I. C. C. 258 and 101 I. C. C. 605, found not justified. Rates from these Canadian mills to Tennessee points have been same as or related to those from competing mills in New England, establishment of proposed rates without similar readjustment of rates from New England mills would result in undue prejudice to Canadian mills, and record does not warrant disruption of present long-standing adjustment. Newsprint Paper from Eastern Canada, 109 I. C. C. 701.

(d) If rates on traffic moving from Canadian points to destinations in the United States are found unduly prejudicial, commission clearly has power, under the act, to require removal of such undue prejudice. Newsprint Paper from Eastern Canada, 109 I. C. C. 701, 703.

(e) Carriers contend the Commission is without jurisdiction to require the establishment of joint rates from points in the United States to destinations in Canada. The Commission does not have such jurisdiction, but it has jurisdiction to award reparation against the lines within the United States which participate in joint rates to or from points in Canada which are shown to be unreasonable. Proctor & Gamble Co. v. A. & V. Ry., 112 I. C. C. 381, 383.

(f) The Commission has no authority to establish a rate for transportation partly in Canada; but where a joint rate has been voluntarily maintained by the carriers to a point in Canada, and charges based on such rate have been collected, it may inquire whether the joint rate is unreasonable, unduly discriminatory or otherwise unlawful. Northwestern Oil Co. v. St. L. S. F. Ry., 112 I. C. C. 488, 490.

(g) Rates on rosin from points in the South and Southeast to Hamilton, Ontario, Canada, and failure of carriers to provide transit arrangements thereon at Ivorydale (Cincinnati), Ohio, found not unreasonable, unduly prejudicial, or otherwise unlawful as compared with rates to Buffalo, N. Y. Ordinarily commission does not require establishment of transit arrangements except to remove unjust discrimination or undue prejudice, neither of which is here shown. Moreover, present rates on this traffic resulted from relatively low rates established following the decision in Naval Stores from Southern Points, 87 I. C. C. 740, and 89 I. C. C. 634, and there is nothing of record to show that rate factors to or beyond either Cincinnati or Buffalo are unreasonable. Procter & Gamble Co. v. A. & V., 112 I. C. C. 381.

(h) While commission does not have jurisdiction to require establishment of joint rates from points in the United States to destinations in Canada, it does have jurisdiction to award reparation against the lines within the U. S. which participate in joint rates to or from points in Canada which are shown to be unreasonable or unduly prejudicial. Procter & Gamble Co. v. A. & V., 112 I. C. C. 381, 383.

(i) Proposal to increase rates on sulphur from Baltimore Md., to Hamilton, Ont., Canada, found not justified. In 89 I. C. C. 383, commission prescribed reasonable rates from New York and Baltimore to Hamilton, and carrier here endeavors to advance Baltimore rate to the New York level. The increase sought, however, centers about a disproportionate division accorded Canadian lines, but commission has repeatedly held that a dispute as to divisions does not afford justification for an increase of rates. Sulphur from Baltimore to Canada, 112 I. C. C. 485.

(j) While the commission has no authority to establish a rate for transportation partly in Canada, where a combination rate, the component factors of which are joint rates, has been voluntarily maintained by carriers to Canadian points, and charges based on such rate have been collected, commission may inquire whether such joint rate is unreasonable, discriminatory or otherwise unlawful. See 66 I. C. C. 627. Northwestern Oil Co. v. St. L.-S. F., 112 I. C. C. 488, 490.

(k) Joint rates on newsprint paper from Espanola, Ontario, Canada; to points in Wisconsin, Minnesota, Illinois, Missouri, and Iowa, and to Omaha, Nebr., in which carriers subject to the act participate, found, in so far as transportation takes place within the United States, to be unreasonable and unduly prejudicial to extent they exceed or may exceed by more than 4 cents per 100 pounds the rates contemporaneously applicable from Sault Ste. Marie,

Ontario, Canada, to same destinations. Spanish River Pulp & Paper Mills v. A. & W., 113 I. C. C. 343.

(l) The Commission has found that in the case of a joint rate from Canada to United States it has jurisdiction to issue a cease and desist order against the carriers operating in this country and to award reparation on past shipments. Consolidated Water Power & Paper Co. v. C. N. Ry., 115 I. C. C. 310.

(m) Clearly the Commission has no authority to establish a rate for transportation in Canada, but American carriers parties to a joint rate from a Canadian point to a point in the United States are jointly and severally liable for damages caused by an unreasonable rate. Lissberger & Co. v. P. R. R., 115 I. C. C. 521, 525.

(n) Joint rate on wet wood pulp from Port Arthur, Ontario, Canada, to Wisconsin Rapids and Biron, Wis., found not unreasonable as compared with rates contemporaneously in effect on same commodity from the same and various other points of origin to same and various other destinations in same general territory for comparable distances. Consolidated Water Power Co. v. C. N. Rys., 115 I. C. C. 310.

(o) The commission has jurisdiction, in the case of a joint rate in which both Canadian and American carriers participate, to issue a cease-and-desist order against carriers operating in the United States and to award reparation on past shipments. See 66 I. C. C. 627; 98 I. C. C. 339, 344. Consolidated Water Power Co. v. C. N. Rys., 115 I. C. C. 310, 311.

(p) Rates on zinc by-products from points in Canada to points in New England and eastern trunk-line territories found unreasonable to extent they exceeded 85 per cent of sixth-class. Reasonable basis of rates prescribed for future and reparation awarded. Lissberger & Co. v. P. R. R., 115 I. C. C. 521.

(q) While the commission has no authority to establish a rate for transportation in Canada, American carriers parties to a joint rate from a Canadian point to a point in the United States are jointly and severally liable for damages caused by an unreasonable rate. See 66 I. C. C. 627. Lissberger & Co. v. P. R. R., 115 I. C. C. 521, 525.

(r) Proposal of carriers to restrict rates on class traffic and various commodities, from Duluth, Minn., and several Michigan points to destinations on N. Y., N. H. & H., so as not to apply in connection with Grand Trunk by way of the Niagara frontier, found not in violation of the act. The route in question is by way of a boat line, a portion thereof being wholly in Canada. While proposed cancellation is outgrowth of a dispute between carriers over divisions, which affords no justification for increased rates, and although joint rates are now in effect over the route, the use of which is of material importance to shippers, the principle referred to has no application here, since commission has no authority either to require establishment of joint rates over this route or to prevent their cancellation. Elimination of G. T. Ry. from Certain Routes, 115 I. C. C. 609.

(s) The act provides a method for adjusting disputes between carriers over divisions and controversies of that character afford no justification for increased rates and will not be permitted to work injury to shippers. This principle, however, has no application where carriers desire to eliminate through routes via Canada since commission has no authority either to require establishment of joint rates over Canadian routes or to prevent their cancellation. Elimination of G. T. Ry. from Certain Routes, 115 I. C. C. 609, 611.

(t) The commission has no authority either to require establishment of joint rates over routes through Canada or to prevent their cancellation. Elimination of G. T. Ry. from Certain Routes, 115 I. C. C. 609, 611.

(u) Commission has considered in the past joint rates from Canada to points in the United States as a whole, found them unreasonable, and awarded reparation against the defendant carriers in the United States for the full amount of the damages sustained. Hyman Michaels Co. v. B. & O. R. R., 120 I. C. C. 417, 419.

(v) The commission's order awarding reparation can be entered only against defendants in the United States, but should not be construed as affecting any right of the Canadian lines to participate in making reparation. American Cement Tile Mfg. Co. v. P. R. R., 120 I. C. C. 611, 612.

(w) Finding in prior report, 113 I. C. C. 343, that joint rates on newsprint

paper from Espanola, Ontario, Canada, to destinations in Wisconsin, Minnesota, Illinois, Missouri, Iowa, and Nebraska are and for future will be, in so far as transportation takes place within United States, unreasonable and unduly prejudicial to extent they exceed or may exceed by more than 4 cents per 100 pounds the rates contemporaneously applicable from Sault Ste. Marie, Ontario, to destinations, affirmed on reconsideration. Spanish River Pulp & Paper Mills v. A. & W., 120 I. C. C. 251.

(x) Joint rates on scrap car wheels from Windsor, Ontario, Canada, to Michigan City, Ind., and Pullman, Ill., found unreasonable and unduly prejudicial, in so far as transportation takes place within United States, to extent they exceeded or may exceed 72 and 55 cents, respectively, higher than corresponding rates from Detroit, Mich. Reparation awarded. Hyman-Michaels Co. v. B. & O., 120 I. C. C. 417.

(y) Upon contention that under the act commission's jurisdiction over rates from Canada to United States is limited to transportation actually taking place within United States, and that until the courts have passed upon this question the commission should refrain from exercising a doubtful jurisdiction over such rates, HELD: Question presented does not differ from that in International Nickel Co., 66 I. C. C. 627, and other cases, wherein commission has considered joint rates from Canada to United States as a whole, found them unreasonable, and awarded reparation against the American lines for full amount of damage sustained. Until the issue of law in above-cited case has been reviewed by the courts there is no valid reason why a different conclusion should be reached in instant proceeding. Hyman-Michaels Co. v. B. & O., 120 I. C. C. 417, 419.

(z) Findings in original report, 104 I. C. C. 408, that rates on rosin to Burlington, Ontario, Canada, from south Atlantic and Gulf ports and points taking same rates, were not unduly prejudicial or unduly preferential; that rates from Gulf ports and points taking same rates were not unreasonable; and that rates from south Atlantic ports and points taking same rates were unreasonable to extent they exceeded rates contemporaneously in effect from Gulf ports to same destinations, affirmed. Vera Chemical Co. v. A. C., 120 I. C. C. 434.

(aa) Commission has no authority to order maintenance of joint rates from points in the United States to points in Canada. Vera Chemical Co. v. A. C., 120 I. C. C. 434, 437.

(bb) Sixth-class rates on cement roofing slabs reinforced with metal, from Wampum, Pa., to Toronto, Ontario, Canada, found unreasonable to extent they exceeded 75 per cent of sixth class, which lower basis was contemporaneously in effect from Chicago and other producing points to destinations in c. f. a. territory, and from Chicago to Sarnia, Windsor, and Toronto, Ontario, Canada, for comparable hauls. Reparation awarded. American Cement Tile Mfg. Co. v. P. R. R., 120 I. C. C. 611.

(cc) Orders of the commission awarding reparation for exaction of unreasonable rates on shipments to and from Canada can be entered only against United States' carriers, and are not to be construed as affecting any right of Canadian lines to participate in making reparation. American Cement Tile Mfg. Co. v. P. R. R., 120 I. C. C. 611, 612.

(dd) Where the commission determines what will be reasonable rates for transportation between points in Canada and points in the United States, no order for the future is entered, but if participating carriers do not comply with its findings within a reasonable time, shippers may bring the matter to commission's attention for appropriate action looking to establishment of a reasonable rate for that portion of the transportation which takes place within the United States. See 66 I. C. C. 627. American Cement Tile Mfg. Co. v. P. R. R., 120 I. C. C. 611, 612, 613.

(ee) If the railroads constituting a through route for traffic from a point in Canada to a point in the United States concurred in a through rate or a carload minimum that was unreasonably high, they are jointly and severally responsible for any damage that might result to any shipper on account of such unlawful rate or minimum. Kroehler Mfg. Co. v. C. N. Ry., 123 I. C. C. 555, 556.

(ff) The commission has jurisdiction to prohibit connecting lines from joining in an unlawful rate even though part of the transportation takes place within Canada. Grain and Products to Eastern Points, 122 I. C. C. 551, 563.

(gg) Joint sixth-class rate on lumber from Sundridge, Ontario, Canada, to Naperville, Ill., found unreasonable to extent it exceeded a lower combination rate contemporaneously in effect over route of movement, and subsequently published as a joint commodity rate. Carriers submitted no evidence to rebut presumption of unreasonableness attaching to a through rate which exceeds the aggregate of intermediates. Reparation awarded against United States carriers only. Kroehler Mfg. Co. v. C. N. Ry., 123 I. C. C. 555.

(hh) Upon contention that commission has no jurisdiction to award reparation against a Canadian carrier for any portion of transportation which takes place within Canada for the exaction of unreasonable rates, HELD: While in 52 I. C. C. 145 the commission found that railroads constituting a through route for traffic from points in Canada to points in the United States concurring in an unreasonably high through rate are jointly and severally liable, in such cases the reparation award runs against the United States carriers only. See 66 I. C. C. 627; 74 I. C. C. 733. Kroehler Mfg. Co. v. C. N. Ry., 123 I. C. C. 555, 556.

(ii) Rate on lumber from Burks Falls, Ontario, Canada, to Pontiac, Mich., found not unreasonable as compared with rates contemporaneously in effect to Toledo, Detroit, and Chicago. While comparisons of distances and earnings show rates that are relatively lower than rate assailed, Toledo, Detroit, and Chicago are lake ports and failure to show conditions under which rates to those points were established impairs their probative value. Strable Lbr. & Salt Co. v. C. N. Ry., 123 I. C. C. 585.

(jj) Rate on lumber from Nashville to Toronto, Ontario, found not unreasonable, but unduly prejudicial to extent it exceeded those contemporaneously maintained from Chattanooga. Rate assailed is as low or lower than those from other lumber-producing points to Toronto from points in the Southeast to c. f. a., trunkline, and New England destinations, and as low or lower than those prescribed in 85 I. C. C. 270 and 102 I. C. C. 611, for comparable distances. However, rates from Nashville and Chattanooga to Buffalo, N. Y., Hamilton, Ontario, and various other points are the same and no reason appears for a difference in rates to Toronto. Farris Hardwood Lbr. Co. v. L. & N., 123 I. C. C. 587.

(kk) Proposed increased rates on newsprint paper and wall paper, blank, unfinished, from Canadian points to destinations in Iowa, over lines of various carriers found not justified, except that increases proposed by the C., B. & Q., found justified to all destinations except Fort Madison. Distances to various destinations are greater over the Burlington than over other lines which now enjoy same rates as those proposed by that carrier, and record tends to show that proposed rates are reasonable and will remove existing fourth-section departures. Moreover, in 113 I. C. C. 343; 120 I. C. C. 251, joint rates on newsprint paper from Ontario, Canada, to various States, including Iowa, were found unreasonable. Newsprint and Wall Paper 126 I. C. C. 166.

(ll) Joint rates in which Canadian lines participate found to apply to a service which is not "wholly within the confines of the United States" within meaning of section 1 of the act, and over which the commission has no jurisdiction. The commission having no power to prescribe such joint rates, it must follow that it is also without power to prescribe their divisions. In absence of treaty provisons or concurrent legislation in both countries affecting the matter, conflict of authority would be inevitable if any different rule were followed. New England Divisions, 126 I. C. C. 579, 637, 671.

(mm) Freight charges on through shipments from Canada to the United States are payable at schedule rates in American money. New York & Pennsylvania Co., v. Davis, Director General of Railroads, 8 Fed. (2d) 662.

(nn) Where shipper made through shipment of pulpwood from Canada into United States, and voluntarily paid through rate in United States money on its arrival in accordance with Interstate Commerce Act. § 6, par. 7 (Comp. St. § 8569), HELD such payment was not illegally exacted, and shipper could not recover as overcharge the difference between amount paid in United States and charge for carriage in Canada in depreciated Canadian currency. New York & Pennsylvania Co., v. Davis, Director General of Railroads, 8 Fed. (2d) 662.

(oo-qq) Proposed cancellation of joint commodity rates on petroleum and its products from Vicksburg and Natchez, Miss., New Orleans, La., and points grouped therewith, to destinations in the Provinces of Ontario and Quebec,

Canada, leaving in effect higher combination rates, found not in violation of interstate commerce act. As proposed cancellation was prompted by desire of Canadian lines to withdraw from participation in joint rates and provisions of section 1 of the act apply to common carriers only in so far as transportation takes place within the United States, commission has no authority to prevent Canadian lines from withdrawing their participation in joint rates, or to prevent their cancellation upon such withdrawal. See 115 I. C. C. 609. Petroleum and Products to Canadian Points, 128 I. C. C. 545.

(rr) The provisions of the act apply to common carriers engaged in transportation of property by railroad only in so far as such transportation takes place within the United States. The Commission is therefore without authority to prevent the Canadian lines from withdrawing their participation in the joint rates, or to prevent cancellation of the joint rates upon such withdrawal. Petroleum from Mississippi Valley to Canada, 128 I. C. C. 545.

(ss) Joint commodity rate assessed on printing presses from Vancouver, British Columbia, to Orlando, Fla., found inapplicable to extent it exceeded lower combination of locals contemporaneously applicable under an alternative provision contained in tariff. Refund of overcharges directed. Duplex Printing Press Co. v. B. C. E., 128 I. C. C. 692.

(tt) Combination rate on printing presses from Vancouver, British Columbia, to Orlando, Fla., a point taking Group K rates, found not unreasonable as compared with Group A rates contemporaenously maintained from Pacific coast terminals to New York. Earnings under latter rates as well as those under rates from various producing points to Orlando compare favorably with those under rates assailed for comparable distances. Duplex Printing Co. v. B. C. E. 128 I. C. C. 692.

(uu) Rates on dry tanning extract from Nashville, Tenn., to Kitchener, Ontario, Canada, found not unreasonable or otherwise unlawful, but rates on liquid tanning extract to Milwaukee, Wis., found unreasonable to extent they exceeded rate subsequently established and unduly prejudicial as compared with rates contemporaneously maintained from Lynchburg, Va., and Harriman and Chattanooga, Tenn., competitive points; and rates on dry tanning extract to Huntsville, Ontario, Canada, found unreasonable and unduly prejudicial to extent they exceeded those contemporaneously applicable from Chattanooga. Nashville is directly intermediate to Chattanooga on traffic to all three destinations, but while rates to Milwaukee and Kitchener conform to the fourth section, departure therefrom still exists in rates to Huntsville. Reparation awarded. Tennessee Extract Corp. v. L. & N., 128 I. C. C. 709.

(vv) The components of the combination rates to Kitchener and Huntsville, Ont., from the Ohio river were and are joint rates. The charges collected were made for the entire movement from point of origin to these destinations. The Commission has no authority to prescribe a joint rate for the future for transportation partly in Canada; but where a joint rate has been voluntarily maintained by the carriers to a destination in Canada, and charges based on that rate have been collected, it may inquire whether the joint rate is unreasonable or otherwise unlawful and may require defendant carriers within the United States to cease and desist from participating in a joint rate which it finds unreasonable or otherwise unlawful. Tennessee Extract Corp. v. L. & N. R. R., 128 I. C. C. 709, 713.

(ww) Commission has no authority to prescribe a joint rate for the future for transportation partly in Canada; but where a joint rate has been voluntarily maintained by carriers to a destination in Canada, and charges based on that rate have been collected, it may inquire whether the joint rate is unreasonable or otherwise unlawful and may require defendant carriers within the United States to cease and desist from participating in a joint rate which is found unreasonable or otherwise unlawful. See 66 I. C. C. 627 and other cited cases. Tennessee Extract Corp. v. L. & N., 128 I. C. C. 709, 713.

(xx) Although joint through rates are now in effect over routes through Canada from points other than those here considered within the coast group, the Commission has no authority to require the establishment of joint rates over such routes. West Coast Lumbermens Asso. v. C. M. & St. P. Ry., 129 I. C. C. 363, 364.

(yy) Commission has no authority to require estalishment of joint rates through Canada. See 115 I. C. C. 609, 611. West Coast Lumbermen's Asso. v. C., M. & St. P., 129 I. C. C. 363, 364.

(zz) Upon reconsideration, maintenance of combination rates on rosin from points in the South and Southeast to Hamilton, Ontario, Canada, accorded transit at Ivorydale (Cincinnati), Ohio, higher than joint rates from more distant points over the same route, in the same direction, the shorter being included within the longer distance, when shipments are accorded transit at Latonia or Central Covington, Ky., found to contravene the long-and-short-haul provision of section 4 of the act. See 35 I. C. C. 27, and other cited cases. Moreover, such rates contravene the fourth section notwithstanding fact that such rates are joint rates from points within United States to Canadian destinations. See Conf. Ruling 447; 66 I. C. C. 627, and other cited cases. Former report 112 I. C. C. 381. Procter & Gamble Co. v. A. & V., 129 I. C. C. 385.

(3a) Refrigeration charges on tomatoes from Port Huron, Mich., originating at Mississippi points, to Toronto and Montreal, Canada, found not unreasonable. Port Huron is the nearest point to destination in a group designated in refrigeration tariff as Group B, which embraces all points in southern peninsula of Michigan. Complainant's contention that because their shipments moved to Port Huron under ventilation they should receive special consideration in the form of lower refrigeration charge, not sustained. Refrigeration could have been had from any point above group, but complainant elected to take service only from Port Huron, and if they did not desire full refrigeration from that point they had option of moving shipments at actual cost of ice plus charge of $7.50 per car. Moreover, in 56 I. C. C. 449, commission approved present grouping and record here does not justify disturbing adjustment there authorized. Simpson Co. v. G. T. W., 129 I. C. C. 430.

(3b) Where shippers from Canada into United States, under bills of lading calling for payment of freight in dollars, without protest paid joint freight rates to terminal carrier, who in turn paid part of freight so collected to Canadian carriers, HELD, shippers could not thereafter, on theory that Canadian carriers, instead of being paid in money of United States, should have been paid in Canadian money or exchange, which was at some 15 per cent depreciation, require carrier collecting charges to account for such 15 per cent. New York & Pennsylvania Co. v. Davis, Director General of Railroads as Agent, 9 Fed. (2d) 911.

CANALS

(a) Ruling of New York courts that Public Service Commission was without authority to make order requiring railroad to operate canal terminals owned by state, which Supreme Court, by denying certiorari, declined to disturb, will be accepted in federal court. New York Cent. R. Co., v. United States, 13 Fed. (2d) 200.

(b) Interstate Commerce Commission held without authority under Interstate Commerce Act, § 6, par. 13, as amended (Comp. St. Supp. 1925, § 8569) to order railroad to operate canal terminals owned by state, where only substantial party to proceeding was state of New York, since statute requires that there shall be two carriers before commission, both subject to its jurisdiction. New York Cent. R. Co., v. United States, 13 Fed. (2d) 200.

CAR FERRY

See Across Lake Rates; Advanced Rates §11½ (a); Allowances §8½; Ferry Charges; Floatage.

(a) Proposed increased translake rate on salt from Ludington and Manistee, Mich., to Chicago, Ill., and intermediate points, applicable over car-ferry route of the Pere Marquette to Milwaukee, and the C., M. & St. P., beyond, found justified. In Salt Cases of 1923, 92 I. C. C. 388, commission fixed minimum translake rate 1 cent under all-rail rate over translake route and the own rails from Ludington and Manistee to Chicago, but the differential in favor of translake route attracts all the traffic and in order to secure the entire haul it desires to maintain same rate over both routes. In the general cases carriers were specifically authorized to apply all-

rail rate over translake route and the commission sees no reason for changing the finding made therein to effect that a translake rate equal to all-rail rate is justified. Salt from Ludington Group, 112 I. C. C. 255.

CARETAKERS

See Live Stock Shipments; Passenger Fares and Facilities §3a, §12; Personal Injury.

(a) Right to recover from interstate carrier for death of caretaker of potato cars as result of train wreck must be determined by Interstate Commerce Act (U. S. Comp. St. § 8563 et seq.), as interpreted by federal Supreme Court. Miller v. Maine Cent. R. Co., (Me. 1926) 133 Atl. 907.

(b) Caretaker traveling on pass HELD entitled to same care and protection as passenger for hire, and to recover for carrier's negligence. Miller v. Maine Cent. R. Co. (Me. 1926) 133 Atl. 907.

(c) If pass to caretaker was gratuitous in ordinary sense of terms it was in violation of Interstate Commerce Act (U. S. Comp. St. § 8563 et seq.), and contract releasing carrier from liability for negligence was without consideration and effect. Miller v. Maine Cent. R. Co., (Me. 1926) 133 Atl. 907.

(d) If caretaker's pass was given as consideration of contract of shipment, he was passenger for hire and release of carriers from liability due to negligence is invalid. Miller v. Maine Cent. R. Co., (Me. 1926) 133 Atl. 907.

(e) Caretaker of shipment of stock was a passenger, to whom carrier owed duty to enable him to alight in safety at transfer point, and compulsion or coercion to alight from moving train thereat need not be shown to recover for resulting injuries; it being negligence to induce him to alight from such train. Bersie v. Chicago, M. & St. P. Ry. Co., (Ia., 1926) 211 N. W. 250.

CARMACK AMENDMENT

See Loss and Damage I.

CARS AND CAR SUPPLY

I. CONTROL AND REGULATION.

A. Jurisdiction of Commission.
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- §1. Over car distribution.
- §2. Car regulations.
- §3. Fuel cars.
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- §8. Size and kind ordered by shipper.
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- §9⅝a. Live stock cars.
- §9¾. Peddler cars.
- §9⅞. Miscellaneous cars.
  - (1) Station-order cars.
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- §10½. Private cars.
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III. ASSIGNMENT AND DISTRIBUTION.

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- §12. In general.
- §13. Private cars.
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- §18. Detention of cars.
- §19. When counted for loading.
- §20. Car famine.
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- §21½. Shippers on branch lines.

B. Rating of Mines.
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§22. Coke oven basis.
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IV. CONTRACTS FOR CAR SUPPLY.
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V. DUTY TO TRANSPORT CARS.
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VI. REMEDIES AND DAMAGES.
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VII. LIMITATION OF LIABILITY.
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VIII. CAR SERVICE REGULATION.
§39. In general.
§40. Filing and publication.
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IX. ALLOWANCES FOR CARS.
§42. In general.

CROSS REFERENCES

See Allowances §8 (½); §8 (5); Boiler Inspection Act; Car Ferry; Classification §12⅞; Control and Regulation; Evidence §22; Floatage; Live Stock Shipments; Minimums §3, §5, §8; Peddler Cars; Private Cars; Safety Appliance Act; Special Rates and Services; Trap Cars.

I. CONTROL AND REGULATION.

See Control and Regulation.

A. **Jurisdiction of Commission.**

See Jurisdiction of Commission; Interstate Commerce Commission I.

§½. In general.

(a) Under Transportation Act Feb. 28, 1920 (21), the question of character and adequacy of car service, at least in interstate shipments, is in the first instance an administrative matter for the Interstate Commerce Commission, and, until the commission acts, a state court could not entertain suit based on alleged inadequacy of car service; there being nothing in the Carmack, or Cummins Amendment to the contrary. Gardner v. Louisville & N. R. Co., (Ky., 1926) 279 S. W. 947.

(b) Order concerning preference in car distribution, issued by Interstate Commerce Commission, under Transportation Act 1920, § 402, par. 15, has force of law. United States v. Michigan Portland Cement Co., 46 Sup. Ct. 395.

(c) Under the Interstate Commerce Act, §1, subds. 3, 6, 10-12, 14, 15, as added and amended and sections 3 and 15, an order of the Interstate Commerce Commission universally abolishing "assigned car rule," relating to distribution of coal cars to mines during times of shortage, HELD unjust, unreasonable, and an unlawfully arbitrary exercise of power, which deprived railroads of their rights to regulate their internal affairs and private car owners of their property without compensation, in violation of Const. Amend. 5. Berwind-White Coal-Mining Co. v. United States, (Pa., 1925) 9 Fed. (2d.) 429, 430.

(d) Interstate Commerce Act, §1, subd. 15, as added and amended, authorizing Commission in case of emergency to suspend rules and establish just and reasonable directions with respect to car service, applies only to unexpected conditions, and does not authorize suspension of rules to meet anticipated conditions, or placing in effect of emergency orders previously condemned as unjust and unreasonable. Berwind-White Coal-Mining Co. v. United States, (Pa., 1925) 9 Fed. (2d.) 429, 430.

§½a. Construction of act.

(a) Transportation Act 1920, § 402, par. 15, and Interstate Commerce Commission's order, establishing preferences and priorities in the movement and exchange of coal cars, HELD applicable, not only to priority of car service, but also to that of transportation,

and one who secures reconsignment and diversion of coal shipment from a preferred class of consignees to less preferred class violated the order in terms. United States v. Michigan Portland Cement Co., 46 Sup. Ct. 395.

§1. Over Car Distribution.

(a) Upon contention that commission has no authority to regulate the usual freight service maintained on any railroad and that its jurisdiction over train service is to be exercised only in times of emergency, HELD: Under section 1 (10) and (11) of the act the duty of carriers with respect to "car service" is continuous, and it is their duty to furnish safe and adequate car service at all times, the terms being used with equal force. It can not be said that duty of furnishing safe car service is in force only in times of emergency, and the same is true with respect to term adequate. Moreover, section 1 (14) and section 15 impose the duty upon carriers to furnish an adequate "supply of trains" for transportation of property, and confers authority upon commission to determine and prescribe just, reasonable, and equitable practice to be followed in respect thereto. Train Service on Northern Pacific, 112 I. C. C. 191, 192, 195.

§4. Private Cars.

(a) Right of both railroads and shippers to use private cars is clearly recognized by law, and can be abolished only by Congress. Berwind-White Coal Mining Co. v. United States, (Pa., 1925) 9 Fed. (2d.) 429, 430.

(b) Interstate Commerce Commission cannot require railroads to distribute among shippers generally in time of shortage privately owned coal cars, for use of which owners receive compensation at a rate fixed by Commission. Berwind-White Coal-Mining Co. v. United States, (Pa., 1925) 9 Fed. (2d.) 429, 430.

II. DUTY TO FURNISH CARS.

§7. In General.

See Bills of Lading §5; Branch Lines IV; Infra §7½ (a); Demurrage §6; Evidence §22.

(a) It is a well recognized principle that a carriers duty to furnish transportation does not arise until request is made therefor. Victor American Fuel Co. v. D. & S. L. R. R., 115 I. C. C. 169, 174.

(b) This is an investigation upon motion of the Commission into the justness, reasonableness and lawfulness of the action of the Kansas, Oklahoma & Gulf Ry. in failing and refusing to furnish transportation and car service over certain tracks and a switch connection in the vicinity of Bromide, Okla., to Dolese Bros. Co., upon request of that company, while furnishing such transportation and car service to the Bromide Crushed Rock Co., with a view to entering such order or orders, and prescribing such just, fair and reasonable rules, regulations and practices as may appear to be warranted. Respondent owns and operates a branch line about 4 miles in length, extending from Bromide Jct. to Bromide. In 1915 respondent extended this line for a distance of about 6,100 feet beyond Bromide to a rock crushing plant having a capacity of about 25 cars a day, constructed about that time by the Hoffman Co. This extension was built at respondents expense upon land acquired by it for right of way. Later the Bromide Co. acquired the plant, and entered into a written contract with respondents which provided, among other things, for the lease of the rails and related materials used in the construction of about 5,200 feet of track. During the period 1922 to 1925 Dolese Bros. acquired a tract of about 200 acres of land in the vicinity of Bromide, which includes the land upon which the rock crushing plant of the Bromide Company is located. In order to move the necessary machinery and materials to the property and to transport products of the proposed plant Dolese Bros. applied to respondent for a connection with the track running from Bromide to the crushing plant of the Bromide Company. Respondent refused the request because of the contract with the Bromide Co. Respondent entered into a contract with Dolese Bros. for the construction of a switch connection and track sufficient to extend off the right of way. This was installed, and what Dolese Bros. now desire is that respondent accord them service over the connection so constructed and the tracks leading to such connection. The sole reason advanced by respondent for its failure to furnish the service requested is the existence of the contract with Bromide Co. There can be no question but that

the track here under consideration came into existence as a public utility and constituted a part of the transportation facilities of the carrier. The status is not altered by the fact that a portion of the rails were for a period removed and later replaced by rails leased by the carrier to a particular shipper and at the expense of the latter. Certainly the public character of the right of way was not affected thereby. The sole use of the track is by respondent in hauling cars to and from the plant of the Bromide Co. This service is and always has been performed by respondent without extra charge. The purpose of the contract has been and is being accomplished and would in no way be defeated by furnishing to Dolese Bros. the requested service. The evidence clearly shows that existing facilities are sufficient to permit respondent to accord both shippers satisfactory service without hurt or inconvenience to either. HELD, through the use of its right of way, tracks, and other facilities in furnishing transportation and car service to the Bromide Co., while refusing similar service to Dolese Bros. upon request, respondent subjects the latter company to undue prejudice. Service on K. O. & G. Ry., 118 I. C. C. 412.

(c) Complainant alleged that, in respect of cars furnished at Omaha, Neb., for loading grain and grain products in sacks, the refusal of defendants to strip the doors with waterproof paper while contemporaneously performing that service in connection with like traffic at Kansas City, Mo., is unduly prejudicial; and that their refusal to sweep the cars clean of all rubbish, dirt, and other foreign material, to drive or draw protruding nails, and to apply paper or pads over projections likely to tear sacks, while contemporaneously performing such services at Kansas City and other points is unreasonable and unduly prejudicial. The record indicates that defendants have not fulfilled in all instances their duty to furnish cars at Omaha for loading flour and other grain products reasonably free from protruding nails and projections likely to tear sacks. If they perform this duty for the future, as it appears most of them have already agreed to do, no order in this respect need now be entered. But in respect of sweeping, padding, and weather stripping cars otherwise suitable for such loading, defendants should accord to shippers at Omaha the service which they contemporaneously accord to competing millers at Kansas City. HELD, the neglect and refusal of defendants, according as they participate in the transportation, to sweep, pad and apply weather strips to cars furnished or to be furnished by them at Omaha, Neb., for loading flour and other grain products, in sacks, for interstate movement while contemporaneously performing that service at Kansas City, Mo., without charge in addition to the line haul rate is, and for the future will be, unduly prejudicial to complainant at Omaha. Omaha Grain Exchange v. C. B. & Q. R. R., 120 I. C. C. 59.

(d) Upon complaint that carriers, in respect of cars furnished at Omaha for loading flour and other grain products, in sacks, refuse to sweep cars, draw protruding nails, pad projections liable to tear sacks, and strip doors with waterproof paper, while contemporaneously performing those services in connection with like traffic at Kansas City, FOUND: (1) That carriers should furnish cars in good repair, free from contaminating materials and reasonably free from protruding nails and rough projections which might tear sacks, and (2) that performance of additional services in preparation of cars at Kansas City without charge in addition to line-haul rate, while contemporaneously refusing to perform like services at Omaha, is and for the future will be unduly prejudicial. Omaha Grain Exchange v. C., B. & Q., 120 I. C. C. 59.

(e) It is the legal duty of a carrier to provide reasonably adequate and suitable equipment for all of the traffic it holds itself out to transport, and it must determine for itself whether it will meet this obligation by owning and maintaining the necessary equipment or by renting it. If it fulfills its obligation by going to the expense of owning and maintaining equipment, a governmental requirement that it pay shippers for additional equipment would be obviously unfair, arbitrary, and unlawful. So long as a carrier has equipment to supply the public, it may use that equipment to exclusion of private equipment, and if shippers in their own interest are permitted by carrier to use their own equipment they can not reasonably expect commission to require the carrier to compensate them by a differential in the freight rate. Switching at St. Louis and East St. Louis, 120 I. C. C. 216, 221, 222.

(f) It is duty of carrier under Interstate Commerce Act to furnish just and reasonable car service and to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service. Midland Valley R. Co. v. Barkley, (Ark., 1927) 291 S. W. 431.

(g) Respondents proposed to establish a tariff rule governing the furnishing of suitable cars for loading grain products in western trunk line and southwestern territories, following Omaha Grain Exchange v. C. B. & Q. R. R. 120 I. C. C. 59. Proposed rule: Cars for loading flour and other gain products. For above lading the carriers will furnish suitable cars with tight roofs and siding and with interior free from debris, noxious odors, oil spots or acid spots, likely to damage the lading, also reasonably free from protruding nails and projections likely to tear sacks, but will not sweep, pad, line or weatherstrip cars nor furnish material therefor. It was agreed at the hearing that the portion of the rule beginning with the word "but" was superfluous, and that respondents would publish an amended rule eliminating that portion. HELD, schedules justified. Suitable cars for loading flour, 128 I. C. C. 442.

(h) Proposed rule governing the furnishing of suitable cars free of debris, of spots, protruding nails, etc., for loading flour and other grain products, found justified. While protest is made against respondents' failure or refusal to provide in tariffs for weather-stripping cars around doors or furnishing material therefor, nearly all freight cars require weather-stripping when lading is grain products in sacks or cartons but carriers generally neither do weather-stripping nor furnish material therefor. Although common carriers must furnish suitable equipment for safe transportation, special safeguards desired by shipper should be furnished by him. See 14 I. C. C. 154 and other cited cases. Moreover, in 26 I. C. C. 245, carriers were not required to line and pad cars for flour movements and while that case dealt with protection on inside of car while instant case deals with protection on outside, principle is the same. Suitable Cars for Loading Flour, 128 I. C. C. 442.

(i) The carriers were not required to line and pad cars for the movement of flour, it being the shippers duty to so pack and load cars as to insure the articles shipped against damage from the ordinary incidents of transportation. Suitable cars for loading flour, 128 I. C. C. 442, 444.

(j) It is well settled that a common carrier must furnish suitable equipment for safe transportation, and that special safeguards desired by the shipper should be furnished by him. Suitable cars for loading flour, 128 I. C. C. 442, 444.

(k) Certain classes of traffic, such as live stock and commodities requiring refrigeration, demand a special class of equipment. If a railroad company holds itself out as a carrier of their species of freight, it is its duty to furnish equipment to carry it, and that duty can not be shifted to the shipper. Handling of fresh meat, 132 I. C. C. 49, 52.

(l) Carriers are obligated to furnish suitable cars and to receive and transport goods tendered to them in safe shipping condition, but are not obligated to prepare shipments for transportation. Standard box, stock, ventilated and refrigerator cars in good repair will accomodate all of the ordinary and usual needs of shippers, and if more than this is demanded because of the form nature, or peculiar characteristics of goods tendered for conveyance some obligation must attach to the shipper in connection with additional demand. Hines Yellow Pine Co. v. A. C. & Y. R. R., 132 I. C. C. 626, 631.

(m) Shipper ordered two 50-foot cars. Carrier for its own convenience furnished four smaller cars and now seeks to collect undercharges on ground that two-for-one rule did not apply under class rate assessed but that a commodity rate at applicable minimum weight applied on each of the four cars furnished. FOUND: Class rate was subject to two-for-one rule and applicable charges were therefore assessed. Leggett & Platt Mfg. Co. v. A., T. & S. F., 129 I. C. C. 219, 223.

(n) Proposed cancellation of commodity rates on fluxing limestone in box cars between points in eastern trunkline territory and restriction thereof to shipments in open-top cars, found not justified. While respondents intended ground-limestone rates to become effective on this commodity in box cars by proposed cancellation, sixth-class rates would become applicable thereon. Ground-limestone rates are but 45 per cent of sixth class. Since in 112 I. C. C.

7, rates on fluxing lime were found unreasonable to extent they exceeded 80 per cent of rates on common lime, hydrated, quick or slaked, and in 128 I. C. C. 23, increases to sixth-class rate resulting from proposal to restrict rates on fluxing limestone to shipments in box cars were found not justified, record is persuasive that rates on ground limestone will not be unreasonable for application on fluxing limestone in box cars. Fluxing Limestone, 129 I. C. C. 574.

§7¼. Car Congestion or Shortage.

See Demurrage §7¼; §14½; Embargoes.

(a) Ordinarily a shipper, on reasonable demand, would be entitled to all the cars which it could promptly load with freight to be transported over the carriers line. But this is not an absolute right and the carrier is not liable if its failure to furnish cars was the result of sudden and great demands which it had no reason to apprehend would be made and which it could not reasonably have been expected to meet in full. Ayrshire Coal Co. v. S. Ry., 118 I. C. C. 531, 535.

(b) In a period of car shortage a shipper has no right to a pro rata distribution of cars based on more than his needs. Victor-American Fuel Co. v. D. & S. L., 115 I. C. C. 169, 174.

(c) Service orders Nos. 23 and 25 issued by commission during periods of car shortage brought about by the coal strike and strike of shopmen of carriers during 1922 had effect of suspending the car-distribution rules of the Southern Ry. to such an extent that it would be improper to hold that carrier responsible for its failure to accord mines on its line an equal share of available cars during that period. Ayrshire Coal Co. v. S. Ry., 118 I. C. C. 531, 534.

§7½. Inspection.

See Inspection.

(a) It is the duty of the carriers to furnish cars suitable for transportation. Obviously this duty can not be fulfilled by furnishing a car that leaks or one that is so full of projecting nails as to be unsuitable for the transportation of commodities properly packed. Whether, in view of the constant use of box cars and the constant strain upon them even under proper operation, the defendants fail in their duty to furnish suitable equipment when they fail in every instance to furnish cars absolutely free from protruding nails may be questioned. Cars should be carefully inspected by the carriers with a view of locating leakages, removing splinters and nails which would have a tendency to tear sacks filled with flour or grain, and locating foreign substances which might contaminate the product to be loaded into the car. Omaha Grain Exchange v. C. B. & Q. R. R., 120 I. C. C. 59, 61.

§8. Size and Kind Ordered By Shipper.

See Classification §21; Follow Lot Shipments; Minimums §3, §4.

(a) Refusal of carriers in official classification territory to apply two-for-one rule with respect to height as well as to length of box cars, where carriers for own convenience furnish two cars of less height than that of a single car ordered by shipper, found not unreasonable. While carriers should furnish equipment most suitable for reasonable needs of traffic offered, requirements of shipper here have been met by recent acquisition by carrier of cars of desired height. However, demand for cars of a type different from ordinary equipment usually should be more general than that of a single shipper before it may be said to be incumbent upon a carrier to acquire them. Moreover, despite advantages of such cars in handling light and bulky commodities, their usefulness is still in experimental stage and it is doubtful whether two-for-one rule could be enforced at this time without imposing an undue burden on carriers generally. Ohio Body & Blower Co. v. A., C. & Y., 104 I. C. C. 19.

(b) Failure of carriers to maintain a two-for-one rule on kitchen cabinets moving from Indiana points on the Wabash Ry. in Group C territory to transcontinental destinations, under which the c. l. rate will be applied on actual weight of contents of second car provided first car is loaded to capacity where two small cars are furnished by carrier in lieu of a large car ordered by shipper, while applying such a rule from adjacent Group D points, found not unreasonable but unduly prejudicial. Wasmuth-Endicott Co. v. C., R. I. & P., 107 I. C. C. 588.

(c) Failure of carrier to accord two-for-one rule when graduated minimum weights apply according to sizes of cars constitutes a prima facie unreasonable act. See Rule 66(a), Tariff

Circular 18-A; Conf. Ruling 339; 22 I. C. C. 432. But it is not prima facie unreasonable for carrier to fail to include a two-for-one rule in its tariffs, for application on a particular commodity, in absence of graduated minima for cars of different sizes. See 46 I. C. C. 317. Wasmuth-Endicott Co. v. C., R. I. & P., 107 I. C. C. 588. 589.

(d) Failure of carrier to furnish cars promptly and in sufficient number for outbound loading of grain or feed at Lexington, Ohio, thereby preventing unloading of inbound cars until additional room could be provided in elevators and warehouses which were filled to capacity, found not to have resulted in assessment of unreasonable demurrage charges. To allow assessing of demurrage on inbound shipments to depend upon the furnishing of cars for outbound movement, a separate transaction, would open the way to abuses not necessary in order to protect a shipper from unlawful acts of the carrier. See also 57 I. C. C. 398. Lexington Elevator & Mill Co. v. B. & O., 109 I. C. C. 542, 544.

(e) Complainant attacked commodity rate of $1.80 charged on two cars of wheelbarrows, Oct. 3, 1923, from Chattanooga, Tenn., to Los Angeles, Calif., as unreasonable, unjustly discriminatory and unduly prejudicial. Complainant ordered one 40 foot furniture car for these shipments, two 40 foot cars furnished, shipments moving N. C. & St. L., to Atlanta, Ga., A. & W. P., to Montgomery, Ala., L. & N., to New Orleans, La., M. L. & T., to Houston, Tex., G. H. & S. A., to El Paso, Tex., and S. P., beyond. Tariff did not provide two for one rule. HELD, failure of defendant to provide a rule of this character unduly prejudicial, reparation denied. Chattanooga Wheelbarrow Co. v. N. C. & St. L. Ry., 112 I. C. C. 549.

(f) It is not prima facie unreasonable for a carrier to fail to provide a two-for-one rule in its tariffs, for application on a particular commodity, in the absence of graduated minima for cars of different sizes. Chattanooga Wheelbarrow Co. v. N. C. & St. L. Ry., 112 I. C. C. 549, 550.

(g) Complainant alleged in substance that the failure of defendants to provide rule 2 of Countiss westbound I. C. C. 1114, in connection with the carload rate on stoves, gas ranges, and other heating and cooking apparatus, named in item 1724, from Detroit, Mich., to rate basis 3 destinations, while contemporaneously providing the same in connection with rates on stove from other points named in that item to the same destinations, was and is unjust and unreasonable, unjustly discriminatory and unduly prejudicial. Shipment moved May 14, 1923, from Detroit, Mich., to Los Angeles, Calif. Fifty foot car was ordered two forty foots furnished. The two-for-one rule was not applicable. HELD, failure of defendants to provide the so-called two-for-one rule of the tariff referred to in connection with the rate on stoves, carloads unduly prejudicial but not unreasonable or unjustly discriminatory. Peninsular Stove Co. v. M. C. R. R., 113 I. C. C. 225.

(h) The mere failure of carriers to provide a two-for-one rule is not prima facie unreasonable unless graduated minima are provided for cars of different sizes. Peninsular Stove Co. v. M. C. R. R., 113 I. C. C. 225, 228.

(i) Failure of carriers to maintain a two-for-one rule applicable to shipments of wheelbarrows from Chattanooga to Los Angeles while contemporaneously maintaining such a rule on similar shipments from points in various transcontinental groups to same destination found not unreasonable but unduly prejudicial to Chattanooga and shippers at that point. Chattanooga Wheelbarrow Co. v. N., C. & St. L., 112 I. C. C. 549.

(j) Upon contention that following rule 66 (a) of Tariff Circular 18-A that it was unreasonable for carriers to fail to maintain a two-for-one rule on shipments of wheelbarrows from Chattanooga to Los Angeles, HELD: Since rule relied upon applies to cars of different sizes with graduated minima, it was not unreasonable for carriers to fail to provide such a rule in their tariffs for application on a particular commodity where, as here, there was an absence of graduated minima for cars of different sizes. See also 107 I. C. C. 588. Chattanooga Wheelbarrow Co. v. N., C. & St. L., 112 I. C. C. 549, 550.

(k) Failure of carriers to provide a two-for-one rule on stoves, including gas ranges, from Detroit, Mich., to Los Angeles, Calif., and other western destinations, under which the c. l. rate will be applied on actual weight of contents of second car provided first car is loaded to capacity where two small cars are furnished by carriers in lieu of a large

car ordered by shipper while contemporaneously providing such a rule on similar commodities from Chicago, St. Louis, and other points with which Detroit comes into direct competition, found not unreasonable or discriminatory, but to result in undue prejudice. Peninsular Stove Co. v. M. C., 113 I. C. C. 225.

(l) Complainant attacked charges on an interstate shipment of furniture from Jamestown, N. Y., to Brooklyn, N. Y., in Sept. 1922 as inapplicable. Shipment moved over the Erie in two 36 ft. cars the first containing 10,400 pounds and the second 9,500 pounds. Charged commodity rate of 74.5c, based on minimum of 12,000 pounds on the first car and actual weight of 9,500 pounds on the second car. These charges were assessed under the authority of rule 34 of the consolidated classification. A 50 ft. car had been ordered for this shipment and the two 36 ft. cars were furnished for defendants convenience. HELD, charges collected applicable, complaint dismissed. Abraham & Straus Inc., v. Erie R. R., 115 I. C. C. 305.

(m) Complainant attacked transportation charges on one electric traveling crane shipped Oct. 1, 1923 from Muskegon, Mich., to South San Francisco, Calif., as unreasonable. The crane was loaded into three gondola cars, containing 24,700, 24,400 and 22,300 pounds moving as routed by consignor over Pennsylvania to Chicago, thence OGW to Kansas City, Mo., KCS, T&P and SP beyond. Charged fifth class of 35c to Mississippi river, $1.83 commodity rate beyond. Sometime prior to the shipping date consignor advised the Pennsylvania that it would require, and so ordered, one 40 foot car and one 46 foot car, which equipment complainant states would have been adequate and safe. The agent acknowledged the order and advised complainant that cars of that size were available and would be furnished. Depending upon that advice the consignor lined up and prepared for shipment, on its shipping platform, the material comprising the crane. Without previous notification the Pennsylvania placed for loading the three cars first described. Under these conditions consignor was obliged to use the three cars furnished. The sizes of the latter, owing to the dimensions of the material, rendered impossible the loading of those cars to the applicable minimum. The record shows that this crane could have been loaded into the two cars ordered, and that their individual loads would have exceeded the minima provided in connection with the respective factors of the applicable combination rate. HELD, charges unreasonable to extent they exceeded the charges on cars of the size ordered, reparation awarded. Metal & Thermit Corp. v. Pennsylvania R. R., 115 I. C. C. 396.

(n) Complainant attacked charges assessed on two cars of automobiles shipped on May 13, 1922 from Dallas, Tex., to Los Angeles, Calif., as unreasonable to extent they exceeded the charges which would have accrued had defendants furnished one car as ordered. Original report 91 I. C. C. 73. HELD in original report, applicable two-for-one rule unreasonable. This is a case where the carrier furnished two 40 foot cars for the transportation of four automobiles, in lieu of one 50 foot car ordered by the shipper. The record shows that the four automobiles could have been loaded in a 50 ft. car, with one automobile tilted at each end of the car. As transported, two automobiles were loaded in each of the 40 ft. cars furnished, and charges were assessed at applicable rate of $5 per 100 pounds on minimum of 10,000 pounds for one of the cars, and on actual weight of 5,885 pounds in the other car.. HELD, defendants two-for-one rule unreasonable in that it failed to provide for the assessment of charges on the minimum weight provided for the larger car ordered, unless the actual weight exceeds such minimum, subject only to the proviso that the shipment could have been loaded in the car ordered. Reparation awarded. Dallas Transfer Co. v. S. P. Co., 115 I. C. C. 658.

(o) Carrier, for own convenience, furnished two small cars in lieu of large car ordered and charges were collected at c. l. rate and minimum weight on first car and at actual weight on second car, under authority of a rule of consolidated classification. Contention that charges should have been assessed on basis of actual weight of entire shipment and that rule under which charges were based does not conform to provisions of rule 66 of Tariff Circular 18-A, not sustained and charges assessed found applicable. Abraham & Straus v. E. R. R., 115 I. C. C. 305.

(p) Charges applicable on one electric traveling crane resulting from carrier furnishing three cars each shorter than

two cars ordered, found unreasonable to extent they exceeded those which would have accrued based on size of the equipment ordered. A tariff rule in effect provided that where a car of specified length is ordered and a longer car is furnished, minimum weight for the latter shall be that fixed for car ordered. It was unreasonable for carriers to fail to provide a like rule to cover situations similar to that here presented. Reparation awarded. Metal & Thermit Corp. v. P. R. R., 115 I. C. C. 396.

(q) Complainant ordered one 50-foot car but carrier furnished for own convenience two 40-foot cars. Governing tariff carried a two-for-one rule which provided for application of minimum weight on one of the cars furnished and actual weight on the other, and charges were collected on that basis. HELD: Rule was unreasonable in that it failed to provide for assessment of charges on minimum weight of car ordered. Reparation awarded and reasonable rule prescribed. Former report 91 I. C. C. 73 affirmed. Dallas Transfer Co. v. S. P., 115 I. C. C. 658.

(r) On imported rattan furniture in bundles, moving from Seattle, Wash., to Cleveland, Ohio, no import c. l. rates were in effect and l. c. l. rates were assessed. Domestic rates provided minimum weights for cars of varying length but carriers elected to load this furniture in smaller cars. HELD: Domestic rates were applicable, and action of carriers in loading in smaller cars should not debar shipper from benefit of minimum on cars which presumably would have held shipments. Reparation awarded and original report 104 I. C. C. 255, reversed. Bailey Co. v. I. C., 118 I. C. C. 455.

(s) Carrier for own convenience furnished two small cars in lieu of larger car ordered. Neither classification nor governing tariff provided for graduated minima for cars of different sizes. Upon complaint attacking assessment of charges based on minimum weight for first car and actual weight at c. l. rate on second car, HELD: Record indicates that prescribed minimum could not reasonably have been loaded into cars furnished and therefore charges assessed in excess of applicable rate and actual weight of entire shipment subject to established minimum, were unreasonable. Folly Town Co. v. E. R. R., 120 I. C. C. 157.

(t) Where there is a uniform minimum for cars of all lengths, carriers are not required to furnish a car of any specified length, but are under duty of establishing a minimum weight that can reasonably be loaded into a car of size furnished. See 55 I. C. C. 17. Folly Town Co. v. E. R. R., 120 I. C. C. 157, 158.

(u) Practice of assessing charges at published minimum where cars furnished by carriers for their own convenience can not reasonably be loaded to the minimum is unreasonable. Under "carriers' convenience" rules carriers are not obliged to furnish cars of size ordered, but are required to protect actual weights where smaller cars furnished are fully loaded. See 74 I. C. C. 747. Folly Town Co. v. E. R. R., 120 I. C. C. 157, 158.

(v) Complainant attacked class rate charged on a mixed carload of toilet paper, paper towels and paper napkins forwarded in August, 1921, from Green Bay, Wis., to Tulsa, Okla., as inapplicable. Shipper ordered a 50 foot car but for their convenience defendants furnished two 40 ft. cars. Shipment moved C. & N. W., to Des Moines, Wabash to Kansas City, Mo., Frisco beyond, charged fourth class rate of $1.18, applied on a minimum of one car and actual weight on the other. The governing classification provided that a mixed carload shipment would be subject to the highest class carload rate applicable. Toilet paper and paper towels were rated fifth class and paper napkins fourth class. A rate of 59.5 cents applied on straight carloads of toilet paper. Defendants express a willingness to refund the outstanding overcharge. HELD, shipment overcharged $2.62, to be refunded, complaint dismissed. Dallas Paper Co. v. C. & N. W. Ry., 122 I. C. C. 295.

(w) Complainant alleged that charges collected on two shipments of gas ranges from Battle Creek, Mich., to Los Angeles, Calif., on Nov. 8 and 26, 1924 were unjust and unreasonable and inapplicable. Shipper ordered a 50 foot car for each shipment but two 40 foot cars were furnished in lieu of the 50 foot cars. Charged $1.87, minimum 24,000 pounds for each car. Actual weights are not of record but apparently none of the cars was loaded to the minimum. Battle Creek is a group C point and the socalled two for one rule was not applicable in connection with the through rate therefrom. The two for one rule as published was applicable only if the shipment could have been loaded into

the car ordered by the shipper. No showing has been made that these shipments could have been loaded in 50 foot cars, and it is therefore impossible to say whether the two for one rule would have applied on them had they originated at Chicago. HELD, charges applicable and not unreasonable, complaint dismissed. Barker Bros. v. M. C. R. R., 132 I. C. C. 361.

(x) In Chattanooga Wheelbarrow Co. v. N. C. & St. L. Ry., 112 I. C. C. 549 the Commission found the failure of defendants to maintain and apply the socalled two for one rule on two carloads of wheelbarrows shipped from Chattanooga, Tenn., to Los Angeles, Calif., while applying this rule to similar shipments from certain competing points to transcontinental destinations was not unreasonable but unduly prejudicial. Tariffs purporting compliance with the order have since been filed. Upon the record it is apparent that the proximate cause of complainants injury, if any, is traceable directly to a misunderstanding as to the amount of the applicable freight charges, and which is not sufficient to justify an award of reparation under a finding of undue prejudice. HELD, reparation denied. Chattanooga Wheelbarrow Co. v. N. C. & St. L. Ry., 132 I. C. C. 713.

(y) Complainant alleged defendants failure to provide socalled carriers convenience rules in connection with shipments of cedar chests from Huntington, Ind., to Los Angeles, Calif., was and is unreasonable and resulted in collection of charges on two shipments made March 9 and Oct. 15, 1923 unreasonable and inapplicable. The consignor ordered 50 foot cars. One 40 foot car and one 36 foot car were furnished for the first shipment and two 36 foot cars for the second. Each shipment was partially loaded into one car and the remainder in the second car. Charged on basis of actual weight, $514 on first shipment at combination rate of $2.57, composed of second class rate of 54c to Highlands, Ind., and a joint commodity rate of $2.03 beyond; and on the second third class rate of $3.78. The record shows that it would have been impossible to load either of the shipments into either of the cars furnished. HELD, aggregate charges collected applicable but unreasonable to extent they exceeded charges that would have accrued at the $2.25 rate had defendants furnished cars of sufficient size to accommodate the minimum of 20,000 pounds, reparation awarded. Barker Bros. v. A. T. & S. F. Ry., 132 I. C. C. 753.

(z) Shipper ordered two 50-foot cars. Carrier for its own convenience furnished four smaller cars and now seeks to collect undercharges on ground that two-for-one rule did not apply under class rate assessed but that a commodity rate at applicable minimum weight applied on each of the four cars furnished. FOUND: Class rate was subject to two-for-one rule and applicable charges were therefore assessed. Leggett & Platt Mfg. Co. v. A., T. & S. F., 129 I. C. C. 219, 223.

§8a. Multiple Carloads.

(a) The fundamental issue is whether timbers, poles and piling, too long to be transported in one car shall be charged rates no higher than those applying on fir lumber and other articles taking the same rates, in single cars. The records in the instant cases show that the transportation qualities of multiple carloads of timbers, poles and piling, on the one hand, and single carloads of fir lumber and poles, on the other, are essentially dissimilar, that the carriage of the former requires of the carriers special, expensive and burdensome services, including the furnishing of materials which are not required in the movement of the latter, and that the hazards of transportation are materially greater in the case of the former, particularly in the mountainous regions, than in the case of the latter. When ordering cars shippers are required to specify whether cars ordered are for single or multiple loads. If for multiple loads, cars must be selected which have decks of the same height. They must then be switched to the repair track, where they are given special inspection. To eliminate spring action, jacks are placed between the ends of the cars and they are forced apart until the draft springs are compressed. Metal placing blocks are then placed between the horns of the couplers and the deadwoods of the cars. To avoid the possibility of uncoupling by mistake between cars carrying a multiple load, the uncoupling levers are disconnected from the couplers. The cars are then chained together by means of switch chains, two chains being used for double loads and four for triple loads. These chains cost from $8 to $10 apiece and are furnished

by the carrier. After delivery of the shipment the chains are removed from the cars and returned to the owning carrier or are paid for by the delivering carrier. The spacing blocks are removed, uncoupling levers connected, and the cars are then ready to be returned to regular service. The weighing of multiple loads requires more time and care, and to that extent is more expensive than the weighing of ordinary lumber in single carloads. Careful weighing of multiple loads is essential as a precaution against the overloading of the trucks which bear the loads. If there is any doubt whether any particular truck is overloaded it must be weighed separately, and, in the case of triple cars, this might necessitate the taking of five separate weights. The transportation of multiple cars of poles is much more hazardous than that of single cars of lumber or timbers. Due to shifting of the load toward one end of the car, failure of stakes, wiring, etc., readjustment in transit of shipments of lumber, poles, or timbers is often necessar Multiple loads are readjusted in transit much more frequently than single loads. The cost of readjusting multiple loads while in transit, which is borne in all instances by the carriers, is seldom less than $20 per car and some times in excess of $60. All transportation units must be inspected, but multiple loads require and receive much more rigid scrutiny than other units. In fact ordinary inspection is wholly inadequate in connection with multiple loads. The expense of inspections, as well as the extra expense of readjusting these multiple loads, falls upon the carrier in possession of the shipment when the maladjustment is discovered. HELD, rates attacked not unreasonable, unjustly discriminatory or unduly prejudicial. Between Jan. 1, 1918, and Feb. 29, 1920, rates on single cars of timbers, poles or piling from points on the S. P., in Oregon to points on that line in California unreasonable to extent they exceeded rates on fir lumber, single carloads. Reparation awarded. Dutton Lumber Corp. v. Director General, 112 I. C. C. 661.

(b) Complainant alleged class rates charged on three less carloads of door and window frames shipped between Sept. 30 and Oct. 2, 1924 from Duluth, Minn., to Eagle River, Wis., were unreasonable. The three shipments weighed 2,440 pounds and consisted of two boxes of building woodwork and 14 large bulky window and door frames. The frames due to their design and peculiar make up could not be shipped knocked down and could not be loaded into an ordinary box car because of their size. The shipments were tendered to the carrier as follows: Eight frames and two boxes Sept. 30, 1924; two frames on Oct. 1; and four frames on Oct. 2. A separate bill of lading was executed for each shipment on the date it was delivered to that carrier. They were received in the ordinary course of business and no notice was given that they should be handled in any but the ordinary manner. On Oct. 2, the three shipments were forwarded over defendants lines in an automobile car, applicable charges being collected on each shipment on basis of 4,000 pounds and first class rate of 76c per 100 pounds. Complainants case in substance is that the failure of the initial carrier to promtly forward each shipment on the day of its delivery resulted in the collection of unreasonable charges. Under the provision of the tariffs the initial carrier could not have legally sent these shipments under one bill of lading or as one shipment. Any claim for damages due to delay is beyond the jurisdiction of the Commission. HELD, charges collected not unreasonable, complaint dismissed. Scott Graff Lumber Co. v. C. St. P. M. & O. Ry., 132 I. C. C. 745.

§9⅝. Insulated or Refrigerator Cars.

See Infra §9⅞ (3); Insulated Cars; Refrigeration.

(a) Respondents proposed to establish certain charges for the use of refrigerator cars in the transportation of fresh fruits, vegetables, berries, melons and other perishable freight, with certain exceptions, in less carloads, subject to a minimum of 12,000 pounds per car, any deficit in weight to be charged for on basis of the highest rated article in the shipment, covered at one bill of lading from one shipper at one point to one consignee at one destination when moving interstate between Alabama. Florida, Georgia, South Carolina, North Carolina and Virginia and intrastate in each of the foregoing states except Florida. These respondents publish no tariff rule which they hold themselves out to transport in refrigerator cars in this territory fruits and vegetables, in less carloads, and by the schedules under suspension they seek to establish rules under which they will handle such ship-

ments of perishable products, except the so-called dairy products, in refrigerator cars without ice at $5 per car per trip, and with ice in bunkers and on orders of shippers, owner or consignee, under instructions "do not reice" or where no instructions are furnished at $12.50 per car per trip. Where cars are furnished with ice in bunkers charges will also be made for such ice on basis of their published ice charges, but such provision of their tariff is not under suspension. The rates and basis of rates as well as the ratings on this traffic, in less carloads, have been in effect for many years, and the use of refrigerator equipment for the handling of less carload shipments of these perishable commodities is a new service, and the rates and ratings thereon could not have contemplated transportation in refrigerator equipment. If under the suspended rules the total charges on an interstate less than carload shipment may exceed the total charges on a carload shipment, such provision of the tariff rules should also be corrected to provide that the lower of the total charges will apply. To authorize charges for the deficit in weight to be based on the lowest rated article in a mixed shipment of perishable products might encourage shippers by defeat the very purpose of the minimum loading. HELD, proposed schedules justified. Charges on refrigerator equipment, 115 I. C. C. 198.

(b) Shipper ordered a half-tank refrigerator car but on date order was placed no car of this type was available. Carrier furnished a full-tank car which was accepted, loaded, and forwarded, bills of lading bearing notation "Full tanks ice." HELD: Under applicable tariffs and circumstances of this case shipper had option of either accepting the full-tank car, or waiting until a car of type ordered became available, but having elected to follow former course, the published tariff charge covering full-tank refrigeration assessed was applicable. Moreover, record fails to establish that carrier received reasonable advance notice, to which it was entitled under its tariffs, of type of car desired. Chase & Co. v. A. C. L., 118 I. C. C. 289.

(c) Whatever the condition of the vegetable growing industry, the commission knows of no warrant in law, and are advised of none, for requiring carriers to furnish refrigeration service at charges which are less than compensatory. Refrigeration charges on vegetables, 120 I. C. C. 555, 560.

§9¾. Peddler Cars.

See Peddler Cars.

(a) Respondent, B. R. & P., proposed to restrict its rules governing peddler car service by requiring that refrigerator cars used therein be furnished by shippers. In actual practice respondent has not furnished equipment heretofore for peddler car service and it contends that the additional phrase "furnished by them" following reference in its rules to refrigerator cars used by shipper, was published merely to clarify the meaning of the more concerning necessary arrangements and did not change that note or set forth a new rule. This contention is without merit. The additional was a requirement, where no former rule so provided, that shippers should furnish refrigerator equipment. Moreover, the evidence shows that under substantially similar peddler car rules it is the common practice of some carriers to furnish the equipment. It appears that it publishes less than carload as well as carload rates on all the articles listed in the rules governing peddler car service and that is holds itself out to carry their commodities. It does not operate a less than carload refrigerator service, and fresh meat in less than carloads may be shipped from Buffalo to destinations on its lines in no way other than in peddler car service. A shipper served by a switching line ordinarily makes initial request of that line for cars, but the carrier receiving the road haul is commonly looked to eventually to furnish cars, and respondents traffic manager so testified. The present record contains nothing to show that peddler service over respondents lines has been unremunerative or that the revenue derived therefrom would be unduly low if respondent furnished the required refrigerator equipment. HELD, suspended schedules not justified. Handling of fresh meat, 132 I. C. C. 49.

§9⅞. Miscellaneous Cars.

(3). Refrigerator Cars.

See Refrigeration.

(a) Complainant alleged charges collected on a car of citrus fruit shipped

on June 1, 1923, from Frostproof, Fla., to Mobile, Ala., were unreasonable. Frostproof is on the A. C. L. about 28 miles south of Haines City, Fla., the junction point with the main line. On May 31, 1923, complainant filed a requisition with defendants agent for one half tank refrigerator car, to be placed for loading at Frostproof on the following day. On the latter date defendant furnished a full tank refrigerator car, which was accepted and loaded by complainant under protest. The bill of lading bears the notation "full tanks ice." Shipment moved A. C. L. to Waycross, Ga., from which point it was reconsigned to Mobile, moving A. C. L. and L. & N. Charged standard refrigeration service rate of $58.50. Complainant seeks reparation to basis of rate of $45.50 applicable for half tank refrigeration service. Complainant had the option either of accepting the full tank car furnished or waiting until a car of the type ordered became available. Having elected to follow the former course, the published tariff charge covering full tank refrigeration was applicable. HELD, charges attacked applicable and not unreasonable, complaint dismissed. Chase & Co. v. A. C. L. R. R., 118 I. C. C. 289.

§10½. Private Cars.

See Infra §13; Common Carrier §6; Private Cars.

(a) Under section 1 of the act the duty is placed upon every carrier subject to the act to provide transportation, including the furnishing of cars. When a shipper furnishes his own car he relieves the carrier of so much of its obligation as a common carrier and is entitled to reasonable compensation from the carrier for the service rendered. Paragon Refining Co. v. A. & S. R. R., 118 I. C. C 166, 167.

(b) While commission has prescribed lower rates on traffic in private than in carrier-owned equipment, 58 I. C. C. 429, 64 I. C. C. 243, this should not be continued as a policy or practice except where a clear, convincing, and complete record justifies it. Switching at St. Louis and East St. Louis, 120 I. C. C. 216, 221.

§11¾. Rental Charges.

(a) Complainant attacked unreasonableness and unlawfulness in defendants failure and refusal to provide by tariff provision for the payment of a mileage allowance of 1c per mile for the use of complainant's tank cars moving in service over its line. The tank cars moved over M. P. to East St. Louis, Ill., defendant Alton & Southern to Madison, Ill., T. St. L. W. beyond. The movement over defendants line was entirely within the East St. Louis switching district. For the haul of 13 miles defendant received a switching charge of $3.75 per car prior to Aug. 26, 1920, and $5.25 per car on and after that date which was absorbed by the T. St. L. & W. out of its revenue. The obligation is on the switching line to pay the mileage allowance unless the line haul carrier assumes it, which has not been done here. The line haul carrier is not a party defendant. Under the present code of per diem rules a reclaim of one day is permitted on cars handled in intermediate switching service when the switching line is obligated to pay per diem. The trunk line should give consideration to whether a similar reclaim should not be permitted on intermediate switching service where the intermediate line is obligated to pay mileage on private cars. HELD, defendants failure to pay mileage allowance on private tank cars is unreasonable, reparation awarded to extent of 1c per car per mile prior to Oct. 1, 1920, and for future 1.5c, reparation awarded. Paragon Refining Co. v. A. & S. R. R., 118 I. C. C. 166.

(b) Compensation to private car owner should be made through a rental charge rather than through a differential in freight rates. Switching at St. Louis and East St. Louis. 120 I. C. C. 216, 222.

(c) Court held without jurisdiction of action to recover rental charges paid by potato shipper for refrigerator cars in addition to line haul rate, involving fact question as to kind of equipment that carrier should have furnished, which was primarily for Interstate Commerce Commission. J. C. Famechon Co. v. Northern Pac., 11 Fed. (2d.) 312.

§11⅞. Per Diem Charges.

See Supra §11¾; Per Diem Charges.

(a) Charges for use or detention of foreign cars on the Marcellus & Otisco Co., a short-line carrier, under code of per diem rules of American Ry. Asso., found not unreasonable. The Marcellus

Company is not a subscriber to per diem agreement of Association under which trunk lines are liable for off-line equipment while on rails of nonmember short lines. The straight per diem basis applies on many short lines operated under substantially same conditions; therefore to permit a lower basis on the Marcellus company would give it a preferred position. Moreover, as a common carrier participating in through movements short line is under obligation to furnish its share of equipment. The per diem that it pays is merely equivalent to car-ownership costs which it would have to bear if it owned cars used in interline traffic. By renting cars from its connection on a per diem basis, it is relieved of necessity of investing in equipment. See 96 I. C. C. 591. Marcellus & Otisco Co. v. N. Y. C., 104 I. C. C. 389.

(b) Upon contention by short-line carrier that increase in per diem rate for use or detention of foreign cars, promulgated by American Railway Association following Federal control, since not approved by commission or other governmental authority, or agreed to by short lines, resulted in a violation of section 208 of transportation act, 1920, FOUND: Rates, fares, or charges contemplated by section (a) of the statute relied upon plainly have reference to those collected from the public, and section (b) simply has reference to divisions of such charges between participating carriers. Marcellus & Otisco Co. v. N. Y. C., 104 I. C. C. 389, 391.

(c) The per diem system is intended to be a reciprocal agreement, although it is extended to short lines which own few cars and interchange none. In some instances short line receives some return by assessment of demurrage against shippers or consignees for part or full time the car is on its rails. Marcellus & Otisco Co. v. N. Y. C., 104 I. C. C. 389, 392.

(d) Per diem is a reciprocal arrangement between the carriers and is in the nature of a penalty. Paragon Refining Co. v. A. & S. R. R., 118 I. C. C. 166, 167.

(e) Complainant contended that as carrier holds itself out to pay per diem allowance on cars owned by carriers which move over its line but refuses to pay mileage on private tank cars in like manner, it unduly prefers carrier-owned cars and subjects complainant and its contention is not sound. Circumstances cars to undue prejudice. HELD: This and conditions in connection with the two transactions are dissimilar, as per diem is a reciprocal arrangement between carriers and in nature of a penalty. See 62 I. C. C. 513, 538. Paragon Refining Co. v. A. & S., 118 I. C. C. 166, 167.

III. ASSIGNMENT AND DISTRIBUTION.

A. Counting of Cars.

§12. In General

(a) Upon further hearing, practices of Director General during Federal control, in distribution of coal cars to mines on the Monongahela and Morgantown & Wheeling Railways, on the one hand, and mines on the Pittsburgh & Lake Erie and specific branches of the Pennsylvania R. R., on the other, found to have subjected operators on the Monongahela and the Wheeling to undue prejudice to extent that percentage of cars furnished them was less than percentage of cars the mines as a whole, on all lines here considered, would have received had all the system cars been equally distributed under car-distribution rules then in effect, See also 242 U. S. 89 and 257 U. S. 85. Original report, 60 I. C. C. 569, modified. Northern W. Va. Coal Asso. v. P. R. R., 109 I. C. C. 604.

(b) In computing damages from discrimination by carrier in car allotment, it is error to assume that complaining shipper should have received cars in same ratio to shipping requirements as was allowed a favored competitor in the making of the discrimination. In other words, complainant was entitled only to such car supply as he would have received had available cars been equally distributed. See 242 U. S. 89, affirmed in 257 U. S. 85. Northern W. Va. Coal Asso. v. P. R. R., 109 I. C. C. 604, 607.

(c) Complainants alleging that failure and refusal of Missouri Pacific to furnish complainants at McCracken, Hargrave, and Bushton, Kans., their proportionate share of available cars for shipment of bulk grain, while contemporaneously furnishing competitors located at same points cars in excess of their proportionate share, resulted in undue prejudice, not sustained. It is impossible to determine number of cars that each shipper was entitled to receive, record failing to indicate the number of cars ordered by complainants, by those alleged to be preferred, or other shippers. Nor does it show in all instances

the amount of grain shippers had on hand at time cars were ordered. It simply shows the number furnished to each at their respective places. Farmers Union Cooperative Business Asso. v. M. P., 112 I. C. C. 269.

(d) A carrier must be allowed some latitude for the exercise of business judgment in determing the scope of its operations, having due regard for the provisions of the act. Winding Gulf Colliery v. C. & O. Ry., 115 I. C. C. 113, 118.

(e) In 96 I. C. C. 161, division 5 found that the practices of defendant during the period Sept. 1, 1922, to March 31, 1923, in connection with the distribution of coal cars to certain mines operated by complainants in Indiana were not shown to have been unreasonable or unduly prejudicial. Service orders 23 and 25 had the effect of suspending the car distribution rules of defendant to such an extent in the month of Sept., 1922, that it would be improper to hold defendant responsible to complainant for failure to accord its mines an equal share of the available cars during that month. The mere fact that discrimination may have existed in the distribution of coal cars between mines in the Indiana-Illinois district and mines located several hundred miles distant in other coal fields, is not, of itself, sufficient proof that such distribution was unreasonable, unjustly discriminatory or preferential within the meaning of the act. HELD, practices not unreasonable or unduly prejudicial. Complaint dismissed. Ayrshire Coal Co. v. S. Ry., 118 I. C. C. 531.

(f) Practice of the Denver & Salt Lake R. R., in establishing mine ratings in accordance with circular CS-31, revised, and considering such ratings standing daily orders for cars over a period of one month, regardless of the number of cars ordered or desired by mines, found unreasonable and wasteful. Such practice results in furnishing certain mines more cars than they could use at times when other mines served by the carrier were being deprived of their ratable requirements for cars. Victor-American Fuel Co. v. D. & S. L., 115 I. C. C. 169, 172, 174.

(g) Rule of the Denver & Salt Lake R. R., which provides that if on any day a mine is furnished with a less number of cars than its rating and for any cause whatsoever, other than railroad's disability, fails to load all cars furnished, the mine is considered as having been furnished 100 per cent of its requirements, as evidenced by its rating, and is charged as having received cars in number equal to its rating, found unjust and unreasonable. Such rule and the practical results of its application are not in conformity with requirements of section 1 (11) of the act which makes it the duty of every carrier subject thereto to furnish safe and adequate car service and to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect thereto, nor with requirements of the law which makes it duty of carriers to accommodate the needs and necessities of its shippers, as nearly as possible, upon a basis of equality. Victor-American Fuel Co. v. D. & S. L., 115 I. C. C. 169, 176.

(h) Practice of the Denver & Salt Lake R. R., in disregarding Rule 5, of circular CS-31, revised, governing distribution of cars to coal mines, by counting a car as a car regardless of its capacity, found unreasonable. Section 1 (12) of the act makes it duty of carriers "to make just and reasonable distribution of cars for transportation of coal among coal mines served by them," and a carrier can not comply therewith if it furnishes one shipper, under substantially similar circumstances and conditions, cars capable of transporting a greater quantity than it does to other shippers tendering for transportation same commodity, without equalizing in some manner the disparity between the capacity of such cars. Victor-American Fuel Co. v. D. & S. L., 115 I. C. C. 169, 177.

(i) Practice of the Denver & Salt Lake R. R., in installing what it terms the "round robin" system of distributing cars to coal mines on its line, found unjust and unreasonable, and not in harmony with the true "round robin" system. The practical result here was that some mines were furnished many more cars than they ordered or could use while other mines were deprived of cars which they had ordered and needed, the cars not used causing penalties to be assessed against the first-mentioned mines, which penalties later deprived them of cars which they ordered and needed. Victor-American Fuel Co. v. D. & S. L., 115 I. C. C. 169, 177, 178.

(j) Section 1 (12) of the act makes it the duty of carriers to count each and

every car, regardless of type, size, or capacity, against mines in distributing cars for loading, and a carrier may not under any circumstances set this mandate aside. Victor-American Fuel Co. v. D. & S. L., 115 I. C. C. 169, 179.

(k) Practice of the Denver & Salt Lake R. R., of delivering cars to certain coal mines on its line when not ordered, and in excess of orders placed, and of delivering cars on successive days when not desired, which practice is not in accordance with the "round-robin" system under which that carrier was working, and the counting of penalty or reject cars caused thereby, found to result in undue prejudice. Victor-American Fuel Co. v. D. & S. L., 115 I. C. C. 169, 180, 182.

(l) The maintenance and application of just and reasonable mine ratings is fundamental in the just and reasonable distribution of cars to mines and to effect both is a duty clearly placed upon railroads by section 1 (12) of the act. Victor-American Fuel Co. v. D. & S. L., 115 I. C. C. 169, 182.

(m) The primary duty of establishing proper mine ratings rests upon carriers. Victor-American Fuel Co. v. D. & S. L., 115 I. C. C. 169, 185.

(n) Upon reargument, original report, 96 I. C. C. 161, affirmed, and practice of Southern Ry. in connection with coal-car distribution to mines in Indiana during 1922 found not to have resulted in undue prejudice or unreasonableness. Due to abnormal conditions following strikes of miners and railway shopmen, special service orders of commission controlled distribution of equipment and all rules and regulations of carriers were suspended so far as they were in conflict with such orders. The unusual conditions brought about by strikes made it impossible for carrier to accord an equitable car supply during period in question; moreover, complainant's mines were no differently treated than other mines similarly situated, nor were operating and transportation conditions in this territory comparable with those in coal fields not affected by the strikes. Ayrshire Coal Co. v. S. Ry., 118 I. C. C. 531.

(o) Foreign-bound cars classify as interstate commerce whether laden or empty. Hatch v. Portland Terminal Co., (Me., 1925) 131 Atl. 5.

(p) In determining whether discrimination resulting from manner of car distribution is unjust or unreasonable, question whether transportation effected is under substantially similar circumstances and conditions must be considered. Berwind-White Coal-Mining Co. v. United States, (Pa., 1925) 9 Fed. (2d.) 429, 430.

§13. Private Cars.

See Supra §10½; Demurrage §10; Private Cars.

(a) Failure to charge private cars in distribution of available equipment has been repeatedly condemned by commission and the courts. Farmers Union Cooperative Business Asso. v. M. P., 112 I. C. C. 269, 274.

(b) That owners of private cars enjoy use of a disproportionately large part of facilities of carrier is not discriminatory, unless other shippers are thereby deprived of use of those facilities. Berwind-White Coal-Mining Co. v. United States, (Pa., 1925) 9 Fed. (2d.) 429, 430.

§14½. Junction Point or Joint Mines.

(a) Upon reconsideration, findings in 102 I. C. C. 19, reversed in part and practices of carriers in according joint mine service to West Virginia Coal & Coke Co., located on the Coalton branch of B. & O., while failing to accord similar treatment to complainant's mine located intermediate thereto, found to have resulted in undue prejudice in the matter of car supply. While reasonable enjoyment of advantages which a joint mine enjoys over a line served by only one road should be protected, carriers may not, by withholding equipment dictate the markets which a particular shipper shall enjoy, while adapting their services to needs of a competing shipper. Complainant was here offered arbitrarily and without regard for requirements of his business that which had been arranged for his competitor after deliberation, whereas he should have been permitted to divide his orders for cars in such divisions of 100 per cent of his mine rating as his judgment dictated, and cars accordingly furnished in conformity with supply available on the respective roads. Brady v. B. & O., 112 I. C. C. 244.

(b) If a carrier extends its service by a trackage agreement to one mine on another line, it would be difficult, if not impossible, to justify a refusal to

accord similar treatment to another intermediate competing mine located on the track over which it operates under the trackage agreement. Winding Gulf Colliery v. C. & O. Ry., 115 I. C. C. 113, 117.

(c) Where a carrier enters into a trackage agreement with another it is in effect an extension of its line. A carrier, except under certain circumstances, is not chargeable with unjust discrimination or undue prejudice if it extends its service by trackage arrangements, thus giving certain mines a joint status, while refusing to make other agreements so as to extend its service to other mines. Winding Gulf Colliery v. C. & O. Ry., 115 I. C. C. 113, 117.

(d) Complainant owns and operates a coal mine near Pemberton, W. Va., on the Winding Gulf branch of the Virginian Ry., which extends from Mullens, W. Va., through Pemberton to Frisco, W. Va., and alleged the rates on bituminous coal from its mine to interstate destinations were and are unreasonable, unjustly discriminatory and unduly prejudicial. Pemberton is a competitive point which is reached by the C. & O. The Lines of the Virginian and the C. & O. intersect in the immediate vicinity of the station at Pemberton at which a joint agency is maintained. Complainants mine is located about 0.5 mile south of the junction and within the yard limits of Pemberton. It has no outlet direct to the C. & O., and is not shown in the tariffs as a mine on that line, but the monthly mine rating and car distribution bulletins of that line classified it as a joint mine. Effective Feb. 13, 1913 the Virginian published a switching charge of $4 per car between its connection with the C. & O. and industries on its line at Pemberton. The C. & O. at no time provided for the absorption of this charge. In Feb. 1922, the Virginian canceled its switching tariff, which made applicable its distance tariff rate of $1.26 per ton. Present rate is $1.13 per ton. Complainant has made no shipments over the C. & O. since the cancellation of the switching charge. Complainant had the benefit of the district basis of rates on shipments moving via the line on which its mine is located but on shipments over the C. & O. it as well as other mines served only by the Virginian were required to pay the local rate of the Virginian to the junction plus the district rate beyond. HELD, rates from complainants mine to eastern interstate destinations on or via the C. & O. are not shown to be unreasonable, unjustly discriminatory or unduly prejudicial. Complaint dismissed. Ragland Coal Co. v. Virginian Ry., 115 I. C. C. 147.

(e) Where a carrier enters into a trackage agreement with another it is in effect an extension of its line, and a carrier is not chargeable with unjust discrimination or undue prejudice if it extends its service by trackage arrangements, thus giving certain mines a joint status, while refusing to make other arrangements so as to extend its service to other mines, except under certain circumstances. Ragland Coal Co. v. V. Ry., 115 I. C. C. 147, 150.

(f) Failure of carriers to accord same service and facilities to certain local mines in the New River district of West Virginia as are accorded other mines in the same district similarly situated, the latter by trackage agreements or otherwise being accorded a joint-mine status, found not to result in discrimination or undue prejudice. The location of mines upon two or more lines differentiates their situation from those located on but one carrier, and where a railroad enters into a trackage agreement with another, it is in effect an extension of its line. The complaining mines here are not intermediate to mines accorded a joint status, and carriers are not chargeable with discrimination or undue prejudice merely because they accord certain mines a joint status by trackage arrangements, while refusing to extend similar service to other mines. Winding Gulf Colliery Co. v. C. & O. Ry., 115 I. C. C. 113; Ragland Coal Co. v. V. Ry., 115 I. C. C. 147.

(g) The location of mines upon two or more carriers differentiates their situation from those located on but one carrier, and where a carrier enters into a trackage agreement with another for purpose of according a local mine a joint-mine status, it is in effect an extension of its line. See 62 I. C. C. 259, and other cited cases. Winding Gulf Colliery Co. v. C. & O., 115 I. C. C. 113, 116, 117; Ragland Coal Co. v. V. Ry., 115 I. C. C. 147, 149.

§15. Railway and Fuel Cars.

(a) Practice of the Denver & Salt Lake R. R., in not counting all cars fur-

nished certain mines on its line for railroad-fuel loading, found unlawful, unreasonable, and unduly prejudicial, section 1 (12) of the act making it the duty of the carriers to count each and every car, regardless of type, size, or capacity, against mines, and a carrier may not under any circumstances set this mandate aside. Victor-American Fuel Co. v. D. & S. L., 115 I. C. C. 169, 178, 180.

§19. When Counted for Loading.

(a) Practice of the Denver & Salt Lake R. R., in not counting all cars furnished certain mines on its line for railroad-fuel loading, found unlawful, unreasonable, and unduly prejudicial. Section 1 (12) of the act makes it the duty of carriers to count each and every car, regardless of type, size, or capacity, against mines, and a carrier may not under any circumstances set this mandate aside. Victor-American Fuel Co. v. D. & S. L., 115 I. C. C. 169, 178, 180.

§20. Car Famine.

(a) A shipper's request for transportation, when properly made, is his need and is the measure of a carrier's responsibility to him. A shipper has no right to more than his needs of a carrier's transportation facilities, at least not until other shippers have received their full requirements, and in a period of car shortage a shipper has no right to pro rata distribution based on more than his needs. Nor may a carrier disregard the rights of a shipper in any respect, and to arbitrarily set aside the order of a mine for cars, when less than the mine's rating, is to disregard not only the rights of the shipper, but also rights of other shippers to a fair and equitable distribution of such transportation facilities as it may possess. Victor-American Fuel Co. v. D. & S. L., 115 I. C. C. 169, 174.

B. Rating of Mines.

§21¾. In General.

(a) Complainants, operating bituminous coal mines in Routt County, Colo., on the Denver & Salt Lake R. R., alleged that the rules and practices of the railroad and receivers thereof, between Aug. 1, 1922 and April 6, 1923 in the distribution of coal cars to complainants mines and to other mines served by the railroad, were and are unjust, unreasonable and unduly prejudicial. The mines are in competition with others in the same and adjacent territories, particularly those of defendants, Moffat Coal Co. and Colorado & Utah Coal Co. During that period the railroad rated the coal mines on its line and distributed cars thereto in accordance with the provisions of circular CS-31, revised, with certain modifications. In judging the reasonableness and character of a rule, consideration must be given to the effect of the rule on both the railroad and the shipper. The mines ability to operate is dependent on the carrier to a greater extent than is the carrier dependent upon the mines ability to perform particularly during periods of car shortage. It is clear that the carrier, during the period here involved, was unable to furnish cars currently and that in some instances periods of several days elapsed when no cars were furnished to particular mines. It is manifest that under these circumstances it would be difficult, if not impracticable, for the mine operator to maintain his force of men in such readiness as would permit full capacity operation on short notice. This is emphasized by the fact that the territory around the mines is sparsely settled and that the labor supply is not plentiful. In such matters some latitude should be left, within which the operator may exercise his judgment as to the needs and possible performance of his mines on particular days. Obviously the mines order represents its maximum need on any day. To ignore the order when for less cars than the rating, and use the rating in lieu thereof, as the basis for car distribution, constitutes an unreasonable and wasteful practice. It here resulted in the furnishing to certain mines of more cars than they could use at times when other mines served by the railroad were deprived of their ratable requirements for cars. The shippers request for transportation, when properly made, is his need and is the measure of the carriers responsibility to him. A shipper has no right to more than his needs of a carriers transportation facilities, at least not until other shippers have their full requirements. It also follows that in a period of car shortage a shipper has no right to pro rata distribution based on more than his needs. A carrier may not disregard the rights of a shipper in any respect, and to arbitrarily set aside the order of a mine, when less than the mines rating, is to disregard not only the rights of that shipper, but also of his rights of the other shippers to a fair and equit-

able distribution of such transportation facilities as it may possess. It is clear that in some instances, during the period here involved, cars were placed at complainants mines on consecutive days much in excess of their actual orders and needs. This practice, coupled with the mines failure to load all such cars resulted in large numbers of reject cars being charged and thereafter cars were denied to those mines until the charges had been balanced. In some instances considerable periods of time elapsed during which particular mines of complainants were furnished no cars because of the penalties which had been charged under this modification. It is the duty of the carrier to accomodate the needs and necessities of its shippers. as nearly a possible, upon a basis of equality. Under a strict application the carriers distribute to the mines in rotation the total number of cars accruing to them up to the time of actual distribution in sufficient number to assure the mine sufficient cars to enable it to work a full day. The practical result, however, was that some mines were furnished many more cars than they ordered or could use, while other mines were deprived of cars which they had ordered and needed. The cars not used caused penalties to be assessed against the first mentioned mines, which penalties later deprived them of cars which they ordered and needed. This can not be said to be in harmony with the true round robin system. An agreement was made whereby certain mines were to furnish fuel to the railroad at $2 per ton. This agreement also provided that in consideration of the low price above stated the mines furnishing such fuel were to receive a free supply of cars therefor, i. e., the cars placed for fuel loading were not to be counted against the mines distributive share. HELD, practice of the railroad in not counting all cars furnished defendant mines for transportation of coal against said mines was unlawful, unreasonable, and unduly prejudicial to complainants. HELD, further, defendant companies have received an undue preference with their knowledge and consent by reason of their agreement with the carrier and the practice of said carrier under that agreement. The next question to be considered is whether or not the practices of the railroad under its rules resulted in further undue prejudice to complainants. The railroads practice of using the mine rating as the basis of car distribution in lieu of the mines order was the same for all mines, and no mine or mines by reason thereof received a preference or suffered prejudice. HELD, railroads practices of delivering cars when not ordered, and in excess of the orders placed by complainants and of delivering cars on successive days to complainant when not desired, which practice is not in accordance with the round robin system under which defendant railroad was working, and the counting of penalty or reject cars caused thereby, was unduly prejudicial to complainants. The maintenance and application of just and reasonable ratings of mines is fundamental in the just and reasonable distribution of cars to mines and to effect both is a duty clearly placed upon the railroad by paragraph 12 section 1 of the act. The primary duty of establishing proper ratings rests upon the railroad. The shipper or operators in this case and the carrier should confer and establish a set of rules to govern car distribution on defendant railroads line. Victor American Fuel Co. v. D. & S. L. R. R., 115 I. C. C. 169.

(b) Failure of carriers to accord same service and facilities to certain local mines in the New River district of West Virginia as are accorded other mines in the same district similarly situated, the latter by trackage agreements or otherwise being accorded a joint mine status, found not to result in discrimination or undue prejudice. The location of mines upon two or more lines differentiates their situation from those located on but one carrier and where a railroad enters into a trackage agreement with another, it is in effect an extension of its line. The complaining mines here are not intermediate to mines accorded a joint status, and carriers are not chargeable with discrimination or undue prejudice merely because they accord certain mines a joint status by trackage arrangements, while refusing to extend similar service to other mines. Winding Gulf Colliery Co. v. C. & O. Ry., 115 I. C. C. 113; Ragland Coal Co. v. V. Ry., 115 I. C. C. 147.

(c) Practice of the Denver & Salt Lake R. R. in establishing mine ratings in accordance with circular CS-31, revised, and considering such ratings standing daily orders for cars over a period of one month, regardless of the number

of cars ordered or desired by mines, found unreasonable and wasteful. Such practice results in furnishing certain mines more cars than they could use at times when other mines served by the carrier were being deprived of their ratable requirements for cars. Victor-American Fuel Co. v. D. & S. L., 115 I. C. C. 169, 172, 174.

(d) The primary duty of establishing proper mine ratings rests upon carriers. Victor-American Fuel Co. v. D. & S. L., 115 I. C. C. 169, 185.

C. Removal of Discrimination.

§27. Effect.

See Discrimination.

(a) The duty of a carrier to equalize treatment among shippers extends only to those whom it is bound to serve. Ragland Coal Co. v. V. Ry., 115 I. C. C. 147, 150.

(b) In the adjustment of rates, it is well settled that unless the conditions of transportation are substantially similar at two points no unlawful discrimination may properly be predicated upon different rates and practices. The same general principle is applicable to questions involving car distribution, where one shipper receives a smaller ratable share of the available cars than another. Ayrshire Coal Co. v. S. Ry., 118 I. C. C. 531, 536.

(c) Where a carrier elects to meet commercial or carrier competition it must not cause undue prejudice. Minnesota Dakota Transit Millers v. A. A. R. R., 118 I. C. C. 585, 592.

(d) Failure of carriers to accord same service and facilities to certain local mines in the New River District of West Virginia as are accorded other mines in the same district similarly situated, the latter by trackage agreements or otherwise being accorded a joint-mine status, found not to result in discrimination or undue prejudice. The location of mines upon two or more lines differentiates their situation from those located on but one carrier and where a railroad enters into a trackage agreement with another, it is in effect an extension of its line. The complaining mines here are not intermediate to mines accorded a joint status, and carriers are not chargeable with discrimination or undue prejudice merely because they accord certain mines a joint status by trackage arrangements, while refusing to extend similar service to other mines. Winding Gulf Colliery Co. v. C. & O. Ry., 115 I. C. C. 113; Ragland Coal Co. v. V. Ry., 115 I. C. C. 147.

(e) Mere fact that discrimination may have existed in distribution of coal cars between mines in one district and mines located several hundred miles distant in other coal fields, is not, of itself, sufficient proof that such distribution was unreasonable, unjustly discriminatory or unduly prejudicial or preferential within meaning of the act. Circumstances and conditions which limit or impede the operations of carriers should also be considered. Ayrshire Coal Co. v. S. Ry., 118 I. C. C. 531, 536.

(f) In adjustment of rates, it is well settled that unless conditions of transportation are substantially similar at two points no unlawful discrimination may properly be predicated upon different rates and practices. See 37 I. C. C. 225. The same general principle is applicable to questions involving car distribution, where one shipper receives a smaller ratable share of available cars than an other. The very terms of the statute that discrimination must not be unjust and that preference or advantage to any particular person, firm, corporation, or locality must not be undue or unreasonable, necessarily imply that strict uniformity is not always to be enforced; but that all circumstances and conditions which reasonable men would regard as materially affecting welfare of shippers and carriers should be considered. See 162 U. S. 197. Ayrshire Coal Co. v. S. Ry., 118 I. C. C. 531, 536.

V. DUTY TO TRANSPORT CARS.

See Transportation II.

§29. In General.

(a) A carrier's duty to furnish transportation does not arise until request is made therefor. See section 1 (4) of the act. Victor-American Fuel Co. v. D. & S. L., 115 I. C. C. 169, 174.

§30. Interchange of Cars.

See Interchange of Cars; Through Routes and Joint Rates.

(a) Freight cars are interchanged generally between all railways in the United States, Canada, and Mexico under an agreement in which each subscribing railroad agrees with each other subscriber to abide by and enforce the rules

prescribed for handling and settlement of freight cars, including codes of car service and per diem rules promulgated by American Railway Association. Since 1909 per diem rate has been based on average cost throughout the country of owning and maintaining freight-car equipment, and rate has been changed from time to time on basis of ascertained average cost to members of association as a whole. Marcellus & Otisco Co. v. N. Y. C., 104 I. C. C. 389, 390.

(b) Fact that by means of a switch it is possible to so handle a car at a place not a point of interchange as to reduce distance between points of origin and destination by the fraction of a mile or a few miles does not bring such a place within the meaning of the phrase "existing connections for the interchange of carload traffic" as used in a finding of commission prescribing distance rates and which provided for computation of distances by the use of "the shortest route via existing connections for the interchange of carload traffic * * *." Cottonseed to Cairo, 112 I. C. C. 709, 711.

(c) Respondent proposed to establish the following rule at all mine sidings on the Kanawha Central: "Where consignors designate certain cars for billing, located on private sidings, such cars designated not being in consecutive order from point of interchange with the K. C. Ry., there will be a charge of $5.00 per car so designated, to cover switching and set out service." Because of the gravity handling of the cars the mine can not control the order in which loaded cars stand on its siding, and it sometimes happens that one or more "no bills" stand nearer the K. C. connections than cars which are billed out. As a result respondent must pull out and then replace the "no bills." These conditions are common to most mine operations in the same section. Respondent states that ordinarily this service is incidental to the line haul; and that it seeks no extra compensation therefor when the coal in the cars billed out is of a size or loaded in equipment of a character differing from the size in or character of the cars standing nearer its connection; and that the suspended rule was not intended to and does not provide for a charge under such circumstances. It states that the rule is intended to cover instances in which the mine bills out cars of coal standing nearer its tipple when the same kind or size of coal in the same kind of equipment is held as "no bills" in cars standing nearer the connection with its line, thus unnecessarily requiring the pulling out and setting back of such "no bills." It is manifest that the rule does not conform in its terms to what respondent intends or desires, and would result in increased transportation charges which have not been shown to be reasonable. HELD, proposed schedules not justified. Switching charges at K. C. Ry. mines, 118 I. C. C. 468.

(d) The commission is not bound by terms of contracts entered into between carrier and its tenants in exercising its powers under the act in respect of interchange traffic. Rates of P. & P. U. Ry., 115 I. C. C. 469, 511.

§32. Rates on Private Cars.

See Classification §7½, §12⅞.

(a) It is the legal duty of a carrier to provide reasonably adequate and suitable equipment for all of the traffic it holds itself out to transport, and it must determine for itself whether it will meet this obligation by owning and maintaining the necessary equipment or by renting it. If it fulfills its obligation by going to the expense of owning and maintaining equipment, a governmental requirement that it pay shippers for additional equipment would be obviously unfair, arbitrary, and unlawful. So long as a carrier has equipment to supply the public it may use that equipment to exclusion of private equipment, and if shippers in their own interest are permitted by carrier to use their own equipment they can not reasonably expect commission to require the carrier to compensate them by a differential in the freight rate. Switching at St. Louis and East St. Louis, 120 I. C. C. 216, 221, 222.

§32⅛. Repair of Equipment.

(a) Upon investigation by commission on its own motion, FOUND: Cost of repairs to locomotives of Central R. R. Co. of N. J. at outside shops under contracts during 1921-1923 exceeded cost of substantially similar work in its own shops, and greater portion of such excess cost was an unreasonable expenditure for maintenance of equipment and not in interest of efficient and economical management as required by section 15a of the act. Construction and Repair of Ry. Equipment, 104 I. C. C. 352.

(b) Cost of raw materials used in making locomotive repairs does not necessarily reflect relative extent of completed repairs, the latter representing not only cost of raw materials, but also cost of labor used in fabricating and applying material. Irrespective of whether completed repairs constitute a relatively great amount of material and small amount of labor, or vice versa, completed repairs will have same value if total of labor and material are same in each case. Construction and Repair of Ry. Equipment, 104 I. C. C. 352, 361.

(c) Upon investigation by commission on its own motion, FOUND: That cost of repairs to steam locomotives of N. Y., N. H. & H. R. R. system, at outside shops during 1922-1924, greatly exceeded cost of substantially similar work in its own shops, and that greater portion of such excess cost was an unreasonable expenditure for maintenance of equipment and not in interest of efficient and economical management and reasonable expenditures for maintenance of way, structures, and equipment, as required by section 15a of the act. Construction and Repair of Ry. Equipment, 107 I. C. C. 721.

(d) It is not unreasonable to expect the shipper to sweep a car or do a reasonable amount of cleaning, or to make some minor and inexpensive repairs to prepare the car for loading and prevent leakage of grain in transit. It is impracticable for the carriers to have competent workmen at all stations to do this work, and minor cleaning, patching, and coopering can readily be done by men in the employ of the elevator companies, who know exactly what is to be done and how best to do it. Omaha Grain Exchange v. C. B. & Q. R. R., 120 I. C. C. 59, 62.

(e) The "code of rules governing the condition of, and repairs to, freight cars for the interchange of traffic" to which practically all the railroads in the country are parties, and which apply to the transportation of shipments in private cars furnished by the shipper, which are carried at reduced rates, but repairs to which cars are to be made at the expense of the owner, also provide that "each railroad is responsible for the condition of all cars on its line." HELD, that such provision did not render a railroad company liable for nondelivery of oil which leaked from a tank car furnished by the shipper and delivered after being loaded, where the defect was not discoverable by such inspection as the company could and did make, and, after the leakage was discovered, it exercised ordinary care to minimize the loss. Southern Cotton Oil Co. v. Atlantic Coast Line R. Co., 17 Fed. (2d) 411.

VI. REMEDIES AND DAMAGES.

See Reparation.

§32½. In General.

(a) In computing damages resulting from discrimination by carrier in car allotment, it is error to assume that complaining shipper should have received cars in same ratio to shipping requirements as was allowed a favored competitor in the making of the discrimination. In other words, complainant was entitled only to such car supply as he would have received had available cars been equally distributed. See 242 U. S. 89, affirmed in 257 U. S. 85. Northern W. Va. Coal Asso. v. P. R. R., 109 I. C. C. 604, 607.

(b) Complainant alleged that defendants failure to ascertain whether a tank car tendered to them by complainant at Chicago Heights, Ill., on May 31, 1923 to be transported to Okmulgee, Okla., was empty, resulted in the assessment of charges which were unreasonable, unjustly discriminatory and unduly prejudicial. On May 23, 1923 a car of fuel oil was shipped from Okmulgee to complainant at Chicago Heights. It arrived over the C. & E. I. at Chicago Heights and was delivered to the C. H. T. T. R. R. May 28, 1923. On May 29, 1923 the car was transported by the terminal company to complainants interchange track. Complainant performs switching within its plant with its own power and employees. On May 31 the car was found by the engine crew of the terminal company on the side line tracks of that company, outside of complainants plant, to which point it had been transported by complainants employees. At noon that day an employee of complainant notified the agent of the C. & E. I. by telephone that the car was empty and directed that it be returned over the inbound route. These instructions were confirmed by written instructions received by the C. & E. I. on June 1. The car was transported by the terminal company to the interchange with the C. & E. I. on May 31 and left over the C. & E. I. June 1. On July 1, 1923 the C. & E. I. received notice that the car was not empty the discovery having been made by the K. O. & G. at Muskogee.

Okla. Complainant was notified and in due time advised the C. & E. I. that the original consignor of the car of oil had taken charge of the car at Okmulgee. Rate charged 64c. Complainants witness did not deny that he had notified the agent of the C. & E. I. that the car was empty and admitted that he executed the usual certificate authorizing the return of the car to Okmulgee without having first ascertained whether or not it was empty. HELD, complaint dismissed. Chicago Heights Mfrs. Asso. v. C. H. T. T. R. R., 120 I. C. C. 357.

(c) Fuel oil shipped from Okmulgee, Okla., to Chicago Heights, Ill., was delivered to consignee. Thereafter car was placed on tracks outside plant and carrier notified by telephone that it was empty and to return same over inbound route, such instructions also being confirmed in writing. Upon arrival of returned car at original point of origin it was found to have been fully loaded. HELD: Complainant not denying that he gave instructions above set forth and that he executed the usual certificate authorizing return of car without having first ascertained whether or not it was empty, failure of carriers to ascertain whether car tendered to them was empty did not result in collection of unreasonable or discriminatory charges. Mfrs. Asso. of Chicago Heights v. C. H. T. T., 120 I. C. C. 357.

§33. Actions at law.

See Actions at Law.

(a) There is not a multiplicity of suits, for prevention of which equity may be invoked, though each of unrelated parties proposes to bring an action for damages under Interstate Commerce Act Feb. 4, 1887, § 16, as amended by Act June 18, 1910, § 13, against a carrier, based on the same order of the Interstate Commerce Commission for reparation for preferential practices in distribution of empty cars. Pittsburgh & W. V. Ry. Co. v. United States, 6 Fed. (2d) 646.

(b) In action against railroad for damages for failure to furnish cars for use in interstate shipment of coal, railroad HELD not prejudicial by instruction given at its request, introducing issue of its violation of Interstate Commerce Act and rules and orders of Interstate Commerce Commission pursuant thereto, in view of testimony warranting verdict, even if action had been based on violation of such act. Midland Valley R. Co. v. Barkley, (Ark., 1927) 291 S. W. 431.

(c) Under Interstate Commerce Act, § 22, state court has jurisdiction of action against railroad for failure to furnish cars for use in interstate shipments of coal in violation of Crawford & Moses' Dig. §§ 895, 915, since Transportation Act, § 402 do not vest in Interstate Commerce Commission supreme power in matter of distribution of coal cars. Midland Valley R. Co. v. Barkley, (Ark., 1927) 291 S. W. 431.

§33a. Appeals from Commission.

(a) On none of the claimed grounds for avoidance of Interstate Commerce Commission's order for reparation for preferential practices in distribution of empty cars, because based on erroneous legal assumption of liability of one carrier for acts of another, because conclusions were arrived at by following legally erroneous method, because order is unsupported by evidence, and because order is arbitrary, can the general equity jurisdiction be invoked; a complete, practicable and adequate remedy at law being available. Pittsburgh & W. V. Ry. Co. v. United States, 6 Fed. (2d) 646.

VIII. CAR SERVICE REGULATION.

§39. In General.

(a) Because of a strike in the anthracite fields which brought about a shortage of fuel for household use, an emergency, such as is contemplated by section 15 (4) of the act, found to exist, requiring prompt establishment of additional joint rates and through routes on bituminous coal in prepared sizes from certain mining districts in the Virginias and eastern Kentucky, and on semianthracite coal from certain Virginia mines, to points in New England and Middle Atlantic States. Additional through routes, and temporary joint rates in connection therewith, prescribed without prejudice to subsequent consideration of requests for their being made permanent. Transportation of Anthracite Coal, 104 I. C. C. 341.

(b) Upon investigation by the commission on its own motion, FOUND: That through use of its right of way, tracks, and other facilities, in furnishing transportation and car service to the Bromide Crushed Rock Co., and refusing similar service and enjoyment of these or

similar facilities to Dolese Bros., upon request, both these companies being located in vicinity of Bromide, Okla., the Kansas, Oklahoma & Gulf Ry. Co., subjects latter company to undue prejudice and gives to former an undue preference, in violation of section 3 of the act. Service on K., O. & G. Ry., 118 I. C. C. 412.

§41. Service Orders.

(a) During an acute car shortage the American Ry. Asso. issued an order requiring certain carriers, including defendant, to discontinue local loading of western-owned cars and to move such cars toward western junctions for delivery to owning lines. Defendant's agents construed this order as prohibiting either the eastbound movement of western-line equipment after arrival at original destination or its reconsignment or diversion in transit. Upon contention that defendant's refusal to permit reconsignment or diversion of western-owned cars when under load consigned to complainant resulted in assessment of unreasonable demurrage charges, HELD: A carrier may not arbitrarily set aside its tariff provisions without due notice in proper form. However, while defendant's agents misconstrued the order, complainant was unable to point out any car on which reconsignment was requested and refused and on which demurrage accrued. Assessment of demurrage charges found not unreasonable. Lexington Elevator & Mill Co. v. B. & O., 109 I. C. C. 542.

(b) Upon reargument, original report, 96 I. C. C. 161, affirmed, and practice of Southern Ry. in connection with coal-car distribution to mines in Indiana during 1922 found not to have resulted in undue prejudice or unreasonableness. Due to abnormal conditions following strike of miners and railway shopmen, special service orders of commission controlled distribution of equipment and all rules and regulations of carriers were suspended so far as they were in conflict with such orders. The unusual conditions brought about by strikes made it impossible for carrier to accord an equitable car supply during period in question; moreover complainant's mines were no differently treated than other mines similarly situated, nor were operating and strike of shopmen of carriers during territory comparable with those in coal fields not affected by the strike. Ayrshire Coal Co. v. S. Ry., 118 I. C. C. 531.

(c) Service orders Nos. 23 and 25 issued by commission during periods of car shortage brought about by coal strike and strike of shopmen of carriers during 1922 had effect of suspending the car-distribution rules of the Southern Ry. to such an extent that it would be improper to hold that carrier responsible for its failure to accord mines on its line an equal share of available cars during that period. Ayrshire Coal Co. v. S. Ry., 118 I. C. C. 531, 534.

(d) Shipments originally routed by complainant were delayed en route because of congestion. Service Order No. 22 of commission provided for disregard by carriers of shippers routing instructions and forwarding of shipments over routes which would expedite movement and prevent congestion, the rate designated by shipper in billing to be protected unless lower rate applied via route of movement. Complaint requested diversion under that order, shipment so moved, and rate over route of movement was assessed. HELD: Situation here is similar to a case where shipper's routing instructions and rate are inconsistent, under circumstances of which carrier's duty is to inquire as to which instruction shall govern. See Conf. Ruling 474 (c). Carrier here accepted diversion request subject to service order and it was incumbent upon it to have notified complainant if its intention was not to protect rate specified in original billing. Having failed therein the applicable rate was that in effect over route named in billing. Reparation awarded. Selden-Breck Const. Co. v. C., M. & St. P., 120 I. C. C. 134.

IX. ALLOWANCES FOR CARS.

§42. In General.

(a) Failure of intermediate line to provide for payment of mileage allowances on private tank cars moving in service over its line, the same as paid by line-haul carriers, found to constitute an unreasonable practice. Under section 1 of the act, it is carrier's duty to provide transportation, including furnishing of cars, and when a shipper furnishes his own cars he relieves carrier of its common-carrier obligation and is entitled to reasonable compensation for the service rendered. Reasonable allowance prescribed for future and reparation awarded. Paragon Refining Co. v. A. & S., 118 I. C. C. 166.

(b) Under section 1 of the act, duty

is placed upon every common carrier subject thereto, to provide transportation, including furnishing of cars, and when a shipper furnishes his own cars, he relieves carrier of so much of its obligation as a common carrier and is entitled to reasonable compensation therefor from such carrier. By act of May 29, 1917, commission was empowered to fix compensation to be paid by carriers for use of cars not owned by them, and in 50 I. C. C. 652, it was fixed at 1 cent per car per mile for loaded and empty movements, mileage to be computed on basis of distance tables without elimination of mileage through switching districts. Paragon Refining Co. v. A. & S., 118 I. C. C. 166, 167.

(c) Obligation is on switching line to pay mileage allowances on private cars switched by it over its line unless line-haul carrier assumes them. Paragon Refining Co. v. A. & S., 118 I. C. C. 166, 168.

(d) It is not clear what amount of difference in rate would represent a reasonable rental charge and not afford the private car owner an undue preference over the shipper which uses a railroad owned car. The use of private equipment should not excuse or justify a preference in favor of owners of private cars. Such shippers by the ownership and use of their own cars have a great advantage over other shippers, which should not be made greater by a difference in rates. Switching at St. Louis and East St. Louis, 120 I. C. C. 216, 221.

(e) The prescription of lower rates on traffic in private than in carrier owned cars is not altogether without precedent. But this should not be continued as a policy or practice except, possibly, where the Commission has a clear, convincing, and complete record which justifies it. It is the legal duty of a carrier to provide reasonably adequate and suitable equipment for all of the traffic it holds itself out to transport. It must determine for itself whether it will meet this obligation by owning and maintaining the necessary equipment or by renting it. If it fulfills its obligation by going to the expense of owning and maintaining the equipment, a governmental requirement that it pay shippers for additional equipment would be obviously unfair, arbitrary and unlawful. So long as a carrier has the equipment to supply the public it may use that equipment to the exclusion of private equipment, and if shippers in their own interest are permitted by the carrier to use their own equipment, they can not reasonably expect the Commission to require the carrier to compensate them by a differential in the freight rate. In other words, the fact that a carrier may permit shippers to furnish their own equipment does not mean that these shippers should receive compensation, unless the carrier fails to provide the necessary equipment. Whether or not it is necessary for respondent to rent equipment, for the service in question is not clear. If it is necessary, the view is that the compensation to the car owner should be made through a rental charge rather than through a differential in freight rate. Switching at St. Louis and East St. Louis, 120 I. C. C. 216, 221.

CIRCUITOUS ROUTES

See Long and Short Hauls §4¾; Routing and Misrouting §4; Through Routes and Joint Rates §6.

CIRCUS TRAINS

See Long and Short Hauls §4, §4¾; Routing and Misrouting §4; Through Routes and Joint Rates §6.

(a) Proposed schedules denying to owners of traveling tent-shows who engage special baggage cars the right to check, in regular passenger service, the usual 150 pounds of baggage allowed on each adult ticket found not justified. Baggage from and between Southern Points, 112 I. C. C. 717.

(b) The wide application schedules which deny to owners of traveling tent-shows who engage special baggage cars the right to check, in regular passenger service, the usual 150 pounds of baggage allowed on each adult ticket, is not conclusive proof of their reasonableness. Baggage from and between Southern Points, 112 I. C. C. 717, 721.

CLAIMS

I. WHEN STATUTE OF LIMITATION RUNS.

§1. In general.
§1½. Under transportation act.
§2. Claims accruing before June 7, 1924.

§2½. Reliance for filing on carrier.
§3. Date of delivery of shipment.
§4. Date of payment of charges.
§5. Date of amending claims.
§5½. After notice to file formal complaint.
§5¾. Interveners.
§5¾a. After payment of undercharges.
§5¾b. Parties named in complaint.

II. INFORMAL COMPLAINTS.
§6. Effect of informal claim
§7. Necessity and form of formal complaint.
§8. Requisites of informal complaint.
§8a. Informal record as evidence.

III. PRESENTATION TO CARRIERS.
§9. Advisability.
§10. Regulations.
§11. Penalties for non-payment.

IV. PARTIES ENTITLED TO RECOVER.
§12. In general.
§13. Assignment.

CROSS REFERENCES

See Actions at Law; Advanced Rates VII; Allowances VI; Cars and Car Supply VI; Express Companies §30; Legal Rates; Loss and Damage; Overcharges; Passenger Fares and Facilities IV; Reparation; Undercharges.

I. WHEN STATUTE OF LIMITATION RUNS.

See Infra §5½, §8; Crimes §28; Loss and Damage §11¼, §13½; Overcharges; Reparation; Statute of limitations.

§1. In General.

(a) Informal complaint filed more than two years after shipment was delivered or tendered for delivery found barred by statute of limitations. Helvetia Milk Condensing Co. v. A., T. & S. F., 104 I. C. C. 402.

(b) Where a statute of limitations is of general application the burden of showing that it does not apply to a particular case is usually on the party who denies the bar of the statute. 17 Ruling Case Law, 1004. Krauss Bros. Lumber Co. v. Director General, 112 I. C. C. 117, 118.

(c) Formal complaint filed with commission more than a year and a half after informal presentation of claims was closed found barred under Rule III (g) of Rules of Practice. Krauss Brothers Lumber Co. v. Director General, 112 I. C. C. 117, 118, 119.

(d) Claim covering a shipment moving during Federal control was first filed with commission informally in the form of an overcharge. Formal complaint, seasonably filed after complainant had been notified that claim was not susceptible of informal adjustment, contained additional allegations, predicated on ground of misrouting. HELD: The basis of an informal claim can not be broadened or otherwise varied by a formal complaint subsequently filed unless such formal complaint itself be filed within statutory period. See 49 I. C. C. 649. Aside from question of overcharge the claim is barred on account of not having been filed within one year after termination of Federal control. Harman & Hulsey v. Director General, 112 I. C. C. 275.

(e) Formal complaint was filed after the two-year limitation period as provided in section 16 (3) of the act had expired. Upon contention that, as complainant paid additional charges within 90 days after such expiration, although no action was begun by carrier for the recovery of charges in respect of the same service, it should not be estopped by its voluntary payment of legal charges from receiving reparation, HELD: Complainant seeks to have read into the statute after the word "action" the words "or without beginning an action collects charges in respect of that service." The word "action," however, must be interpreted to mean "action at law" and since the commission has only such jurisdiction as is specifically conferred upon it by statute, the two-year provision of the act sets a limit to its powers, as distinguished from a rule of law for its guidance in reaching conclusions. See 246 U. S. 638, 642. Complaint found barred. Pfister & Vogel Leather Co. v. E. R. R., 112 I. C. C. 659.

(f) The commission has only such jurisdiction as is specifically conferred upon it by statute, and the two-year limitation of action provision as set forth

in section 16 (3) of the act sets a limit to its powers, as distinguished from a rule of law for its guidance in reaching conclusions. See 246 U. S. 638, 642. Pfister & Vogel Leather Co. v. E. R. R., 112 I. C. C. 659, 660.

(g) On shipments moving during Federal control informal complaint alleged only overcharges. Formal complaint subsequently filed brought in additional issue of unreasonableness. Allegation of unreasonableness not having been presented within statutory period of one year after Federal control terminated, found barred. Rohan Co. v. Director General, 118 I. C. C. 83.

(h) Where specific shipments are named in a complaint filed within statutory period, additional shipments may not be subsequently included unless presented within limitation period required by the act, and burden of proof to show that such shipments were seasonably filed is upon complainant. Duluth Boiler Works v. A., T. & S. F., 118 I. C. C. 161, 162.

(i) Complainant attacked rate charged on a car of wrought iron pipe shipped from Reading, Pa., to Dallas, Tex., and delivered on July 30, 1923 as unreasonable. The formal complaint was received more than two years after the delivery of the shipment and the claim is barred. HELD, complaint dismissed. Hamilton Co. v. P. & R. Ry., 120 I. C. C. 205.

(j) Informal complaint seasonably filed alleged only overcharges. Formal complaint filed more than two years after delivery or tender of delivery of shipments contained additional allegations of unreasonableness and prejudice. HELD: Aside from claim of overcharge, formal complaint is barred. See 115 I. C. C. 105. North Ontario Packing Co. v. O.-W. R. R. & Nav. Co., 122 I. C. C. 360, 364, 365.

(k) Informal complaint seasonably filed failed to name as a party complainant the real party in interest, such party, however, being named in the formal complaint subsequently filed. HELD: Although such real party was not named within period prescribed by law, a sufficient cause of action was set up in the filing of informal complaint, and fact that either through a mistake of fact or law, the wrong party was named does not act as a bar to the rights of real party in same proceeding. See 101 Fed. 171. American Smelting & Refining Co. v. Director General, 123 I. C. C. 136, 138.

(l) The date upon which a complaint is received, although subsequently returned for correction and stamped as filed on a later date, is the date that tolls the statute. Crystal Springs Mfg. Co. v. I. C. R. R., 126 I. C. C. 4, 5.

(m) Complaint filed more than two years but less than three years after delivery of shipments, sought refund of allowance provided by tariff for "drayage and ferriage in lieu of lighterage." Upon contention that complaint was not properly within section 6 of the act but constituted a claim for damages resulting from carrier's failure to comply with its lawful published tariff and was therefore barred by statute of limitations, citing 69 I. C. C. 59 and other cases, HELD: Cases cited are not in point. Complaint is clearly within section 6, being in effect a complaint seeking refund of overcharges, and having been filed within the three-year period prescribed by section 16 of the act is therefore not barred. Taub v. L. V., 128 I. C. C. 105.

(n) Carriers contended that claim was barred because of failure to file formal complaint within six months from time settlement of claim on informal docket was declined. FOUND: Contention without merit, as date on which complaint was originally received by the commission, although subsequently returned for correction, was date which tolled the statute. See 100 I. C. C. 319. Practical Drawing Co. v. C. & N. W., 128 I. C. C. 540, 542.

(o) The date on which the complaint was originally received by the Commission, although subsequently returned for correction, is the date which tolls the statute. Practical Drawing Co., v. C. & N. W. Ry., 128 I. C. C. 540, 542.

(p) The date on which the complaint was originally received is the date which tolls the statute. Shafton Co., v. S. P. Co., 132 I. C. C. 715.

(q) Contention that filing of informal complaint covering similar shipments involving same carriers and directing their attention to collection of unlawful rates, asserted its claim against such carriers within statutory period as to shipments moving subsequently, found without merit. Obviously such filing does not constitute the filing of a complaint covering shipments moving at a later date. National

Tube Co. v. Director General, 129 I. C. C. 515, 517.

(r) Claim for reparation filed more than two years after the date on which shipment was delivered, including date of delivery, is barred by the statute of limitations. See 39 I. C. C. 171. Purse Bros. v. B. & O., 129 I. C. C. 727.

§1½. Under Transportation Act. See Overcharges (o) (t); Transportation Act.

(a) Claim for overcharges was originally submitted on informal docket more than two years from date of delivery of shipments and shipper was advised that claim was barred. Shipper resubmitted claim on informal docket and later filed formal complaint, citing amendment of June 7, 1924 to section 16 of the act which extended time for filing overcharge claims to three years. FOUND: The claim, being barred prior to enactment of the amendment, falls within provisions of commission's conference ruling of July 28, 1925, wherein Supreme Court's decisions in 268 U. S. 633 and 261 U. S. 133, were construed as prohibiting reparation awards on claims barred at or prior to enactment of a new statute of limitations which had the effect of reviving barred claims. Milner Lbr. Co. v. W. Ry., 104 I. C. C. 669.

(b) By virtue of amendment to section 16 of the act, passed June 7, 1924, under which a three-year period was provided for filing complaints in respect of straight overcharges in lieu of two-year period theretofore provided, complainants fixed Sept. 27, 1921, as beginning of their periods of limitation, complaint being filed on Sept. 29, 1924. FOUND: Following Danzer & Co., 268 U. S. 633, and Conf. Ruling of July 28, 1925, commission is prohibited from awarding reparation on such claims which were barred by statute at or prior to date of amendment. Reparation awarded only on shipments moving on and after June 8, 1922, or two years from date of passage of amendment. Sturges Co. v. A. & V. 107 I. C. C. 136, 139, 140.

(c) Shipments moving prior to Federal control barred by statute of limitations. Supreme Court having ruled in 268 U. S. 633, that section 206 (f) of transportation act, 1920, which provides for non-computation of Federal control period as part of limitation period in claims for reparation for causes of action arising prior thereto, may not be construed retroactively to create liability. Parkersburg Rig & Reel Co. v. C., R. I. & P., 107 I. C. C. 182.

(d) Complaint alleging unreasonableness and covering shipments moving more than two years from date of accrual of cause of action, but filed within 90 days after institution of suit in courts by carriers for collection of undercharges, accepted and decided. Lane v. S. P., 107 I. C. C. 253.

(e) Claims for reparation not presented formally until more than two years after cause of action accrued and more than six months after notice to claimant that they could not be adjusted informally, found to have been adandoned. Jones v. P. R. R., 107 I. C. C. 483, 484.

(f) Overcharge claim barred prior to June 7, 1924, found not to have been revived by amendment to section 16(d) of the act, passed on that date, which extended limitation period for filing such claims with commission. See conference ruling of July 28, 1925. Saxony Mills v. M. P., 107 I. C. C. 649.

(g) Informal filing of a claim for reparation by a copartnership, of which complainant named in formal proceeding was a member, found to stay statute of limitations in favor of such complainant, who operated the business alone, under another trade name, immediately prior to partnership. Humphreys v. Director General, 109 I. C. C. 157, 159, 160.

(h) Section 206 (f) of transportation act, 1920, provides that Federal control period shall not be computed as a part of limitation period in actions against carriers or in claims for reparation for causes of action arising prior thereto. In the Danzer case, 268 U. S. 633, the Supreme Court held that such section could not be applied to revive complaints which were barred by the statute of limitations at time it was enacted. HELD: Claim for reparation on shipments moving prior to Federal control, which were barred under the two-year limitation provision of section 16 of the interstate commerce act prior to passage of the transportation act, under the decision cited can not be revived. Chevrolet Motor Co. v. C. & A., 109 I. C. C. 462, 463.

(i) Informal complaint was seasonably filed, but shipper did not file formal complaint until more than two years and ten months after denial of claim on informal docket. HELD: Under Rules of

Practice such claims must be deemed to have been abandoned. Barnes v. C. & N. W. Ry., 109 I. C. C. 589.

(j) Complaint attacked rates charged on carloads of steel plates forwarded since March 1, 1920, from St. Louis, Mo., Gary, Ind., Bridgeport, Matins Ferry, and New Philadelphia, O., and other points to Tulsa, there fabricated and reshipped to points in Wyoming, as in violation of sections 1, 6 and 10 of the act. Shipments moved from points of origin during 1920 and were reforwarded from the fabrication point during 1920 and 1921. The actual dates of delivery are not disclosed of record, but the most recent shipment was forwarded from Tulsa on June 22, 1921, and all shipments were delivered more than two years prior to the enactment of the amendment of June 7, 1924, to section 16 of the act. That amendment extended the time for filing certain claims, but did not operate to revive claims which were previously barred. HELD: complaint dismissed. Maloney Tank Mfg. Co. v. B. & O. R. R., 113 I. C. C. 379.

(k) Claims for reparation in respect of overcharges on shipments delivered during Federal control, charges on which were paid to director general during that period, found to constitute claims against Federal Government, and are subject, not to limitation imposed under section 16 (3) of interstate commerce act, but to those imposed under section 206 (c) of transportation act, 1920. Period of limitation provided in latter statute extinguishes claims not filed "within two years and six months after termination of Federal control," and since claims here were not filed until more than four years subsequent thereto, they are barred. Krauss Bros. Lbr. Co. v. Director General, 112 I. C. C. 117, 118.

(l) Complaint alleging overcharges found barred by statute of limitations since claims were barred prior to enactment of the amendment to section 16 (3) of the act, approved June 7, 1924, and were not revived thereby. Duthie & Co. v. Director General, 113 I. C. C. 255, 256.

(m) Complainant attacked commodity rate of $1.124 charged on one car of newsprint paper shipped Sept. 25, 1919, from Sault Ste. Marie, Ont. Can., to Dallas, Tex., as unreasonable and unlawful. Complaint as to allegations under the act other than straight overcharges or undercharges barred as it was not filed within one year after the expiration of federal control. HELD, rate of $1.125 applicable, complaint dismissed. Western Newspaper Union v. Director General, 115 I. C. C. 105.

(n) With respect to shipments moving prior to federal control, complainants right to file claim expired prior to the passage of the transportation act, 1920, under the then existing statute, Section 206 (f) of that act could not revive the claim, because lapse of time not only barred the remedy but also destroyed defendants liability. Smith Grape Juice Co v. A. G. S. R. R., 118 I. C. C. 169, 170.

(o) Claim covering shipments moving during Federal control alleged only overcharges. Formal complaint seasonably filed, after notification that claim was not susceptible of informal adjustment, contained additional allegations. HELD: Basis of an informal claim can not be broadened or otherwise varied by a formal complaint subsequently filed unless such formal complaint itself be filed within statutory period. See 49 I. C. C. 649. Issues other than overcharges found barred because not presented within statutory period of one year after termination of Federal control, as provided by section 206 (c) of transportation act 1920. Western Newspaper Union v. Director General, 115 I. C. C. 105.

(p) Shipments delivered during period of Federal control are not subject to limitations imposed by section 16 of interstate commerce act, but to those imposed by section 206 (c) of transportation act of 1920, as amended. See 92 I. C. C. 519, and other cited cases. Western Newspaper Union v. Director General, 115 I. C. C. 105, 106.

(q) Allegation of unreasonableness on shipments moving during the period of Federal control found barred, complaint having been filed with commission more than one year after Federal control terminated. See section 206 (c) of the transportation act, 1920. Tidal Osage Oil Co. v. Director General, 115 I. C. C. 237.

(r) Carrier originally under Federal control but subsequently relinquished contended that it was never a Federally controlled line and could not lawfully refund charges collected without tariff authority on shipments moving during Federal control. Complaint was seasonably filed under section 206 (c) of transpor-

tation act, 1920, but carrier urges that this provision does not affect the period within which complaints could be filed against non-Federally controlled roads for violations of the interstate commerce act, and since complaint was not filed within two years after cause of action accrued, it is barred as to this carrier. HELD: Possession and control exercised by director general over carriers taken over by him were complete, and he thereby undertook to perform transportation services for shippers through them and assumed full responsibility, so far as the interstate commerce act is concerned, for their wrongful acts. Superior Coal Co. v. Director General, 115 I. C. C. 710, 712, 713.

(s) Complaint alleging overcharges was filed January 6, 1926. Citing 107 I. C. C. 136, carriers contended that limitation provision of the statute barred from consideration shipments moving more than two years prior thereto. HELD: As oldest shipment under consideration was delivered in April, 1923, and amendment of June 7, 1924, extended period for filing overcharge claims to three years, none of shipments are barred. Curtis Leather Co. v. P. R. R., 123 I. C. C. 1, 3.

(t) Claims which were barred under the two year limitation provision of section 16 of the act to regulate commerce were not revived by the provisions of section 206f of the transportation act, 1920. Western Newspaper Union v. Director General, 126 I. C. C. 437, 438.

(u) Complainant alleged overcharges were collected on carload shipments of wrought iron pipe from Ellwood City, McKeesport and Pittsburgh Pa., Syracuse, N. Y., Lorain, O., and Wheeling, W. Va., to California during the period Sept 9, 1918 to Nov 30, 1921. Finding herein does not cover shipments moving during federal control. In the absence of evidence to the contrary it must be assumed that all of the cars originating on and after March 1, 1920 were delivered or tendered for delivery more than two years prior to June 7, 1924, the date upon which the limitation period was extended for two to three years. It follows that the claims covering those shipments were barred prior to June 7, 1924 and could not be revived by the amendment of that date to the act. It also follows that the claims were barred when first presented informally on Sept 22, 1924 the statute of limitations was not stayed thereby. HELD, shipments which originated on and after March 1, 1920 are barred, complaint dismissed. National Tube Co., v. Director General, 129 I. C. C. 515.

(v) Prior to the amendment of June 7, 1924, to the act the statutory period for filing overcharge claims with the Commission was two years from the date of the cause of action, which was and is defined as the date of delivery or tender of delivery by the carriers. On that date paragraph (3) of section 16 of the act was amended by extending the limitation period on overcharge claims to tree years. On July 28, 1925 in consequence of inquiries as to the affect of the decision rendered on June 8, 1925 by the Supreme Court of the United States in Danzer Co., v. Gulf R. R. 266 U. S. 633, the Commission adopted a conference ruling to the effect that it construed that decision, in connection with the decision in Kansas City So. Ry. Co., v. Wolf. 261 U. S. 133, as preventing payment of overcharge claims which were barred by statute at or prior to the effective date of the amendment to the act, and as prohibiting the Commission from awarding reparation on such claims. National Tube Co., v. Director General, 129 I. C. C. 515, 516.

(w) Section 206 f of the transportation act, 1920, which provides that the period of federal control shall not be computed as a part of the periods of limitation in claims for reparation for causes of action arising prior to federal control, may not be construed retroactively to create liability. Bloom & Co., v. Director General, 132 I. C. C. 127, 128.

§2. Claims Accruing Before June 7, 1924.

(a) When shipments moved the statutory period for filing complaints with commission covering overcharges or reparation was two years. By act of Congress approved June 7, 1924, the act was amended to provide that where cause of action accrued after March 1, 1920, complaints shall not be deemed barred if they shall have been filed prior to June 7, 1924, or within six months thereafter. Claim here in issue found barred by statute prior to date of amendment, in that complaint was not filed within two years from date of accrual of cause of action, and claims so barred can not be revived. See also 266 U. S. 435; 109 I. C. C. 170. Mason v. M. & W. R., 112 I. C. C. 56.

(b) Claims for reparation for over-

charges found barred by statute of limitations. While such claims were filed with commission within six months after passage of amendment of June 7, 1924, to section 16 of the act, as provided in paragraph (h) of such amendment, when the cause of action accrued, the statutory period of such claims was two years. Amendment did not revive claims which were barred prior to enactment thereof. See 268 U. S. 633; 261 U. S. 133. Standard Oil Co. of N. Y. v. S. L. S. F., 112 I. C. C. 217.

(c) Complaint alleging overcharges found barred by statute of limitations since claims were barred prior to enactment of the amendment to section 16 (3) of the act, approved June 7, 1924, and were not revived thereby. Duthie & Co. v. Director General, 113 I. C. C. 255, 256.

(d) Claim for reparation found barred by statute of limitations, all shipments having been delivered more than two years prior to enactment of the amendment of June 7, 1924, to section 16 of the act. That amendment extended time for filing certain claims but did not operate to revive claims which were previously barred. See conference ruling of July 28, 1925. Maloney Tank Mfg. Co. v. B. & O., 113 I. C. C. 379.

(e) Complainant sought to amend its complaint so as to include shipments moving on and after March 1, 1920, referring to amendment to section 16 of the act, as approved June 7, 1924. However, on July 28, 1925, a conference ruling was adopted construing decisions of the Supreme Court as prohibiting awarding of reparation on claims barred by the statute prior to that amendment. Shipment sought to be included, not being covered by complaint seasonably filed, found barred. Great Northern Paper Co. v. B. & A., 113 I. C.C. 463, 466.

(f) Claim for reparation due to exaction of alleged inapplicable and illegal charges, which was barred at or prior to June 7, 1924, the date of the passage of the amendment to section 16 (3) of the act which extended the limitation period for filing such claims with the commission, not considered. See conference ruling of the commission adopted July 28, 1925. Gulf Naval Stores Supply Co. v. L. & N., 113 I. C. C. 551.

(g) Complainant attacked charges assessed on one car of batting dross shipped April 30, 1921, from Lumberton, Miss., to New Orleans, La., and on one mixed carload of batting dross, strainer dross and cup skimmings shipped Jan. 26, 1921, from Ausmac, Ga., to New Orleans as in excess of applicable charges. The complaints were barred by the provisions of paragraph 3 of section 16 prior to the amendment, as the shipments were tendered for delivery more than two years prior to June 7, 1924. HELD, complaints dismissed. Gulf Naval Stores Supply Co. v. L. & N. Ry., 113 I. C. C. 551.

(h) Claims barred by statute prior to the date of amendment of June 7, 1924, can not be revived. Northwestern Fruit Exchange v. S. I. Ry., 115 I. C. C. 127.

(i) Complainant attacked charges collected on one car of boxed apples shipped Oct. 20, 1920, from Parks Spur, Wash., to Minneapolis, Minn., final destination Milwaukee, Wis., as unreasonable in violation of the act. The claim was barred by statute prior to the date of amendment of June 7, 1924. HELD, Claim barred complaint dismissed. Northwestern Fruit Exchange v. S. I. Ry., 115 I. C. C. 127.

(j) Complainant attacked charges collected on a car of potatoes shipped Oct. 15, 1921, from Gill, Colo., to Gardner, Kan., as illegal. Shipment was delivered in Oct. 1921, at which time the statutory period for filing complaints with the Commission covering overcharge claims was two years. By act of Congress, approved June 7, 1924, paragraph 3 of section 16 of the act was amended to provide that complaints filed here for the recovery of overcharges where the cause of action accrued after March 1, 1920, shall not be deemed to be barred if such complaints have been filed prior to June 7, 1924, or within six months thereafter. But the claim here in issue was barred by statute prior to the date of the amendment of June 7, 1924, and claims so barred can not be revived. HELD, claim barred, complaint dismissed. Blacker Elevator Co. v. U. P. R. R., 115 I. C. C. 569.

(k) Claim for refund of overcharges found barred by statute of limitations, shipments having been delivered more than two years prior to enactment of amendment of June 7, 1924, to section 16 of the act. That amendment extended the time for filing certain claims but did not operate to revive claims which were previously barred. See 109 I. C. C. 170.

Northwestern Fruit Exchange v. S. I. Ry., 115 I. C. C. 127.

(l) Overcharge claim on drugs and medicines from Elkhart, Ind., to New York and Philadelphia, found barred. At time of shipment the statutory period for filing claims for overcharges was two years from delivery or tender of delivery, and that period had expired prior to enactment of amendment of June 7, 1924, when statutory period was extended to three years. Miles Medical Co. v. B. & O., 118 I. C. C. 33, 35, 36.

(m) Claims for refund of over charges which were barred prior to amendment of June 7, 1924, to section 16 (3) of the act extending limitation period for filing of overcharge claims from two to three years, found to fall within provisions of commission's conference ruling of July 28, 1925, wherein decision of Supreme Court in 268 U. S. 633 was construed as preventing payment of overcharge claims barred at or prior to effective date of that amendment. See 261 U. S. 133; 109 I. C. C. 170. Moreover, as claims were barred when first filed informally, the statute of limitations was not stayed by such filing. National Tube Co. v. Director General, 129 I. C. C. 515.

(n) Claim for reparation, on ground of misrouting shipments moving during Federal control, found barred by statute within one year after termination of Federal control, found barred by statute of limitations. Dyersburg Milling Co. v. Director General, 129 I. C. C. 739.

§4. Date of Payment of Charges.

(a) Upon complaint alleging unreasonableness in rates on shipments moving prior to Federal control, the commission can consider only such shipments on which charges were paid within two years prior to date of filing of the claim, since statute of limitations in effect at time the cause of action accrues governs in computing limitation period. See 102 I. C. C. 729, 730. Leach v. C., N. O. & T. P., 112 I. C. C. 38.

§5. Date of Amending Claims.

(a) Where specific shipments are named in a complaint filed within statutory period, additional shipments may not be subsequently included unless presented within limitation period required by the act, and burden of proof to show that such shipments were seasonably filed is upon complainant. Duluth Boiler Works v. A., T. & S. F., 118 I. C. C. 161, 162.

§5½. After Notice to File Formal Complaint.

See Supra §1.

(a) Informal complaint was seasonably filed, but shipper did not file formal complaint until more than two years and ten months after denial of claim on informal docket. HELD: Under Rules of Practice such claims must be deemed to have been abandoned. Barnes v. C. & N. W. Ry., 109 I. C. C. 589.

(b) Complainant attacked charges assessed on a carload of gasoline shipped Sept. 8, 1920, from Cushing, Okla., to Bangor, Mich., and reconsigned to Hudson, Mich., as inapplicable. Informal complaint filed June 2, 1922 and on May 23, 1923, Commission advised complainant it could not be handled in that manner. Formal complaint filed Nov. 8, 1924. HELD: complaint barred, complaint dismissed. Dillion v. C. C. C. & St. L. Ry., 112 I. C. C. 745.

(c) Formal complaint filed with commission more than a year and a half after informal presentation of claims was closed found barred under Rule III (g) of Rules of Practice. Krauss Bros. Lbr. Co. v. Director General, 112 I. C. C. 117, 118, 119.

(d) Complaint first filed informally contained nothing to show that it had been presented to interested carriers. The commission advised complainant that claim had been registered and suggested that it be taken up directly with carrier, the letter also stating that if claims could not be adjusted in that manner the complaint should be resubmitted. Record does not show that claim was presented to the carrier, and the matter was not again submitted to commission as a complaint until approximately three years later, when formal complaint was filed. HELD: It was complainant's duty to present the claim to the carrier promptly and advise commission within a reasonable time of the result. The mere receipt of informal claim was insufficient, under commission's Rules of Practice, to stay the period of limitation, which, under the circumstances, must be deemed to have been abandoned. Krauss Bros. Lbr. Co. v. Director General, 112 I. C. C. 117, 119, 120.

(e) Formal complaint filed within six months after notice that claim could not be adjusted informally was returned for correction. In corrected complaint received after expiration of six months, an additional party defendant was named. HELD: Under Rule III (g) of Rules of Practice claim against additional party defendant is barred. See 92 I. C. C. 29. Remaining carriers, however, are jointly and severally liable for any damage resulting from assessment of an unreasonable joint rate. See 66 I. C. C. 627, and cases there cited. Bunte Bros. v. C. & N. W., 112 I. C. C. 557, 558.

(f) Complaint alleging overcharges was not resubmitted on the informal docket or formal complaint filed until after expiration of the six-months' period after notification that the claim failed of informal adjustment, as provided in Rule III (g) of the Rules of Practice. HELD: Barred and not revived by the amendment of June 7, 1924, to section 16 of the act because barred at or prior to that date. See 107 I. C. C. 649. Dillon v. C., C., C. & St. L. Ry., 112 I. C. C. 745.

(g) Formal complaint filed with commission six months and one day after notification to complainant that the matter failed of informal adjustment, found seasonably filed under Rule XXII of the Rules of Practice, the last day of the six-month period falling on a Sunday. Benson Produce Co. v. G. N., 113 I. C. C. 541, 542.

(h) Complaint seeking reparation was returned to complainant and attention called to vital omissions therein. Subsequently such complaint was refiled. HELD: That statute of limitations must be computed from date of refiling and all shipments made more than two years prior thereto are barred. Bartling Grain Co. v. M. P., 115 I. C. C. 441, 442.

(i) Formal complaint was received by commission within the two-year statutory period provided in the act, but was returned for correction and subsequently refiled after statute of limitations had expired. HELD: That the original filing stopped the running of the statute and complaint as subsequently filed with corrections, is not barred. Lynchburg Chamber of Commerce v. S. Ry., 115 I. C. C. 625, 626.

(j) Claims for reparation which were not filed formally within six months after notification that claim failed of informal adjustment as provided by Rule III (g) of Rules of Practice, or within two years after causes of action accrued, as required by the statute, found barred. Seaboard Live Stock Traffic Bureau v. A., C. & Y., 115 I. C. C. 687, 688.

(k) Formal complaint not having been filed within six months after complainants were notified that claims could not be adjusted informally, as required by Rule III (g) of Rules of Practice, found barred. Whittemore's Sons v. N. Y., N. H. & H., 122 I. C. C. 451, 452.

(l) Allegation of unreasonableness included in formal complaint filed more than two years after shipments moved, found barred by the statute, informal complaints seasonably filed having alleged only that rates charged were inapplicable. Chevrolet Motor Co., v. A. T. & S. F., 128 I. C. C. 638.

(m) Abandonment, as recognized by the practice of the Commission, occurs where a formal complaint is not filed within the six months period following notification to the parties of termination of informal proceedings. Lapse of time is an important element in laches, but the doctrine does not, like the statute of limitations, rest on time alone, but is founded also on the inequity of permitting the claim to be enforced because of some intervening change in conditions. Peters Mill Co. v. Director General, 129 I. C. C. 331.

(n) Claim for reparation declined informally and not resubmitted within period provided by the act, found barred. Baldwin Hardware Co. v. Director General, 129 I. C. C. 708.

§5¾a. After Payment of Undercharges.

See Undercharges.

(a) Paragraph 3 of section 16 of the act provided that complaint must be filed within two years of the date of delivery, or tender of delivery, of the shipment by the carrier, and not after, except that, when the carrier, after the expiration of such two years, or within 90 days before expiration, begins an action for recovery of charges for the same service the limitation period is extended to and including 90 days from the time of the beginning of such action by the carrier. The Commission has ruled that the action by the carrier therein referred to is an action at law. There was no such action begun by the carrier as to these ship-

ments, the additional payments having been made by complainant, under protest, upon the demand of defendants. Paragraph 3 of section 16, as amended June 7, 1924, provides for the extension of the limitation period for 30 days after the beginning of an action for the recovery of damages by the carrier, or within 30 days after the collection of such charges without bringing action. That amendment is not retroactive. Parkersburg Rig & Reel Co. v. B. & O. R. R., 115 I. C. C. 539, 542.

(b) From the language of section 16 and its history it is clear that Congress did not intend to permit the carrier to collect undercharges after two years and within three years from accrual of the action and yet deny the shipper the right to challenge the reasonableness of the rate thus collected. Instead Congress intended, and by this amendment has provided in paragraph 3 d that regardless of whether undercharges are collected by the carrier in two years or three years the shipper may file his complaint within 90 days after such charges are paid. Prior to the amendment of June 7, 1924, the shipper clearly had the right to file complaint alleging unreasonableness of a rate which the carrier sought by action in court to collect in whole or in part after two years and within three years from the time the cause of action accrued. The amendment should not be construed as taking away this right. Its purpose, among other things, was to make certain that the right existed not only where action was brought by the carrier to collect undercharges but where, without such action, the undercharges were paid. Crerar Clinch Coal Co. v. A. A. R. R., 118 I. C. C. 171, 173.

(c) Undercharges were collected by carrier after statutory period for filing complaint with commission by shipper had expired. Complaint filed within 90 days from time additional charges were paid found to have been seasonably presented under paragraph 3 (d) of section 16 of the act. Abeles & Taussig Lbr. & Tie Co. v. C. M. & St. P., 115 I. C. C. 205.

(d) The amendment of June 7, 1924 to section 16 (3) of the act extending limitation period 90 days after the beginning of an action for recovery of damages by carriers or after collection of such charges without bringing an action, can not be applied retroactively. Parkersburg Rig & Reel Co. v. B. & O., 115 I. C. C. 539, 542.

(e) The provisions of section 16 (3) of the act, whereby the limitation period is extended 90 days from time of beginning of an action by carriers for recovery of charges, relates to actions at law and has no application where additional charges are paid by shippers under protest upon demand of carriers. Parkersburg Rig & Reel Co. v. B. & O., 115 I. C. C. 539, 542.

(f) After expiration of the two-year period provided in section 16 (3) of the act for filing of claims for reparation, complainant, under protest, paid additional charges demanded by carrier. Approximately one month thereafter formal complaint was filed. HELD: Section 16 (3) of the act extended limitation period 90 days from time of the beginning of an action by carriers in respect to recovery of charges for same service, but such actions relate to actions at law. See 112 I. C. C. 659. Here no such action was begun, and while the statute was subsequently amended June 7, 1924, extending limitation period 90 days after collection of such charges without bringing an action, that amendment is not retroactive. See 109 I. C. C. 588. It follows, therefore, that the claim is barred. Parkersburg Rig & Reel Co. v. B. & O., 115 I. C. C. 539, 541, 542.

§5¾b. Parties Named in Complaint.

(a) Informal complaint seasonably filed failed to name as a party complainant the real party in interest, such party however being named in the formal complaint subsequently filed. HELD: Although such real party was not named within period prescribed by law, a sufficient cause of action was set up in the filing of informal complaint, and fact that either through a mistake of fact or law, the wrong party was named does not act as a bar to the rights of real party in same proceeding. See 101 Fed. 171. American Smelting & Refining Co. v. Director General, 123 I. C. C. 136, 138.

II. INFORMAL COMPLAINTS.

See Reparation §22.

§6. Effect of Informal Letter.

See Overcharges (u).

(a) Claim for reparation which was not filed formally within six months after notification that claim failed of informal adjustment as provided by Rule III (g) of the Rules of Practice, found barred.

Duthie & Co. v. Director General, 113 I. C. C. 255.

(b) The basis for an informal claim can not be broadened or otherwise varied by a formal complaint subsequently filed unless such formal complaint itself be filed within the statutory period. Western Newspaper Union v. Director General, 115 I. C. C. 105.

(c) Informal complaint was filed within statutory period and was duly referred to carriers for attention. Carriers failed to advise of their action, if any, with respect thereto. Approximately three years later formal complaint filed. HELD: That informal complaint remains open and tolls the statute of limitations. Abeles & Taussig Lbr. & Tie Co. v. C., M. & St. P., 115 I. C. C. 205.

§7. Necessity and Form of Formal Complaint.

(a) Complaint alleged overcharges, while tacitly admitting that charges were correctly computed under existing published rates. It contained no specific allegation of a violation of the act; stated indefinitely origin territory; did not name as defendants any other than delivering line; and statement of shipments named neither commodities shipped, charges paid, nor routes of movement. HELD, cumulative effect of these defects warrants finding that such complaint was insufficient to stay limitation provisions of the act. Bartling Grain Co. v. M. P., 115 I. C. C. 441, 442.

(b) Complaint which did not specifically allege a violation of section 6 of the act, but stated that rates were "unreasonable and otherwise unlawful" and that complainant paid and bore "illegal excess charges" over and above those which were "just, proper, and reasonable," held sufficient to cover overcharges. Crerar Clinch Coal Co. v. A. A. R. R., 118 I. C. C. 171, 172.

(c) Claim for damages found barred by statute of limitations, supplemental complaint not having been filed within statutory period. See Rule III (u) of Rules of Practice. Hollingshead Co. v Director General, 120 I. C. C. 55, 56.

(d) Formal complaint received within statutory period of limitation was returned to complainants for correction of errors in names of defendants, attention also being called to omission of reference to informal complaint, and to fact that statements of shipments were attached to only a limited number of copies of complaint. The complaint, as corrected, was refiled after statutory period had expired. HELD: There being no substantial error in names of defendants against which complaint is principally directed, and omissions referred to not being of vital importance, original receipt of complaint operated to stay limitation provisions of the act. Ryan Fruit Co. v. Director General, 120 I. C. C. 206, 207.

§8. Requisites of Informal Complaint.
See Supra §1.

(a) Letters received by commission in the nature of inquiries can not be relied upon to toll the statute of limitations with respect to claims alleging unreasonableness of rates. Leach v. C., N. O. & T. P., 112 I. C. C. 38.

(b) Informal complaint alleging unreasonableness set forth a specific number of shipments it being stated that the claim was filed "so as to toll the statute of limitations." Subsequently an itemized statement was filed covering the same number of shipments on which "reparation is requested." Contention that these shipments were merely illustrative not sustained and claims on all shipments set forth in the formal complaint, other than those covered by the informal proceeding, which are outside the statutory periods of limitation, are barred. Kellogg & Sons v. D., L. & W., 112 I. C. C. 629, 639.

(c) Claim covering shipments moving during Federal control alleged only overcharges. Formal complaint seasonably filed, after notification that claim was not susceptible of informal adjustment, contained additional allegations. HELD: Basis of an informal claim can not be broadened or otherwise varied by a formal complaint subsequently filed unless such formal complaint itself be filed within statutory period. See 49 I. C. C. 649. Issues other than overcharges found barred because not presented within statutory period of one year after termination of Federal control, as provided by section 206 (c) of transportation act 1920. Western Newspaper Union v. Director General, 115 I. C. C. 105.

(d) A letter merely enclosing freight bills, bill of lading, and a Rule V statement covering a shipment does not constitute an informal complaint such as would toll the statute of limitations on

shipments covered thereby. Hamilton Co. v. P. & R., 120 I. C. C. 205.

(e) Letter received by commission from complainant merely enclosed a freight bill, bill of lading and what purported to be a Rule V statement covering a shipment. Complainant was advised that if it was desired that commission consider the claim on informal docket, essential details forming the basis of claim must be furnished as required by Rule III of Rules of Practice. More than two years after delivery of shipment formal complaint was filed. HELD: Complainant's letter did not toll the statute of limitations for reason that it did not constitute an informal complaint. Moreover, any claim for damages based thereon must be considered as having been abandoned by complainant's failure to resubmit the matter either informally or formally within six months subsequent to commission's letter, as required by Rule III (g) of the Rules of Practice. Claim found barred. Hamilton Co. v. P. & R., 120 I. C. C. 205.

(f) Informal complaint filed during statutory period attacked a reconsignment rule under which rates were assessed, but no particular shipments were identified until filing of formal complaint more than two years subsequent to date shipments moved. Informal complaint, therefore, did not toll statute as to shipments covered by formal complaint, and they are consequently barred. Earl Bros. v. C., M. & St. P., 120 I. C. C. 299, 300.

(g) Informal complaint seasonably filed named Armour & Co., an Illinois corporation, as a party complainant. Formal complaint filed within time required by Rule III (g) of Rules of Practice named additional complainants said to be subsidiaries of Armour & Co. HELD, fact that additional parties were subsidiaries of complainant named in informal complaint did not ipso facto entitle them to bring an action in their own name for damages suffered by the former, and not having filed their claims within time provided by statute they are accordingly barred. Armour & Co. v. Director General, 120 I. C. C. 587.

§8a. Informal Record as Evidence.

(a) Informal complaint was filed within statutory period and was duly referred to carriers for attention. Carriers failed to advise of their action, if any, with respect thereto. Approximately three years later formal complaint filed. HELD: That informal complaint remains open and tolls the statute of limitations. Abeles & Taussig Lbr. & Tie Co. v. C. M. & St. P., 115 I. C. C. 205, 206.

(b) Claim was presented informally, and after correspondence with interested carriers, complainant was advised that matter could not be adjusted on informal docket. Upon suggestion of complainant that informal file "should be adopted and made a part of the record" of the formal complaint, HELD: An informal docket may only be considered with the formal docket by agreement of the parties. Paris Flouring Co. v. N. Y., C. & St. L., 118 I. C. C. 291.

III. PRESENTATION TO CARRIERS.

See Agency (a); Loss and Damage §2.

§9. Advisability.

(a) Complaint first filed informally contained nothing to show that it had been presented to interested carriers. The commission advised complainant that claim had been registered and suggested that it be taken up directly with carrier, the letter also stating that if claims could not be adjusted in that manner the complaint could be resubmitted. Record does not show that claim was presented to the carrier, and the matter was not again submitted to commission as a complaint until approximately three years later, when formal complaint was filed. HELD: It was complainant's duty to present the claim to carrier promptly and advise commission within a reasonable time of the result. The mere receipt of informal claim was insufficient, under commission's Rules of Practice, to stay the period of limitation, which, under the circumstances, must be deemed to have been abandoned. Krauss Bros. Lbr. Co. v. Director General, 112 I. C. C. 117, 119, 120.

IV. PARTIES ENTITLED TO RECOVER.

§12. In general.

(a) Filing of informal complaint in which name of complainant differed with that shown in formal complaint found sufficient to stay the statute, as the two complainants named are parties to both complaints. Baldwin Hardware Co. v. Director General, 129 I. C. C. 708, 709.

CLASS RATES

I. TARIFFS AND CONSTRUCTION.
§1. In general.
II. REASONABLENESS AND DISCRIMINATION.
§2. In general.
III. REPARATION.
§3. In general.

CROSS REFERENCES

See classification V; Commodity Rates §2; Differentials; Evidence §13 (1½); Reasonableness of Rates §28.

I. TARIFFS AND PUBLICATION.

§1. In General.

See Commodity Rates §2; Tariffs.

(a) Class rates applicable on glass lamp globes, lettered, in boxes l. c. l., from Cincinnati and Brighton, Ohio, to Los Angeles, Calif., found unreasonable to extent they exceeded lower contemporaneous commodity rate on unlettered glass lamp globes and other commodities from and to same points. Reasonable rates prescribed for future and reparation awarded. Boyle-Dayton Co. v. A., T. & S. F., 107 I. C. C. 151.

(b) Class rate on "Salt, livestock, medicated" assessed on shipments of medicinal sheep salt found applicable and not unreasonable. Lower commodity rate applied on salt and sulphurized rock salt, complainant contending for such lower rate upon ground that "Salt, livestock, medicated" is an item shown in classification under the general heading "Salt," that commodity not being specifically excepted in commodity tariff. FOUND: Commodity shipped was not salt within commonly accepted meaning of that word, could not have been substituted for common salt, and was more in the nature of a medicine. Commodity tariff covered only common salt and sulphurized rock salt and if any salt mixture had been intended to be covered by that tariff, it is reasonable to assume that sulphurized rock salt only of all the other kinds and combinations would not have been singled out for mention in addition to the general term "Salt." Yakima Grocery Co. v. O.-W. R. R. & N. Co., 112 I. C. C. 751.

(c) Fifth-class rates applicable on monuments or monument parts, assessed on shipments of dressed, and partly polished, partly cut, and partly rough granite, found applicable. Contemporaneously a lower commodity rate applied on "rough quarried granite," "sawed granite," and "polished or planed stone or granite (not to apply on monuments or parts thereof.)" The granite here shipped being partly polished and partly dressed, was not rough quarried or sawed granite but upon further manufacture was used for monuments, and therefore monument parts. Southworth & Son v. N. Y., N. H. & H., 113 I. C. C. 171.

(d) Fourth-class rate charged on a l. c. l. shipment of malleable link belting from Indianapolis, Ind., to Algoma, Oreg., found inapplicable. Applicable rate found to be a lower commodity rate to Modoc Point, Oreg., under an intermediate rule in the tariff, Algoma being directly intermediate between Indianapolis and Modoc Point. Reparation awarded. Algoma Lbr. Co. v. Director General, 113 I. C. C. 311.

(e) Once a proper class-rate structure is adopted, the same relationships between localities and communities may well be followed in making rates on many commodities. Phosphate Rock from Florida, 115 I. C. C. 229, 235.

(f) Shipment of drugs and medicines from Elkhart, Ind., to New York and Philadelphia, found overcharged to extent third-class rates assessed exceeded lower commodity rates contemporaneously in effect from Kalamazoo, Mich. Tariff carried an intermediate clause providing that an intermediate origin station from which no specific rate is published is entitled to higher rates from either of two stations between which it is located from which rates are published. No specific rates were published from Elkhart which is directly intermediate to Kalamazoo, and it was therefore entitled to lower commodity rate. Refund of overcharges directed. Miles Medical Co. v. B. & O., 118 I. C. C. 33.

(g) First class is an unusually high c. l. rating and is generally assigned only to a few very light and bulky articles of high value, to especially perishable commodities like fresh strawberries, and to commodities that are dangerous to handle, such as high explosives. Providence Exchange v. N. Y., N. H. & H. 118 I. C. C. 190, 191, 192.

(h) Complainant attacked class rates charged on four cars of street car bodies and parts thereof, shipped June 1, 1923

and March 9, 1924 from Findlay, O., to San Francisco, Calif., as inapplicable and unreasonable. Only one body can be loaded on a flat car. Charged class A rate of $2.73. There was in effect a commodity rate of $2.61 applying on cars and car bodies, street, with or without motor attachments, minimum 20,000 pounds, for each street car or street car body. HELD, rate of $2.61 applicable, reparation awarded. Market Street Ry. Co. v. S. P. Co., 120 I. C. C. 654.

(i) Sixth-class rate on textile machinery from Tallassee, Ala., located on the Birmingham & S. E. Ry., to Natchez, Miss., found not unreasonable as compared with lower rate prescribed for like distances in Southern Class Rate Investigation, 100 I. C. C. 513. In cited case the Birmingham & S. E. was designated as a weak line entitled to special rate treatment, and it was found that joint rates between weak and standard lines should be somewhat higher than that prescribed for latter. The general class-rate revision can not properly be used as measure of reasonableness on shipments moving prior thereto. Moreover, general practice in southern territory is to apply to through movements the local rates of short lines to junction points plus standard-line rates beyond. The rate here charged compares favorably with numerous rates applicable from points in Alabama, Mississippi, and Tennessee for comparable distances, involving joint-line hauls, including one "relief" line. Cotton Mills Products Co. v. A. & V., 120 I. C. C. 473.

(j) Complainant attacked class rates charged on 17 shipments of pneumatic rubber tires made between Dec. 28, 1922 and May 22, 1923 from Cudahy, Wis., to St. Louis, Mo., as inapplicable. Charged, carloads, third class rate of 59.5 cents, less carloads first class of 88.5 cents. Rate claimed was a carload commodity rate of 29 cents, applicable on agricultural implements and parts thereof, viz: articles shown in item 843 Boyds I. C. C. A-1203 under head of vehicles (except automobiles, childrens vehicles and hearses) and parts thereof. Boyds I. C. C. A-1203 provided "commodity rates on vehicles (except automobiles, childrens vehicles and hearses) and parts thereof, referring to this item, will apply on following articles * * * vehicles, parts of * * * tires, rubber, pneumatic * * * loose or in packages." Vehicles and parts of vehicles enumerated in item 843 are restricted by the caption of the rate item to agricultural implements and parts thereof, and the commodity shipped is not shown to have been part of an agricultural implement or of any vehicle not excepted. HELD, rates charged applicable, complaint dismissed. Federal Rubber Co. v. C. & N. W. Ry., 122 I. C. C. 331.

(k) One of the fundamental functions of class rates is to provide a basis for possible shipments. Cancellation of Class Rates on Sugar, 126 I. C. C. 527, 528.

(l) Upon contention that minimum class-rate scale is inapplicable because in its publication the publishing agent failed to denote and advance, FOUND: Contention is without merit. See 74 I. C. C. 179, 181. Lynchburg Chamber of Commerce v. B. & O., 128 I. C. C. 557, 558.

(m) Complainant alleged class rate charged on a shipment of textile machinery, knocked down, from Philadelphia, Pa., to Nepperhan, N. Y., on Feb. 13, 1918 was inapplicable and unlawful. Shipment moved P. & R., Jersey Central and N. Y. C., charged carload fifth class 17c, minimum 20,000 pounds. Official classification provides second class rating on less carload shipments of textile machines, n. o. i. b.n., knocked down, in boxes, bundles or crates. The shipment weighed less than the carload minimum. Defendants evidence that the record of all the carriers show that car was treated by them as a carload shipment from point of origin to destination is of doubtful force. If the shipment was improperly classified as a carload in the first instance, obviously there is little likelihood that the error would have been detected en route. The evidence is not persuasive that the loading of this car either at origin or en route was in any way restricted by the shipper or by any of its agents. The preponderance of the evidence leads to the opposite conclusion. In the absence of a specific instruction from the shipper to treat the shipment as a carload, defendant was obliged to charge the less than carload rates. HELD, rate assailed inapplicable to the extent it exceeded 30c on the weight of the shipment, reparation awarded. Smith & Sons Carpet Co. v. Director General, 132 I. C. C. 593.

II. REASONABLENESS AND DISCRIMINATION.

§2. In General.

See Basing Points and Lines §3 (a); Classification §17; Commodity Rates §2; Discrimination §8 (3); Equalization of Rates; Reasonableness of Rates §28.

(a) Rates on high explosives, c. l., and l. c. l., from Gibbstown and Thompsons Point, N. J., to Norton, Va., Powder, W. Va., and other stations in Virginias, found unreasonable to extent they exceeded first-class and double first-class, respectively, contemporaneously applicable from and to same points. Usual basis of rates on high explosives in this territory is first-class c. l., and double first-class l. c. l., that basis having been prescribed as reasonable maximum in 35 I. C. C. 77 and 64 I. C. C. 10. Reparation awarded. Du Pont De Nemours & Co. v. W. J. & S., 104 I. C. C. 249.

(b) Fifth-class rates on furnaces and furnace parts from Holland, Mich., to Milwaukee and Chicago and points taking Chicago rates, found unduly prejudicial to extent they exceeded those based upon rates bearing same relationship to fifth-class from Holland that contemporaneous commodity rates bear to corresponding fifth-class rates from Detroit. Nonprejudicial rates prescribed. Holland Furnace Co. v. A., T. & S. F., 104 I. C. C. 286.

(c) Rates on rosin from south Atlantic ports, and points taking same rates, to Burlington, Ontario, Canada, found unreasonable to extent they exceeded rates contemporaneously in effect from Gulf ports to same destination. Rates from the Gulf ports found not unreasonable. Reparation awarded. Vera Chemical Co. v. A. C., 104 I. C. C. 408.

(d) Rates on rosin from South Atlantic and Gulf ports, and points taking same rates, to Burlington, Ontario, Canada, found not unduly prejudicial or preferential in favor of Chicago, Ill., Erie, Pa., Brooklyn, N. Y., and all points taking the Toronto and Hamilton, Ontario, basis of rates. Vera Chemical Co. v. A. C., 104 I. C. C. 408.

(e) Fourth-class rate on flexible split leather from Waukegan, Ill., to Natick, Mass., found not unreasonable. In official, southern, and western classifications various kinds of leather, including flexible splits, are and have been for many years rated fourth class. While complainant instances commodity rates on leather to Boston and several other New England destinations from numerous States to show that exceptions to class basis have been made, and estimated that volume of its shipments will continue in future as in past at about one carload a week, it failed to show how that movement compares in volume with movement of leather, generally under fourth-class rates. Griess-Pfleger Tanning Co. v. E., J. & E., 104 I. C. C. 464.

(f) Fourth-class ratings, minimum weight 30,000 pounds, in official, southern and western classifications, on cocoa powder, in bulk, in barrels, found unreasonable to extent they exceed fifth class, minimum weight 36,000 pounds. Comparisons are made with many commodities rated fifth class or lower, the best analogy being with coffee which is shipped in much same manner as cocoa, loads about same, and is to some extent competitive. Reasonable rating prescribed for future. Opler v. A. & R. R. R., 104 I. C. C. 468.

(g) Class rates on fresh meats, packing-house products, and other articles, in peddler cars, from Chicago and East St. Louis, Ill., to branch-line points on Big Sandy and Logan divisions of C. & O., found unreasonable and unduly prejudicial to extent they exceeded rates to main-line junctions plus differentials for hauls beyond, computed under distance scale prescribed herein. Reasonable and nonprejudicial class rates prescribed for future and reparation awarded. Wilson & Co. v. C. & O., 104 I. C. C. 641.

(h) Class rates on fresh meats, packing-house products, and other articles, in peddler cars, from Chicago and East St. Louis, Ill., to points on C. & O. east of Gauley, W. Va., found unreasonable to extent they exceeded aggregate of intermediates to and from Gauley. Reasonable class rates prescribed for future and reparation awarded. Wilson & Co. v. C. & O., 104 I. C. C. 641.

(i) Proposal to readjust class rates between upper Mississippi River crossings and related points and points in Minnesota and North Dakota to basis of rates between Chicago group and Fargo, N. Dak., resulting in both increases and decreases, the former predominating, found not justified. Transportation conditions between the crossings and the destination territory, on one hand, and

between Chicago and destination territory, on the other, are not materially different, and difference in distance can not be ignored. Reasonable maximum class rates between the crossings and Fargo and Moorehead, N. Dak., and from the crossings to Fargo for application on traffic from points east of Chicago in c. f. a., trunk-line, and New England territories, determined. Rates from Upper Mississippi Crossings, 107 I. C. C. 256.

(j) Fourth-class rating in official classification territory on automobile bow sockets found unreasonable to extent they exceeded fifth class, the rating on other automobile parts. Reasonable rating for future prescribed. Chevrolet Motor Co. v. B. & O., 109 I. C. C. 185.

(k) Upon reconsideration of original report, 100 I. C. C. 513, wherein commission made its findings, after investigation, of the class-rate structure in southern classification territory, following the filing by interested parties of statements objecting to various findings embraced therein, such report modified in certain respects. Southern Class Rate Investigation, 109 I. C. C. 300.

(l) The class rates of official and southern territories are based upon two differing theories of freight-rate construction, resulting in a wide difference in level of the two sets of rates. Southern Class Rate Investigation, 109 I. C. C. 300, 303.

(m) The class rates of official territory are much lower in level than the class rates of southern territory, and while transporation conditions justify some difference in level. they do not in themselves justify existing difference. The situation, however, is one that can not be radically changed without a complete reorganization of the rate structures, including both class and commodity rates, of both territories. Southern Class Rate Investigation, 109 I. C. C. 300, 303.

(n) Carload rating of third class, minimum 30,000 pounds, in western classification territory on carpets and carpeting made of cork, linoleum, or asphalted and decorated paper felt, and mats or rugs made of linoleum or of asphalted and decorated paper felt, found unreasonable for future to extent it exceeds fourth class, subject to a minimum not in excess of 36,000 pounds. Congoleum-Nairn v. C. & N. W., 109 I. C. C. 447.

(o) Class rates on ginger ale, root beer, and mineral water, l. c. l., from Tazewell, Va., to points in West Virginia on the Virginian and Kanawha, Glen Jean & Eastern Railways, and on empty bottles, l. c. l., returned from those points to Tazewell, found not unduly prejudicial or discriminatory, but unreasonable as compared with rates accorded other Virginia and West Virginia points. Reasonable distance scale of rates prescribed for future. Was-Cott Corp. v. K., G. J. & E., 109 I. C. C. 468.

(p) Carriers showed that class rates governed by official classification are generally lower per mile than class rates bearing same numerical designation governed by western or southern classification, and urged that the lower rate level in official territory shows that there is no reason why ratings in official classification should be the same as those in southern and western classifications. HELD: The commission has repeatedly pointed out that this contention is without force. Manifestly it would be improper to attempt to overcome differences in rate levels by rating articles higher in official than in western and southern classifications. Nat'l. Commercial Fixture Mgrs. Asso. v. A. A. R. R., 109 I. C. C. 479, 483.

(q) Class rate assessed on sporadic shipments of green salted hides from Moultrie, Ga., to Elsmere Junction, Del., found unreasonable as compared with lower commodity rates contemporaneously in effect from various points in Georgia, Alabama, and Florida to Elsmere Junction and to Philadelphia, New York, and Boston, and to extent it exceeded lower commodity rate subsequently established. Reparation awarded. Barr & Dougherty v. G. N., 109 I. C. C. 487.

(r) Class rates assessed on sporadic shipments of soya beans from Norfolk, Va., to Chicago Heights, Ill., found not unreasonable as compared with lower commodity rates on wheat, which lower rates were subsequently established on soya beans. To award reparation on wheat rate basis would be tantamount to prescribing a commodity rate for application nearly one year prior to time its establishment was requested, and some two years after its voluntary establishment. Moreover, volume of movement of soya beans is insignificant compared with that of wheat, no shipments have moved from and to these points subsequent to those here considered, nor does any possible future movement appear probable.

Chicago Hts. Mfrs. Asso. v. B. & O., 109 I. C. C. 545.

(s) Class rates on contractors' outfits, from Buffalo, Iowa, to Apache, Okla., and from Richards Spur, Okla., to Buffalo, found not unreasonable as compared with lower commodity rate on graders' outfits. Shipments concerned were made because of fluctuating business conditions at complainant's operations. The record fails to show any prior movements between these points, or that there are likely to be any but sporadic movements in future. The few shipments here do not justify application of a commodity rate in the past, record does not establish necessity of such a rate for the future, nor does similarity between graders' and contractors' outfits afford a sufficient basis for a finding that the same rate should be applied to both. See also 51 I. C. C. 138 and 85 I. C. C. 408. Dolese Bros. v. C., R. I. & P., 109 I. C. C. 561.

(t) Class D rates on iron ore from Ishpeming and Negaunee, Mich., to Tamms, Ill., found unreasonable as compared with commodity rates contemporaneously in effect to St. Louis, Mo., and East St. Louis and Granite City, Ill., and with commodity rate established subsequent to movement. Reparation awarded. Tamms Silica Co. v. C. & N. W., 109 I. C. C. 618.

(u) Window glass: Class rate on window glass moving rail and water from Jeannette, Pa., to Jacksonville, Fla., found not unreasonable, discriminatory, or unduly prejudicial as compared with rail-and-water commodity rates from the same origin point to Savannah, Ga. Allegations of complaint rest solely upon fact that on certain other commodities the two ports are accorded same rates. However, no showing was made that any of the commodities upon which rate parity is maintained compete with window glass or that assessment of a class rate on window glass and a commodity rate on a competing commodity results in undue prejudice. Towers Hardware Co. v. P. R. R. 109 I. C. C. 651.

(v) Rates on canned goods from Illinois freight association territory to certain west-bank Mississippi River points in that territory found unreasonable in instances where such rates exceed fifth class. Reasonable basis of rates prescribed for future and reparation denied. Burlington Shippers' Asso. v. A., T. & S. F., 109 I. C. C. 694.

(w) Sixth-class rates on sand and gravel from La Fayette, Ind., in connection with the Wabash, Illinois Central, B. & O., Kankakee & Urbana, and Illinois Traction, to specified points in Illinois, found unreasonable as compared with rates from Attica, Ind. Maximum reasonable joint commodity rates prescribed for future. Western Indiana Gravel Co. v. N. Y. C. & St. L., 109 I. C. C. 727.

(x) Fifth class rates in the southwest move little traffic, most articles rated fifth class which move in appreciable volume being subject to commodity rates lower, and often much lower, than the class rates. This situation exists to much greater degree in the southwest than in western trunk-line territory. Midcontinent Oil Rates, 1925, 112 I. C. C. 421, 433.

(y) Complainant attacked through rates charged on 59 cars of wine in tank cars and in bulk in wooden barrels since April, 1922, from St. Louis, Mo., and Sandusky, O., to Brooklyn, N. Y., as unreasonable. Short line distances 1,054 and 650 miles. In official classification wine in bulk, in barrels, is rated third class; the ratings have been increased on Aug. 31, 1921, from fourth class. Prior to July 25, 1922, the tariffs made no provisions for wine in tank cars. The carriers apparently applied third class rates, considering such shipments analogous to shipments in bulk in barrels. Charged from St. Louis $1.105, from Sandusky 82 c. prior to July 1, 1922 and 73.5 c. thereafter. HELD, rates attacked not unreasonable complaint dismissed. Garrett & Company v. N. Y. C. R. R., 112 I. C. C. 519.

(z) In 77 I. C. C. 249, Commission found sixth class rates applicable on flaxseed, carloads from New York Harbor points to Buffalo, N. Y., on shipments moving in 1920 subsequent to Federal control as not unreasonable and denied reparation. In 91 I. C. C. 663, division 2 found rates on same commodity from and to the same points as unreasonable after Jan. 1, 1922, and awarded reparation. The rates attacked are sixth class rates of 20.5 c. prior to August 26, 1920, 28.5 c. from that date until Jan. 1, 1923 and 26.5c. thereafter. HELD, rate attacked unreasonable to extent they exceeded 17.5 c. prior to Aug. 25, 1920, 24.5 c. between that date and Jan. 1, 1922 and 22 c. thereafter from New York to Buffalo; from New York to Toledo, O., unreasonable to extent they exceeded 25.5 c.

prior to Aug. 26, 1920, 36 c. between that date and Jan. 1, 1922 and 32.5 c. thereafter; from Philadelphia to Toledo unreasonable to extent they exceeded 2 c. under New York; to Chicago unreasonable to extent they exceed 33 c. prior to Aug. 26, 1920, 46 c. between that date and Jan. 1, 1922 and 41.5 c. between that date and March 26, 1923, present rate not unreasonable, reparation awarded. Kellogg & Sons v. D. L. W. R. R., 112 I. C. C. 629.

(aa) In 95 I. C. C. 161, Division 4 found rates on wire rods, in coils, in carloads, from Acme and Peoria, Ill., Harriet, N. Y., and Johnstown, Pa., to Kansas City, Mo., as not unreasonable, unjustly discriminatory or unduly prejudicial. On shipments from eastern territory to Kansas City rates on wire rods are made by combination on the Mississippi River crossings. East of the river billet rates, which approximate sixth class, apply while the fifth class proportional rates apply west of the river. In the western classification billets are classified with pig iron and take class D. The same basis of rates on rods applies to Kansas City and other cities west of the Mississippi River and a change to one point without a corresponding change to others would tend to condemn and disrupt an extensive and longstanding rate relationship. The evidence shows the classification of wire rods with other iron and steel articles in western territory to be warranted and proper. This record does not show the proportional class rates to Kansas City to be unreasonable or otherwise unlawful, complaint dismissed. Black Steel & Wire Co. v. A. T. & S. F. Ry., 112 I. C. C. 739.

(bb) Complainant attacked class rates charged on medicinal sheep salt from Salt Lake City, Utah, to Livingston, Mont., Walla Walla, Wash., Yakima, Wash., Baker, Oreg., and Mountain Home, Ida., two years prior to May 28, 1925 as unlawful and unreasonable. Salt livestock, medicated, is rated class B minimum 30,000 pounds in the western classification. Charged class B rates of $1.03 to Livingston, 92 c. to Baker, Walla Walla and Yakima and 65 c. to Mountain Home. Rates charged alleged to be unreasonable to extent they exceeded the commodity rates on salt by more than the amount of the spread between class B and class C rates. The commodity shipped was not salt within the commonly accepted meaning of that word. It was more in the nature of medicine. It clearly could not have been substituted for common salt. No such claim is made for it. On the other hand it is equally clear that the commodity tariff covered only common salt and sulphurized rock salt. The difference in the spread in the class rates on common salt and medicated livestock salt applied to the commodity rates on common salt does not of itself fix the measure of a proper commodity rate on medicated salt. There is no evidence that the volume of movement and other conditions attending the latter are such as to warrant any commodity rate on it. HELD, rate charged applicable and not unreasonable, complaint dismissed. Yakima Grocery Co. v. O. W. R. R. & N., 112 I. C. C. 751.

(cc) On June 12, 1926, all parties to this proceeding were notified that the respondent carriers had agreed to cooperate with the Commission in carrying into effect with the utmost expedition the purposes of the findings in the original report, 100 I. C. C. 513, as modified by 109 I. C. C. 300. The southern carriers have now submitted a petition asking to change the rule for the computation of distances set forth in finding 14 at page 312 of the supplemental report. HELD, finding should be amended to read as follows: That in computing distances for the application of the scale set forth in Appendix K1 and Appendix L1 of the supplemental report as modified herein, the shortest routes shall be used over which carload traffic can be moved without transfer of lading. HELD, further, Appendix K2 should be amended to provide a somewhat higher distance scale ranging first class 34 c. for 5 miles to 286 c for 1,500 miles. Southern Class rate Investigation, 113 I. C. C. 200.

(dd) Fifth-class rates on fish oil from Atlantic seaboard points to Port Ivory, N. Y., and Bayway, N. J., and from Bayway to Philadelphia and Marcus Hook, Pa., found unreasonable for future only and reasonable rates prescribed. Lower commodity rates instanced by complainants were in most, if not in all, instances so affected by competition that they do not afford a criterion upon which fifth-class rates assailed may be condemned as exceeding reasonable maxima in the past over routes of actual movement. Procter & Gamble Mfg. Co. v. B. & O., 112 I. C. C. 177.

(ee) Rates on fresh tomatoes from Silver Creek, N. Y., district to Pittsburgh,

Pa., found not unreasonable and findings in 91 I. C. C. 358, reversed. Evidence does not indicate that rates assailed are too high to move traffic or that they are unreasonable per se. There are no commodity rates on this traffic from Silver Creek district to any destination, or from any point of origin to Pittsburgh. Assailed rates are those prescribed and approved in numerous cases, and while various commodity rates are in effect both in c. f. a. and trunk-line territories, but few apply for distances comparable to the haul here considered, ripe tomatoes generally moving short distances under commodity rates made with reference to truck competition. Here traffic moves in considerable volume only during an annual 60-day period, which fact does not entitle it to a commodity rate since commodities may move in considerable volume and yet remain on a class-rate basis. Heinz Co. v. Director General, 112 I. C. C. 206.

(ff) Fifth-class rates in the Southwest move little traffic, most articles rated fifth class which move in appreciable volume being subject to commodity rates lower, and often much lower, than class rates. Midcontinent Oil Rates, 1925, 112 I. C. C. 421, 433.

(gg) From standpoint of percentages of corresponding first-class rates, fifth class under the southern classsification is the substantial equivalent of fourth class in official classification and class A in western classification. See 92 I. C. C. 340, 344. Tennessee Electric Power Co. v. L. & N., 112 I. C. C. 491, 493.

(hh) Class rates on tinware from Chicago, Rockford, and Waukegan, Ill., Milwaukee, Wis., and points taking same rates, to Burlington and Keokuk, Iowa, found not unreasonable, but maintenance of lower commodity rates from same points to St. Louis, Mo., and Quincy, Ill., would subject Burlington and Keokuk to undue prejudice and disadvantage, and give to St. Louis and Quincy an undue preference and advantage. Burlington Shippers' Asso. v. C., B. & Q., 112 I. C. C. 533.

(ii) Local and joint class rates between points in Arizona, on the one hand, and points in California, New Mexico, and El Paso, Tex., on the other hand, found unreasonable. Rates assailed are materially higher than those prescribed in 21 I. C. C. 640, and 74 I. C. C. 207, for application in the Pacific Northwest and at present in effect throughout the northern half of the Mountain-Pacific group. Operating and transportation conditions in territory here under consideration compare favorably with those in much of the territory in which the lower rates apply. Temporary scale of distance rates prescribed which will accord the Pacific Southwest substantially same scale of rates as now applies in the Pacific Northwest. Arizona Corp. Commission v. A. E., 113 I. C. C. 52.

(jj) Fifth-class rates applicable on monuments or monument parts, assessed on shipments of dressed, and partly polished, partly cut, and partly rough granite, found applicable. Contemporaneously a lower commodity rate applied on "rough quarried granite," "sawed granite," and polished or planed stone or granite (not to apply on monuments or parts thereof.)" The granite here shipped being partly polished and partly dressed, was not rough quarried or sawed granite but upon further manufacture was used for monuments, and therefore monument parts. Southworth & Son v. N. Y., N. H. & H., 113 I. C. C. 171.

(kk) Fifth-class rate on petroleum products from Brunswick, Ga., to Richmond, Va., found unreasonable to extent it exceeded lower commodity rate subsequently established from same origin point to Richmond and Petersburg. Subsequently established rate found not unreasonable as compared with lower combination rate contemporaneously in effect via routes other than route of movement, carriers showing that such lower combination was depressed, and, distance considered, that subsequently established commodity rate compares favorably with other rates between points in southern territory. National Oil Co. v. S. A. L., 113 I. C. C. 371.

(ll) The movement of carload traffic on class rates in the southwest is small, the southwestern carriers having published relatively high class rates for the carload classes and made commodity rates to move carload traffic. Dawson Produce Co. v. A. & V. Ry., 113 I. C. C. 454, 455.

(mm) Rates on certain alloys of lead, viz., babbitt, solder, terne, and type metal which have lead as a base in composition with tin, antimony, or other metals in varying proportions, from Newark, N. J., to Buffalo, Pittsburgh, Chicago, and

other destinations in Illinois, Indiana, Ohio, Pennsylvania, New York, Kentucky, and Tennessee, found unreasonable to extent they exceeded sixth-class. While no substantial movement of these commodities has been shown which would warrant establishment of commodity rates thereon, the present rates on these alloys are clearly out of line with rates found reasonable by commission on copper, brass, bronze, lead, antimonial lead, and tin. Reasonable rates prescribed for future and reparation awarded. Federated Metals Corp. v. C. R. R. Co. of N. J., 113 I. C. C. 487.

(nn) Complainant attacked rates and charges collected on a car of lumber shipped from Philadelphia, Pa., and delivered in Paterson, N. J., April 24, 1923, at Broadway station upon the Susquehanna, as unjust and unreasonable, and that the joint class rates of the Erie and Susquehanna on all interstate traffic from the Erie station to the Susquehanna station, both at Paterson, as unjust and unreasonable. Shipment was consigned by one complainant Wilgus to the other complainant at Paterson, no delivery being specified in the bill of lading. Upon arrival at the Erie station in Paterson consignee refused to accept delivery and ordered the car reshipped to its siding on the tracks of the Susquehanna in Paterson at Broadway station, where delivery was accepted. Lumber is rated sixth class in the official classification. Charged combination of 28c, consisting of sixth class factors of 18.5c to first billed destination in Paterson and 9.5c beyond, plus reconsigning charge of $6.30. The record shows no service in addition to that performed under the separate line haul rates which would justify a charge for reconsignment any more than it would if the car had been actually or constructively delivered. Under the circumstances the collection of a charge in addition to those imposed by application of the rates to and from the point of reconsignment was, is, and for future will be unreasonable. HELD, rates attacked not unreasonable but reconsignment charge was unreasonable, reparation awarded. Wilgus v. P. R. R., 113 I. C. C. 617.

(oo) Combination class rates to and beyond York, Pa., or Baltimore, Md., charged on l. c. l. shipment of marble moving from Cardiff to destinations in eastern and New England States found not unreasonable or unduly prejudicial as compared with rates on same classes from such noncompetitive points as Baltimore, York, Philadelphia, and New York City, or with rates from Westfield, Mass., and Roxbury, Vt., from which latter point Cardiff is said to meet its principal competition. Traffic and transportation conditions in connection with shipments from Cardiff, in so far as initial part of movement is concerned, are materially different from and less favorable than those obtaining between trunk-line points with which comparison is made, and whatever rate disadvantage complainant may be laboring under in marketing of its products appears to be principally due to location of its quarry on an independently owned and operated short line of light traffic density and unfavorable operating conditions. Cardiff Green Marble Co. v. M. & P., 113 I. C. C. 655.

(pp-qq) Generally speaking, class rates for longer distances in trunk-line territory are not on a mileage basis, but are grouped, and some of these rate groups are quite extensive. Cardiff Green Marble Co. v. M. & P., 113 I. C. C. 655, 657.

(rr) Complainant attacked sixth class rate charged on barrel shooks, carloads, from Rahway, N. J., to New York Harbor, N. Y., as unreasonable. These commodities move over defendants line to its rail terminus in New York Harbor where they are transferred by defendant from the cars to lighters and then moved to and unloaded on steamship docks in the harbor, a distance of 29 miles, including 10 miles for the harbor transfer. Sixth class rate of 11.5c was applicable. The rates on barrel shooks as well as on lumber between New York Harbor, including lighterage, and points in New Jersey are generally on the sixth class basis. The rate attacked compares favorably with commodity rates on barrel shooks for similar distances from New Jersey to points on Long Island. HELD, rate attacked not unreasonable, complaint dismissed. Hamilton v. P. R. R., 113 I. C. C. 723.

(ss) Fourth class all-rail rate on sole leather from Bridesburg (Philadelphia) to Boston, found not unreasonable or otherwise unlawful as compared with lower commodity rate from competing points in western Pennsylvania, or with a lower all-water rate from Philadelphia to Boston not subject to the commission's jurisdiction. Western Pennsylvania points,

from which the lower commodity rate applies, are west of the Harrisburg-Williamsport line of the Pennsylvania and in some instances are served by other carriers having more direct routes to Boston than the Pennsylvania affords. Continental Leather Co. v. P. R. R., 113 I. C. C. 745.

(tt) Fourth-class rate on sole leather from Bridesburg (Philadelphia) to Boston, found not unreasonable or otherwise unlawful as compared with a lower all-water rate from Philadelphia to Boston not subject to the commission's jurisdiction. Complainant does not ship by water apparently because drayage costs from its plant to the wharf, plus the water rate to Boston, exceed the class rate of which complaint is made. Continental Leather Co. v. P. R. R., 113 I. C. C. 745.

(uu) Complainant attacked class rate charged on sole leather, carloads, from Bridesburg (Philadelphia), Pa., to Boston, Mass., and points taking same rates as unreasonable, unjustly discriminatory and unduly prejudicial as compared with commodity rates from competing points in western Pennsylvania and an all-water rate from Philadelphia to Boston. Complainant's plant is 12 miles from the steamer wharf from which water rates to Boston are available. Complainant does not ship by water because drayage costs from its plant to the wharf plus the water rate to Boston, exceed the class rates of which complaint is made. The applicable fourth class rate is 38c. The rate attacked is applicable all rail and rail and water to Boston and Boston rate points, from Harrisburg, Sunbury, Williamsport and Newberry, Pa., and from Trenton, N. J. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Continental Leather Co. v. Penn. R. R., 113 I. C. C. 745.

(vv) Class rates on iron and steel articles between Pittsburgh, Pa., district and other points on the one hand, and Ohio points on the other, found unreasonable to extent they exceeded lowest aggregate of intermediate commodity rates contemporaneously in effect. See also 89 I. C. C. 601. Reparation awarded. Firestone Tire & Rubber Co. v. Director General, 113 I. C. C. 751.

(ww) Complainant attacked class rates charged on animal hoofs, horns, and horn tips, in carloads from Chicago, Ill., to Shelton, Conn., and Weehawken, N. J., as unreasonable, unjustly discriminatory and unduly prejudicial. Charged fifth class of 59.5c to Shelton and 56.5c to Weehawken. Under exceptions the sixth class rating is applicable on fertilizer material, consisting of the following articles having value only as a fertilizing ingredient, viz, hoofs or horns. The fifth class rating has been in effect on animal horns and hoofs in the official classification for more than 20 years. The same rating applies on most of the packing house products. HELD, fifth class rates applicable and not unreasonable, complaint dismissed. Tomkins Summer Co. v. B. & O. R. R., 115 I. C. C. 24.

(xx) Complainant attacked fifth class rates on pickles in brine, carloads, from Ohio, Indiana and Michigan to Toledo, O., as unreasonable, unjustly discriminatory and unduly prejudicial. The rates on pickles in brine here under consideration are the same as those on the finished product. Pickles in brine are somewhat in the nature of raw material, as they must be further treated before they are available for general distribution and consumption. Loss and damage claims are practically unknown. Generally speaking, most any kind of a car may be used, but some of the traffic moves in specially provided tank cars owned by shippers, and sometimes refrigerator cars are necessary in cold weather. Competitors of complainant are favored with some much lower rates on this pickles. Transportation conditions throughout the territory involved are substantially the same. Some commodity rates lower than the fifth class rates apply from certain salting stations in Michigan to the Michigan plants of its competitors. They have been maintained for a number of years. They were established so that the total of the inbound and outbound charges would be less burdensome on the Michigan picklers and assist in the sale of their products at important markets in competition with the pickles produced nearer the markets. Subject to these exceptions, practically all of the pickle movement on defendants lines is at the fifth class rates and that basis apparently applies generally in official territory. HELD, rates attacked not unreasonable but unduly prejudicial in that the rates to Toledo are on the fifth class basis while commodity rates lower than fifth class apply from the origin territory to the Chicago district and Michigan points.

Reparation denied. Harbauer Co. v. A. A. R. R., 115 I. C. C. 30.

(yy) Complainant attacked class A rate charged on three cars of castings and forgings, parts of compresses, each piece weighing 2,000 pounds or over, shipped to El Paso, Tex., from Monroe, La., during June, 1924, as unreasonable. There is no probability of a future movement from Monroe. The three shipments moved over the M. P., to Lake Charles, La., and S. P. lines beyond 1,170 miles. Charged class A rate of 126.5c applying on machinery and machines, including cotton gins, gin presses, and cotton ginning machinery, steam and power trip hammers, and ore milling and crushing machinery. Reparation is sought to basis of commodity rate of 77.5c on structural iron or steel, including unfinished castings and forgings. HELD, rate attacked not unreasonable, complaint dismissed. El Paso Compress & Fumigation Co. v. M. P. R. R., 115 I. C. C. 166.

(zz) Once a proper class rate structure is adopted the same relationships between localities and communities may well be followed in making rates on many commodities. Phosphate rock from Florida, 115 I. C. C. 229, 235.

(3a) Complainant attacked charges based on $1.23 and minimum of 34,080 pounds on nine shipments of refrigerating and ice making machinery transported during Feb. and March, 1923, from Canton, O., to Oklahoma City, Okla., as illegal, unreasonable and unduly prejudicial to extent it exceeded charges based on actual weight, minimum 20,000 pounds which was applicable on creamery and cheese factory apparatus including refrigerating machinery. Movement of 6 shipments was B. & O. to Chicago, E. J. & E. to Joliet, Ill., Santa Fe beyond; and of three, Pennsylvania to Lima, O., Nickle Plate to Peoria, Ill., and Rock Island beyond. Charged joint class A rate of $1.23. There is no evidence here to the contrary and there is no proof that the manufacturers of refrigeration and ice making machinery with whom complainant competes are in any different situation than complainant is with respect to the carload minima. The creamery apparatus item permits a generous mixture of various articles differing widely in size, shape, weight and value and the same is true of the ice making machinery item. The fact that the two overlap in so far as refrigeration machinery is concerned, lends color to complainant's contention with respect to refrigeration machinery but not with respect to ice making machinery. The articles shipped constituted ice making machinery and the shipments were properly billed. There is no provision in the creamery apparatus list for ice making machinery and a number of articles embraced in the ice making list, such as ice cutting machines have no counterpart in the creamery apparatus list. HELD, charges attacked not illegal or otherwise unlawful, complaint dismissed. Artic Ice Machine Co. v. A. T. & S. F. Ry., 115 I. C. C. 346.

(3b) Complainant attacked fifth class rate of 89c charged on two cars of sugar shipped June 10, 1924, from Jacksonville, Fla., to New Orleans, La., as unreasonable. One moved S. A. L. and L. & N. and other A. C. L. and L. & N. Contemporaneously a commodity rate of 34c applied over other routes between the origin and destination points. Under the law defendants were required to strictly observe shippers routing instructions and to assess charges on the basis of the rates applicable over the routes specified. No necessity is shown for requiring defendants to establish commodity rates on sugar from Jacksonville to New Orleans. The movement was sporadic, due to the fire, and no probability of a future movement is shown. HELD, rate charged not unreasonable or otherwise unlawful, complaint dismissed. Underwriters Salvage Co. v. L. & N. R. R., 115 I. C. C. 585.

(3c) Complainant attacked third class rate charged on 29 cars of plate glass shipped between March, 1923, and June, 1924, from Jersey City, N. J., and Brooklyn and New York, N. Y., 14 to Winston Salem and 15 to High Point, N. C., as unreasonable. They were either loaded into cars at certain piers or station in New York harbor and moved by car float to the rail terminals of defendants on the Jersey side of the harbor, or removed in lighters from the piers to the rail terminals and there loaded into cars. Five moved thence over the Pennsylvania to Hagerstown, M. D. and N. & W. to High Point, and the others over either the Pennsylvania, B. & O., or Jersey Central, Reading and B. & O. and Southern beyond. The short line distances are shown to be 535 miles to High Point and 549 miles to Winston Salem. Charged third class rates of $1 to Winston Salem and $1.08 to High Point. Plate glass

under 120 united inches is rated fourth class in the official and western classifications, or one class lower than that provided in the southern classification. The fourth class rates from the points of origin are 81c to Winston Salem and 88c to High Point. Window glass, carloads, is rated fifth class in all three classifications. The value of certain grades of so-called double window glass is shown to be greater than that of the plate glass here considered. HELD, rate charged unreasonable to extent it exceeded 84c, reparation awarded. Southern Mirror Co. v. Southern Ry., 115 I. C. C. 590.

(3d) Complainant attacked fifth class rate charged on one car of brass ingots shipped Oct. 31, 1924, from East Liberty, Pa., to Elmira, N. Y., as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of fourth section. Shipment moved 277 miles via Pennsylvania, charged fifth class of 28.5c. When the shipment moved defendant maintained a commodity rate of 19.5c on copper ingots from and to the same points. Brass ingots are composed principally of copper and are slightly less valuable than copper ingots. The rate of 22c from Cleveland to Elmira was applicable through East Liberty and was published subject to rule 77. HELD, rate attacked unreasonable to extent it exceeded 22c, reparation awarded. Federated Metals Corp. v. Pennsylvania R. R., 115 I. C. C. 719.

(3e) Complainant attacked rate charged on marine engines and parts, carloads, from Hamilton, O., to Oakland, Calif., between July 15 and Oct. 15, 1921, as unjust, unreasonable and inapplicable. Charged class A rate of $3.035 applicable on machinery and machines. Claimed aggregate of intermediates of $2.96 applicable. The 11 shipments as a whole constituted two complete marine engines, but the engines were not shipped in complete units. Each shipment consisted of marine engine parts on which class A rate was applicable. The descriptions in Boyds tariff of the articles on which the rate of $1.625 from the Mississippi river to Salt Lake City was applicable are limited to specific kinds of machinery or machines and marine engine parts are not specifically named. Prior to March 15, 1918, there was a commodity rate of $1.50 Hamilton to Oakland, canceled on that date leaving in effect class A rate of $1.82, now $3.035. A commodity rate of $2.61 was published June 1, 1922, and rate now is $2.03. HELD, rate attacked applicable but unreasonable to extent it exceeded $2.96, reparation awarded. Moore Shipbuilding Co. v. C. I. & W. R. R., 118 I. C. C. 3.

(3f) Complainant attacked third class rate of 70c charged on less carloads of printing paper to Lynchburg, Va., from Erie, Pa., as unreasonable and unduly prejudicial as compared with rates to Danville and South Boston, Va. 81 moved Pennsylvania to Potomac Yard, Va., Southern beyond 655 miles, two Pennsylvania to Hagerstown, Md., and N. & W. beyond, 721 miles . On Nov. 28, 1924, the rate on printing paper from Erie to Lone Jack, Danville and South Boston was made 70c, thus removing all departures except that existing in connection with the rate to Mountview, which was removed Jan. 1, 1925. HELD, rate attacked not unreasonable or unduly prejudicial, complaint dismissed. Lynchburg Chamber of Commerce v. P. R. R., 118 I. C. C. 11.

(3g) Complainant attacked class rates charged on green salted hides, carloads, from Laurel, Meridian, Clarksdale, Greenwood, Yazoo City, Vicksburg, Jackson and Natchez, Miss., and Tuscaloosa and Dothan, Ala., to Winchester, Mass., as unreasonable and in violation of the fourth section. Green salted hides are rated sixth class in southern and fifth in official, charged joint sixth class rates and combinations. A joint commodity rate of 61.5c was in effect on this traffic from New Orleans, La., to Boston, Mass., and Winchester, and this rate was applicable from Vicksburg. HELD, rate from Natchez prior to July 1, 1922, unreasonable to extent it exceeded 86.5c, and other rates unreasonable to extent they exceeded 72c from Tuscaloosa and Dothan, 74c from Meridian, 76c from Laurel, Clarksdale, Greenwood and Jackson and 78c from Yazoo City and Natchez, reparation awarded. Beggs & Cobb v. A. & V. Ry., 118 I. C. C. 13.

(3h) Respondents proposed to increase the class rates between Gary, Ind., on the E. J. & E. and points in northern Indiana and southern Michigan. At the present time class rates from Gary, on the one hand, and points in northwestern Indiana and some few points in Michigan bordering on the Indiana-Michigan state line, on the other hand, are the same over all lines. On July 15, 1920, Gary was shown as a base

point taking a lower basis to these nearby points than that applicable to and from the Chicago district. This basis is in effect today with the exception of these few points. HELD, suspended schedules justified. Class rates between Gary, Ind., and Michigan, 118 I. C. C. 263.

(3i) Complainant attacked sixth class rate charged on 7 cars of logs shipped between Dec. 30, 1922, and Aug. 18, 1923, from Adrian, Mich., to Hicksville, O., as unreasonable, unjustly discriminatory and unduly prejudicial to the extent it exceeded 65% of sixth class rate. They moved Wabash to Defiance, O., and B. & O. beyond, 139 miles, charged sixth class rate of 13.5c. A rate of 10c on these shipments would be 74% of sixth class rate. HELD, rate attacked unreasonable to extent it exceeded 10c, reparation awarded. Crook Son Co. v. Wabash Ry., 118 I. C. C. 285.

(3j) Complainant attacked class rate of 42.5c charged on one car of wrought iron pipe forwarded on March 7, 1924, from Bowling Green, Ky., to Florence, Ala., as unreasonable, unduly prejudicial and in violation of the fourth section. Bowling Green is on the L. & N., 113 miles south of Louisville, Ky., and 73 miles north of Nashville. Florence is on the L. & N., 125 miles south of Nashville. Charged class 1 rate of 42.5c. Northbound rate is 29c. HELD, rate attacked not unduly prejudicial but unreasonable to extent it exceeded 29c, reparation awarded. Nashville Machine & Supply Co. v. L. & N. R. R., 118 I. C. C. 577.

(3k) Complainant attacked fifth class rates charged on cider vinegar, in barrels, in carloads from New York to North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Missouri and Wisconsin as unreasonable and unduly prejudicial. The general basis for rates on vinegar, carloads, in official classification territory is fifth class, although commodity rates on a lower basis apply between certain points in trunk line territory. There are no joint rates on vinegar from New York to this destination territory except joint fifth class rates to Minneapolis and St. Paul, Minn. Rates to other points in the destination territory are constructed on the basis of the proportional fifth class rates to the Mississippi river or other basing points plus the rates beyond. It is obvious that if local manufacturers in the destination territory can compete there with Pacific coast producers paying a 75c rate and New York manufacturers paying a rate of, say, 61.5c, as to the Twin Cities, increased rates from the Pacific coast would be of little avail to complainant. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. American Cider Vinegar Mfrs. Asso. v. N. Y. C. R. R., 118 I. C. C. 721.

(3l) Fifth-class rate on pickles, in brine, from points in Ohio, Indiana, and Michigan, to Toledo, Ohio, found not unreasonable or discriminatory, but unduly prejudicial, in that competitive companies in Chicago district and certain Michigan cities were favored with a lower commodity rate. Transportation conditions throughout territory involved are substantially the same and with but few exceptions pickles move at fifth-class rate. Where such conditions exist commission is not disposed to allow rates from a comparatively limited section to control general basis of rates applicable throughout that general territory in absence of a clear showing that such rates are too high. Harbauer Co. v. A. A. R. R., 115 I. C. C. 30.

(3m) Class A rate assessed on finished castings and forgings, parts of compresses, from Monroe, La., to El Paso, Tex., found not unreasonable as compared with commodity rates on structural iron and steel, including unfinished castings and forgings. Rate assailed is maintained on same description of traffic to all points in the Southwest similarly situated and was prescribed in 34 I. C. C. 472, and other cited cases. Moreover, commodity rate on structural iron and steel is affected by competition. El Paso Compress & Fumigation Co. v. M. P., 115 I. C. C. 166.

(3no) Sixth-class rate assessed and lower commodity rate subsequently established on scrap iron from Burnham, Pa., to Cumberland, Md., found unreasonable as compared with rates from considerably greater hauls, with lower commodity rate in effect between points in immediate territory of this movement for comparable distances, and to extent it exceeded rate contemporaneously in effect from Burnham, Milroy, and Lewiston, Pa., to State Line, Pa., which lower rate was also in effect in the reverse direction from Cumberland to Burnham. Reasonable rate prescribed and reparation awarded. Cohen & Son v. P. R. R., 115 I. C. C. 307.

(3p) Sixth-class rate on crossties from Bedford and other points in Pennsylvania to Buffalo, N. Y., and related points, found unreasonable to extent it exceeded a commodity rate subsequently established from Everett, Pa., to Buffalo, and a lower rate applicable in reverse direction from Buffalo and related points to approximately 40 destinations of comparable distance in Pennsylvania and New Jersey, including Bedford and Everett. Reasonable rates prescribed for future, and reparation awarded. La Fayette Lbr. Co. v. P. R. R., 115 I. C. C. 445.

(3q) Rate equal to 90 per cent of sixth-class on box board from Halltown, W. Va., to Lynchburg, Va., found not unreasonable as compared with lower intrastate commodity rate on wood-pulp board from Covington, Va., to Richmond, it being shown that movement from Covington to Richmond involves but a local single-line haul whereas the movement from Halltown to Lynchburg is over two or more roads. Lynchburg Chamber of Commerce v. B. & O., 115 I. C. C. 465.

(3r) Sixth-class rate charged on refuse sand from Detroit, Mich., to Indianapolis, Ind., found unreasonable as compared with lower rates from and to same points on various other commodities and to extent it exceeded a commodity rate contemporaneously in effect on refuse sand from Detroit to Cincinnati, Ohio. Reasonable rate prescribed for future and reparation awarded. American Radiator Co. v. D. & T. S. L., 115 I. C. C. 529.

(3s) Fifth-class rate charged on a sporadic shipment of fire-damaged sugar specifically routed by shipper from Jacksonville, Fla., to New Orleans, La., found not unreasonable as compared with lower rate contemporaneously in effect over other routes and in reverse direction. No evidence was introduced to show that commodity shipped was improperly classified, and fifth-class rating under which it moved should not be condemned merely because commodity rates applied over other routes. Underwriters Salvage Co. v. L. & N., 115 I. C. C. 585.

(3t) Sixth-class rates on wood pulp from Delano Junction, N. Y., and Great Works, Me., to Housatonic, Mass., found unreasonable as compared with lower commodity rates from comparable distances in same territory and to a number of destinations in trunk-line and c. f. a. territories. Reasonable rates prescribed for future and reparation awarded. Rising Paper Co. v. N. Y., N. H. & H., 115 I. C. C. 699.

(3u) Fifth-class rate on brass ingots from East Liberty (Pittsburgh), Pa., to Elmira, N. Y., found unreasonable to extent it exceeded lower commodity rate over same route from Cleveland, Ohio, a more distant point, applicable through East Liberty and published subject to rule 77 of Tariff Circular 18-A. Reparation awarded. Federated Metals Corp. v. P. R. R., 115 I. C. C. 719.

(3v) Class rates on candy and confectionery, c. l. and l. c. l., from Salt Lake City, Utah, to destinations on Mississippi and Missouri Rivers, and to St. Paul, Minn., and Chicago, Ill., rate territories, found unreasonable and unduly prejudicial to extent they exceeded lower commodity rates contemporaneously applicable from San Francisco, Calif., to same destinations. Reparation awarded. McDonald Chocolate Co. v. B. E. R. R., 118 I. C. C. 45.

(3w) First class is an unusually high c. l. rating and is generally assigned only to a few very light and bulky articles of high value, to especially perishable commodities like fresh strawberries, and to commodities that are dangerous to handle, such as high explosives. Providence Exchange v. N. Y., N. H. & H., 118 I. C. C. 190, 191, 192.

(3x) Fifth-class rates, minimum 36,000 pounds, approved in 48 I. C. C. 515 and applied on wet rag pulp from Franklin, Ohio, to points in official classification territory, found unreasonable as compared with rates and minimum weights contemporaneously in effect on wood pulp, cottonseed-hull shavings pulp, linen pulp, and straw pulp, used in manufacture of paper, and with which rag pulp comes into competition, and to extent they exceeded sixth class, minimum 50,000 pounds. Reasonable rates and minimum weight prescribed for future. Cheney Pulp & Paper Co. v. A., C. & Y., 118 I. C. C. 477.

(3y) Class A rate applicable on a sporadic shipment of coffin material from Jackson, Miss., to New Orleans, La., found not unreasonable as compared with lower rate from Maryville, Tenn., to same destination, or with commodity rate established from Jackson subsequent to movement. The subsequently established rate was accorded with expectation of a

regular movement which never developed, whereas it is shown that there is a free movement under the rate from Maryville. Considering the sporadic character of shipment here involved, coupled with a lack of evidence to indicate that coffin stock is improperly classified, the commission does not consider class A rate as unduly high. Jackson Traffic Bureau v. I. C., 118 I. C. C. 515.

(3z) Class rates on iron pipe and oil-well supplies from and to points in Arkansas, Louisiana, and Texas, found unreasonable to extent they exceeded those which would have accrued by use of the 9702 scale prescribed in 77 I. C. C. 473. See 102 I. C. C. 761 and other cited cases. Reparation awarded. Bender Iron & Supply Co. v. K. C. S., 118 I. C. C. 661.

(4a) Fact that certain shippers have paid class rates without protest is not conclusive of their reasonableness. Bender Iron & Supply Co. v. K. C. S., 118 I. C. C. 661, 665.

(4b) Class A rates on oil-well outfits and supplies from Oil City, Caddo, Mansfield, and Marion, La., to Smackover and Louann, Ark., found unreasonable to extent they exceeded lower distance commodity rates computed under scale prescribed in 77 I. C. C. 473. Reparation awarded. Texas Co. v. K. C. S. Ry., 118 I. C. C. 713.

(4c) Rates on wrought-iron or steel pipe and fittings between points in Texas and points in Oklahoma, found unreasonable to extent they exceeded rates for like distances computed under scale prescribed on iron and steel pipe in Memphis-Southwestern Investigation, 77 I. C. C. 473. Reasonable rates prescribed, and reparation awarded. Lone Star Gas Co. v. C., R. I. & G., 118 I. C. C. 717.

(4d) Rate on iron and steel pipe from Ranger, Tex., to Ada, Bristow, Byng, Paden, and Seminole, Okla., and from Jefferson, Okla., to Ranger, Tex., found unreasonable to extent it exceeded rates for like distances computed under scale prescribed on iron and steel pipe in 77 I. C. C. 473. Reasonable rates prescribed for future, and reparation awarded. Texas Pacific Coal & Oil Co. v. A., T. & S. F., 118 I. C. C. 719.

(4e) Complainant attacked class rates on steel castings, carloads, from Attica, Ind., to St. Louis, Mo., and Chicago, Peoria, Streator and Mt. Vernon, Ill., as unreasonable and unduly prejudicial. Steel castings are rated fifth class and Attica takes the class basis to the above destinations while most producing points in Indiana and Illinois take commodity rates averaging about 65% of fifth class. Complainant has been charged rates very much above the general level in the same immediate territory and in making sales has absorbed the difference between its rates and those of its competitors. Under the circumstances it has been damaged by the rate adjustment to the extent that its rates were above the somewhat higher level now prescribed. HELD, rates attacked unreasonable to extent they exceeded rates prescribed in 96 I. C. C. 682 for same distances, reparation awarded. National Car Coupler Co. v. A. T. & S. F. Ry., 120 I. C. C. 37.

(4f) Complainant attacked rates charged on printed waxed wrapping paper, in carloads, shipped since Oct. 17, 1923 from Nashua, N. H., to New York and Brooklyn, N. Y., as unreasonable. There were and are no joint rates in effect, charged combination. Sixth class rates are maintained on this commodity from points generally in trunk line and central territories to Long Island. HELD, rates attacked unreasonable to extent they exceed 25.5c to Flatbush Ave., Brooklyn and 25c to New York, reparation awarded. Ward Baking Co. v. B. & M. R. R., 120 I. C. C. 47.

(4g) Complainant alleged that rates on all articles of every kind and description provided in the consolidated freight classification and various class and commodity tariffs between points in western trunk line and official classification territories, on the one hand, and Mayfield and Fulton, Ky., on the other, and between official territory and Boaz, Viola and Hickory, Ky., as unjust, unreasonable, unjustly discriminatory and unduly prejudicial as compared with rates on like traffic between points in the territory named north of the Ohio river and points in Kentucky, Iowa, Missouri, Indiana and Illinois. Mayfield is 23 miles south of Paducah, Ky., Fulton is 45 miles southwest of Paducah and other three complaining points are between Paducah and Mayfield, all located on the I. C. In 100 I. C. C. 513, 109 I. C. C. 300 and 113 I. C. C. 200 Commission prescribed rates to and from the south. In that case Mayfield, Fulton and the other points under consideration are given the identical adjustment accorded all other points generally throughout the south. The record in this case does not warrant a

modification of the findings. No findings are necessary with respect to the reasonableness of the present or future class rates attacked from official territory. CLASS RATES TO AND FROM WESTERN TRUNK LINE TERRITORY. Class rates between Fulton and Mayfield on the one hand and western trunk line territory on the other are generally constructed by combination on either Cairo or Metropolis, Ill., or Paducah. However, joint through rates apply between Kansas City, Mo., and Omaha, Neb., on the one hand and Mayfield and Fulton on the other, and from the Twin Cities to the complaining points. Testimony offered shows clearly the disadvantage of Mayfield and Fulton in comparison with Ohio river points in respect of many commodities. Manifestly, the basis of commodity rates to and from the points under consideration should be somewhat higher than prevails in central territory. What these exact differences as between the complaining cities and Ohio river crossings on individual commodities should be can not be determined on this record. HELD, rates between official territory on the one hand and Fulton and Mayfield on the other unduly prejudicial to extent they exceed from or to Cairo or Metropolis 24c first class; between Kansas City, Omaha and Twin Cities and Fulton and Mayfield unreasonable to extent they exceed 24c first class over Cairo or Metropolis, reparation denied. Mayfield Chamber of Commerce v. A. & W. Ry., 120 I. C. C. 137.

(4h) Complainant attacked class rate of $1.62 applicable on two cars of lemons, shipped on April 12 and 20, 1923 from New York to Nashville, Tenn., as unreasonable. Defendants admit the unreasonableness of the rate attacked and state that a reasonable rate on this traffic over the routes of movement should not exceed the 86c rate applicable via the Virginia gateways. HELD, rate attacked unreasonable to extent it exceeded 86c, undercharge waived. Hill Grocery Co. v. L. V. R. R., 120 I. C. C. 161.

(4i) Complainant attacked class rates charged on cranberries, carloads, from Massachusetts, New Jersey and Wisconsin to Hutchinson, Wichita, and Anthony, Kas., as unreasonable and unduly prejudicial as compared with the rates to Kansas City and St. Joseph, Mo., and Omaha, Neb. Hutchinson and Wichita are in south central Kansas, 219 and 213 miles, west of Kansas City, Anthony is 281 miles southwest of Kansas City. The gist of the complaint is that, distance considered, these destinations are denied the benefit of their location as compared with Kansas City and other Missouri river points. In official and western classifications cranberries are rated fourth class, carloads, and third class less carloads. The situation presented is not new. In many cases the Commission has found that traffic conditions east of the Missouri river justify a relatively lower basis of rates. The rate differences here encountered are the result of an adjustment of long standing. Neither the volume of this traffic nor the other evidence of record warrants the establishment of commodity rates. HELD, rates attacked not unreasonable or otherwise unlawful complaint dismissed. Anthony Produce Co. v. B. & A. R. R., 120 I. C. C. 224.

(4j) Complainant attacked sixth class rate of 28.5c charged on lumber, carloads, from Masten and Laquin, Pa., to Boston, Mass., and points taking same rates in Massachusetts, Rhode Island and Connecticut on the B. & A., B. & M. and New Haven as unreasonable and unjustly discriminatory. On Aug. 23, 1925 a commodity rate of 26.5c was established and reparation is sought to that basis. A rate of 26.5c was contemporaneously in effect from points on the T. V., S. & T. and K. & E., all of these roads being in the same general locality as the S. & N. Y., the originating defendant. Lumber is rated sixth class in official territory and generally moves intraterritorially on class rates. HELD, rates charged not unreasonable or otherwise unlawful, complaint dismissed. Central Pennsylvania Lumber Co. v. S. & N. Y. R. R., 120 I. C. C. 239.

(4k) Complainant attacked fourth class rates charged on iron or steel barrels, carloads, from Detroit, Mich,, and Sharon, Pa., to Hot Springs, Ark., as unreasonable. Charged fourth class $1.45 from Detroit and $1.36 from Sharon, minimum 16,000 pounds. A few months after the complaint was filed the carriers filed tariffis proposing discontinuance of the class basis and the establishment of commodity rates based on scale 14 in 77 I. C. C. 473. They are much below the class rates previously applicable. HELD, rates attacked not unreasonable, complaint dismissed. Mountain Valley Springs Co. v. C. R. I. & P. Ry., 120 I. C. C. 313.

(4l) Complainant attacked class rates charged on cotton pulp board, carloads, from Nitro, W. Va., to Marcus Hook and Lewiston, Pa., and to Roanoke, Norfolk and Newport News, Va., as unreasonable. Existing rates are on the basis of 90% of sixth class. HELD, rates attacked not unreasonable, complaint dismissed. Viscose Co. v. N. Y. C. R. R., 120 I. C. C. 352.

(4m) Complainant attacked fifth class rate on iron and steel articles, carloads, from Pittsburgh, Pa., to Jamestown and Falconer, N. Y., as unreasonable, unjustly discriminatory and unduly prejudicial. Present fifth class rate is 26.5c. HELD, rate attacked unreasonable to extent it exceeded 23c, reparation awarded. Jamestown Chamber of Commerce v. P. R. R., 120 I. C. C. 372.

(4n) Complainant attacked class rates and various commodity rates to Marshall and Jefferson, Tex., from Kansas City and St. Louis, Mo., Memphis, Tenn., and New Orleans, and from Atlantic seaboard over water and rail routes, as unduly prejudicial as compared with rates to Shreveport, La., and Texarkana, Tex. On Dec. 8, 1923 division 4 rendered its decision herein, 85 I. C. C. 115 and found the rates attacked unduly prejudicial to extent they exceeded rates in effect to Shreveport by certain differences determined so far as possible, by the scales prescribed in 55 I. C. C. 515, 77 I. C. C. 473, and found rates attacked unreasonable to extent they exceeded the aggregate of intermediates, reparation denied. Complainants made no attempt to prove damage by reason of the undue prejudice alleged. Under all the circumstances, a finding made so long ago, and which seems to have been designed primarily to place the points involved upon a proper relationship, should not be accepted ipso facto as proving intrinsic unreasonableness in rates attacked for the sole purpose of reparation. HELD, present rates on sugar, in carloads, from New Orleans to Marshall and Jefferson are just and reasonable, but unduly prejudicial to extent they exceed rates to Shreveport by more than 3 and 4c. HELD, rates higher than aggregate of intermediates unreasonable, reparation awarded. Marshall & Jefferson v. T. & P. Ry., 120 I. C. C. 455.

(4o) Complainant attacked fifth class rate of 41c charged during Sept. and Oct. 1922, 1923, 1924 and 1925 on dried seed peas, carloads, from Grace, Ida., to Smithfield, Utah, as unreasonable. Grace is on the O. S. L. 6 miles south of Alexander, Ida. Smithfield is on the O. S. L. and U. I. C. Shipments moved O. S. L. to Hyrum, Utah, thence U. I. C. 140.5 miles, charged fifth class 41c, claimed to be unreasonable to extent it exceeded rate of 27.5c. HELD, rate attacked unreasonable to extent it exceeded 38c, reparation awarded. Morgan Canning Co. v. O. S. L. R. R., 120 I. C. C. 466.

(4p) Complainant attacked double first class rate charged on 10 rolls of woven curled hair shipped from Michigan City, Ind., to Portland, Ore., on March 5 and 14, 1925 as unreasonable and unjustly discriminatory. Shipments weighed 520 and 535 pounds respectively. Rate charged $10.50 applicable on pads or padding, vehicle body or seat, curled hair, interlaced through paper or burlap. Contemporaneously the rating applicable on curled hair other than in rope form, in bags, less carloads, was double first class, and rate on machine compressed bales of loose curled hair, commodity rate of $3.45. Cotton felt, any quantity, with which curled hair woven on burlap competes, is rated first class. HELD, rating attacked unreasonable to extent it exceeded one and one half times first class, reparation denied. Blocksom & Co. v. M. C. R. R., 120 I. C. C. 521.

(4q) Complainant attacked class E rate of 13c charged on two cars of clam shells shipped in Sept. 1922 from Dixon Ill., to Fort Madison, Ia., as unreasonable, unduly prejudicial and in violation of the fourth section. The complaint was held in abeyance pending decision in 89 I. C. C. 560, wherein class E rates were found not unreasonable. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Mississippi Pearl Button Co. v. I. C. R. R., 120 I. C. C. 647.

(4r) Complainant attacked class rate charged on 11 cars of wooden handle material shipped from Meridian and Pyland, Miss., to Montour Falls, N. Y., between Dec. 1, 1922 and June 14, 1924 as unreasonable, unjustly discriminatory, unduly prejudicial and inapplicable. They were shipped loose, in bundles, without covering. Charged sixth class rate of 87.5c applicable on handles, wooden, n. o. i. b. n., in the rough, loose or in packages, c. l. min. wt. 36,000 pounds. Lumber rate is desired. HELD, rate at-

tacked applicable, complaint dismissed. Cronk & Carrier Mfg. Co. v. G. M. & N. Ry., 120 I. C. C. 663.

(4s) Complainant attacked class rates charged on 112 cars of sawdust from Clarksburg, W. Va., to Newark, N. J., between April 4, 1923 and Oct. 21, 1925 as unreasonable. Shipments moved B. & O. to Wilmington, Del., Pennsylvania beyond, 480 miles, charged sixth class rate of 28.5c. On Aug. 18, 1925 a rate of 25.5c was established. Sawdust is a very low grade commodity, the volume of movement from Clarksburg to Newark during the reparation period was comparatively heavy, and the rates between other points in that territory for similar distances were generally lower. HELD, rate attacked unreasonable to extent it exceeded 25.5c, reparation awarded. Maloney v. B. & O. R. R., 120 I. C. C. 705.

(4t) Complainant attacked class rates charged on carbide of calcium from Keokuk, Ia., to Kansas City, Mo., as inapplicable. Charged fifth class of 33.5c prior to June 1, 1925 and 32c thereafter. A commodity rate of 15.5c was in effect on line over one of the routes used. Calcium of carbide is not known commercially as lime and is produced by subjecting lime and coke to intense heat which fuses the calcium in the lime with the carbon from the coke. Only by a strained interpretation of the tariff could the commodity rate on lime be applied to calcium carbide. HELD, complaint dismissed. Kansas City Oxygen Gas Co. v. C. B. & Q. R. R., 120 I. C. C. 715.

(4u) Complainant attacked class rate charged on four cars of compoboard shipped between Feb. 9, 1918 and Feb. 1, 1919 from Minneapolis, Minn., to Omaha, Neb., as unreasonable. Short line distance is 357 miles, charged class B rates of 27c prior to June 25, 1918 and 34c thereafter. Complainant contended rates attacked unreasonable to extent they exceeded rates on wood pulp wall boards, which were made applicable on compoboard June 26, 1919. The fact that the commodity rates on wood pulp wall boards has been extended to compoboard does not of itself indicate that the class rates were unreasonable. HELD, rate attacked not unreasonable for the past, complaint dismissed. Disbrow & Co. v. Director General, 120 I. C. C. 720.

(4v) Complainant attacked class rates charged on cement building or roofing slabs reinforced with metal, in straight carloads, or in mixed carloads with roofing cement (other than liquid) and/or asphaltum, from Lincoln, N. J., to eastern trunk line and New England territories, as unreasonable. Claims for loss and damage are negligible. The carload rating of these slabs is sixth class. From Chicago, Ill., Wampum and other producing points in central territory to destinations in that territory, 75% of sixth class is generally applicable in straight or mixed carloads on the commodities involved. HELD, rates attacked for future unreasonable to extent they exceed 75% of sixth class. American Cement Tile Mfg. Co. v. A. & A. R. R., 120 I. C. C. 730.

(4w) Basis for class rates approved in Southern Class Rate Investigation, 109 I. C. C. 300, affirmed for application between official classification territory on one hand and Fulton, Mayfield, Boaz, Viola, and Hickory, Ky., on other. Mayfied Chamber of Commerce v. A. & W., 120 I. C. C. 137.

(4x) Class rates between official classification territory, on one hand and Fulton and Mayfield, Ky., on other found unduly prejudicial in favor of Ohio River crossings to extent they exceed corresponding rates contemporaneously maintained from or to Cairo or Metropolis, via whichever crossing the traffic moves from and to Fulton and Mayfield, by more than 24 cents on first class, and on the other classes by amounts bearing same percentage relationships to 25 cents as contemporaneous rates on the corresponding classes bear to first-class rates from or to Cairo or Metropolis, as the case may be, on the one hand, and points in official classification territory, on the other, resulting rates to be governed by official classification. Mayfield Chamber of Commerce v. A. & W., 120 I. C. C. 137, 144.

(4y) Class rates between Kansas City, Mo., Omaha, Nebr., and St. Paul and Minneapolis, Minn., on one hand, and Fulton and Mayfield, Ky., on other, found unreasonable and unduly prejudicial in favor of Ohio River crossings to extent they exceed corresponding rates contemporaneously maintained from or to Cairo or Metropolis by more than specified amounts herein prescribed. Reasonable maximum rates and nonprejudicial basis of rates prescribed for future and reparation denied. Mayfield Chamber

of Commerce v. A. & W., 120 I. C. C. 137, 144.

(4z) Sixth-class rate on lumber from Masten and Laquin, Pa., situated on the Susquehanna & New York R. R. to destinations in New England, found not unreasonable as compared with lower commodity rate contemporaneously applicable from points on other short lines located in same general origin territory. Formerly equal rates applied from points on all these short lines, but due to general increases under the Fifteen Per Cent Case 45 I. C. C. 303, this equalization was disrupted and subsequently restored. However, disruption of rate adjustment caused by general advances and subsequent establishment of rate sought afford no basis for award of reparation. Moreover, commission has recognized that lumber is rated sixth class in official classification and generally moves interterritorially on class rates. Central Pennsylvania Lbr. Co. v. S. & N. Y., 120 I. C. C. 239.

(5a) Sixth-class rate applicable on hollow building brick and hollow building tile from Haviland, Ohio, to Fort Wayne, Ind., found unreasonable to extent it exceeded lower commodity rate prescribed in General Brick Case, 68 I. C. C. 213, and established subsequent to movement between points here involved. Reparation awarded. Haviland Clay Works Co. v. C. N. R. R., 120 I. C. C. 241.

(5b) First-class l. c. l. rate on fresh beef hams, salted, from Chicago to Philadelphia, Pa., and Phillipsburg, N. J., found unreasonable to extent it exceeded rate on class lower than l. c. l. rate on fresh meats. See 85 I. C. C. 725. Application of a rate reasonable for fresh meats to meats partially cured by salting is unreasonable in view of protection against deterioration afforded by the salting process. Guggenheim Bros. v. B. & O., 120 I. C. C. 340.

(5c) Sixth-class rates on sulphuric acid, in tank cars, from La Salle, Ill., to Washington Court House, Ohio, found not unreasonable as compared with rates from and to various other points for comparable distances. The comparisons submitted were unaccompanied by a showing of any movement or of conditions influencing their establishment; moreover, sulphuric acid moves on the sixth-class basis throughout c. f. a. territory, except where lower rates have resulted from circumstances which are not a factor in instant case. Hamm Co. v. B. & O., 120 I. C. C. 345.

(5d) Sixth-class rates on commercial fertilizers between points in c. f. a. territory found not unreasonable or otherwise unlawful in the past as compared with rates in the South and West, but for future found unreasonable to extent they exceed distance rates herein prescribed. As volume of movement is substantial and increasing and use of fertilizers is an adjunct to successful farming, rates thereon should be more on a parity with those prescribed in 113 I. C. C. 389 in southern territory. However, on evidence presented, the commission is not convinced that sixth-class rate produces rates which might be condemned as exceeding the limits of maximum reasonableness if evidence covering conditions in c. f. a. territory in general was fully presented, and scale prescribed is, therefore, without prejudice to any future findings which may be made on a more comprehensive record. Ohio Farm Bureau Federation v. A. & W., 120 I. C. C. 361.

(5e) Fifth-class rates on iron and steel articles from Pittsburgh, Pa., and points taking same rates to Jamestown and Falconer, N. Y., found unreasonable and unduly prejudicial as compared with lower so-called short-haul commodity rates contemporaneously maintained from and to various other points for comparable distances. Reasonable and nonprejudicial rates prescribed for the future and reparation awarded. Jamestown Chamber of Commerce v. P. R. R., 120 I. C. C. 372.

(5f) Class rates on water meters, l. c. l., from Boston, Mass., to Pacific coast points, found not unreasonable as compared with lower commodity rates on numerous articles on which the risk, weight, density, and value per pound are less favorable to carriers than complainant's product, or with commodity rates established subsequent to movement. The commodities with which comparisons are made are shown to be water-compelled rates and present commodity rates on meters were established for same reason. Hersey Mfg. Co. v. B. & A., 120 I. C. C. 413.

(5g) Class rates on Compo-board from Minneapolis, Minn., to Omaha, Nebr., found not unreasonable as compared with lower commodity rates contemporaneously in effect between same points on wall board, box board, fiber

board, and pulp board. Earnings under rates assailed not unduly high when compared with those under rate found not unreasonable on Compo-board from Minneapolis to Kansas City, Kans., in 80 I. C. C. 185; moreover fact that commodity rates on fiber board, pulp board, and wall board were subsequently extended to include Compo-board does not of itself indicate that class rates previously applicable were unreasonable. Disbrow & Co. v. Director General, 120 I. C. C. 720.

(5h) Fact that class rates in eastern territory have not as yet been passed upon by commission and are not upon a distance basis, is not a sufficient reason why they should not be given consideration in the determination of a reasonable maximum level for rates on cement slabs. American Cement Tile Mfg. Co. v. A. & A. R. R. Corp., 120 I. C. C. 730, 733.

(5i) Complainant attacked class rate charged on burlap and cotton bags, straight or mixed carloads, from Jersey City, N. J., to Philadelphia, Pa., as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of section four. Complainant is located on the Central of New Jersey, shipments moving between Dec. 19, 1923 and May 27, 1924, via that line to Bound Brook, N. J., and Reading beyond, 96 miles, charged third class 28.5 cents. At time of movement a commodity rate of 25 cents on burlap bags was maintained between Jersey City and Norfolk, Va., 348 miles, and a commodity rate of 19 cents on burlap bagging, carloads, from Jersey City to Philadelphia, and effective Oct. 25, 1925 the latter rate was established on the commodities in question. HELD, rate attacked unreasonable to extent it exceeded 19 cents, reparation awarded. Riegal Sack Co. v. C. R. R. of N. J., 122 I. C. C. 78.

(5j) Complainant attacked class rate of 19 cents charged on numerous cars of printing paper from Newburgh and Salisbury Mills, N. Y., to Montclair, N. J., between May, 1923 and Sept., 1924 as unjust and unreasonable. Movement 70 miles, charged sixth class rate of 19 cents. Rate of 11.5 cents was applicable from the same points of origin to Newark, Nutley, Rutherford and Belleville, N. J., all within the general vicinity of Montclair. HELD, rate attacked unreasonable to extent it exceeded 13.5 cents, reparation awarded. Holden Paper Co. v. Erie R. R., 122 I. C. C. 130.

(5k) Complainant attacked rates charged on numerous carload and less carload shipments of cowpeas from South Carolina to New Orleans, La., between Dec. 11, 1923 and Dec. 8, 1925 as unreasonable, unduly prejudicial and in violation of section four. Cowpeas are rated class D in southern classification. Prior to Feb. 20, 1922 the commodity rates were lower than the class D rates, but with the readjustment of the class rates in this territory pursuant to 64 I. C. C. 264 the commodity rates became higher than the class rates. The record indicates that all lines participating in this traffic from South Carolina to New Orleans, except the Southern, have canceled the commodity rates and applied the lower class rates. HELD, rates attacked unreasonable to extent they exceeded class D rates, reparation awarded. Gay Sullivan & Co. v. A. G. S. R. R., 122 I. C. C. 201.

(5l) Complainant attacked class rates charged on 21 cars of wood pulp from Philadelphia, Pa., to Fort Edward, N. Y., between March 26, 1923 and Feb. 24, 1924 and on 81 cars of wood pulp from Baltimore, Md., to Fort Edward between Oct. 7, 1922 and May 9, 1924 as unreasonable and in violation of section four. Fort Edward is on the D. & H. about 55 miles north of Albany, N. Y. Distances ranged from 387 to 412 miles from Philadelphia and from 446 to 550 miles from Baltimore, charged 27 and 28.5 cents from Philadelphia and 30 and 30.5 cents from Baltimore. Wood pulp is a low grade commodity used in the manufacture of newsprint and other paper products and moves in substantial volume throughout the year. A commodity rate of 26.5 cents was made effective from Baltimore on July 20, 1924. HELD, rate attacked not unreasonable, complaint dismissed. International Paper Co. v. B. & O. R. R., 122 I. C. C. 440.

(5m) Complainant alleged that the third class rate of 70 cents on less carload shipments of printing and wrapping paper from Niagara Falls, N. Y., to Lynchburg, Va., was and is unreasonable and unduly prejudicial. Three moved N. Y. C., to Newberry Jct., Pa., Pennsylvania to Potomac Yard, Va., and Southern beyond, 700 miles. Fifteen moved N. Y. C., to Charleston, W. Va., C. & O., beyond, 799 miles. Prior to Nov. 28, 1924 the less carload rates from

Niagara Falls through Lynchburg in connection with the N. & W., to Lone Jack, 779 miles were 51 and 42 cents, to South Boston, Va., 835 miles, 65 and 54 cents, in connection with Southern to Danville, Va., 764 miles, 65 and 56 cents or fourth class on printing paper and fifth class on wrapping paper under the southern classification. On that date the rates to those points were made 70 cents. Printing and wrapping paper, in less carload quantities, uniformly takes third class in official territory, and defendants show that the class rates to Lynchburg compare favorably with corresponding rates between other points in that territory. HELD, rates attacked not unreasonable or unduly prejudicial, reparation denied, complaint dismissed. Lynchburg Chamber of Commerce v. N. Y. C. R. R., 123 I. C. C. 15.

(5n) Complainant attacked sixth class rate of 11.5 cents charged on four cars of logs, shipped Jan. 7 and 30 and Feb. 4, 1924 from Huntertown and New Era, Ind., to Hicksville, O., as unreasonable and unduly prejudicial. Shipments moved N. Y. C., to Auburn Jct., Ind., B. & O., beyond. In 85 I. C. C. 533, the commission found rates on logs in central territory unreasonable to extent they exceeded 65% of sixth class. HELD, rates attacked unreasonable to extent they exceeded 8 cents, reparation awarded. Crook Son & Co. v. N. Y. C. R. R., 123 I. C. C. 93.

(5o) Complainant alleged as unreasonable and unduly prejudicial class rates maintained by defendants on carload and less than carload traffic from Bluefield, W. Va., to destinations on the Virginian in West Virginia between Princeton and Oak Hill Junction. Bluefield is in southern West Virginia on the main line of the Norfolk & Western. A branch line of that carrier extends from Bluefield through a small portion of Virginia to Matoaka, W. Va., 27 miles where it connects with the main line of the Virginian. The line of the latter carrier extends north from Matoaka and connects with the C. & O., at Deepwater, W. Va. Princeton is about 16 miles southeast of Matoaka and Oak Hill Junction, the most distant destination, is about 61.5 miles north of Matoaka, and 88.5 miles from Bluefield. The rates are the full combinations on Matoaka. On less carload traffic there is in addition a charge for transfer at Matoaka of 3 cents per 100 pounds. The rates from Princeton to destinations on the N. & W., are made in the same manner. The present disparity between the rates here attacked, on the one hand, and the local distance rates of the N. & W. and the Virginian and the joint rates from C. & O. points to Virginian destinations on the other hand, is clearly unwarranted. Transportation conditions throughout this territory are substantially the same. HELD. rates assailed unreasonable and unduly prejudicial to extent they exceed 30 miles and under first class 57 cents to 87 cents for 90 miles. Bluefield Traffic Bureau v. N. & W. Ry., 123 I. C. C. 653.

(5p) Complainant attacked rates charged on wrought iron pipe, well drilling rigs, oil well supplies and outfits, gas and steam engines, boilers, and steel tanks, carloads, from and to points in northern Louisiana and southern Arkansas as unreasonable and unduly prejudicial. All of the points of origin and destination are in or near the oil fields of northwestern Louisiana and southern Arkansas, most of the destinations being in the Smackover field. Charged on pipe at joint fifth class rates. Commodity rates were collected on two shipments from Smackover and Kenova, Ark., to Couchwood, La. Fifth class rate of 56.5 cents was collected on shipment from Oil Hill, Ark., to Lewis, La., whereas a commodity rate was applicable. Joint class A rates were collected on the engines, boilers, and oil well outfits and supplies. Fifth class rate of 38.5 cents applicable on steel tanks from Haynesville, La., to Louann, Ark. The basis claimed was established on Nov. 27, 1923. Class A rates apply on boilers and gas or steam engines in straight carloads throughout practically the entire southwestern territory. HELD, rates attacked on boilers, gas engines, and steam engines not unreasonable or unduly prejudicial. Following Crawford & Sebastian v. C. R. I. & P. Ry., 92 I. C. C. 453, rates charged on the other articles unreasonable to extent they exceeded those subsequently established, reparation awarded. Standard Oil Co. v. C. R. I. & P. Ry., 123 I. C. C. 669.

(5q) Complainant attacked fifth class rate of 97 cents charged on four cars of brass ingots shipped during April, 1924 from Charleston, S. C., to Pittsburgh, Pa., were unreasonable and in violation of section four. Shipments moved as

routed by shippers A. C. L., to Richmond, Va., thence R. F. & P., and Pennsylvania. Combination was 64 cents to Richmond and 22 cents beyond. The 22 cent rate was not applicable via route shipment moved. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Bell Bros. v. A. C. L. R. R., 123 I. C. C. 683.

(5r) Rates on green salted hides, found not unreasonable as compared with rates found reasonable on packing-house products and prescribed for application on hides in 29 I. C. C. 449 and other cited cases. Peyton Packing Co. v. A. & S., 122 I. C. C. 3.

(5s) Fifth-class rates assessed on petroleum products from Bayonne and Tremley Point, N. J., to Fresh Pond, N. Y., all Group A points, found unreasonable as compared with commodity rates from various refining points to destinations in eastern trunk-line and New England territories; as compared with commodity rates contemporaneously in effect from Point Breeze, a Philadelphia group point, to Fresh Pond, established in compliance with commission's findings in Transcontinental Oil Co., 89 I. C. C. 738; and to extent it exceeded lower rate subsequently made effective to all Group A points, some of which involve a materially longer haul than to Fresh Pond. Reparation awarded. Transcontinental Oil Co. v. C. R. R. Co. of N. J., 122 I. C. C. 61.

(5t) Sixth-class rate on printing paper from Newburgh and Salisbury Mills, N. Y., to Montclair, N. J., found unreasonable as compared with lower corresponding rates contemporaneously in effect to Newark, Nutley, Rutherford, and Belleville, N. J., points in the general vicinity of Montclair. Reasonable rate prescribed for future and reparation awarded. Holden Paper Co. v. E. R. R., 122 I. C. C. 130.

(5u) Fifth-class rate on crude glycerine (concentrated spent lye) from Milwaukee, Wis., to Union Stock Yards, Chicago, found unreasonable as compared with lower rates contemporaneously in effect from various other Illinois and Iowa points to same destination and to extent it exceeded lower commodity rate subsequently established. Reparation awarded. Armour & Co. v. C. M. & St. P., 122 I. C. C. 380, 381.

(5v) Class rates on wrapping paper and paper articles from Cincinnati, Ohio, to destinations in Missouri, Kansas, Iowa, Nebraska, and Colorado, found unreasonable and unduly prejudicial as compared with lower commodity rates contemporaneously in effect from Fox River group prescribed in 66 I. C. C. 571, to same destinations. However, as practice of basing interterritorial rates on a combination of factors to and from the Mississippi River has been in effect for many years and rates assailed, judged as combination rates, do not produce excessive earnings, they were not unreasonable in the past and no damage has been shown as a result of undue prejudice which may have existed. Reasonable and nonprejudicial rates prescribed for future. Fox Paper Co. v. A., T. & S. F., 122 I. C. C. 399.

(5w) Class rate on wood pulp from Philadelphia and Baltimore to Fort Edward N. Y., found not unreasonable as compared with lower commodity rates from certain Philadelphia piers, New York, and Boston to same destination, or with commodity rates in effect generally from Philadelphia and Baltimore to various New York and Canadian destinations. While carriers subsequently established a commodity rate lower than that charged, assailed rate compares favorably with rates approved by commission on this commodity in 104 I. C. C. 327 and other cases. International Paper Co. v. B. & O., 122 I. C. C. 440.

(5x) Sixth-class rates on wood pulp from Wilmington, Del., to points in New England territory, found unreasonable as compared with lower commodity rates contemporaneously in effect from and to various other points in same general territory. Record indicates that nowhere in territory under consideration does wood pulp actually move regularly on basis so high as sixth class or even 90 per cent of sixth class. Scale of maximum reasonable rates prescribed for future and reparation awarded. Jessup & Moore Paper Co. v. B. & A., 122 I. C. C. 543.

(5y) Class rates on metallic bedsteads and springs from Rome, N. Y., to points in official territory, based on a minimum weight of 20,000 pounds, found not unreasonable as compared with commodity rates, based on same minimum weight, from Atlanta, Ga., to Boston, New York, Philadelphia, and Baltimore, and from Rome to Chicago. Having in mind the difference in transportation conditions between these territories and further difficulty of making intelligent comparisons between class rates in offi-

cial territory and commodity rates in southern and western territories, it follows that evidence of such a nature has little probative force. Rome Metallic Bedstead Co. v. B. & A., 122 I. C. C. 733, 737, 738.

(5z) Third-class rates on printing and wrapping paper l. c. l., from Niagara Falls, N. Y., to Lynchburg, Va., found not unreasonable or unduly prejudicial as compared with lower l. c. l. rates to Lone Jack, South Boston, and Danville, Va., to which Lynchburg is intermediate. Carriers showed that rates from Niagara Falls to Lynchburg compare favorably with corresponding rates between other points in that territory. Moreover, fourth-section departures were protected by appropriate applications, and were subsequently removed by increasing the rates from the farther-distant points to level of rates to Lynchburg. Lynchburg Traffic Bureau v. N. Y. C., 123 I. C. C. 15.

(6a) Fifth-class rate on brass ingots from Chicago, Ill., to Sturgis, Mich., found not unreasonable as compared with lower commodity rate equal to sixth class subsequently established by carriers under a general readjustment of rate in c. f. a. territory, which basis commission approved in 96 I. C. C. 351. In cited case the rate from Chicago to Sturgis was not directly involved, and revision suggested was in nature of a general readjustment which might require both increases and reductions. Complainant offered comparisons with a number of miscellaneous commodities for similar distances, but made no showing with respect to transportation, competitive, and other conditions attending their movement. Carriers, on the other hand, showed that when these shipments moved the general rate basis on brass ingots in c. f. a. territory was fifth class; also that the same basis of rates apply on numerous commodities, which move in substantially greater volume than brass ingots. Hartman Ingot Metal Co. v. C., B. & Q., 123 I. C. C. 20.

(6b) Interests of neither public nor carriers are served by maintaining carload class rates on such high bases that they are rarely used, making it necessary to follow the practice which has prevailed for many years in the Southwest of establishing commodity rates on practically all commodities which move in carloads in material volume. It is due to this practice that many discrepancies in rates which are subject of complaint have arisen, and existing widespread dissatisfaction with complexity of tariffs in the Southwest arises out of prevalence of commodity rates and failure to adjust them on a basis which fairly relates the various points which compete with one another. In the circumstances, commission is of the opinion that it should follow principle that carload class rates in the Southwest should be prescribed which are capable of moving many of the carload commodities, as is the case today in official and western trunk-line territories, thus making it possible to eliminate from tariffs thousands of commodity rates. Consolidated Southwestern Cases, 123 I. C. C. 203, 234.

(6c) Generally speaking, same class percentages should apply throughout any one classification territory, and as rapidly as may be possible, progress should be made to harmonize classification ratings and class percentages throughout the country. Consolidated Southwestern Cases, 123 I. C. C. 203, 233, 234.

(6d) In so far as considerations which govern class percentages are concerned, there are no differences in conditions as between the Southwest and western trunk-line territory. Accordingly, substantially same class percentage should apply in both these territories. Consolidated Southwestern Cases, 123 I. C. C. 203, 234.

(6e) Class and commodity rates applying to, from, or between points in the Southwest and Kansas-Missouri territory found to be in generally chaotic condition, and tariffs there applying complicated and unsatisfactory. Comprehensive system of rates based on distance, and embodying uniform class percentages so adjusted as to permit greater carload movement on class rates needed to correct the situation. Consolidated Southwestern Cases, 123 I. C. C. 203, 217, 235.

(6f) Rates on each commodity in any one class should be in reasonable proportion to rates on other articles in same class, and generally speaking, rates on each article should be determined with reasonable regard for rates on other articles classified the same. Consolidated Southwestern Cases, 123 I. C. C. 203, 306, 307.

(6g) Fifth-class rate assessed on granite monument bases, found unreasonable to extent it exceeded lower commodity rate contemporaneously in effect and published in same tariff subject to shipper's declaration of value in writing.

In conformity with principle announced in 33 I. C. C. 370; 39 I. C. C. 483, duty rested upon carrier's agent to advise complainant of alternative rates and secure his signature to a proper bill of lading. This the agent failed to do. Reparation awarded. Lafayette Granite Co. v. B. & M., 123 I. C. C. 543.

(6h) Fifth-class rates on paper tablets and papeteries from East Hartford, Conn. to Baltimore and Washington, found not unreasonable but unduly prejudicial to extent they exceeded lower commodity rates contemporaneously in effect from Holyoke, Mass., a farther distant point. Carriers showed that New England points of origin are grouped with respect to class rates to Baltimore and Washington and that distance is, therefore, not a controlling factor. Commodities involved move generally from this territory under fifth-class rates and since class rates from Holyoke and East Hartford are the same, it is carrier's intention to place rates from Holyoke on the class basis. Taylor-Atkins Paper Co. v. N. Y., N. H. & H., 123 I. C. C. 583.

(6i) Class rates on interstate traffic from Bluefield, W. Va., to destinations in West Virginia on the Virginia Ry., between Princeton and Oak Hill Junction, W. Va., found unreasonable and unduly prejudicial as compared with local distance rates contemporaneously maintained by Norfolk & Western and the Virginian; with joint rates from Charleston, W. Va., on the Chesapeake & Ohio to destinations on the Virginia; and to extent they exceed distance rates prescribed. Present disparity between rates here under consideration is clearly unwarranted as transportation conditions throughout this territory are substantially the same. Reasonable and nonprejudicial distance rates prescribed for future. Bluefield Traffic Bureau v. N. & W., 123 I. C. C. 653.

(6j) Class A rates on gas engines, steam engines, and boilers between points in Louisiana and Arkansas, found not unreasonable or unduly prejudicial. Only evidence introduced to support allegation of unreasonableness was that articles named could be mixed with other oil-well supplies at rates applying on latter commodity. However, Class A rates were prescribed in 77 I. C. C. 473, for application on boilers and gas or steam engines throughout practically the entire southwestern territory and evidence here presented does not warrant a different finding. Standard Oil Co. v. C., R. I. & P., 123 I. C. C. 669.

(6k) Fifth-class rates on manufactured iron and steel articles from Youngstown, Newton Falls, and Niles, Ohio, and points grouped therewith, to Buffalo and other western New York and northwestern Pennsylvania points, found unreasonable as compared with lower rates contemporaneously in effect between points in c. f. a., territory; from Pittsburgh district to St. Louis under distance scale prescribed in 96 I. C. C. 682; from Buffalo to destinations in Youngstown district; with aggregate of intermediate rates; and to extent they exceeded distance rates prescribed, and unduly prejudicial to extent they exceed the contemporaneous rates from Buffalo to same destinations. Reasonable and nonprejudicial distance rates prescribed for future and reparation awarded. Concrete Steel Co. v. B. & O., 123 I. C. C. 677.

(6l) Complainant attacked fifth class rates charged on tin oxide carloads from East Liberty, Pa., to Sheboygan, Wis., as unjust, unreasonable and unduly prejudicial. East Liberty takes Pittsburgh rates. Shipments moved Pennsylvania to Toledo, P. M. to Ludington, Mich., by car ferry across lake to Manitowoc, Wis., and C. & N. W. beyond, 627 miles, charged fifth-class rate of 42c prior to Sept. 10, 1925 and 40.5c on and after that date. They were alleged to be unreasonable in that they exceeded the rates on pig tin. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Federated Metals Corp. v. Pennsylvania R. R., 126 I. C. C. 144.

(6m) In Miles Medical Co. v. B. & O. 118 I. C. C. 33, the Commission found the third class rates charged on drugs and medicines, carloads, from Elkhart, Ind., to New York, N. Y., and Philadelphia, Pa., were not unreasonable or otherwise unlawful, but were applicable during a certain period, and inapplicable during a certain other period. Effective July 15, 1926 the carriers voluntarily established a commodity rate of 71c which is satisfactory to complainant. Case reopened upon petition of complainant that rates charged from June 15, 1925 to Jan. 25, 1926 were applicable rates and not unreasonable, and finding of Commission to that effect was in error. It now develops for the first

time that the tariffs publishing the rate of 70c from Kalamazoo, Mich., to New York and Philadelphia between June 15, 1925 and July 14, 1926 also published a rule in conformity with rule 77 of tariff circular 18 A. HELD, class rates charged from June 15, 1925 to July 14, 1926 applicable rates but unreasonable to extent they exceeded commodity rates from Kalamazoo under rule 77, reparation awarded. Miles Medical Co. v. B. & O. R. R., 126 I. C. C. 159.

(6n) Complainant alleged first class rate of $1.42 charged on one carload of box board, flat, imprinted, to be used as trouser presses shipped Feb. 2, 1924 from Chicago, Ill., to New York, N. Y., was unreasonable and inapplicable. This rating was provided for paper goods, n. o. i. b. n., any quantity. Sixth allegation abandoned. Rate of 94.5c applied on fiber board boxes, knocked down, flat, printed, carloads. HELD, rate attacked unreasonable to extent it exceeded 94.5c, reparation awarded. Chicago Carton Co. v. N. Y. C. R. R., 126 I. C. C. 457.

(6o) Respondents proposed to cancel the application of class rates on sugar, in carloads, between points in Arkansas and Texas, on the one hand, and points in Oklahoma on the other. Present rates are fifth class. Within Texas, interstate and intrastate, commodity rates apply. Respondent proposal to cancel the carload class basis is to prevent shippers from defeating the through charges. HELD, schedules not justified. Cancellation of class rates on sugar, 126 I. C. C. 527.

(6p) Complainant alleged that the rates on potatoes, in carloads from Creeds, Va., Pungo, Va., Pleasant Ridge, Va., Fentress and Hickory Ground, Va., and from Barnetts Creek, N. C., to New York stations were and are unreasonable, unduly prejudicial and in violation of section four. Charged combination rates basing on Norfolk. Joint commodity rates on potatoes apply from points on defendants main line, Fentress to Elizabeth City, to Buffalo, N. Y., and destinations taking Buffalo rates, including Albany, Binghamton, Schenectady and Syracuse. Potatoes, in carloads, are rated sixth class in southern classification and joint sixth class rates apply from the points of origin to the destinations here considered, but the tariff publishing these rates prohibits their use on potatoes. Generally the class rates are lower. HELD, rates unreasonable to extent they exceeded class C rates, reparation awarded. Caruso Rinella Battaglia Co. v. N. S. R. R., 126 I. C. C. 555.

(6q) Complainant alleged fifth class rate of $1.03 charged on cement laundry tubs and parts thereof, carloads, from Chicago, Ill., to New Orleans, La., between Oct. 13, 1923 and Feb. 16, 1925 was unreasonable and unduly prejudicial. Shipments moved 912 miles. A joint commodity rate of 81c applied on plumbers goods generally, including enameled iron and porcelain laundry tubs, in carloads, effective Dec. 20, 1923. Effective May 2, 1925 the rate of 81c was made applicable on cement laundry tubs. They are securely packed and the loss and damage claims are negligible. Prior to Oct. 20, 1923 the rate charged was higher than the St. Louis combination. The rate attacked was higher than the rate established July 15, 1924 on the same commodity to New Orleans from Sheboygan, Wis., a point 137 miles farther distant than Chicago. HELD, rate charged unreasonable to extent it exceeded a rate of 81c, reparation awarded. Chicago Granatine Mfg. Co. v. I. C. R. R., 126 I. C. C. 572.

(6r) Class rates vary widely in the uses to which they are put and in the theories upon which they are constructed. Often they are designed chiefly for less than carload traffic and sporadic carload shipments, while in other cases they are used extensively for the movement of carload traffic in volume. They are apt to be a misleading index of general rate level. New England Divisions, 126 I. C. C. 579, 606.

(6s) Complainant attacked sixth class rate of 28.5c charged and commodity rate of 24.5c on waste paper, carloads, from Boston, Mass., to Thomson, N. Y., as unreasonable, unjustly discriminatory and unduly prejudicial. Thomson is on the G. & J., 21 miles north of Johnsonville, N. Y., the junction of that line with the B. & M. Waste paper in carloads, is rated sixth class, in official classification, but by exception to the classification a minimum of 20,000 pounds is published. The 24.5c rate was established pursuant to United Paperboard Co. v. G. & J. Ry., 81 I. C. C. 591, decided July 20, 1923. While the record clearly shows that it is now too high, it does not indicate that it should be found unreasonable for a period extending back to March 8, 1924, or two years

prior to the filing of the complaint. HELD, 24.5c rate not unreasonable prior to March 8, 1926, the date complaint was filed, but since that date was and will be unreasonable to extent it exceeded 21.5c, reparation awarded. United Paperboard Co. v. B. & A. R. R., 126 I. C. C. 751.

(6t) Proposed increased class and commodity rates between certain points in Iowa and South Dakota and in Colorado and Utah, found not justified. Proposed rates would increase all class rates as well as commodity rates on grain and products and other articles. As there is a surplus of coarse grain in South Dakota and Iowa which must be moved, proposed rates would naturally greatly affect, if not completely destroy, this movement. Moreover, in 109 I. C. C. 27, a similar proposal was found not justified and protestants urge that no such readjustment as proposed should now be made in view of investigation proceedings now pending. Rates from Iowa and South Dakota, 126 I. C. C. 81.

(6u) Third-class rates on adhesive paste in jars, tins, and metal tubes, from Columbus, Ohio to Dallas, Tex., found not unreasonable as compared with lower commodity rates contemporaneously in effect on insecticides or fungicides, including calcium-arsenate or lead-arsenate paste. Carriers urged that rates on latter commodities are low and are maintained because use of these articles by the farmer tends to increase the products of agriculture and also showed that complainant's commodity moves to Texas destinations and from Detroit-Cleveland or St. Louis and Chicago territories generally, on third or fifth-class basis depending upon manner of packing. Practical Drawing Co. v. N. Y. C., 126 I. C. C. 133.

(6v) Second-class rate on furniture frames from Chicago, to Burlington, Iowa, found unreasonable to extent it exceeded lower commodity rate contemporaneously in effect from Chicago to New London, Iowa, a farther distant point to which Burlington is directly intermediate. Lower rate was subject to Rule 77 of Tariff Circular 18-A and commission has consistently held that publication of rates subject to that rule is a substantial compliance with long-and-short-haul provision of fourth section of the act, and affords an adequate basis for an award of reparation on shipments moving to intermediate points at charges higher than those to farther distant points. Reparation awarded. Burlington Shippers Asso. v. C., B. & Q., 126 I. C. C. 179.

(6w) Proposed cancellation of class rates on sugar between points in Arkansas and Texas on the one hand, and Oklahoma, on the other, in order to prevent shippers from defeating through charges found not justified. While there is no c. l. movement of sugar on the class basis, protestants fear that occasion may arise for shipping a mixed carload of groceries, and if the class basis were canceled the fourth-class l. c. l. instead of the fifth-class c. l. rate would apply on any sugar contained in the car. However, one of the fundamental functions of class rates is to provide a basis for possible shipments. Moreover, interstate rates on sugar between points here involved were prescribed or approved in 123 I. C. C. 203, and their establishment will correct difficulties which suspended schedules intend to correct. Cancellation of Class Rates on Sugar, 126 I. C. C. 527.

(6x) Upon premise that class rates are the "normally reasonable rates which, in the absence of controlling reasons to the contrary, would be the rates on which traffic would move," and hence afford a fair test of transportation conditions and general rate levels of various territories, carriers reach conclusion that commission itself has recognized that "conditions west of Chicago call for a much higher basis of rates than in the territory east of Chicago," HELD: Premise is not sound as class rates vary widely in the uses to which they are put and in the theories upon which they are constructed. See 109 I. C. C. 300, 303. Often they are designed chiefly for l. c. l. traffic and sporadic carload shipments, while in other cases they are used extensively for the movement of carload traffic in volume. They are apt to be a misleading index of general rate-level. New England Divisions, 126 I. C. C. 579, 606.

(6y) Joint sixth-class rates on building and agricultural lime from stations on the Baltimore & Ohio to points on the Washington, Baltimore & Annapolis R. R., found unreasonable as compared with lower rates contemporaneously in effect between various Virginia, Maryland, and Pennsylvania points and to extent they exceeded joint commodity rates subsequently established. Washington Build-

ing Lime Co., v. B. & O., 128 I. C. C. 9, 11, 13.

(6z) Class rates as they now exist are frequently not accurate indicia of general rate levels or transportation conditions of different sections of the country. Oklahoma Portland Cement Co. v. D. & R. G. W., 128 I. C. C. 63, 75.

(7a) Complainants attacked class rates charged on scrap brass and brass ingots or pigs, carloads, between New York and New York rate points, Pittsburgh, Pa., rate points and Meadville, Pa., among others, as unreasonable. In the original report, 95 I. C. C. 104, rates found to be unreasonable to extent they exceeded the rates in the reverse direction, and reparation awarded. Case was reopened solely as to the reasonableness of the rates on shipments from New York and New York rate points to Pittsburgh and East Liberty. Fifth class rates applicable. The attacked rates were less than the rates in the reverse direction except prior to April 1, 1922 when the rates were the same. HELD, rates attacked prior to May 3, 1922 not unreasonable; from May 3, 1922 to Aug. 14, 1925 unreasonable to extent they exceeded 25c prior to July 1, 1922 22.5c on and after that date on scrap brass, 22.5c on scrap copper from July 1, 1922 to Nov. 26, 1923, and 23c on scrap copper from Nov. 27, 1923 to Aug. 14, 1925, on and after that date not unreasonable, reparation awarded. Union Smelting & Refining Co., v. C. R. R. of N. J., 128 I. C. C. 129.

(7b) Complainant attacked class rates charged on store and office fixtures in carloads from Columbia, Ga., to Paducah, Ky., Memphis, Tenn., and New Orleans, La., prior to and including July 14, 1925 as unreasonable and unduly prejudicial to Columbus. Furniture is rated third class and third class rates were charged. After these shipments moved, commodity rates were established, minimum 12,000 pounds. HELD, rates attacked not unreasonable or unduly prejudicial. National Show Case Co., v. S. A. L. Ry., 128 I. C. C. 193.

(7c) Third-class rates on store and office fixtures from Columbus, Ga., to Paducah, Ky., Memphis, Tenn., and New Orleans, La., found not unreasonable or unduly prejudicial as compared with those from Atlanta, Louisville, St. Louis, and Chicago, or with lower commodity rates subsequently established. Carriers stated that latter were temporary rates in both directions on a reasonable basis; were made with relation to rates from Atlanta; and should not be used as a basis for condemning rates charged. Moreover, earnings under rates assailed can not be regarded as high when value, character, and light loading of this furniture is considered, nor can it be said that it is a commodity which would call for commodity rates, and since record consists wholly of rate and distance comparisons, a finding of undue prejudice is not warranted. Natl. Show Case Co. v. S. A. L., 128 I. C. C. 193.

(7d) Complainant alleged fifth class rates on window glass, carloads, from Hartford City, Ind., to Minnesota, North Dakota, South Dakota, Iowa, Missouri, Kansas and Nebraska, are unreasonable and unduly prejudicial. Joint fifth class rates are applicable from Hartford City to St. Paul, Minneapolis, Duluth, and destinations on the Missouri river, and combination fifth class rates to points beyond. The western factors of the combination rates are proportional rates. From southwestern points to the same destinations commodity rates are applicable which, to any one destination, are the same from all of those points. The rates from Hartford City and other points in central territory to destinations in western trunk line territory are generally upon the fifth class basis. The disturbance of the class rate adjustment applicable to the numerous destinations covered by the complaint is not warranted upon the present meager record. It is not shown to what extent, if any, the carriers handling complainants traffic control the rates from the southwest. HELD, rates attacked not unreasonable or unduly prejudicial, complaint dismissed. American Window Glass Co., v. A. T. & S. F. Ry., 128 I. C. C. 222.

(7e) Following 96 I. C. C. 289 and 115 I. C. C. 27, second-class l. c. l. rates on printed, waxed wrapping paper between points in official territory found unreasonable to extent they exceeded third class. Reasonable rates prescribed for future and reparation awarded. Ward Baking Co., v. P. R. R., 128 I. C. C. 231.

(7f) Sixth-class rate on iron from Pedricktown, N. J., to Catasauqua, Pa., found unreasonable as compared with lower rates on same commodity between other points in same territory, and to extent it exceeded lower commodity rates subsequently established. Reparation

awarded. Davies & Thomas Co., v. C. R. R. Co., of N. J., 128 I. C. C. 241.

(7g) Complainant attacked class E rate charged of 11c on carloads of gravel, from Holliday, Kas., to Standish, Mo., during Oct. 1925 83 miles, as unreasonable and unduly prejudicial. Effective Feb. 1, 1926 defendant established a commodity rate of 6c, which removed the fourth section departure. There was in effect at time of movement and is now a rate of 5.5c on sand and gravel from Grinter, Muncie and Morris, Kas., 81, 79 and 80 miles, respectively to Standish. These are competing sand and gravel producing points located in the vicinity of Holliday. HELD, rate attacked unreasonable to extent it exceeded 5.5c, reparation awarded. Spencer Co., v. A. T. & S. F. Ry., 128 I. C. C. 346.

(7h) Complainant attacked class rates charged on bar iron, less carloads, from Knoxville, Tenn., to Georgia as unreasonable and unduly prejudicial as compared with rates from Birmingham, Ala. Generally speaking the rates assailed are sixth class, while the rates from Birmingham to the same destinations are less carload commodity rates. The rates from Birmingham are relatively lower than those from Knoxville, distance considered. HELD, rates attacked not unreasonable but are unduly prejudicial. Knoxville Iron Co., v. L. & N. R. R., 128 I. C. C. 513.

(7i) Complainant attacked fifth class rates charged on three cars of calcium arsenate shipped in Feb., Mar. and April 1924 from Middleport, N. Y., to Minden and Shreveport, La., as unreasonable. One shipment moved to Minden over N. Y. C., Newark, N. J., Transmarine Corp, Port Arthur, Tex., T. & F. S., K. C. S., Shreveport and L. & A. to destination. The two shipments to Shreveport moved over the same route except that the L. & A. did not participate in the haul, charged $1.11 to Minden and @ 1.04 to Shreveport. Rate to Waskum, Tex., 22 miles west of Shreveport was 90c and subsequently established to Shreveport. The rates to the Texas points were not applicable over the routes over which complainants shipments moved. HELD, rate attacked not unreasonable, complaint dismissed. Moline George Co., v. N. Y. C. R. R., 128 I. C. C. 517.

(7j) Fifth-class rate on bar steel from Youngstown, Ohio to Lynchburg, Va., governed by official classification, found not unreasonable. While a lower sixth-class rate under southern classification was contemporaneously maintained to Lone Jack, Va., a more distant point, that point is a flag stop at which there is no post office or business of any consequence and rate thereto was subsequently increased to level of the Lynchburg rate, thus removing fourth-section departure. Complainant found not to have been damaged by reason of any undue preference or fourth-section violation that may have existed. Lynchburg Chamber of Commerce v. B. & O., 128 I. C. C. 557.

(7k) Sixth-class rate on china clay from Philadelphia to Newton Falls, N. Y., found unreasonable as compared with lower rates contemporaneously in effect between points in c. f. a. territory; between points in c. f. a. territory and Canadian points; from Philadelphia and Mount Holly Springs, Pa., to numerous destinations in New York for comparable distances; and to extent it exceeded lower commodity rate subsequently established. Reparation awarded. Newton Falls Paper Co. v. R. Co., 128 I. C. C. 563.

(7l) Upon reconsideration of previous reports, wherein commission made its finding after investigation of class-rate structure in southern classification territory, and upon various petitions seeking modifications of findings therein, more particularly with respect to interterritorial rates in first supplemental report 109 I. C. C. 300, such findings modified in certain respects and affirmed in others. Southern Class Rate Investigation, 128 I. C. C. 567.

(7m) Complainant attacked class rates charged on two cars of granite from Barre, Vt., one to New Castle and one to Greensburg, Ind., on May 15 and Oct. 22, 1924, as unreasonable, unjustly discriminatory and unduly preferential. Bill of lading bore notations signed by the shipper to the effect that the value exceeded $2.25 per 100 pounds. Charged fifth class rates of 47 and 48.5c. At time shipments moved commodity rates of 27.5c and 28.5c on blocks, slabs, or pieces of granite not "carved, lettered, polished or traced" and of 32.5c and 33c on blocks, slabs, or pieces of granite "carved, lettered, polished, or traced" were applicable from Barre when the value of the commodity was declared by the shipper as not exceeding $2.25 per 100 pounds. HELD, rates charged not unreasonable or otherwise unlawful, complaint dis-

missed. Dillie v. C. V. Ry., 128 I. C. C. 641.

(7n) Complainant alleged that sixth class rates charged for the transportation of wooden last blocks, carloads, from Gaylord, Mich., to New York, Brockton, Mass., and Philadelphia, Pa., were and are unjust and unreasonable and inapplicable to extent they exceeded the rates on lumber. They are loaded loose in the car and are not susceptible of damage. Gaylord is about 63 miles south of Mackinaw City, rate charged 53c to Philadelphia, 55c to New York and 57c to Brockton. Lumber rates were 37.5c, 39.5c and 41.5c. While sixth class rates may be applicable on lumber quite generally in official territory, there is reason to believe that the bulk of the tonnage actually moves on rates substantially less than sixth class. HELD, rates attacked unreasonable to extent they exceed 47.5c to New York, 45.5c to Philadelphia and 49.5c to Brockton, rates for the future not to exceed those on lumber, reparation awarded. Jackson v. M. C. Ry., 129 I C. C. 235.

(7o) Complainant attacked class rates charged on wooden bobbins, returned empty from Massachusetts on the B. & M. to Skowhegan, Me., as unreasonable, unjustly discriminatory and unduly prejudicial. Skowhegan is on the Me. Central. Second class rate charged, less carloads, and fifth class, carloads. There is in effect upon the B. & M. and Me. C., for application between points local to their line, in each case, a rating and rates of rule 26 on certain secondhand carriers, including wooden spools, returned empty, in less carloads, HELD rating complained of not unreasonable or otherwise unlawful, complaint dismissed. Maine Spinning Co., v. B. & M. R. R., 129 I. C. C. 266.

(7p) Complainant attacked class rate charged on tin cans, carloads, from Baltimore, Md., to Buchwick, Brooklyn, N. Y., between Feb. 2 and Aug. 19, 1924 as unreasonable, unjustly discriminatory and unduly prejudicial to the extent it exceeded 28c. 75% of shipments moved B. & O. and connections for delivery by the Long Island 195 miles, remainder over Pennsylvania and Long Island, charged joint fourth class rate of 34c. The cans are shipped in crates. During the period of movement B. & O. maintained a commodity rate of 28c from Baltimore to Buchwick on enamel ware, tinware, snuff and tobacco boxes or box shapes of the same material, in carloads, and a rate of 28c on empty tin cans, new, from Baltimore to New York and Brooklyn stations, and was established to Buchwick Aug. 20, 1924. HELD, rate assailed of 34c unreasonable to extent it exceeded 28c, reparation awarded. Metal Package Corp. v. B. & O. R. R., 129 I. C. C. 301.

(7q) Complainant alleged that the rates charged on 11 cars of cotton linters shipped from Lakewood Station and Rome, Ga., to Chattanooga, Tenn., between Nov. 19, 1924 and May 8, 1925 as unreasonable. Charged 51c from Lakewood station and 39c from Rome applicable on cotton. Sixth class rates of 34c from Lakewood station and 28c from Rome were in effect. The commodity rates were cancelled May 21, 1925 after which date sixth class rates became effective. HELD, rates assailed unreasonable to extent they exceeded sixth class rates contemporaneously in effect, reparation awarded. Southern Cotton & Paper Co., v. A. & W. P. Ry., 129 I. C. C. 433.

(7r) Complainant alleged that class rates charged on granite, in carloads and less carloads, from Granite Mountain, Llano, and Teich, Tex., to Arizona, Arkansas, Colorado, Illinois, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, Oklahoma, Tennessee, Utah, and Wyoming are unjust and unreasonable and compared with lower commodity rates from other points of origin unduly prejudicial. All of the points are in what is known as Texas common point territory. Granite is transported in flat or gondola cars, which are staked by the shipper, and the equipment is generally loaded the day it is received. Damage in transit is rare. Ratings in the western classification on granite are class C on carved, lettered, polished or traced, class D on chiseled, dressed, hammered, sand rubbed, or sawed more than four sides, and class E on rough quarried and sawed four sides or less, in carloads and fourth class on all descriptions in less carloads, except chiseled, dressed, hammered or sand rubbed, shipped loose, on which the rating is third class. Class rates are generally applicable to the traffic here considered. HELD, upon the record and Consolidated Southwestern Cases, 123 I. C. C. 203, attacked carload rates for future unreasonable to extent they exceed the percentages of first class pre-

scribed in that decision. HELD, allegation of undue prejudice not sustained. West Texas Chamber of Commerce v. H. & T. C. Ry., 129 I. C. C. 546.

(7s) Complainant alleged fourth class rate of $1.53 charged on three cars of varnish shipped in May, July and Oct. 1924 from Louisville, Ky., to Port Arthur, Tex., was unreasonable. Shipments moved to New Orleans, La., thence Gulf Coast Lines, K. C. S. and T. & Ft. S. A commodity rate of $1.425 applied on paints and varnishes from Louisville to Deming, N. M., and would have applied as a maximum at Port Arthur, an intermediate destination, had not an alternative tariff rule made applicable the rate and minimum applied for the reason that the charges thereby resulting were lower due to the lower minimum. In Consolidated Southwestern Cases 123 I. C. C. 203, the fourth class rate prescribed from Louisville to Port Arthur via New Orleans is $1.45. HELD, rate assailed not unreasonable, complaint dismissed. Peaslee Gaulbert Co., v. Southern Ry., 129 I. C. C. 611.

(7t) Class rates in western trunk line territory admittedly are on a materially lower level than those in the southwest or any other sections of the western district. Boston Wool Trade Asso. v. A. T. & S. F. Ry., 129 I. C. C. 681, 688.

(7u) Complainant alleged that the rates charged on 16 less carload shipments of cotton fabrics, moving between June 13 and Oct. 16, 1922 from Cooleemee Mills, Gibsonville, Graham, Greensboro, Hillsboro, Kannapolis and Salisbury, N. C., to Galveston, Tex., were inapplicable. Shipments moved Southern to Memphis, Tenn., thence over connecting lines to Galveston. The rates of $1.97 and $1.775 were provided in section 3 of the tariff on "carloads, unless otherwise specified." Neither the words "any quantity" nor a minimum weight appeared in connection therewith. After the shipments moved the words "any quantity" were added to the commodity description. The tariff carried provisions permitting the alternative application of rates in sections 2 and 3, whichever were lower, and stated that it was governed "except as otherwise provided" by the western classification, which provided any quantity ratings. While no minimum weight was provided in connection with the carload rate, rule 13 of the classification provided that "the minimum charge for carload shipments shall be $15.00 per car." Rule 14 provided that "the minimum carload weight provided is the lowest weight on which the carload rating or rate will apply." HELD, rates in section 3 subject to a minimum charge of $15 per car, plus the separate loading and unloading charges of 2.5c, were applicable when they resulted in lower charges than those provided in section 2, overcharges to be refunded complaint dismissed. Southern Traffic & Audit Asso. v. I. G. N. Ry., 129 I. C. C. 723.

(7v) Complainant alleged that class rates charged on baking powder, carloads, from Brooklyn, N. Y., to Chicago, Ill., and other points in central territory as unreasonable. Complainant alleged that class rates charged on baking powder, carloads, from Providence, R. I., to Richmond, Va., Logan, Huntington, Bluefield, Williamson and Keystone, W. Va., Pittsburgh and Philadelphia, Pa., and Washington, D. C., were unjust and unreasonable, and in violation of section four. Fourth class rates were in effect prior to July 26, 1926 when they became fifth class. In Rumford Chemical Works v. N. Y. N. H. & H. R. R. Co., 112 I. C. C. 645, the Commission found the rates unreasonable to extent they exceed fifth class. HELD, rates assailed not unreasonable or otherwise unlawful, complaints dismissed. Royal Distributing Co., v. B. & O. R. R., 129 I. C. C. 749.

(7w) Complainant alleged that class rate applicable on one car of scrap zinc from Wyandotte, Mich., June 9, 1923, to Canton, Md., was unjust and unreasonable. Shipment moved D. T. & I., B. & O., and Canton R. R., 757 miles, applicable rate sixth class 34c. The commodity transported was scrap zinc having value for remelting purposes only. A commodity rate of 29c was contemporaneously applicable on spelter, and on zinc dross. Effective July 18, 1923 defendants voluntarily established a specific commodity of 22c on scrap zinc, having value for remelting purposes only, and at the same time reduced the rate on spelter and zinc dross from 29c to 22c, which is the present rate on all three commodities. HELD, rate of 34c unreasonable to extent it exceeded 29c, reparation awarded. Lissberger & Co., v. D. T. & I. R. R., 132 I. C. C. 41.

(7x) Complainant alleged class rate charged on 11 carload shipments of dry goods samples attached to display cards from Brooklyn N. Y., to San Francisco and Los Angeles, Calif., and Seattle,

Wash., between Dec. 1923 and Jan. 1926 were and are unreasonable. Prior to Dec. 1, 1925 there was no transcontinental commodity rate on dry goods samples, and on 10 carload shipments made by complainant over various all rail routes it paid the second class rate of $4.80. Effective on that date a commodity rate of $3.98, minimum 30,000 pounds, the same in amount as the third class rate from Brooklyn to Pacific coast points, was established. HELD, rate charged prior to Dec. 1, 1925 unreasonable to extent it exceeded $3.98, but rate on and after that date not unreasonable, reparation awarded. Detmer Bruner & Mason, Inc., v. Bush Terminal R. R., 132 I. C. C. 100.

(7y) Complainant alleged that class rates applicable on sugar from north Pacific coast points and interior Washington to Chicago, Ill., Boston, Mass., and Landisville, N. J., in Oct. and Nov. 1919 and May 1920 were unreasonable. Original report 91 I. C. C. 75, division 3 found the rates not unreasonable and dismissed the complaint. Joint fifth class rates of $2.19 to Chicago and $2.375 to Boston and Landisville were charged. Reparation was sought to basis of commodity rates in effect from San Francisco and other California points, namely 82c minimum 60,000 pounds or 70c minimum 80,000 pounds, on shipments to Chicago and to the basis of these rates plus the fifth class rates beyond on shipments to Boston and Landisville. The rates on sugar from California to Chicago, on the outer edge of wide rate blankets resulting from intense competition, do not afford a measure of normal maximum reasonable rates. HELD, rates of $1.38 to Chicago and $1.975 to Boston and Landisville from Seattle will not for the future exceed maximum reasonable rates. Armour & Co., v. N. P. Ry., 132 I. C. C. 123.

(7z) Complainant alleged class rates charged on seven cars of automobile lamp lenses between June 5, 1923 and Sept. 1, 1924 from Charleroi, Wagon Works, O., and Omaha, Neb., to San Francisco and Los Angeles, Calif., were unreasonable. Charged fourth class of $3.30 from Charleroi, $3.225 from Wagon Works and $2.75 from Omaha. Subsequently commodity rates of $2.03 from Charleroi, $1.95 from Wagon Works and $1.65 from Omaha were established, which formerly applied on glassware, N. O. S. not including lenses. HELD, rates attacked unreasonable to extent they exceeded subsequently established rate, reparation awarded. MacBeth Evans Glass Co., v. P. R. R., 132 I. C. C. 129.

(8a) Complainant alleged sixth class rates on fertilizer, carloads, between points in central territory were and are unreasonable, and unduly prejudicial to extent such rates exceeded or exceed 75% of sixth class. The commodity is shipped in box cars, in burlap bags containing 125 pounds each. The claims for loss and damage are negligible. Average loading is about 46,400 pounds, average value $28 per ton. HELD, interstate rates on fertilizer carloads, from Indianapolis, Ind., to points in central territory are unreasonable to extent they exceed distance rates ranging from 6c for 5 miles and under to 33.5c for 800 miles, reparation denied. Rauh & Sons Fertilizer Co., v. A. C. & Y. Ry., 132 I. C. C. 287.

(8b) Complainant alleged that the class rates charged on scrap brass and scrap copper having value for remelting purposes only, in straight and mixed carloads from Kansas City, Mo., and Omaha, Neb., to Chicago and other destinations were unreasonable. Consideration will be confined to rates from Kansas City to St. Louis, Peoria and Chicago in 17455. Scarp brass and scrap copper, in straight or mixed carloads, are rated fifth class, minimum 36,000 pounds. Charged fifth class 33.5c to St. Louis and 41.5c to Chicago prior to July 15, 1924. Prior to that date applicable rates were $3.65 per ton to St. Louis and $4.13 per ton to Chicago. Overcharges to be refunded. Fifth class rates of 41.5c to Chicago, North Chicago and Waukegan, Ill., and 33.5c to St. Louis from Omaha. Omaha and Kansas City are Missouri river points which take the same general basis of rates to the destination concerned. The issues presented in both complaints are substantially the same and the record in this complaint does not warrant a different finding with respect to the rates from Omaha than is made with respect to the rate from Kansas City. HELD, rates assailed not unreasonable or unduly prejudicial, complaints dismissed. Atlas Iron & Metal Co., v. A. T. & S. F. Ry., 132 I. C. C. 299.

(8c) Complainant alleged fourth class rate charged on nine less carload shipments of polished marble, made between May 7, 1924 and May 9, 1925 from Knoxville, Tenn., to Lynchburg, Va., was unreasonable, unjustly discriminatory and

unduly prejudicial. Shipments moved over the Southern 430 miles. Rate charged 84.5c. From various points on the Southern more distant than Knoxville there was, and still is, in effect to Lynchburg a commodity rate of 37.5c. This rate applies over the Southern through Knoxville. Lynchburg is intermediate to Charlottesville, Va., 60 miles beyond. The rate assailed also exceeded a combination rate of 60c over the route of movement, composed of fourth class of 22.5c to Caswell and 37.5c beyond. The comparisons tend to show that the fourth class rate applicable was not and is not unreasonable as such. But such a showing is not necessarily determinative here, in the light of the lower commodity rates, not only from contiguous points to the same destination, but from the same origin to other destinations. Less than carload commodity rates lower than fourth class were and are in effect from Knoxville to eastern trunk line territory generally. HELD, rate charged unreasonable to extent it exceeded the aggregate of intermediates, reparation awarded. Lynchburg Chamber of Commerce v. Southern Ry., 132 I. C. C. 317.

(8d) Complainant alleged sixth class rate of 25c charged on ground coal, in carloads from Carleroi, Pa., to Indianapolis, Ind., is unreasonable and inapplicable. Contemporaneous commodity rate of $2.52 was applicable on bituminous coal. Ground coal is a manufactured product of much greater value than coal. It is packed in bags, barrels, and boxes and shipped in box cars, whereas bituminous coal is shipped in open top equipment. Ground coal is not used as a fuel, nor is bituminous coal, as shipped for fuel purposes, interchangeable with ground coal for foundry facings. HELD, rates assailed not unreasonable or otherwise unlawful, complaint dismissed. American Foundry Co., v. Pennsylvania R. R., 132 I. C. C. 345.

(8e) Complainant alleged fifth class rate of $1.07 charged on two cars of prepared roofing shipped during Oct. 1923 from New Orleans, La., to Kansas City, Mo., was unreasonable. Shipments moved T. & P., to Shreveport, La., and K. C. S. beyond, 882 miles. A commodity rate of 57.5c was in effect over routes east of the Mississippi river via St. Louis, Mo. Distance via St. Louis is about 100 miles in excess of the distance over route of movement. June 25, 1924 a rate of 52c was established on this traffic and is now in effect. HELD, rate assailed unreasonable to extent it exceeded 60c, reparation awarded. Nicholas Wire Sheet & Hardware Co., v. A. T. & S. F. Ry., 132 I. C. C. 347.

(8f) Complainant alleged rate charged on tin cans, carloads, and on tin pails, in carloads, from East Norwood, O., to Kentucky, Tennessee, Alabama, Mississippi, Florida, Louisiana and Arkansas were and are unreasonable, unduly prejudicial, inapplicable and in violation of section four. Cans and pails are generally loaded in bulk or in cases, and pails are sometimes nested. Fourth class rates apply on tin pails and fifth class on tin cans. Commodity rates are applicable from preferred points. HELD, rates assailed applicable, and not unreasonable in past, but unreasonable in future to extent they exceed fifth class and fourth class rates approved for the distances in Southern Class Rate Investigation, 100 I. C. C. 513, 113 I. C. C. 200. United States Can Co., v. A. & V. Ry., 132 I. C. C. 363.

(8g) Complainant alleged the fourth class rate of 43.5c charged on three carloads of glycerine, other than crude, in drums, shipped between August 3 and Sept. 19, 1925 from Ivorydale, Cincinnati, O., to Grafton, Ill., was unreasonable, unjustly discriminatory and unduly prejudicial and reparation is sought to basis of the subsequently established commodity rate of 34c. Grafton is a local point on the A. & E., about 35 miles northeast of East St. Louis. Shipments moved Big Four to East St. Louis, and A. & E. beyond, distance 400 miles, fourth class rate charged 43.5c. Prior to the movements Big Four and other carriers maintained a commodity rate of 34c on this commodity to Ashburn, Mo., 466 miles, and to Fayville, Ill., 356 miles. HELD, rate charged unreasonable to extent it exceeded 34c, reparation awarded. Illinois Powder Mfg. Co., v. C. C. C. & St. L. Ry., 132 I. C. C. 403.

(8h) Complainant alleged class rates charged on insulators, carloads, from Kenova, W. Va., to points in eastern trunk line territory are unreasonable, unjustly discriminatory and unduly preferential of its competitors. All of the shipments, with two exceptions, were sent to New York for export. Kenova is on the Ohio river, about 8 miles southwest of Huntington, W. Va. Both points were formerly in the 87% group in the

rate adjustment to trunk line territory, but in Jobbers & Mfrs. Bureau of Huntington v. A. C. R. R. Co., 57 I. C. C. 64, the Commission found that the rates from a group including both these points should not exceed 82% of the New York-Chicago rate. Insulators, in carloads, are rated fifth class in official territory and move on that basis from Kenova to eastern territory. Prior to the decision above cited commodity rates were published on various manufactured articles from both Huntington and Portsmouth, O. The latter point is in the same group, about 39 miles west of Kenova on the north bank of the Ohio river. In the report the Commission referred to the willingness of the B. & O. and C. & O. to establish commodity rates from Huntington to the east on the Columbus, O., basis of 77%. Kenova is entitled to the same consideration. HELD, rates assailed unreasonable and unduly prejudicial to extent they exceed 44c, reparation awarded. Jeffrey Dewitt Insulator Co., v. B. & O. R. R., 132 I. C. C. 423.

(8i) Complainant alleged sixth class rate of 27c on inedible tallow, carloads, from Norton Siding, Va., to New York, Jersey City and other points taking New York rates, prior to Nov. 23, 1925 were and are unreasonable, unjustly discriminatory and unduly prejudicial. Norton Siding is on the R. F. & P. 5 miles south of Washington, 4 miles north of Alexandria, Va., and 1 mile north of Potomac, Yard, Va. Inedible tallow is rated fifth class, but by exceptions it is given sixth class. Shipments moved both B. & O. and Pennsylvania, short line distance to Jersey City 232 miles and to New York over Pennsylvania, 257 miles. It would be of no advantage to complainant if the all rail commodity rate from Richmond was increased to the class basis or to the level of the rate from Norton Siding. HELD, rates assailed not unreasonable, complaint dismissed. Norton & Co. v. R. F. & P. Ry., 132 I. C. C. 517.

(8j) Complainant alleged that rate charged on numerous cars of steel from Elwood, Ind., to St. Louis, Mo., was and is unreasonable. Shipments made between May 17, 1924 and Oct. 7, 1926, over N. Y. C. & St. L. to Lafayette, Ind., thence Wabash, 293 miles, charged fifth class rate of 28c. HELD, rate assailed not unreasonable, complaint dismissed. Ames Shovel & Tool Co. v. W. Ry., 132 I. C. C. 659.

(8k) Complainant alleged sixth class rate charged on eight cars of lath from Duluth, Minn., to Detroit, Mich., April 30 and May 17, 1924 were unreasonable. Shipments moved water and rail, Minnesota Atlantic Transit Co., to the docks at Detroit, thence P. M., 726 miles, charged sixth class 30.5c plus reconsigning. A commodity rate of 23.5c was published prior to the movement but did not become effective until May 25, 1924. Sixth class all rail rate from Duluth to Detroit is 41c, whereas the all rail commodity rate on lumber, including lath, from and to those points is 33c, about 76% of the class rate. HELD, rate assailed unreasonable to extent it exceeded 23.5c, reparation awarded. Bayly Thompson Co., v. M. A. T. Co., 132 I. C. C. 665.

(81) Complainant alleged sixth class rates charged on 10 cars of rough lumber shipped between April 22, 1924 and Jan. 14, 1926 from Columbia City and Bourbon, Ind., to Moline, Ill., were unreasonable, unduly prejudicial and unjustly discriminatory. Charged 24.5c to Columbia City and 24c from Bourbon. Complainant seeks 20.5c commodity rate from both points of origin and reparation. HELD, rates assailed not unreasonable or otherwise unlawful, complaint dismissed. Peabody Lumber Co., v. Pennsylvania R. R., 132 I. C. C. 741.

(8m) Complainant alleged class rate charged on three cars of logs shipped Feb. 8, 13 and 15, 1924 from Columbia City, Ind., to Hicksville, O., was unreasonable. Shipments moved Pennsylvania to Auburn Jct., Ind., B. & O., beyond, 42 miles, charged sixth class rate of 13c. In Indiana Public Service Commission v. A. A. R. R. Co., 85 I. C. C. 533, the Commission found carload rates on logs in central territory were unreasonable to the extent they exceeded 65% of sixth class. HELD, reparation awarded on basis of 9c, minimum 34,000 pounds. Crook Son & Co., v. Pennsylvania R. R., 132 I. C. C. 749.

(8n) Fifth-class rates on petroleum fuel oil in tank-car loads from Pettys Island, N. J., to Garden City, Long Island, N. Y., a Group B point, found unreasonable as compared with rates established following 89 I. C. C. 738, from same point of origin to Group A points. Reasonable rates prescribed for future and reparation awarded.

Curtiss Aeroplane & Motor Co. v. P. R. R,. 129 I. C. C. 174.

(8o) Class rates on muriatic, sulphuric, and nitric acids from Kansas City, Mo.-Kans., Grasselli, Ind., and Hegewisch, Ill., to Omaha, Nebr., found not unreasonable as compared with lower commodity rates subsequently established. Bruce & Co. v. C. & N. W., 129 I. C. C. 435.

(8p) Fifth-class rates on pig lead, red lead, and litharge from Joplin, Mo., to Oklahoma City, Okla. found unreasonable but not unduly prejudicial as compared with lower commodity rates from Joplin to various points in western territory, including St. Louis, Mo., East St. Louis, Ill., and Kansas City, Mo., and with distance rates prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203. Competitive situation prevents lower rates from Joplin to St. Louis, East St. Louis, and Kansas City from being basis of undue prejudice. Reasonable rates prescribed for future and reparation awarded. Oklahoma Traffic Asso. v. St. L.-S. F., 129 I. C. C. 461.

(8q) Fourth-class rate, minimum 30,000 pounds, on shipments of varnish weighing less than 33,000 pounds, found not unreasonable as compared with fifth-class rate, minimum 36,000 pounds, contemporaneously applicable on paint. Under an intermediate clause, a lower commodity rate on varnish, minimum 40,000 pounds, would have been applicable to shipments had not an alternative rule provided for application of rate and minimum producing lowest charge. Transportation qualities of paint and varnish are not shown to be similar and fourth-class rate was prescribed on paint between the same points, in 123 I. C. C. 203. Peaslee-Gaulbert Co. v. S. Ry., 129 I. C. C. 611.

(8r) Class rates on rough quarried granite, c. l. from East Weymouth, Mass., to local points on the N. Y., N. H. & H., found unreasonable and unduly prejudicial as compared with lower commodity rates contemporaneously applicable on common brick and on stone and granite paving and curbing; and to extent they exceeded, exceed, or may exceed rates based on distance scale herein prescribed, minimum 48,000 pounds. Reparation awarded. Plymouth Quarries v. N. Y., N. H. & H., 129 I. C. C. 621.

CLASSIFICATION

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CROSS REFERENCES

See Advanced Rates §5 (3); Class Rates; Differentials §2; Evidence §60½; Tariffs §12¼.

I. RIGHT OF CARRIER TO ESTABLISH.

§2. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) Doctrine that burden of rail transportation should be distributed among the various kinds of freight with some regard for economic needs of the country has always had recognition, in one way or another, in the rate structure. The familiar principle of "charging what the traffic will bear," or, as some prefer to put it, of "not charging what the traffic will not bear," has had that result in some degree. The principle which has been quite generally recognized in public regulation, that the value as well as the cost of service is a factor entering into the determination of just and reasonable rates, has had a similar result. In another form the same thought seems to be predominant in the Hoch-Smith resolution. But the inevitable result of such a distribution of transportation burden must be that some kinds of traffic, under just and reasonable rates, will earn materially less for carriers than others. Fertilizers between Southern Points, 113 I. C. C. 389, 420.

(b) There are manifest limitations to the doctrine that burden of rail transportation should be distributed among the various kinds of freight with some regard for economic needs of the country. It may be conceded that commission has no power to fix rates upon any kind of freight which will fail to produce some margin over operating cost. Moreover, the fact that certain carriers are largely dependent upon a particular form of traffic and have little opportunity to recoup a deficiency in profit upon such traffic by recourse to higher rates upon other kinds must be taken into consideration. Fertilizers between Southern Points, 113 I. C. C. 389, 420.

II. BASIS OF CLASSIFICATION.

§3. In General.

(a) No classification can be so minute as to conform to differing varieties and conditions of traffic, and to separate different grades or densities of same article into different classes with varying rates, even if it could be accomplished, would go far to defeat the real purpose of classification. See 49 I. C. C. 327, 330. Western Paper Makers' Chem. Co. v. A. A. R. R., 109 I. C. C. 133, 138, 139.

(b) The classification contains but a limited number of ratings, and commodities possessing somewhat different transportation characteristics must often of necessity be assigned to same class. French Battery & Carbon Co. v. C. & N. W., 112 I. C. C. 128, 131, 132.

(c) Differences between various articles can not always find expression in different classification ratings because of the limited number of classes in the classification and the comparatively wide spreads between the class rates. Hollingshead Co. v. A. A. R. R., 115 I. C. C. 95, 97.

(d) First class is an unusually high carload rating. In general it is assigned only to a few light and bulky articles of high value, to especially perishable commodities like fresh strawberries, and to commodities that are dangerous to handle. Providence Exchange v. N. Y., N. H. & H. R. R., 118 I. C. C. 190, 191.

(e) Differences in transportation characteristics and per pound values between various articles can not always find expression in different classification ratings because of limited number of classes in classification and comparatively wide spreads between class rates. Hollingshead Co. v. A. A. R. R., 115 I. C. C. 95, 97.

(f) Rating on component or raw materials is not conclusive of rating to apply on a finished article. Troxel Mfg. Co. v. B. & O., 126 I. C. C. 169.

(g) It does not seem unreasonable to require a carrier which maintains fourth-section departures under protection of an order, to keep in touch with changes in classification governing its class rates between same points and to revise its commodity rates conformably. Fourth Section Departures, 129 I. C. C. 187, 195.

§4. Bulk or Weight of Commodity.

See Evidence §65; Express Companies §18; Loading and Unloading; Passenger Fares and Facilities §10.

(a) Official classification ratings on soda-fountain counter interiors, on soda-fountain counters when packed with soda-fountain counter interiors, and on work boards, bar or counter, found unreasonable for l. c. l. and not unreasonable for c. l. shipments. Evidence shows that only two rows of fountains can ordinarily be loaded lengthwise in a car, and that the fountains can not well be top loaded. It nevertheless appears practicable, in loading merchandise cars with l. c. l. freight, to place other packages alongside and on top of fountains if carriers desire to use this space. Nat'l. Commercial Fixture Mfrs. Asso. v. A. A. R. R., 109 I. C. C. 479.

(b) Official classification ratings on l. c. l. shipments of soda-fountain counter interiors, on soda-fountain counters when packed with sofa-fountain counter interiors, and on work boards, bar or counter, found unreasonable. Actual loading possibilities rather than mathematical weight density should be considered in fixing ratings on such commodities, and evidence shows that it is practicable, in loading merchandise cars with l. c. l. freight, to place other packages alongside and on top of fountains if carriers desire to use this car space. Nat'l Commercial Fixture Mfrs. Asso. v. A. A. R. R., 109 I. C. C. 479.

(c) In rating light and bulky articles a difference in weight density of only a few pounds per cubic foot becomes a matter of first importance, but other considerations, such as value, susceptibility to damage, and method of packing, can not be disregarded. Nat'l Commercial Fixture Mfrs. Asso. v. A. A. R. R., 109 I. C. C. 479, 482.

(d) Actual loading possibilities rather than mathematical weight density should be considered in fixing c. l. ratings for light and bulky articles. On the other hand, limitations on loading, if peculiar to c. l. shipments, are not properly a factor in fixing l. c. l. ratings. Nat'l. Commercial Fixture Mfrs. Asso. v. A. A. R. R., 109 I. C. C. 479, 483.

(e) Having regard for difference in structure of freight and express classifications, commission can not predicate a condemnation of freight rate for light and bulky articles solely upon a showing that express rates are lower between some points. Parlor Frame Mfrs. Asso. v. A. A. R. R., 118 I. C. C. 154, 155.

(f) Weight density or weight of an article in proportion to space it occupies, is an important consideration in freight classification, whereas, under existing system of express rates practically all articles except food products are charged first-class rates regardless of their bulk. Parlor Frame Mfrs. Asso. v. A. A. R. R., 118 I. C. C. 154, 155.

(g) Paper cups, nested and flat, average substantially same value per pound, and risk of damage is negligible. When used for same purpose they compete commercially. While the greater density of flat cups when packed permits loading to a c. l. weight heavier than can be attained by the nested cup, this consideration alone does not justify ratings on flat cups lower than on nested cups. Public Service Cup Co. v. A. C. L., 118 I. C. C. 697, 701.

(h) The weight per cubic foot of an article is an important factor in its classification. Burroughs Adding Machine Co. v. M. C., 120 I. C. C. 19, 22.

§4½. Knocked-down or Set-up Shipments.

See Classification §21 (a); Knocked-down Shipments.

(a) Complainant attacked less carload rating on wooden oil tank parts, in boxes, crates, or bundles, in the official classification as unreasonable. Wooden oil tanks, knocked down, are rated third class. Rule 20 of the classification provides: "Parts or pieces, constituting a complete article, received as one shipment, on one bill of lading, will be charged at the rating provided for the complete article." Knocked down wooden silos, consisting of silo staves with not to exceed their necessary equipment of iron, steel or wooden silo parts, are rated rule 26c l. c. l. HELD, third class rating unreasonable to extent it exceeds rule

26 rating of 20% less than third class. Reparation denied. Parkersburg Rig & Reel Co. v. B. & O. R. R., 115 I. C. C. 539.

(b) The rating on the complete articles applies when the missing parts are insufficient to affect its identity. Parkersburg Rig & Reel Co. v. B. & O. R. R., 115 I. C. C. 539, 540.

(c) Following 59 I. C. C. 751, and other cited cases, official classification third-class rating on wooden tanks, k. d., found unreasonable to extent it exceeded the rule 26 rating of 20 per cent less than third class. Rating found reasonable prescribed for future. Parkersburg Rig & Reel Co. v. B. O., 115 I. C. C. 539.

(d) Coffin material was assessed sixth-class rate applicable on knocked-down coffins. Complainant contended for a lower class A rate on "Coffin stock, consisting of built-up or combined wood, bent or straight." Carrier urged that shipment did not consist of built-up wood but was sap gum lumber cut to shape, and that since no commodity rate applied on coffin material there was no alternative but to assess the knocked-down coffin rate. HELD, class A rate was applicable by analogy under a rule of the classification which provided that when articles are not specifically provided for, nor embraced as articles "N. O. I. B. N." classification provided for analogous articles should apply. Gum lumber cut to shape is closely analogous to built-up or combined wood, but neither are properly described as coffins until further manufactured, and to constitute knocked-down coffins would require the inclusion of all parts necessary to make up a complete coffin. Reparation awarded. Jackson Traffic Bureau v. I. C., 118 I. C. C. 515.

(e) To constitute a shipment of "knocked-down" articles, requires inclusion of all parts necessary to make a complete or a substantially complete article. Jackson Traffic Bureau v. I. C., 118 I. C. C. 515, 516.

(f) Complainant attacked rates on six shipments of wooden chairs in the white, knocked down, in carloads, from Union City, Pa., to Memphis, Tenn., between Aug. 3, 1922 and Jan. 22, 1925 as unreasonable and inapplicable. Shipments consisted of wooden chairs, in the white, partially assembled. In order to produce a complete chair in the white complainant has only to glue the under stock, drive it into the seat and level it. HELD, applicable rate prior to July 1, 1923 was 81c, and subsequently 88.5c, not unreasonable, complaint dismissed. Memphis Furniture & Mfg. Co. v. L. & N. R. R., 120 I. C. C. 267.

(g) Rates on "Furniture and Furniture Parts" were assessed on chairs, in the white, partially assembled. In the same tariff, carrier published lower rate on "Chair Stuff or Stock, K. D., in the white." Classification provided separate ratings on wooden chairs, knocked-down, in the white, and when knocked-down flat. Upon contention that commodity here shipped was chair stock, k. d., since it conformed to a rule of the tariff which provided that k. d. ratings involved the taking apart of the commodity in such a manner as to materially reduce the space occupied, HELD: The mere separation of the chairs into two or more parts did not destroy their identity as chairs and to sustain contention raised would nullify the distinction between the ratings on chairs, knocked-down and chairs knocked-down flat. Rates charged were therefore legally assessed. Memphis Furniture & Mfg. Co. v. L. & N., 120 I. C. C. 267.

§5. C. L. and L. C. L. Shipments.

See Infra §13; Allowances §8(7a), §10(b); Any Quantity Rates I (w); Cars and Car Supply §11⅞; Class Rates §2 (3v) (5b) (7h) (8c); Classification §4 (b), §13, §17 (3k), §22 (4n) (4q); Commodity Rates §1 (c), §2 (b), §5 (d) (k); Evidence §8 (j), §63; Explosives and Dangerous Articles (a); Express Companies §10 (k); Facilities and Privileges §15½ (a); Long and Short Hauls §6¾ (s) (x); Perishable Freight (a); Rail and Water Rates (3h) (3i); Reduced Rates §5 (s) (w) (x); Refrigeration §6½ (a); Released Rates §1½ (d), §4 (a), §5 (c); Storage §2 (c), Tariffs §18 (pp) (3c); Through Routes and Joint Rates §15 (3g); Transportation §2 (b); Trap Cars (a) (b).

(a) Official classification rating and rates on steam-shovel parts, l. c. l., found not unreasonable as compared with ratings on iron and steel castings, n. o. i. b. n., in the rough. Erie Steam Shovel Co. v. B. & O., 104 I. C. C. 367.

(b) Car-mile revenue is often employed as a basis for comparison of c. l. rates, but is obviously improper for comparison of l. c. l. shipments which move at a flat charge to scattered destinations in small individual lots or parcels. Newspapers in Baggage Cars, 104 I. C. C. 527, 532.

(c) One of the most effectual ways to destroy continuity of a carload movement is to break it up into less-than-carload shipments. Armour & Co. v. Director General, 104 I. C. C. 603, 605.

(d) Class rates applicable on glass lamp globes, lettered, in boxes, l. c. l., from Cincinnati and Brighton, Ohio, to Los Angeles, Calif., found unreasonable to extent they exceeded lower contemporaneous commodity rate on unlettered glass lamp globes and other commodities from and to same points. Reasonable rates prescribed for future and reparation awarded. Boyle-Dayton Co. v. A., T. & S. F., 107 I. C. C. 151.

(e) Ratings and rates on new and on junked old worn-out electric automobile armatures, l. c. l., found not unreasonable as compared with ratings and rates on various automobile parts. Electric armatures are not rated as automobile parts. They are built in a variety of forms and sizes, ranging from diminutive type used in very small motors to the gigantic type employed in generators for central-station equipment. The record refers almost entirely to one type of automobile electric armatures, and contains little or no information as to automobile armatures generally and how such armatures compare with other small armatures in value, loading, weight per cubic foot, volume of movement, etc. It is here sought to segregate automobile electric armatures from other kinds, but there is no basis for assuming that they are entitled to more favorable ratings. Oklahoma Traffic Asso. v. A. & R., 109 I. C. C. 457.

(f) Official classification ratings on soda-fountain counter interiors, on soda-fountain counters when packed with soda-fountain counter interiors, and on work board, bar and counter, found unreasonable for l. c. l. and not unreasonable for c. l. shipments. Actual loading possibilities rather than mathematical weight density, should be considered in fixing ratings on such commodities, and evidence shows that only two rows of fountains can ordinarily be loaded lengthwise in a car, and that the fountains can not well be top loaded. It nevertheless appears practicable, in loading merchandise cars with l. c. l. freight, to place other packages alongside and on top of fountains if carriers desire to use this car space. Nat'l. Commercial Fixture Mfrs. Asso. v. A. A. R. R., 109 I. C. C. 479.

(g) Actual loading possibilities rather than mathematical weight density should be considered in fixing c. l. ratings for light and bulky articles. On the other hand, limitations on loading, if peculiar to c. l. shipments, are not properly a factor in fixing l. c. l. ratings. Nat'l. Commercial Fixture Mfrs. Asso. v. A. A. R. R., 109 I. C. C. 479, 483.

(h) Complainant attacked less carload commodity rate charged on candy forwarded from Chicago, Ill., to Portland, Ore., on Sept. 15, 1922, as unreasonable, unjustly discriminatory and unduly prejudicial. Charged $3.21 and effective Oct. 30, 1922, defendants established a rate of $2.10 on confectionery, carloads, minimum 30,000 pounds. HELD: Rate attacked not unreasonable or otherwise unlawful. Complaint dismissed. Bunte Bros. v. C. & N. W. Ry., 112 I. C. C. 557.

(i) Complainant attacked less carload rating on baking powder in cans, cartons or glass in three classifications and carload ratings in glass, in southern and western, and in cans, cartons, or glass in official classification as unjust, unreasonable, unjustly discriminatory and unduly prejudicial in comparison with the ratings on self rising flour. Baking powder is the leavener used in making bread or cake. Loss and damage claims are negligible. Present carload rating of fifty class, in cans or cartons, in the southern and western classifications represent a reduction from fourth class, and is satisfactory to complainants. Self rising flour, in inner containers in boxes, in bags, or in barrels, is rated fourth class in official and western classifications, in less carloads, and fifth class, minimum 40,000 pounds in carloads. In southern territory, on any quantity rating of class C is applicable on this commodity when shipped in the containers indicated. HELD: Less carload rating on baking powder in cans or cartons, in the three classifications not unreasonable, unjustly discriminatory or unduly prejudicial; that rating in the three classifications on baking powder, in glass, packed in barrels or boxes, when

shipped in less carloads unreasonable to extent it exceeds a rating of second class; that carload ratings on baking powder, in glass, packed in barrels or boxes, in southern and western classifications and in cans, cartons, or glass in official classification unreasonable to extent they exceed a rating of fifth class, minimum 36,000 pounds, but not unjustly discriminatory or unduly prejudicial. Rumford Chemical Works v. N. Y. N. H. & H. R. R., 112 I. C. C. 645.

(j) Rate on burlap bags, in bales, l. c. l., from New Orleans to Tuscaloosa, Ala., found not unreasonable, but unduly prejudicial to Tuscaloosa and unduly preferential of Birmingham to extent it exceeds lower contemporaneous rates on like traffic from New Orleans to the latter named point. Nonprejudicial rate prescribed. Dixie Peanut Mills v. A. G. S., 112 I. C. C. 167.

(k) First-class rate on l. c. l. shipment of all-metal and metal-and-wood settees, k. d., in bundles, assessed due to such shipment not being wrapped in burlap or paper in conformity with tariff specifications, found unreasonable to extent it exceeded lower rate subsequently established when packing requirement was removed. The wrapping of these articles would have served no useful purpose; in fact, wrapping in paper would have made them less easy to handle. Reparation awarded. Dow Co. v. C., C., C. & St. L., 112 I. C. C. 320.

(l) Less-than-carload commodity rate on candy found not unreasonable as compared with lower c. l. rate on confectionery subsequently established. The unreasonableness of a rate is not established, nor is it admitted, by a subsequent reduction. Bunte Bros. v. C. & N. W., 112 I. C. C. 557.

(m) Less-than-carload commodity rate assessed on candy found not unreasonable as compared with lower c. l. rate contemporaneously maintained on chocolate, carpets and rugs, drugs, medicines, perfumery, toilet preparations, and chemicals. Comparisons submitted are of little probative force in absence of evidence as to comparative transportation and other conditions, and while carriers subsequently established such lower rate on confectionery, unreasonableness of the l. c. l. rate is not established, nor is it admitted, by subsequent reduction. Bunte Bros. v. C. & N. W., 112 I. C. C. 557.

(n) Less-than-carload rating on baking powder in cans or cartons in southern, western, and official classifications found not unreasonable, discriminatory, or unduly prejudicial; but l. c. l. ratings on this commodity in glass in the three classifications and c. l. ratings in southern and western classifications in glass, and in official classification in cans, cartons, or glass found unreasonable as compared with ratings on self-rising flour. Reasonable ratings prescribed for future. Rumford Chemical Works v. N. Y., N. H. & H., 112 I. C. C. 645.

(o) Complainant attacked rates charged on less carloads of cash and document boxes from Middlefield, Middletown and New Haven, Conn., and Grand Rapids, Mich., to Chicago, Ill., between Nov. 3, 1922 and Sept. 20, 1924, as unreasonable and unduly prejudicial to extent they exceeded rates on boxes, iron or steel, n. o. i. b. n. Charged double first class and effective Sept. 20, 1924, the item covering cash or document boxes was cancelled, and since that time defendants have assessed first class rates. The record shows that, considering the elements of bulk, weight, value, and expense of handling, complainants boxes bear a close analogy to many other boxes which were entitled to move at first class rates during the period covered by the complaint. HELD, rates attacked unreasonable to extent they exceeded first class, reparation awarded. Horders Inc. v. C. A. T. Co., 113 I. C. C. 520.

(p) Double first-class rate on l. c. l. shipments of cash or document boxes, found unreasonable to extent they exceeded rates contemporaneously applicable on actresses makeup boxes and various other iron, steel, and tin boxes n. o. i. b. n., rated first class and with which cash or document boxes come into active competition. Carrier subsequently established first-class rates and while a finding of unreasonableness can not be presumed from the voluntary reduction, considering the elements of bulk, weight, value, and expense of handling, cash or document boxes which bear a close analogy to other boxes taking first-class rates, were entitled to move at similar rates. Reparation awarded. Horder's v. C. A. T. Co. of U. S., 113 I. C. C. 520.

(q) Complainant attacked class rates applicable on less carloads of fiber furni-

ture from Columbia, S. C., to southern classification territory, as compared with commodity rates from North Carolina manufacturing points to the same destinations as unduly prejudicial and unjustly discriminatory. Prior to April 30, 1925, the classification rating on fiber furniture, n. o. s., less carloads, was double first class. On that date it was increased to three times first class, and is uniform throughout the three classification territories. The commodity rates in effect from Winston Salem and Silver City to southeastern territory were established many years ago and were made the same as the then prevailing class rates from Virginia cities, which were published to apply on furniture, n. o. s., and included all kinds of furniture not indexed or shown by name in the tariffs, and included, technically speaking, fiber furniture. Since that time the classification has been changed and many of the rates have undergone revision, but none of the furniture class rates has been revised. There is no showing as to the extent of the competition. HELD, rates attacked not unjustly discriminatory or unduly prejudicial, complaint dismissed. South Carolina Penitentiary v. A. & R. Ry., 113 I. C. C. 584.

(r) Complainant attacked rates on marble, less carloads, from Cardiff, Md., to various destinations in eastern states and New England as unreasonable and unduly prejudicial. Cardiff is a local station on the Maryland, 43 miles north of Baltimore and 34 miles south of York. At Baltimore the Maryland connects with the B. & O. and Pennsylvania and at York with the Pennsylvania. The Pennsylvania also operates a line between Baltimore and York which is 57 miles long and thus 20 miles shorter than that of the Maryland. The official classification ratings on marble, stone, or granite blocks, pieces or slabs, less carloads, are fourth class when in the rough, and rule 26, 20% less than third class, but not less than fourth class when in the finished state. Rates attacked are composed of the combinations of class rates to and beyond the junction points or York or Baltimore. In connection with the majority of the shipments made by complainant, where were for the longer distances, the combining of the Marylands local rates and the group rate in effect from the point of interchange with its trunk line connection, served to materially reduce the ton mile earnings under the through rates as compared with those accruing under the latter carriers local rates. Traffic and transportation conditions in connection with shipments from Cardiff to the destination territory, in so far as the initial part of the movement is concerned, are materially different from and less favorable than those obtaining between the trunk line points compared by complainant. These latter points are not only located for the most part on main lines of trunk line carriers operating through territory of heavy traffic density, but in many instances the transportation entails only a single line haul. The Maryland is a road of light traffic density and encounters substantial operating handicaps practically no through or overhead traffic and is dependent upon such business as originates or terminates at points on its line, upon the most of which it receives its local rates. Whatever rate disadvantage complainant may be laboring under in the marketing of its products appears to be principally because of the location of its quarry on an independently owned and operated short line of railroad of light traffic density and unfavorable operating conditions. HELD, rates attacked not unreasonable or unduly prejudicial, complaint dismissed. Cardiff Green Marble Co. v. M. & P. R. R., 113 I. C. C. 655.

(s) Combination class rates to and beyond York, Pa., or Baltimore, Md., charged on l. c. l. shipments of marble moving from Cardiff, Md., to destinations in eastern and New England States found not unreasonable or unduly prejudicial as compared with rates on same classes from such noncompetitive points as Baltimore, York, Philadelphia, and New York City, or with rates from Westfield, Mass., and Roxbury, Vt., from which latter point Cardiff is said to meet its principal competition. Traffic and transportation conditions in connection with shipments from Cardiff, in so far as initial part of movement is concerned, are materially different from and less favorable than those obtaining between trunk-line points with which comparison is made, and whatever rate disadvantage complainant may be laboring under in marketing of its products appears to be principally due to location of its quarry on an independently owned and operated short line of light traffic density and unfavorable operating conditions. Cardiff Green Marble Co. v. M. & P., 113 I. C. C. 655.

(t) While nearly all commodities are given ratings in the prevailing classifications, it is conceded that class rates are too high for carload application in many, particularly on those commodities which are of low value or are shipped in great volume. Shipments in less carload quantities, however, ordinarily move in a way which causes relatively high cost of operation, and they are seldom far down in the scale of value. Given a reasonable level of class rates, it seems that under few, if any, circumstances will the Commission be justified in requiring the maintenance or establishment of less carload commodity rates. Cardiff Green Marble Co. v. M. & P. R. R., 113 I. C. C. 655, 660.

(u) Complainant attacked rates on small arms ammunition packed in cases, less carloads, from New York and Baltimore, Md., to Lynchburg, Va., as unreasonable and unduly prejudicial; that carload rates on brick machinery from Lancaster, Pa., to Deacon, Va., are unreasonable unduly prejudicial and in violation of fourth section. First class rates of $1.025 and 99.5c are applicable, all rail and water and rail routes, on small arms ammunition to Lynchburg from New York and Baltimore, governed by the southern classification. Small arms ammunition is rated second class in less carloads in official classification. Immediately east and west of Lynchburg on the C. & O. and N. & W., rates are governed by official classification. The all rail route traversed by the shipments from New York used for illustrative purposes in the complaint is B. & O. to Potomac Yard, Va., and C. & O. beyond. On the shipment from Baltimore the route used is Chesapeake Steamship Lines to Norfolk and N. & W. beyond. Fifth class rate of 41c governed by official classification is applicable on brick machinery in carloads from Lancaster to Deacon. Deacon is about 7 miles east of and intermediate to Lynchburg on the C. & O., to which point the sixth class rate of 33.5c governed by southern classification is applicable Obviously in view of the general investigations which cover not only class rates within southern and eastern territories, but also rates between these territories, no attempt should be made at this time and on these records to adjust the disparity brought about by the application of the rates governed by the southern instead of the official classification on small arms ammunition and rates governed by official instead of southern on brick machinery. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Lynchburg Chamber of Commerce v. B. & O. R. R., 115 I. C. C. 721.

(v) Complainant attacked class rate on less carload shipments of empty coppered or nickeled iron or steel acetylene gas cylinders, returned, between April 17, 1923 and July 25, 1924, from Butte, Mont., to Seattle, Wash., as unreasonable, unjustly discriminatory and unduly prejudicial. Charged fourth class rate of $1.52 and on Sept. 24, 1924, by exceptions to the classification a rate of 76c, one half of fourth class rate, was made applicable on empty cylinders, iron or steel, returned, in any quantity. HELD, rate attacked unreasonable to extent it exceeded 76c, reparation awarded. Sherman & Reed v. C. M. & St. P. Ry., 118 I. C. C. 56.

(w) In 93 I. C. C. 506, division 3 found that the less carload ratings on set up wooden chair and lounge frames, when in boxes, crates, bundles, or loose, in western and southern classifications, and when loose or in bundles in official classification, were not unreasonable or otherwise unlawful; that the carload rating on such frames, loose or in packages, in official classification, was not unreasonable or otherwise unlawful; and that the less than carload rating on set up wooden chair and lounge frames, in boxes or crates, in official classification was unreasonable and should be two and one half times first class. It so happens, that while the charges for the transportation of heavy and compact articles are ordinarily very much less by freight than by express, on light and bulky articles the freight charges sometimes approach or even exceed the express charges. HELD, previous finding affirmed. Parlor Frame Mfrs. Asso. v. A. A. R. R., 118 I. C. C. 154.

(x) Refusal of carriers, parties to southern classification, to accept l. c. l. shipments of stoves or ranges made of cast iron, or of plate or sheet iron with cast-iron bases or tops, unless boxed or crated, found unreasonable. Reasonable rating of second class, or one class higher than on crated stoves or ranges, prescribed for future. Cairo Asso. of Commerce v. B. & N. W., 115 I. C. C. 3.

(y) Present l. c. l. ratings in official classification on dressed or tanned rab-

bitskin clippings or scraps, found not unreasonable, but c. l. ratings found unreasonable as compared with corresponding ratings in western classification and with c. l. ratings on various commodities which are comparable in value per pound and weight per cubic foot. Reasonable ratings prescribed and reparation awarded. American Hatters & Furriers Co. v. C. N. E. Ry., 115 I. C. C. 283.

(z) Caption of tariff naming rates on furniture stated that rates were applicable to "Carloads except as otherwise specified." The furniture items carried under this caption separated different kinds of furniture into groups according to classification ratings applicable thereon, each item carrying the words "any quantity." HELD, as such tariff did not indicate whether l. c. l. or c. l. rating was to be used in determining to which commodity-rate group any particular article belonged, the words "any quantity" constituted an exception and made the rates applicable to either c. l. or l. c. l. shipments, and since the tariff item was specifically made applicable to shipments in "any quantity" the carload classification rating could and should have been used in determining commodity rates applicable to l. c. l. shipments. Refund of overcharges directed. Amber Furniture Co. v. C. & N. W., 115 I. C. C. 640.

(aa) Applicable third class l. c. l. rate under official classification on printing paper from Erie, Pa., to Lynchburg, Va., found not unreasonable or unduly prejudicial as compared with lower fourth-class rates contemporaneously in effect under southern classification to Danville and South Boston, Va., farther distant points. Rate assailed compares favorably with corresponding rates between other points in official classification territory and at time of shipment rates to alleged preferred points were protected by appropriate fourth-section applications. While complainant meets competition with paper dealers at latter points for business "in common territory," no damage was shown by reason of any undue prejudice which may have existed in past, the fourth-section departures having since been removed. Lynchburg Chamber of Commerce v. P. R. R., 118 I. C. C. 11.

(bb) A carrier is under no duty or obligation to "farm out" the work of and incident to receipt or delivery of l. c. l. freight handled in usual way, and such traffic as is accorded service of a trap or ferry car, received or delivered upon private sidings remote from carrier's own terminal facilities, is for obvious reasons loaded or unloaded by consignors or consignees. This is recognized by defining of the term "trap or ferry car service" in 34 I. C. C. 516, 519, 520. Columbia Mills v. D., L. & W., 118 I. C. C. 112, 117.

(cc) First-class l. c. l. ratings on sticky fly paper in official and southern classifications, found not unreasonable in past, but for future found unreasonable to extent they exceed western classification rating of second-class. Tanglefoot Co. v. N. Y. C., 118 I. C. C. 131.

(dd) Fourth class c. l. rating on sticky fly paper in official, western, and southern classifications, found not unreasonable or unduly prejudicial as compared with lower ratings on insecticides. Average value per pound of insecticides is materially lower than that of sticky fly paper, and carriers point out that sticky fly paper is more closey related to poisonous fly paper, fly swatters, and fly traps which are not accorded lower ratings than sticky fly paper. First-class l. c. l. rating in official and southern classifications, found not unreasonable in past but for future found unreasonable to extent they exceed western classification rating of second class. Tanglefoot Co. v. N. Y. C., 118 I. C. C. 131.

(ee) Upon further hearing, original report 93 I. C. C. 506, wherein it was found that c. l. rating on set-up wooden chair and lounge frames, loose or in packages, in official classification territory was not unreasonable or otherwise unlawful, and prescribing two and one-half times first-class for l. c. l. shipments in boxes or crates in that territory, affirmed. As to l. c. l. rating, complainant made comparisons with ratings on similar traffic moving by express, but different methods are used in constructing freight and express classifications and freight rates for light and bulky articles can not be condemned solely on a showing that express rates are lower between some points. As to c. l. rating, mere comparison with lower ratings in other classifications is not sufficient to show that rating on same article in official classification territory is unreasonable. Parlor Frame Mfrs. Asso, v. A. A. R. R., 118 I. C. C. 154.

(ff) Ratings on paper cups, c. l. and l. c. l., in official, southern, and western classifications and class rates governed thereby found unreasonable as compared with ratings on various other paper articles, glass tumblers, wooden bowls, and fiber-board berry baskets with covers detached. Reasonable ratings and rates prescribed for future and reparation awarded. Public Service Cup Co. v. A. C. L., 118 I. C. C. 697.

(gg) In 91 I. C. C. 378, division 3 found that the less than carload rating on adding machines, in boxes, in the western classification was not unreasonable in the past, but would be unreasonable for future to extent it exceeded one and one-fourth times first class, and that carload ratings of second class, minimum 30,000 pounds, in the official, southern and western classifications was not unreasonable. HELD, upon rehearing, previous decision affirmed. Burroughs Adding Machine Co. v. M. C. R. R., 120 I. C. C. 19.

(hh) Complainant attacked first class rating applied on its product in less carloads, under the western, official and southern classifications, as unreasonable to extent it exceeds second class, and, as compared with lower rating on mops, unduly prejudicial. There is no provision in the classifications for cotton dust cloths, as such, but provision is made therein for dry goods N. O. I. B. N. The record shows that complainants cloths are not cotton dusters as that term is generally understood. In the opinion of the commission the applicable rating is on dry goods, n. o. i. b. n. The cloths are used to remove dust by absorption, and also to impart a luster to painted, varnished or other finished surfaces. Dust mops are used principally, if not exclusively on floors. Although complainants dust cloths can no doubt be adapted for use as dust mops, complainants principal witness concedes that they are primarily intended for use in dusting automobiles, furniture, pianos, storage fixtures and the like. Under these circumstances it is apparent that they are not directly in competition with dust mops. Their competition, rather, is with cotton dusters, which are rated first class. But, even though there is competition between dust cloths and dust mops, the ratings for the two articles need not be the same if their classification characteristics are substantially different. The record shows that dust cloths have a substantially greater value per pound than mops. HELD, rating attacked not unreasonable and not unduly prejudicial, complaint dismissed. Auto Supplies Mfg. Co. v. A., T .& S. F. Ry., 120 I. C. C. 40.

(ii) Complainant attacked classification interpretation on three less carload shipments from Lynchburg, Va, one each to Peoria, Ill., and Navasota and Bryan, Tex. The advertising sign consists of a metal signboard placed edgewise on a pivot on top of a wooden post. To the signboard is attached a wheel with propeller blades in front and a tailboard, narrower than the main sideboard, at the rear. The wheels are more analogous to windmill parts than to sheet iron or sheet steel ware, wooden wheels, or other classified articles, so far as this record shows, and in the absence of a specific rating are entitled, under the analogy rule, to the rating provided for windmill parts. HELD, wheels are entitled to rating on windmill parts, reparation awarded. Lynchburg Chamber of Commerce v. N. & W. Ry., 120 I. C. C. 64.

(jj) Complainant attacked first class rate on fresh beef hams, salted, less carloads, from Chicago to Philadelphia, Pa., and Phillipsburg, N. J., as unreasonable. Rate attacked is alleged to be unreasonable to extent it exceeds rule 26 rate by more than 8 cents. Rate sought, 82 cents, is that applicable on lightly salted sausage meats under a rating provided in central territory exceptions. It is clear upon this record that the sausage meats rate does not present a fair test for reasonable rates on beef hams. The 82 cent rate is only 5 cents higher than the rate on fresh meats. It is equally clear that the application to this partially cured meat of a rate reasonable for fresh meats is unreasonable in view of the protection against deterioration afforded by the salting process as proved by the absence of any damage claims. A rate on beef hams, in less carloads, reflecting two full classes higher than the carload rate on that article, and one class lower than the less carload rate on fresh meats, would be $1.225. HELD, rate attacked unreasonable to extent it exceeded $1.225, reparation awarded. Guggenheim Bros. v. B. & O. R. R., 120 I. C. C. 340.

(kk) There are no l. c. l. ratings published based on condition that shipments fill the car, as such a rating would be impracticable. Brownell & Field Co. v. N. Y., N. H. & H., 120 I. C. C. 229, 231.

(ll) Complainant alleged that rating of first class on hand laundry washers, less carloads, is contrary to the provisions of the classification and was unjust and unreasonable. The Childers hand washer is a mechanical household utensil used in the laundering of clothes. There is no specific rating in the classification on hand laundry, washers, and defendants have classified this commodity under "sheet iron or sheet steel ware, n. o. i. b. n., tinned (tinware) galvanized, japanned, lithographed, nickel plated, painted or plain." First class does not appear high for laundry washers packed. HELD, rating attacked not unreasonable, complaint dismissed. Childers v. A., T. & S. F. Ry., 122 I. C. C. 116.

(mm) Complainant attacked ratings on geographical globes, with or without stands, in boxes, in less carloads, in official, western and southern territories are unjust and unreasonable. The present ratings on geographical globes, with or without stands, in boxes, any quantity, are one and a half times first class in official and western classifications and double first class in southern classification. HELD, rating in western and official not unreasonable but in southern classification unreasonable to extent it exceeds one and a half times first class. Chicago Heights Mfrs. Asso. v. A., T. & S. F. Ry., 122 I. C. C. 582.

(nn) Respondents proposed increased rates on wooden handles, in less carloads, from Arkansas and Missouri to Louisiana and Texas. Shipments moved at fourth class rates. The general basis of rates, class and commodity, from the points of origin to destination has for several years been the Memphis, Tenn., rate from some of the points and the St. Louis, Mo., rate from the others. By an exception to this general basis, effective since about 1911, wooden handles, any quantity, from certain points in Arkansas, including Jonesboro and Paragould have been accorded Little Rock, Ark., rates, and from other points of origin in Missouri, the Little Rock-Fort Smith rates have been accorded. By the suspended schedules it is proposed to make the exception apply only to carload traffic, which will have the effect, as to the less carload traffic, of placing the points of origin in the respective territorial groupings to which they are otherwise generally assigned. Except probably wagon material in less carloads from Dexter, Mo., wooden handles constitute the only commodity on which there is departure from the normal groupings on less carload traffic from and to the points involved. If any disadvantages are present by reason of the existing adjustment, the schedules under suspension will do little more than shift them and create disparities in the rates from these complaining points which for a long period have been accorded the same treatment. HELD, schedules not justified. Wooden Handles from Arkansas and Missouri, 123 I. C. C. 146.

(oo) Complainant alleged that charges collected on a less carload shipment of wire steel reels returned on Nov. 7, 1923 from Torrance, Calif., to Niles, Mich., were unreasonable and unjustly discriminatory. Charged second class rate of $4.55. There was no less carload rate or rating applicable specifically on returned reels. There is nothing of record to indicate that other shipments of returned reels have moved, or will move, between the points herein considered. It appears that the plant of complainant at Torrance has been closed for more than a year, and apparently further shipments are unlikely. Manifestly the establishment of a commodity rate or an exception to the usual classification for a less carload movement under these circumstances would not be justified. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Thomas Traffic Co. v. P. E. Ry., 123 I. C. C. 535.

(pp) Complainant alleged second class rate of $1.065 applicable on sheet brass and bronze, in less carloads, from East Alton, Ill., to Minneapolis and St. Paul, Minn., was unjust and unreasonable, unjustly discriminatory and unduly prejudicial to extent it exceeded third class rate of 87.5c. East Alton is on the Burlington about 23 miles north of St. Louis, Mo. Distances are 559.5 miles to St. Paul and 548 miles to Minneapolis. Articles are rated second class in western and third class in official, and have been so rated for several years. No instances of less carload commodity rates on sheet brass or bronze in western territory are disclosed by the record. In western trunk line territory, through which complainants shipments move to the Twin Cities, rates generally, and especially class rates, are now on a relatively lower level than in other parts of western classification territory, including the

southwest. HELD, complaint dismissed. Western Cartridge Co. v. C. B. & Q. R. R., 123 I. C. C. 547.

(qq) First-class l. c. l. rating and rate assessed on sheet-iron hand-laundry washers with wooden handles, under classification item "Sheet Iron or Sheet Steel Ware, n. o. i. b. n.: Tinned (Tinware), * * *," not nested, found applicable and not unreasonable. Complainant contended that under analogy rule these washers are more nearly analogous to tinware, nested, which takes second-class rate, as handles are removed, conical heads overlap each other, and one dozen washers complete are packed in a standard carton. However, to come within nesting rule, three or more articles must be placed one within the other so that each upper article will not project above the next lower article more than one-third of its height. Use of the rule is prohibited when articles of different name or material are nested or enclosed one with the other. As washers can not be so packed they do not come within provisions of nesting rule. Moreover, first class does not appear high for washers packed as indicated. Childers v. A., T. & S. F., 122 I. C. C. 116.

(rr) Southern classification rating of double first class on geographical globes with or without stands, in boxes, l. c. l., found unreasonable to extent it exceeded a rating of one and a half times first class. Reasonable rating prescribed for future. Official and western classification ratings of one and a half times first class found not unreasonable. Chicago Heights Mfrs. Asso. v. A., T. & S. F. 122 I. C. C. 582.

(ss) Rate on engraved copper rolls returned for reengraving, l. c. l., found not unreasonable as compared with rates on copper rivets, copper rolls, electrotype plates and various other commodities. Sunbury Converting Works v. D., L. & W., 123 I. C. C. 89.

(tt) Proposed increased rates on wooden handles, l. c. l., from producing points in Arkansas and Missouri to destinations in Louisiana and Texas, found not justified. Wooden handles constitute only commodity on which there is a departure from the normal groupings on l. c. l. traffic from and to origin and destination territories here involved and although present schedules include a number of points for which this special basis serves no purpose because of seeming abandonment of plants, the record presents no sound reason for a discontinuance of this special basis at points where its maintainance has made possible a continuance of the industries at the respective places. If any disadvantages are present by reason of existing adjustment, the suspended schedules will do little more than shift them and create disparities in the rates from complaining points which for a long period have been accorded substantially same treatment. Wooden Handles from Arkansas and Missouri, 123 I. C. C. 146.

(uu) Interests of neither public nor carriers are served by maintaining carload class rates on such high bases that they are rarely used, making it necessary to follow the practice which has prevailed for many years in the Southwest of establishing commodity rates on practically all commodities which move in carloads in material volume. It is due to this practice that many discrepancies in rates which are subject of complaint have arisen and existing widespread dissatisfaction with the complexity of tariffs in the Southwest arises out of the prevalence of commodity rates and failure to adjust them on a basis which fairly relates various points which compete with one another. In the circumstances, the commission is of the opinion that it should follow the principle that carload class rates in the Southwest should be prescribed which are capable of moving many of the carload commodities, as is the case to-day in official and western trunk-line territories, thus making it possible to eliminate from tariffs thousands of commodity rates. Consolidated Southwestern Cases, 123 I. C. C. 203, 234.

(vv) Carriers authorized to cancel existing l. c. l. classification exceptions and commodity rates applicable to and from the Southwest and to substitute class rates, subject to western classification rating. Consolidated Southwestern Cases, 123 I. C. C. 203, 401, 402.

(ww) Second-class rate applicable on reels in less than carloads charged on an l. c. l. shipment of wire-steel reels returned from Torrance, Calif., to Niles, Mich., found not unreasonable or otherwise unlawful. A lower c. l. commodity rate was in effect on secondhand reels or spools but complainant could not profitably use this rate as it was not feasible for it to accumulate a carload. Reference is made to lower l. c. l. rates on typewriters and lawn mowers from and

to these points, also for returned shipments of iron and steel blocks and car-decking racks but latter named commodities are used to facilitate packing and loading westbound c. l. shipments of automobiles. Here the shipments were sporadic, the plant of complainant at Torrance has been closed for more than a year, and further shipments are unlikely. Manifestly, establishment of a commodity rate or an exception to usual classification for an l. c. l. movement under such circumstances would not be justified. Thomas Traffic Co. v. P. E. Ry., 123 I. C. C. 535.

(xx) Second-class l. c. l. rates on sheet brass and bronze, from East Alton, Ill. to Minneapolis and St. Paul, Minn., found not unreasonable or otherwise unlawful as compared with third-class l. c. l. rate contemporaneously in effect from Detroit, Mich., Rome, N. Y., and Waterbury, Conn., competing points. Class rates in western trunk-line territory generally, through which complainant's shipments move, are now on a relatively lower level than in other parts of western classification territory including the Southwest, and fact that a lower rating exists in one of the three great classification territories is not conclusive that second-class rate applied on complainant's traffic is unreasonable. Western Cartridge Co. v. C., B. & Q., 123 I. C. C. 547.

(yy) Complainant alleged that the ratings maintained for the transportation of saddles, less carloads, from Elyria, O., to all destinations in official, southern and western classification territories are unreasonable. The saddles herein considered are those ordinarily used on bicycles, motor cycles and tricycles. There are no loss or damage claims. The saddles considered herein are rated first class in less carloads, in all classification territories, which rating has applied on bicycle saddles, in less carloads, since April 1, 1887. First class rating or higher applies on practically all bicycle parts, and also on most articles in the saddle group as shown in the classification. Leather goods are rated first class, which description would include saddles, in the absence of a specific classification. HELD, rating on saddles, less carloads, is not unreasonable, complaint dismissed. Troxel Mfg. Co. v. B. & O. R. R., 126 I. C. C. 169.

(zz) Complainant alleged that the carload and less carload ratings on chocolate and chocolate coating in the official, southern and western classifications, and carload ratings on chocolate and chocolate coating in the official and western classifications are unreasonable, unjustly discriminatory and unduly prejudicial. COCOA BEANS. Cocoa beans are imported from Java and other tropical countries, principally through the port of New York. No special equipment is required for their transportation by rail, and claims for loss or damage are infrequent. Cocoa beans constitute the raw material from which chocolate, chocolate coating, and cocoa are manufactured. Cocoa beans, in bags, barrels or boxes are rated when in less carloads second class in official and western classifications and first class in southern; and in carloads, fourth-class in all three classifications. CHOCOLATE AND CHOCOLATE COATING. Chocolate and chocolate coating are manufactured by cleaning the cocoa beans, roasting and shelling them and removing the bitter germ. The resultings nibs are then ground, producing a pasty or running substance known as chocolate liquor, and composed of cocoa butter and cocoa. Solidified chocolate liquor sweetened or unsweetened, and with or without the addition of more cocoa butter, is designated either as chocolate or as chocolate coating, depending apparently upon the size of the bar or cake. It is largely an article for household consumption. Claims for loss or damage are negligible. Chocolate, in barrels or boxes, less carloads is uniformly rated second-class, and in carloads, third-class in official and western and fourth-class in southern. CONCLUSIONS. HELD, ratings attacked not unjustly discriminatory or unduly prejudicial, but on cocoa beans, in bags, barrels or boxes, in the three classifications unreasonable to extent they exceed third class less carloads and fifth-class carloads. Also HELD, ratings attacked on chocolate and chocolate coating, less carloads, not unreasonable, but carload ratings in official and western on chocolate in barrels or boxes, are unreasonable to extent they exceed fourth-class. Cocoa & Chocolate Mfrs. Asso. v. A. & V. Ry., 126 I. C. C. 561.

(3a) First-class l. c. l. rating on saddles, used on bicycles, motor cycles, and tricycles, from Elyria, Ohio, to points in official, southern, and western classification territories, found not unreasonable as compared with c. l. rating on same commodity, or with first-class l. c.

l. rating on bells, spark plugs, magnetos, gasoline-engine starters, and various other articles. First-class rating or higher applies on practically all bicycle parts and also on most articles in the saddle group including leather goods. Moreover, first-class rating was found reasonable on automobile horns which compare favorably, weights and values considered, with bicycle saddles. Troxel Mfg. Co. v. B. & O., 126 I. C. C. 169.

(3b) One and one-half times first-class rate collected on l. c. l. shipment of portable laundry tubs under heading "Sheet Iron or Sheet Steel Ware: Wash Tubs," found inapplicable. Carriers contended that by analogy rule, applicable rating was double first class under item "Wash Sinks, n. o. i. b. n.: Plate or Sheet Iron or Steel: on legs: * * * In boxes or crates," l. c. l., while complainant sought third-class rating on laundry tubs under head of "Plumbers' Goods" by use of analogy rule. At time of shipment, however, a commodity rate applicable on wash tubs appeared under caption "Sheet Iron or Sheet Steel Ware," l. c. l., and since Century Dictionary and Cyclopedia define a wash tub as "a tub for washing, especially one in which clothes are washed," articles shipped clearly fall within that description and lower commodity rate was therefore applicable. Reparation awarded. West Texas Utilities Co. v. M. C., 128 I. C. C. 57.

(3c) Complainant alleged that the charges collected on a less than carload shipment of portable laundry tubs forwarded June 2, 1925 from Saginaw, Mich., to Abilene, Tex., as inapplicable. Shipment was billed as "24 laundry tubs, crated iron and steel." Charged at rate of $4.27, one and one half times first class, being that applicable on "wash tub, not nested in boxes or crates" in less carloads. There was contemporaneously published a commodity rate of $3.45 which was applicable on sheet iron or sheet steel ware. HELD, rate of $3.45 applicable, reparation awarded. West Texas Utilities Co., v. M. C. R. R., 128 I. C. C. 57.

(3d) Following 96 I. C. C. 280 and 115 I. C. C. 27, second-class l. c. l. rates on printed waxed wrapping paper between points in official territory found unreasonable to extent they exceeded third class. Reasonable rates prescribed for future and reparation awarded. Ward Baking Co. v. P. R. R., 128 I. C. C. 231.

(3e) Complainant attacked second class rates applicable in official classification on less carloads of printed waxed wrapping paper, in rolls, in boxes or crates, as unreasonable to extent they exceed third class rates contemporaneously applicable on the same commodity, when not printed. This rating has heretofore been found unreasonable in General Baking Co., v. P. R. R. Co., 96 I. C. C. 280. HELD, rates attacked from Milwaukee and Frankford unreasonable to extent they exceed third class rates, and likewise from Chicago, Middletown, Nashua, Tacony and New York, reparation awarded. Ward Baking Co., v. Pennsylvania R. R., 128 I. C. C. 231.

(3f) Rates on furniture from Memphis, Tenn., to points in trunk-line and New England territories, found not unreasonable or unduly prejudicial, except that l. c. l. commodity rate on mattresses will be unreasonable to extent it exceeds first-class rate contemporaneously in effect. Other rates assailed are relatively lower than those previously found reasonable from c. f. a. territory manufacturing points to destinations in trunk-line territory and also lower than corresponding rates in reverse direction, and on the whole compare favorably with corresponding rates to eastern port cities from Atlanta, Ga., and Chattanooga, Tenn., competing points. Reasonable rates on mattresses prescribed for future. Memphis Freight Bureau v. A. G. S., 128 I. C. C. 445.

(3g) Sixth-class l. c. l. rates on bar iron from Knoxville, Tenn., to points in Georgia, found not unreasonable but unduly prejudicial as compared with lower l. c. l. commodity rates contemporaneously maintained from Birmingham, Ala. Rates assailed compare favorably with those from Memphis, Nashville, and Chattanooga, Tenn., and Louisville, Ky., to Georgia points and are relatively lower than those prescribed in 100 I. C. C. 513 and other cited cases. Practically all shipments were sold on basis of Birmingham prices plus rate from Birmingham, but since no loss of business is alleged and proof of damage is insufficient, reparation is denied. Knoxville Iron Co. v. L. & N., 128 I. C. C. 513.

(3h) Second-class l. c. l. rating and rates on corrugated fibre boxes, k. d., from Omaha Nebr., to destinations in Iowa, found unreasonable as compared with lower third-class rating and rates in official, southern and Illinois classifications, and intrastate within Kansas;

with third-class rating in official and western and fifth-class rating in southern classifications on solid fibre board; and with third-class rating on cover paper, building, roofing, or sheathing felt or paper and various other related commodities in western classification; and unduly prejudicial and in unjust discrimination against interstate commerce as compared with lower fourth-class rating from Keokuk, Iowa, to same destinations. Third-class rating and rates prescribed for future and reparation awarded. Case held open to afford opportunity to revise interstate rating in harmony with rating prescribed. Eggerss-O'Flyng Co. v. C. & N. W., 128 I. C. C. 644.

(3i) Complainant alleged second class rating applied on numerous less carloads of corrugated fibre boxes, prior to April 23, 1923 from Omaha, Neb., to Iowa, are unreasonable and unduly prejudicial as compared with the rates from Keokuk, Ia. Iowa Commission ruled that the fourth class rating and rates were applicable on intrastate traffic. Effective May 1, 1927 the Iowa classification was cancelled and interstate traffic became subject to the western classification or second class. Intrastate shipments are still rated fourth class, less carloads, under an exception to western classification. HELD, fourth class rating and rates were applicable prior to May 1, 1927, overcharges to be refunded. Third class rating is in effect in all other classifications except western. HELD, second class rating unreasonable to extent it exceeded third class, reparation awarded. Eggerss-O'Flyng Co. v. C. & N. W. Ry., 128 I. C. C. 644.

(3j) Fifth-class c. l. rating on unprinted waxed wrapping paper, in boxes or crates, in official classification, found not unreasonable, but second-class l. c. l. rating in western classification found unreasonable to extent it exceeds third class. Reasonable rating prescribed for future. Kalamazoo Vegetable Parchment Co., v. C. K. & S., 128 I. C. C. 675.

(3k) L. c. l. ratings on vegetable-parchment wrapping paper, either printed or unprinted, in official, southern, and western classifications, and c. l. rating in official and southern classifications, found not unreasonable, but fourth-class c. l. rating in western classification found unreasonable as compared with fifth-class rating contemporaneously maintained on waxed wrapping paper, a competitive commodity, and to extent it exceeds class A rating. Reasonable rating prescribed for future. Kalamazoo Vegetable Parchment Co., v. C. K. & S., 128 I. C. C. 675.

(3l) Second-class l. c. l. ratings on printed, waxed wrapping paper in boxes or crates in official and western classifications, found unreasonable to extent they exceeded third-class rating found reasonable in 96 I. C. C. 280; fifth-class c. l. rating found not unreasonable in official classification as compared with group of low-grade commodities accorded sixth-class rating, but fifth-class c. l. rating in southern classification found unreasonable to extent it exceeds sixth class. Southern fifth-class rating under recently approved rate scales, is relatively higher than fifth-class rating in official classification and carriers failed to show that there are any differences in kind of paper transported or in transportation conditions which warrant a higher rating in the South than in the North. Reasonable ratings prescribed for future and reparation awarded. Kalamazoo Vegetable Co. v. C., K. & S., 128 I. C. C. 675.

(3m) First-class l. c. l. rating in southern classification was assessed on vegetable-parchment wrapping paper, in flat sheets cut to size and bearing a printed legend descriptive of article to be wrapped, a quantity of such sheets then being wrapped in heavy paper and placed in a wood frame enclosing four sides but not the ends. Upon contention that material shipped is simply wrapping paper in bales or crates and fourth-class rate applicable on wrapping paper in crates should apply, FOUND: Package described is a bundle. While in 96 I. C. C. 280, it was held that paper shipped in continuous rolls although printed to indicate its use for wrapping bread was wrapping paper, here additional step of cutting paper to size converted the wrapping paper into wrappers and rate assessed was therefore applicable. Kalamazoo Vegetable Parchment Co., v. C. K. & S., 128 I. C. C. 675, 683.

(3n) First-class l. c. l. southern classification rating on printed vegetable-parchment wrapping paper in flat sheets cut to size and a quantity of such sheets wrapped in heavy paper and placed in a wood frame enclosing four sides but not the ends, found unreasonable as compared with fourth-class rating on vegetable-parchment wrapping paper in bundles, and to extent it exceeds contemporaneous second-class ratings in official and west-

ern classifications. While paper having been cut to size constitutes wrappers rather than wrapping paper, wrappers should not be rated three classes higher than uncut paper. Moreover, although package described is a bundle and takes first class as compared with second class when in crates, southern is only classification that distinguishes between boxes, bundles, or crates, and it, as well as other classifications, disregards this distinction on other similar commodities whether in bundles, boxes, or crates. Reasonable rating prescribed for future. Kalamazoo Vegetable Parchment Co. v. C., K. & S., 128 I. C. C., 675, 683, 684.

(3o) Following General Baking Co., 96 I. C. C. 280, second-class rating and rate on l. c. l. shipments of printed waxed wrapping paper between points in official territory, found unreasonable to extent they exceeded third-class rating and rates subsequently established. Reparation awarded. Bakeries Service Corp. v. B. & M., 128 I. C. C. 695.

(3p) Complainant alleged second class rates charged on many less carload shipments of printed waxed wrapping paper made between Aug. 1, 1923 and Aug. 25, 1925 between points in official territory were unjust and unreasonable to extent they exceeded the third class rates. In General Baking Co. v. P. R. R. Co., 96 I. C. C. 280, the Commission found the second class rates unreasonable to extent they exceeded third class, which was published on May 7, 1925. Possession of the freight bills coupled with the witness' knowledge of the customary method of payment and his personal investigation of these particular claims is sufficient to support a finding that complainants paid and bore the charges under review. HELD, reparation awarded on basis of third class rates. Bakeries Service Corp. v. B. & M. R. R., 128 I. C. C. 695.

(3q) Complainant alleged that the classification rating of second class on less carload shipments of worn out paper mill plugs in official, southern and western classifications is unreasonable. Second class rating on iron or steel machinery parts, n. o. i. b. n., is applied. HELD, rating complained of in the three classifications is, and for the future will be, unreasonable to extent they exceed third class. Bahr Bros. Mfg. Co. v. C. C. C. St. L. Ry., 129 I. C. C. 289.

(3r) Complainant alleged that rate of 66.5c charged on 21 less carload shipments of cotton piece goods, shipped between Nov. 14, 1923 and Oct. 16, 1924 from East Greenwich, Saylesville, and South Providence, R. I., Jewett City, Conn., and Walpole and Fall River, Mass., to Lynchburg, Va., as unreasonable, unduly prejudicial and in violation of section four. Charged commodity rate of 66.5c. Cotton piece goods are rated fourth class in southern classification, which was 53.5c. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Traffic Bureau v. N. Y. N. H. & H. R. R., 129 I. C. C. 309.

(3s) Complainant alleged that the rating, and the rates applicable thereunder, on root beer sirup, in less carloads, in metal cans in boxes, shipped from Philadelphia, Pa., to destinations in official and western classifications were and are unreasonable. It is not affected by climatic conditions and leakage would not cause serious damage to other freight. The root beer containers permit of easy and economical handling in loading and unloading. The susceptibility to loss or damage is slight. HELD, second class rating on root beer sirup, in less carloads, in metal cans in boxes, in official and western classifications was not unreasonable in the past but such rating and rates applicable thereunder are for future unreasonable to extent they exceed rule 25 in official and third class in western classifications. Hires Co. v. A. C. & Y. Ry., 132 I. C. C. 29.

(3t) Shipments in less than carload quantities ordinarily move in a way which causes relatively high cost of operation, and they are seldom far down in the scale of value. Given a reasonable level of class rates it seems under few, if any, circumstances will the Commission be justified in requiring the maintenance or establishment of less than carload commodity rates. Lynchburg Traffic Bureau v. Southern Ry., 132 I. C. C. 317, 320.

(3u) Complainant alleged class rates charged on 70 less than carloads of cotton piece goods during 1923, 1924 and 1925 from Chadwick and New York, N. Y., Fairhill, Lancaster and Philadelphia, Pa., and Wilmington, Del., to Lynchburg, Va., were and are unreasonable, unjustly discriminatory and unduly prejudicial and in violation of section four. Chadwick takes Utica rates, Lancaster, Wilmington and Fairhill take Philadelphia rates. Rates from New York and Philadelphia to Lynchburg are the same.

Lynchburg is served by the C. & O., N. & W., and Southern and is on the border line between official and southern classification territories. Cotton piece goods are rated rule 25 in official classification which is 15% lower than second class, with third class as minimum, and fourth class in southern. Rates from Chadwick and Montview and Lone Jack, Va., 4 and 8 miles, south of Lynchburg were governed by the southern classification and lower rates were applicable. No substantial evidence was introduced with respect to unjust discrimination or undue prejudice and no damage is shown because of fourth section departures. HELD, rate of 79c from Chadwick, and 56.5c from New York, Fairhill, Lancaster and Philadelphia not unreasonable, unjustly discriminatory or unduly prejudicial, complaints dismissed. Lynchburg Chamber of Commerce v. D. L. & W. R. R., 132 I. C. C. 321.

(3v) Complainant alleged combination rates charged between May 1, 1922 and May 1, 1924 on numerous l. c. l. shipments of cotton piece goods from official and southern territories to Wichita, Kas., were unreasonable. Cotton piece goods, any quantity, are rated in official classification rule 25, which is equivalent to 85% of second class; in southern classification, fourth class and in western classification, first class. Exceptions to western classification provide for third class rates except where specific commodity rates are published. Charged from eastern territory rule 25 rates to Mississippi river and commodity rate of $1.52 west; from southeastern and Carolina territories joint any quantity commodity rates. These latter rates were slightly higher than the proportional commodity rates to Memphis, Tenn., plus the local commodity rates beyond, as well as higher than the local commodity rates to Memphis plus the class rates beyond. Joint rates now in effect appear to be on the basis of the proportional commodity rates to Memphis plus the class rates beyond. HELD, rates charged on shipments which originated in official territory unreasonable to extent the commodity rates beyond the river crossings exceeded the third class rates; and that joint rates from southeastern and Carolina territories unreasonable to extent they exceeded the lowest combination of rates to Memphis, Cairo or other river crossings, plus third class rates beyond, reparation awarded. Johnston & Latimer Dry Goods Co., v. A. T. & S. F. Ry., 132 I. C. C. 343.

(3w) Application proposing to maintain a minimum l. c. l. commodity rate on traffic between San Francisco and other California ports and Portland and other Oregon and Washington ports, denied. L. c. l. traffic should move on applicable class rates herein approved. Pacific Coast Fourth Section Applications, 129 I. C. C. 3, 17.

(3x) Third-class l. c. l. rate, under official classification, on unprinted fruit wrappers from Hamburg, N. J., to Lynchburg, Va., found not unreasonable or otherwise unlawful as compared with fifth-class rate, under southern classification, contemporaneously in effect to Montview and Lone Jack, Va., more distant points. The general level of rates applicable in official territory is extended south of Lynchburg to and including more distant points, and reasons in justification therefor are fully discussed in 31 I. C. C. 145; 107 I. C. C. 249. Rates assailed are same as those from Cincinnati, Ohio to Lynchburg, and compare favorably with those from Hamburg to various other Virginia districts for comparable distances, and presumption of unreasonableness of rate to Lynchburg is rebutted. See 269 U. S. 1. Moreover, since no movement of fruit wrappers has been shown from Hamburg to Montview, no finding of discrimination or undue prejudice can be made. See 34 I C. C. 634. Lynchburg Chamber of Commerce v. E. R. R., 129 I. C. C. 230.

(3y) Following 89 I. C. C. 251, in which third-class l. c. l. rating was found reasonable on steam superheaters, second-class l. c. l. rating on wornout paper-mill grinding plugs in official, southern, and western classification, found unreasonable. No specific rating was made in the three classifications for paper-mill plugs as such, but they are somewhat analogous to steam superheaters from a classification standpoint. Third-class rating prescribed. Bahr Bros. Mfg. Co. v. C., C., C. & St. L., 129 I. C. C. 289.

(3z) L. c. l. joint commodity rate on cotton piece goods from certain points in Connecticut, Massachusetts, and Rhode Island to Lynchburg, Va., which exceeds contemporaneous class rate to same and more distant Virginia destin-

ations, found not unreasonable or otherwise unlawful, following 113 I. C. C. 270. Fourth-section departures were pretected by appropriate applications. Traffic Bureau v. N. Y., N. H. & H., 129 I. C. C. 309.

(4a) C. l. and l. c. l. ratings on school books in official, southern, and western classifications, found not unreasonable as compared with lower ratings on school blanks and forms in same classifications. Schoolbooks are of much higher value than school forms and blanks, based upon information obtained at public hearings conducted by classification committees for purpose of affording interested shippers opportunity of expressing their views respecting classification changes. Moreover, printed articles, such as almanacs, catalogues, magazines, and calendars, take same ratings as schoolbooks, but have considerably lower value. American Book Co. v. A. A. R. R., 129 I. C. C. 372.

(4b) L. c. l. rate collected on steam condenser from Philadelphia, Pa., to Santa Fe, N. Mex., found inapplicable. A lower rate was contemporaneously in effect and tariff authority for rate collected was not shown. Refund of overcharges directed. Mirabel Motor Co. v. M. C., 129 I. C. C. 411.

(4c) Combination rates on l. c. l. shipments from Hoboken, N. J., on Hoboken Manufacturers' R. R. to Norfolk and Richmond, Va., found inapplicable. Contemporaneously Lackawanna published lower joint class rates from New York Lighterage Station, a point within the free-lighterage limit of New York Harbor, subject to a terminal tariff which provided that rates from points in free-lighterage limits would apply on shipments from Hoboken via Hoboken Manufacturers' except where specific rates from Hoboken were in effect. No specific rates covering traffic were published from Hoboken and where there is doubt as to meaning of tariff provision, the doubt should be resolved against maker and in favor of shipper. Refund directed. Jewel Tea Co. v. D., L. & W., 129 I. C. C. 424.

(4d) C. l. and l. c. l. rates on granite from Granite Mountain, Llano, Teich, and Fredericksburg, Tex. to various interstate destinations, found not unduly prejudicial but unreasonable as compared with lower rates contemporaneously in effect from points in Vermont, Massachusetts, Georgia, North Carolina, South Carolina, Minnesota, Colorado, California, and various other points to same and various other destinations for comparable distances, and to extent they exceed distance rates prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203, between same points, except that rates to portions of Wyoming, Utah, and Colorado, found not unreasonable except to extent they will be reduced by reductions herein required to Colorado common points. Reasonable bases of rates prescribed for future. West Texas Chamber of Commerce v. H. & T. C., 129 I. C. C. 546.

(4e) Carriers were authorized generally, in 123 I. C. C. 203, to cancel all less-than-carload classification exceptions and commodity rates, and no reason appears why, under section 1, exception should be made in case of granite, but an exception should be made to rule 10 of the western classification to provide for application to the mixed carloads of granite, of highest rate and highest carload minimum applicable to any granite in the mixture. West Texas Chamber of Commerce v. H. & T. C., 129 I. C. C. 546, 554.

(4f) Rates charged on cotton fabrics, l. c. l., from North Carolina points to Galveston, Tex., found inapplicable. Governing tariff stated that it was subject to western classification "Except as otherwise provided," and provided for alternative application of rates in section 2 or 3, whichever were lower. No minimum weight was provided in connection with lower rates under section 3, and rates were there applicable to actual weight of shipments. However, since rule 15 of the western classification provided for assessment of separate loading and unloading charges on l. c. l. freight moving at c. l. rates, and rule 13 required a minimum charge of $15 per car, these rules must be considered in determining rates applicable to various shipments. Refund of overcharges directed on basis indicated. Southern Traffic & Audit Asso. v. I.-G. N., 129 I. C. C. 723.

§6. Competition.

(a) First-class l. c. l. rating in official, western, and southern classifications

on dust cloths found not unreasonable or unduly prejudicial as compared with lower second-class rating on dust mops. Dust cloths are pieces of cotton cloth cut to size and saturated with paraffine oil and are primarily intended for dusting automobiles, furniture, and the like, whereas, dust mops are used principally if not exclusively on floors. The two articles are therefore not directly in competition, and even though competition does exist between them ratings thereon need not be the same if their classification characteristics are substantially different. The record here shows that dust cloths have a substantially greater value per pound than mops. Auto Supplies Mfg. Co. v. A., T. & S. F., 120 I. C. C. 40.

(b) Even though there is competition between two somewhat similar articles, ratings thereon need not be the same if their classification characteristics are substantially different. Auto Supplies Mfg. Co. v. A., T. & S. F., 120 I. C. C. 40, 42.

(c) Mere possibility that two articles may in some cases be used for same purpose does not necessarily justify same classification ratings for both. Smith Co. v. A., T. & S. F., 120 I. C. C. 309, 311.

(d) Mere existence of competition between two or more articles does not require that they be accorded a parity in ratings if their classification characeristics are substantially different. Kalamazoo Vegetable Parchment Co. v. C., K. & S., 128 I. C. C. 675, 678.

§6½. Crated Shipments.

(a) Complainant alleged that the rule in the southern classification which provides that stoves and ranges, made either entirely of cast iron, or of plate or sheet iron with cast iron bases or tops, will not be accepted for transportation in less carloads unless boxed or crated, is unjust and unreasonable and unduly prejudicial. Stoves and ranges may be shipped uncrated between points where rates are governed either by the official or the western classification. Under the western classification the rating is the same whether the stoves or ranges are crated or not, and under the official classification uncrated stoves are higher than crated stoves only by the comparatively small difference between the third class and the rule 25 rates. The destination territory to which complainant wishes to ship stoves and ranges, uncrated, is that part of Kentucky and Tennessee lying west of the Tennessee river. Tennessee jobbers can ship stoves to all destinations in Tennessee without crating and it is not denied that Cairo jobbers meet them in this competitive field. Kentucky and Alabama are the only states in the Union in which stoves and ranges must be crated for intrastate shipment. HELD, refusal of defendants to accept uncrated stoves or ranges of the type here considered is unreasonable, and should not exceed the rates on stoves crated by more than one class. Cairo Asso. of Commerce v. B. & N. W. Ry., 115 I. C. C. 3.

§7. Mixed Carloads.

See Cars and Car Supply §8 (v); Class Rates §2 (5i); Classification §16½; Commodity Rates §2½ (i), §5 (3b); Evidence §34¼; Express Companies §16; Minimum §6; Mixed Carloads; Rail and Water Rates (3h); Switch Tracks and Switching §3 (kl); Tariffs §18 (nn).

(a) Following 74 I. C. C. 567, rates on stucco mix, magnesium chloride, and crushed-rock dash, articles constituting a complete commodity, viz., magnesite stucco, and shipped in separate packages in same car, found unreasonable to extent they exceeded lower rate on "stucco," commodities here shipped falling within that general description. Reasonable rate prescribed for future and reparation awarded. Rocbond Co. v. A., T. & S. F., 104 I. C. C. 517.

(b) Rotary-drill bits, fishing taps, milling tools, and weight indicators: Second-class rating and rates under western classification on, and failure of carriers to include weight indicators in the classification list of oil-well outfits and supplies, found not unreasonable or otherwise unlawful. Hughes Tool Co. v. A. & R., 107 I. C. C. 545.

(c) Rates assessed on so-called Hallock boxes, in crates, and box material, in mixed carloads, found unreasonable to extent they exceeded rates on box material. Reparation awarded. Crystal Springs Mfg. Co. v. I. C., 109 I. C. C. 177.

(d) No warrant shown for establishment of a mixing rule on sirup, molasses, and preserves, from Kansas City, Mo., to destinations in Kansas, whereby the

highest rate and highest minimum weight on any article in the mixture will apply to entire shipment. Fifth-class rates apply to this destination territory from all points at which complainant's competitors are located, so that they have no advantage in that respect, and while there may be need from a commercial standpoint for commodity rates on mixed carloads, there is no showing that present rates impose an undue burden on the traffic. Bliss Syrup Refining Co. v. A., T. & S. F., 109 I. C. C. 391.

(e) Rates on sirup, molasses, and preserves, in mixed carloads, from Kansas City, Mo., to destinations in Kansas, found not unreasonable or otherwise unlawful as compared with rates from St. Louis and Chicago. While Kansas City has an advantage in distance and the St. Louis rates are a lesser percentage of fifth class than are those from Kansas City, the former bear no fixed relationship to class rates. Complainant's difficulties in meeting competition at St. Louis and Chicago are due to the fact that it obtains its raw material at points east of Kansas City, paying inbound freight charges thereon, whereas its competitors either manufacture their own raw material or secure it where their plants are located. Bliss Syrup Refining Co. v. A., T. & S. F., 109 I. C. C. 391.

(f) Complainant attacked through rate charged on mixed cars of pears, apples, and cabbage, from Wilson, N. Y., to Jacksonville, Fla., as unreasonable. Rate charged sixth class, rate sought commodity rate of 63c plus sixth class differential of 2c. Commodity rate was applicable on apples, cabbage, and potatoes, and on beets in straight or mixed carloads, but did not apply on a mixed shipment of these commodities and pears. Effective March 20, 1925, this rate was made to include pears. There is apparently no substantial difference in the hazard of transporting the two, or in other important transportation characteristics. HELD: Rate charged unreasonable to extent it exceeded 65c. Reparation awarded. Fitch & Wilkinson v. N. Y. C. R. R., 112 I. C. C. 547.

(g) Rate assessed on mixed carloads of tin cans and pails found legally assessed and contention of shipper that lower rates applicable on tin cans or on tin pails should have been applied upon theory that there is no distinction between a tin can and a tin pail, not sustained. Shipments were tendered to carrier as cans and pails, were readily identified as such, and no substantial or reasonable doubt existed as to correct designation of containers. The shipments were referred to in complaint as tin cans and pails, were so described in bills of lading, and shippers understood that cans took a different rating from pails, and specified number of each in each shipment. Neuhoff Packing Co. v. L. & N., 112 I. C. C. 223.

(h) Sixth-class rate on mixed-carload shipments of pears, apples, and cabbage found unreasonable to extent it exceeded contemporaneously applicable lower commodity rate on mixed-carload shipments of apples, cabbage, and other vegetables, excluding pears, which was subsequently made also to include pears. Reparation awarded. Fitch & Wilkinson v. N. Y. C., 112 I. C. C. 547.

(i) Upon further consideration, former report, 101 I. C. C. 196, finding rates on bananas and coconuts, in mixed carloads, from New Orleans and sub-ports taking same rates, and Gulfport, Miss., to various destinations in Oklahoma and to Arkansas City, Kans., and from New Orleans and sub-ports taking same rates to certain Texas points, unreasonable and prescribing a scale of distance rates to Oklahoma and Arkansas City and a single rate to Texas destinations in order to conform to the Texas common-point method of rate making, affirmed. Dawson Produce Co. v. A. & V., 113 I. C. C. 454.

(j) Rates on bananas and coconuts, in mixed carloads, from New Orleans, La., to San Antonio, Tex., found unreasonable to extent they exceeded rates prescribed in 101 I. C. C. 196, and 113 I. C. C. 454. Reasonable maximum rate prescribed for future and reparation awarded. Gugenheim-Goldsmith Co. v. G., H. & S. A., 113 I. C. C. 459.

(k) The oil-well outfits and supplies list includes many articles, of varying values and weights, which are given like rates to permit mixing. Carter Oil Co. v. A., T. & S. F., 113 I. C. C. 757, 759.

(l) Complainant attacked fourth class rate of $3.585 charged on a mixed car of springs shipped Feb. 24, 1921, from Kalamazoo, Mich., to Los Angeles, Calif., as unreasonable and unduly prejudicial. Shipment moved over G. T.,

I. H. B., and Santa Fe. On Sept. 30, 1922, a commodity rate of $1.68 was established on all of the articles except the common coil springs not assembled nor covered in any way. It would appear that charges on the shipment should have been assessed on whichever of several bases resulted in the lowest total charges. There is failure, however, to show definitely the individual weights of the several articles in the shipment, and neither is it shown to what extent, if any, the chair seat assemblies were compressed for shipment. The record, therefore, does not show that the total charges collected exceed those which should have been assessed, nor is it sufficient to a finding of unreasonableness, discrimination or undue prejudice. HELD, complaint dismissed. D'Arcy Spring Co. v. G. T. W. Ry., 115 I. C. C. 91.

(m) Complainant attacked charges collected on a car of mixed vegetables shipped April 26, 1924, from San Benito, Tex., to Denver, Colo., as unjust, unreasonable and unduly prejudicial. Shipment consisted of squash, beans, peppers and garlic, 20,065 pounds, and moved St. L., B. & M., Santa Fe., Ft. W. & D. C., C. & S., to destination. Charges on squash, beans and peppers were collected at the applicable mixed carload commodity rate of 96c, minimum 20,000 pounds. Charged on garlic first class less carload rate of $2.985. The mixture upon which the 96c rate is applicable covers a long list of vegetables, including all of those named in the above described shipment except garlic. HELD, failure of defendants to include garlic unreasonable, reparation awarded to basis of 96c. Meier Dawson Produce Co. v. C. & S. Ry., 115 I. C. C. 221.

(n) Western classification fourth-class rates on "Spring assemblies, cushion, or seat, * * *, charged on a mixed shipment of cushion seat springs and coiled-wire springs, not shown in excess of those applicable or otherwise unlawful. Complainant contended for a commodity rate on "Springs, wire, n. o. s., in bundles," or a still lower commodity rate subsequently established on articles shipped. Commodities here in issue did not come within description contended for, were specifically covered by various classification items on "Springs" and "Spring assemblies," and charges should have been assessed on whichever of the several classification bases resulted in lowest total charges. Moreover, absence, among other things, of weights of the several articles renders it impossible to ascertain aggregate legal charges, and record fails to show that total charges collected exceeded those which should have been assessed. D'Arcy Spring Co. v. G. T. W., 115 I. C. C. 91.

(o) Upon contention that charges on l. c. l. mixed shipments of fruits, vegetables, and perishable freight, covered by one bill of lading, from one consignor to one consignee at one destination, should be based on the lowest instead of the highest rated article in car, to compensate carrier for any deficit in minimum weight, HELD: To authorize charges on basis contended for might encourage shippers loading less than the minimum to place in car a low-rated article and thereby defeat very purpose of the minimum loading. Charges on Refrigerator Equipment, 115 I. C. C. 198, 201, 202.

(p) Failure of carriers to include garlic in list of vegetables entitled to move under a mixed carload commodity rate on vegetables from San Benito, Tex., to Denver, Colo., found unreasonable. Garlic is analogous to various vegetables included in the mixing provision, is included in the mixing provision governing movements in the opposite direction, and no good reason appears why it should not be included therein from and to points here involved. Reparation awarded and reasonable basis prescribed for future. Meier-Dawson Produce Co. v. C. & S., 115 I. C. C. 221.

(q) Mixed shipment of veneer moved under a joint commodity rate applicable to veneer less than one-eighth inch in thickness. A portion of shipment was of greater thickness but no separate weights of differing thicknesses were shown in billing. Upon contention that as tariff made no provision for such mixed shipments a lower commodity rate on lumber or veneer, n. o. i. b. n., without restriction as to thickness, should have been assessed on entire shipment, HELD: Rate sought was restricted to apply only in absence of other specific commodity rates. Commodity rate charged was applicable on that portion less than one-eighth inch thick, and rate contended for applied on the balance of greater thickness. Adjustment of charges authorized computed to these bases, if weights of differing thicknesses can be determined or agreed upon. Standard Furniture Co. v. A. G. S., 115 I. C. C. 243.

(r) Shipment of crude oil blended with a small quantity of casing-head gasoline and assessed gasoline rates found overcharged. Such shipments found to consist of crude oil, it being shown that the material here considered, as shipped, when subjected to usual tests, showed characteristics well within the range of those exhibited by crude oils to which no casing-head gasoline had been added. Moreover, while oil originally contained a substantial percentage of casing-head gasoline, in view of highly volatile character of the commodity and opportunities that were afforded for its evaporation between time of its production and time it was loaded into the cars, the oil as tendered for shipment did not contain a sufficient quantity of casing-head gasoline to render it different in any essential respect from crude oil as covered by tariffs. Reparation awarded. National Refining Co. v. L. & N., 118 I. C. C. 177.

(s) Complainant attacked class rates charged on contractors equipment, shipped July 28, 1924, from Elgin, Ill., to Bakersfield, Calif., in a mixed carload with one complete Elgin motor street sweeper as unreasonable and unlawful. Charged second class rate of $4.43. Obviously the rating in the classification on road scrapers does not cover machines of such a character as the Austin backfiller. The mere possibility that in some cases this backfiller may be used on roads would not justify its classification as a road scraper. The body construction of the backfiller is similar to that of locomotive cranes and power shovels. It is a machine, and machines N. O. I. B. N., set up, are rated first class less carloads, and class A carloads. First class rate is $5.10 and there is a commodity rate of $1.93 on machinery rated fifth class and class A in the classification. Lowest basis of charge was commodity rate of $1.93 on the backfiller and second class $4.43 on the street sweeper. HELD, Austin backfiller was properly ratable as a machine n. o. i. b. n. and legal charges not unreasonable, outstanding undercharge to be collected, complaint dismissed. Stuart & Smith Co. v. A., T & S. F. Ry., 120 I. C. C. 309.

(t) Complainant attacked rates charged on magnesite stucco from Illinois, Iowa and Missouri to Kansas, Missouri, Oklahoma and Arkansas and from Waukegan, Ill,, to Pueblo, Colo., as unreasonable, inapplicable, and as compared with rates on stucco and other plasters, unduly prejudicial. Class D rates charged except to Oklahoma class E. The rates contemporaneously applicable on stucco ranged from 15.5 cents to 48 cents. HELD, following 104 I. C. C. 517, rates charged on magnesite stucco composed of stucco mix, magnesite chloride, and crushed rock dash shipped in separate packages in the same car, the magnesium chloride not to exceed 20% and the crushed rock dash not to exceed 50% of the gross weight of the shipment were unreasonable to extent they exceeded rates on stucco, reparation awarded. Badger Lumber & Coal Co. v. A., T. & S. F. Ry., 120 I. C. C. 590.

(u) Contention that under a classification rule which provides that charge for a package containing freight of more than one class shall be at rating provided for highest rated freight contained in packages, the applicable ratings on mixed stearine are those in effect on coconut stearine, not sustained. Mixed stearine is composed principally of coconut stearine and the mixture or compounding of that and peanut stearine operates to destroy identity of the article either as coconut or peanut stearine. In absence of a more specific classification, mixed stearine properly falls within description of stearine, n. o. i. b. n. Best Foods v. C. R. R. Co. of N. J., 120 I. C. C. 169, 172.

(v) There are no l. c. l. ratings published based on condition that shipments fill the car, as such a rating would be impracticable. Brownell & Field Co. v. N. Y., N. H. & H., 120 I. C. C. 229, 231.

(w) Following Rocbond Co., 104 I. C. C. 517, rates on magnesite stucco composed of stucco mix, magnesium chloride, and crushed-rock dash and shipped in separate packages in same car, magnesium chloride not to exceed 20 per cent and crushed-rock dash not to exceed 50 per cent of the gross weight of shipments, found unreasonable to extent they exceeded lower rates on "stucco." Reparation awarded. Badger Lbr. & Coal Co. v. A., T. & S. F., 120 I. C. C. 590.

(x) Complainant attacked class rates charged on mixed carloads of fresh meat and packing house products from Jacksonville, Ill. to Detroit, Mich., between Aug. 28, 1920 and March 4, 1922 as unreasonable, unjustly discriminatory and

unduly prejudicial. Jacksonville is on the Wabash 37 miles closer to Detroit than is St. Louis. Under mixing rules generally applicable in Illinois and central territories, mixed carloads of fresh meats and packing house products from Jacksonville to Detroit have for some years moved at the respectively carload rate for each commodity, subject to minimum revenue per car based on 21,000 pounds on fresh meat at the carload rate. Prior to Nov. 5, 1920 the applicable carload rates on fresh meats and packing house products were third class of 72c and fifth class of 38c, respectively. During that time the commodity rate on fresh meats, in carloads, from St. Louis to Detroit was 52c. Effective Nov. 5, 1920 defendant established a commodity rate of 52.5c from Jacksonville, applying on fresh meats in straight carloads and on fresh meats and packing house products in mixed carloads. Effective April 15, 1922 the fifth class basis on packing house products shipped with fresh meats was restored. The record sustains the allegation that the 72c rate on fresh meats was unduly prejudicial in relation to the rate of 52.5c from St. Louis. The record does not warrant a finding that the rate was unreasonable. HELD, the attacked rates on fresh meats in mixed carloads with packing house products in effect prior to Nov. 5, 1920 not unreasonable but unduly prejudicial, reparation denied. Rate on packing house products in mixed carloads with fresh meats between Nov. 5, 1920 and April 5, 1922 unreasonable to extent it exceeded the fifth class rates, reparation awarded. Powers Begg & Co. v. Wabash Ry., 122 I. C. C. 476.

(y) Complainant attacked charges assessed on one mixed carload of material described as sewer pipe, sewer pipe fittings, and septic tank baffle plates, shipped from North Birmingham, Ala., to Binghamton, Tenn., on July 18, 1922 as illegal and unreasonable to the extent that they exceeded those which would have accrued on basis of the carload and less carload rates applicable on the weights of the sewer pipe and fittings and on the baffle plates, respectively. Complainant attacked rates charged on sewer pipe and sewer pipe fittings so cut and shaped that they can be used to construct septic tanks, and for water meter boxes, from Chattanooga, Rome, Macon and North Birmingham to Kentucky, Louisiana, Mississippi and other southeastern states as illegal and unreasonable. It is complainant's contention that the commodities shipped were in fact sewer pipe and sewer pipe fittings. Reinforced concrete septic tanks, with which complainant's tanks compete, were given a less carload rating of third class and carload rating of fifth class. The position of defendants is that if the articles referred to are merely standard sewer pipe pieces and are so described and shipped the ultimate use to which they are to be put does not concern them. If, however, such clay pieces are not standard pipe or parts, whether they be described as septic tanks or not, they are not entitled to sewer pipe rates. HELD, rates applied applicable and not unreasonable, complaints dismissed. Southern Sewer Pipe Works v. L. & N. R. R., 122 I. C. C. 721.

(z) Complainant alleged that rates charged on numerous mixed carloads of fresh meats, packing house products, butter, eggs, and cheese, from Wheeling, W. Va., to Ohio, Pennsylvania, and West Virginia between Aug. 10, 1920 and March 30, 1922 were unreasonable and unduly prejudicial. Third class rates were applicable on fresh meats, in carloads, from and to the points under consideration. Charged at the rates applicable on the several commodities computed upon their respective weights subject to a minimum charge on each entire shipment equal to the carload rate on fresh meats, minimum 21,000 pounds. Commodity rates on fresh meats, in carloads, lower than the third class rates were established by the B. & O. on Jan. 15, 1922 and by the Pennsylvania April 1, 1922 upon request of complainants. In official territory fresh meats take third class rates or commodity rates, which are generally lower than third class. HELD, on and after August 26, 1920 rates on fresh meats unreasonable to extent they exceeded rates established Jan. 15 and April 1, 1922 and prior to Aug. 26, 1920 unreasonable to extent they exceeded those rates modified to reflect the general rate level prior to the general increases of 1920, reparation awarded. Allied Packers v. B. & O. R. R., 123 I. C. C. 115.

(aa) Rate on burlap bags, cotton-lined burlap bags, and cotton bags, in straight or mixed carloads, found unreasonable to extent it exceeded lower rate contemporaneously maintained on burlap bagging. Reasonable rate prescribed for future and reparation awarded. Biegel Sack Co. v. C. R. R. Co. of N. J.,

122 I. C. C. 78.

(bb) Rate on fresh meats, in mixed carloads with packing-house products, from Jacksonville, Ill., to Detroit, Mich., found not unreasonable but unduly prejudicial to extent it exceeded a lower rate contemporaneously in effect from St. Louis, Mo. While Jacksonville is not intermediate to St. Louis, it is nearer to Detroit. However, rate assailed was based on distance scale prescribed in 45 I. C. C. 254 and record does not warrant a finding that such rate was unreasonable. Powers-Begg & Co. v. W. Ry., 122 I. C. C. 476.

(cc) Commodity rate on packing-house products, in mixed carloads with fresh meats, from Jacksonville, Ill., to Detroit, Mich., found unreasonable to extent it exceeded fifth-class rate contemporaneously in effect on packing-house products for the same haul. Reparation awarded. Powers-Begg & Co. v. W. Ry., 122 I. C. C. 476.

(dd) Third-class rates on mixed carloads of fresh meats and other products from Wheeling, W. Va., to certain destinations in Ohio and Pennsylvania, found unreasonable as compared with lower commodity rates contemporaneously in effect from Chicago, East St. Louis, and Indianapolis, to same destinations for comparable distances, and to extent they exceed rates subsequently established. Reparation awarded. Allied Packers v. B. & O., 123 I. C. C. 115.

(ee) Class A rates on gas engines, steam engines, and boilers between points in Louisiana and Arkansas, found not unreasonable or unduly prejudicial. Only evidence introduced to support allegation of unreasonableness was that articles named could be mixed with other oil-well supplies at rates applying on latter commodity. However, Class A rates were prescribed in 77 I. C. C. 473, for application on boilers and gas or steam engines throughout practically the entire southwestern territory and evidence here presented does not warrant a different finding. Standard Oil Co. v. C., R. I. & P., 123 I. C. C. 669.

(ff) Respondents proposed to change the present mixing rule under which wire products and merchant iron move in mixed carloads at commodity rates between Shreveport, La., and points in Texas, and between points in Texas on interstate traffic, so as to bring it into accord with the mixing rule applicable between points in Texas on intrastate traffic. By the proposed change staples and woven wire would be included among the wire products, but the weight of the wire products in the mixture would be restricted to 60% of the mixed carload weight. Present rule allows an unrestricted mixture of wire and nails with certain iron and steel articles known as merchant iron. HELD, suspended schedules justified. Iron and steel articles, 126 I. C. C. 147.

(gg) Quantity or percentage restrictions in carload mixtures, are not new. Iron and steel articles, 126 I. C. C. 147, 150.

(hh) Proposed change in mixing rule covering wire products and merchant iron in mixed carloads between Shreveport, La., and points in Texas, and between Texas points on interstate traffic, so as to include staples and woven wire among wire products in mixed carloads with merchant iron at commodity rate applicable on merchant iron, and to restrict weight of wire products to 50 per cent of car-load weight, found justified. Proposed mixing rule in effect on intrastate traffic in Texas and its establishment on interstate traffic will avoid disparity between interstate and intrastate rates. Moreover, proposed restriction of weight of wire products will prevent the loading of a small quantity of merchant iron in a carload of wire products in order to secure the lower merchant-iron scale of rates, in defeat of rates on wire products. Iron and Steel Articles, 126 I. C. C. 147.

(ii) Charges on mixed shipments of lumber, built-up woods and veneer, were collected under mixed-carload rules providing that charges on two or more kinds of lumber or articles taking lumber rates should be assessed at rate applicable on highest rated article, subject to highest minimum weight of any article contained in the car. Upon contention that built-up woods should have been rated as water-closet seats under heading "Plumbers' Goods," HELD: Built-up woods consisted of five plies of wood temporarily glued together and roughly hand-sawed to shape, thus necessitating further processing before they became finished closet seats. Clearly they were not plumbers' goods. Moreover, considering the conflicting interpretations of participating carriers and mixed-carload rules and tariffs in their entirety, there is a reasonable doubt as to their proper interpretation, which doubt is ordinarily resolved in favor of shippers. Rates sought to be collected

are therefore inapplicable. Brunswick-Balke-Collender Co. v. B. & O. R. R., 126 I. C. C. 747.

(jj) Fourth-class rating on storage batteries found not unreasonable as compared with lower class A rating thereon when shipped in mixed carloads with other electrical equipment. Carriers assert that it is commercially necessary and in accordance with their policy to permit shipment of extra parts and accessories in mixed carloads with machines and electrical appliances at rate applicable on latter commodities in straight carloads. However, in instant case shippers defeated purpose of rating by including a single electrical machine with the shipment thus creating merely a technical mixture. Moreover, in 38 I. C. C. 571 and other cited cases, rates on storage batteries in straight carloads were found not unreasonable as compared with lower rates thereon in mixed carloads with electrical machines and record here does not warrant a different conclusion. National Lead Battery Co., v. M. P. 128 I. C. C. 39.

(kk) Complainant alleged that the fourth class rating and rate charged on four cars of storage batteries shipped from Kansas City and Centropolis, Mo., to Dallas, Tex., between Jan. 10 and March 26, 1924 were unreasonable. Rate charged $1.355. Contemporaneously class A rating was accorded to mixed carloads of electric generators, engines, and switchboards combined, together with their equipment of batteries. Class A rate was $1.095. On June 15, 1924 the classification was amended to restrict the batteries to the number necessary to equip the electrical appliances in the shipment. HELD, rating and rate attacked not unreasonable, complaint dismissed. National Lead Battery Co. v. M. P. R. R., 128 I. C. C. 39.

(ll) Third-class rate on mattresses and metallic cots in mixed carloads from Atlanta, Ga., to Meridian., Miss., found not unreasonable or otherwise unlawful as compared with a lower commodity rate on mattresses or cots in straight carloads contemporaneously in effect to Memphis; or with commodity rates on the same articles, including furniture in straight or mixed carloads, between various other points for comparable distances. Carrier contended that commodity rate to Memphis, and other commodity rates instanced by complainant, were subnormal, and showed that rate assailed was relatively aligned with rates from Atlanta, Chattanooga, and Knoxville to numerous destinations in Mississippi. Moreover, it was not contended or shown that mattresses and metallic cots in mixed carloads were improperly classed, and subsequent reduction of rate assailed resulting from a general investigation in 113 I. C. C. 200 does not imply that rate paid was unreasonable. Hulett & Son v. S. Ry., 128 I. C. C. 201.

(mm) Complainant attacked third class rate of 93.5c charged on 15 mixed cars of mattresses and metallic cots shipped from Atlanta, Ga., to Meridian, Miss., as unreasonable, unduly prejudicial and in violation of the fourth section. Mattresses are rated second class, and metallic cots fourth class, carloads, mixed carloads, third class. The shipments consisted principally of mattresses, and metallic cots were included in order to secure the third class rates. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Hulett & Son v. Southern Ry., 128 I. C. C. 201.

(nn) Complainant attacked rates on enameled iron bathtubs, in straight carloads, and tubs and enameled iron lavatories in mixed carloads from Monaca, Pa, and on shipments of ingot lead, sheet lead in rolls, lead pipe fittings and lead solder in mixed carloads, from Joplin, Mo., to Dallas, Tex, two years prior to August 17, 1925 as unreasonable. Monaca is about in the center of the Pittsburgh group on traffic to Texas. Joplin is near the southern boundary of the Kansas City group of origin. Rate charged on tubs, unreleased, in straight or mixed carloads, was $1.805, and a rate of $1.77 was charged on straight carload shipments of tubs released to the value of $20 each. A rate of 81c was charged on plumbers goods from Joplin. The rates to the coast terminals even when depressed, are not necessarily low or even reasonable rates to intermediate points. The record shows that other commodities suitable for water transportation, on many of which the low canal rates presumably apply, take rates to Dallas considerably lower than the Deming rates. HELD, rates attacked from Monaca unreasonable to extent they exceed $1.61, from Joplin unreasonable to extent they exceed 58c, reparation awarded. Fisher Supply Co. v. A. & V. Ry., 128 I. C. C. 215.

(oo) Rate on mixed carloads of printing paper and writing paper from Appleton and Neenah, Wis, to Dallas, Tex., found not unreasonable as compared with rates prescribed in 66 I. C. C. 571, wherein the commission approved a mixed-carload rule to effect that the highest rate on any article contained in the car and also the highest minimum carload weight on any such article should apply on entire shipment. Practical Drawing Co. v. C. & N. W., 128 I. C. C. 540.

(pp) Complainant alleged charges collected on a mixed carload of oats, barley and beans shipped from Brampton, N. D., March 3, 1924 to Burdett, N. Y., and the mixing rule were unreasonable. The car was loaded with 50,640 pounds of barley and oats, in bulk, and 120 sacks of navy beans weighing 13,-710 pounds. Charged rates to and beyond Chicago. On the grain the combination rate was 55.5c, made up of commodity rates of 36c to Chicago and 25.5c beyond. On the beans charges were based on a combination of fourth class rates of $1 and 53c to and beyond Chicago, applicable on less carload shipments. There was also in effect a carload combination rate of $1.075 on beans, subject to carload minimum of 36,000 pounds. The charges were lower when based on the actual weight and less carload rate on the beans and charges were collected on that basis. HELD, the rate and mixing rule not unreasonable, complaint dismissed. Bennett v. M. C. R. R. 132 I. C. C. 400.

(qq) Complainant alleged fourth class rate charged on shipments of sheet copper in straight carloads or in mixed carloads with sheet brass and/or bronze, and with copper, brass, and/or bronze rods, from Kenosha, Wis., to Niles, Mich., was and is unreasonable and unduly prejudicial. Shipments moved in box cars over C. & N. W. to Chicago, and beyond either over the M. C., total distance 144.6 miles, or N. Y. C. to Elkhart, Ind., and Big Four, total distance 171.1 miles, charged 32c. The Commission is of the opinion that the relationship between the rates here assailed and the rate on the same commodities from Kenosha to Chicago does not unduly prefer manufacturers at Chicago or unduly prejudice complainant. HELD, rates assailed not unreasonable or unduly prejudicial, complaint dismissed. Kawneer Co. v. C. & N. W. Ry., 132 I. C. C. 643.

(rr) Rates on Portland cement and plaster in mixed carloads from Hanover, Mont., to western and central portions of North Dakota and South Dakota, found not unreasonable but unduly prejudicial to extent that charges thereunder exceed those which would accrue under mixing rules similar to those contemporaneously maintained from Steelton, Minn., and Des Moines and Gilmore City, Iowa. Mixtures from Hanover move under rates subject to 50,000-pound minimum, whereas from preferred points cement moves at c. l. rate and actual weight subject to 50,-000-pound minimum, and plaster at actual weight and c. l. rate subject to lowest minimum. No order entered but carriers expected to provide for mixing rules in revising rates. Three Forks Portland Cement Co. v. C., B. & Q., 129 I. C. C. 107, 118.

§10. Use or Process of Making Commodity.

See Reasonableness of Rates §22, §23; Restricted Rates.

(a) Proposal to restrict, throughout official classification territory, application of the billet basis of rates to bolt, nail, rivet, or wire rods and chain iron or steel, in coils, so that it will apply on such commodities only when round in cross section, found not justified. Effect of the proposed restriction would be to increase the rates now effective on rods, in coils, which are not round in cross section. The distinction between round and not round does not reflect any substantial difference in material, stage or process of manufacture, value, or transportation characteristics other than volume of movement. Moreover, the burden resting upon carriers to justify the increase has not been borne, nor has it been made to appear that the resulting difference in rate level would be free from undue prejudice as between round rods and rods of other shapes when shipped in coils. Iron and Steel Articles, 104 I. C. C. 616.

(b) Rates may not be based upon the use to which a commodity is put. Brass, Bronze, and Copper Articles, 109 I. C. C. 351, 357.

(c) Although the commission has repeatedly found that rates upon same commodity, varying according to the use to which it is put, are unlawful, it has as consistently found that there is nothing unlawful in establishment of different rates on different commodities after

taking into consideration, along with other factors, the general uses to which the commodities are respectively put. Eastern Lime Mfrs. Traffic Bureau v. A. & B. B., 112 I. C. C. 7, 15.

(d) The nature of an article shipped and not price at which it is sold or use to which it is put determines applicable rating thereon. See 102 I. C. C. 325, 326. Richmond Radiator Co. v. C. & N. W., 115 I. C. C. 743, 744.

(e) Rates may not be constructed based upon use to which a commodity is put, use being an element which is not controlling in fixing of rates. Duluth Boiler Works v. A., T. & S. F., 118 I. C. C. 161, 163.

(f) Use to which an article is put does not alone determine its essential character or charges which may be legally exacted for its transportation, but it tends to distinguish its qualities from other closely analogous articles. McEwing & Thomas Co. v. C. & E. I., 118 I. C. C. 211, 213.

(g) The line of demarcation separating commodities should not be controlled by mechanical processes but by actual differences in grades. See also 77 I. C. C. 727. Cotton Linters from Southwest, 118 I. C. C. 419, 425, 426.

(h) Every step in process of manufacture can not be reflected in a difference in classification treatment. Cheney Pulp & Paper Co. v. A., C. & Y., 118 I. C. C. 477, 481.

(i) Mere possibility that two articles may in some cases be used for same purpose does not necessarily justify same classification ratings for both. Smith Co. v. A., T. & S. F., 120 I. C. C. 309, 311.

(j) Character of an article shipped and not use to which it is put determines the rate applicable thereon. Menasha Wooden Ware Co. v. D., S. S. & A., 120 I. C. C. 415, 416.

(k) The Commission has consistently found that rates shall not be made based upon the use which is to be made of a commodity. Zimmerman Wells Brown Co. v. Director General, 122 I. C. C. 199, 200.

(l) Rates shall not be made based upon use which is to be made of a commodity. Zimmerman-Wells-Brown Co. v. Director General, 122 I. C. C. 199, 200.

(m) Rates predicated upon use to be made of a commodity are unlawful because of resulting discriminations, nevertheless, such rates, while in effect, are the legally applicable rates on the particular commodity when conditions of tariffs publishing them have been fully complied with. Harlem & Morrisiana Tranp. Line v. N. Y., N. H. & H., 123 I. C. C. 480, 484.

(n) Rates on pottery clay and imported china and ball clay found not unreasonable or otherwise unlawful, as compared with rates contemporaneously in effect on "clay, crude or ground (common or fire)." While complainants contend that all clays used in manufacture of pottery are crude, are formed through decomposition of feldspar in granitic rocks, and can be used in manufacture of brick. Pottery clay is found only in restricted areas, in considerably more valuable than common or fine clay, and use to which it is put requires that it be transported in clean tight box cars, whereas common clay may be shipped in leaky or open-top cars. Although pottery clays can be used for making brick, brick clays can not be used for making pottery and because of their high value pottery clays are not ordinarily so used and can not be properly included as brick clays. Moreover, in 112 I. C. C. 7, differentiation was made as between high-grade and low-grade lime, and applying that principle here, differentiation in classification and tariffs between types of clays involved is fully justified. United States Potters' Asso. v. A., C. & Y., 128 I. C. C. 249.

(o) Although the Commission has repeatedly found that rates upon the same commodity, varying according to the use to which it is put, are unlawful it has consistently found that there is nothing unlawful in the establishment of different rates on different commodities after taking into consideration along with other factors the general uses to which the commodities are respectively put. In other words, the Commission regards lime suitable for chemical or building purposes and lime having no value for such purposes, such as agricultural and fluxing lime, as different commodities. United States Potters Asso. v. A. C. & Y. Ry., 128 I. C. C. 249, 254.

§11. Value.

See Advanced Rates §18 (5); Evidence §61; Reasonableness of Rates §38.

(a) The oil-well outfits and supplies

list includes many articles, of varying values and weights, which are given like rates to permit mixing. Fact that derricks are of lower value than some other commodities taking same rates, is not, in and of itself, a compelling reason for according them lower rates. Carter Oil Co. v. A., T. & S. F., 113 I. C. C. 757, 759.

(b) It is clear that the factory cost of adding machines without the addition of any profit, can not properly be compared with the sale prices of other commodities in which a profit is included. This is true regardless of the basis upon which complainants filed claims against carriers for machines lost or damaged in transit. Burroughs Adding Machine Co. v. M. C. R. R., 120 I. C. C. 19, 20.

(c) Rating on component parts or raw material is not conclusive of rating to apply on a finished article. Troxel Mfg. Co. v. B. & O., 126 I. C. C. 169.

(d) Although it is true that a manufactured article would ordinarily be rated higher than the material from which it is made the comparatively small number of classes into which all commodities must be grouped in the classifications places an important limitation upon the application of that principle. Eggerss-O'-Flyng Co. v. C. & N. W. 128 I. C. C. 644, 649.

(e) Fifth-class c. l. rating on unprinted, waxed wrapping paper, in boxes or crates in official classification, found not unreasonable, but second-class l. c. l. rating in western classification found unreasonable to extent it exceeds third class. Reasonable rating prescribed for future. Kalamazoo Vegetable Parchment Co. v. C., K. & S., 128 I. C. C. 675.

(f) L. c. l. ratings on vegetable-parchment wrapping paper, either printed or unprinted, in official, southern and western classifications, and c. l. rating in official and southern classifications, found not unreasonable,but fourth-class c. l. rating in western classification found unreasonable as compared with fifth-class rating contemporaneously maintained on waxed wrapping paper, a competitive commodity and to extent it exceeds class A rating. Reasonable rating prescribed for future. Kalamazoo Vegetable Parchment Co. v. C., K. & S. 128 I. C. C. 675.

(g) Carriers urge printed paper because of its higher value should invariably be rated higher than unprinted paper of the same kind. However if value is the sole consideration it seems rather obvious that such a rule strictly applied would result in many improper ratings because of difference in values of unprinted paper. Therefore, it can neither be said that printed paper should always be rated higher than same paper unprinted nor that printed and unprinted paper should always be rated the same. Kalamazoo Vegetable Parchment Co. v. C., K. & S., 128 I. C. C. 675, 679.

III. CLASSIFICATION REGULATIONS.

§11¾. In General.

(a) When missing parts of a complete article are insufficient to affect its identity rating on complete article applies. Parkersburg Rig & Reel Co. v. B. & O., 115 I. C. C. 539, 540.

§12¼. Description.

(a) On shipments of rough marble, originally imported, and used for interior decorations, sixth-class rates were assessed under governing classification on "Stone, Natural, * * * Marble * * *." Contemporaneously commodity tariff provided lower rates on "Stone (Building)." HELD: The lower commodity item not being restricted to domestic traffic, or otherwise, rates thereunder were applicable on traffic here involved. Refund of overcharges directed. Lautz Marble Corp. v. E. R. R., 115 I. C. C. 543.

(b) Upon contention that an exception to classification takes item in the exception out of the classification and the exception governs, HELD: Contention is sound in part only as description in the exception must be read in connection with the classification item, and not wholly by itself. See 36 I. C. C. 519. General Motors Truck Co. v. G. T. W., 118 I. C. C. 99, 103.

(c) A manufacturers description of an article to induce its purchase by the public also describes it for transportation and carriers may accept his description for purposes of classification and rates. Carriers are not required to analyze freight to ascertain whether it is in fact inferior to the description or public representations under which it is sold, in order to give it a lower rate corresponding to its actual value. Southern Sewer Pipe Works v. L. & N. R. R., 122 I. C. C. 721, 725.

§13½. Long Articles.

(a) Complainant attacked class rate

charged on four steel girders forwarded from Pittsburgh, Pa., to Atlanta, Ga., on Jan. 2 and 4, 1924, as unreasonable and inapplicable. The girders constituted part of one electric crane, knocked down, forwarded as three shipments on different days, and under separate bills of lading. The knocked down parts consisted of the four girders above mentioned, measuring 24 inches square and 68 ft. long, and various smaller parts and fixtures. Each of the shipments considered consisted of two girders, which were loaded on two cars because of their length. The charges were collected at sixth class rate of 88.5 cents minimum 53,760 pounds for each shipment. The competent facts of record show that the shipments were stripped of all attachments or fixtures, and, for the purposes of transportation, were steel girders entitled to the special iron rating. HELD, rate charged inapplicable, applicable rate was 58 cents, reparation awarded. Knight Luttrell Iron Co. v. S. A. L. Ry., 120 I. C. C. 580.

§14. Marking and Addressing.

(a) Penalty charges collected on canned fruit in fibre boxes because of shipper's failure to mark boxes with a description of contents, in conformity with governing classification provision, which provided that "boxes must show a description of contents," found unreasonable as applied to c. l. shipments. Ball & Co. v. D. & R. G. W., 109 I. C. C. 759.

§15. Minimum Charge and Weight.

See Passenger Fares and Facilities §6½.

(a) Minimum charges on fresh meats, packing-house products, and other articles, in peddler cars, from Chicago and East St. Louis, Ill., to points on C. & O. in Kentucky, West Virginia, and Virginia, found unreasonable and unduly prejudicial to extent they exceeded charges on 20,000 pounds of freight at 3 cents per 100 pounds less than fourth-class rates from point of origin to final destination of car. Reasonable and nonprejudicial minimum charges prescribed for future, and reparation awarded. Wilson & Co. v. C. & O., 104 I. C. C. 641.

(b) Proposed increased minimum charges on articles, in peddler cars, from East St. Louis, Ill., to points on C. & O. in Kentucky and West Virginia, designed to place such charges on a basis similar to that from Chicago to same points, found not justified. The loading of peddler cars is dependent upon consuming ability of destination territory. Territory served by the C. & O., especially the branch lines, is thinly settled, and limited refrigeration facilities render storage of perishable articles for extended periods impossible. Wilson & Co. v. C. & O., 104 I. C. C. 641.

(c) Upon contention that theater chairs compete with portable chairs, church furniture, and wood benches, and that an increase in the minimum on theater chairs would be unduly prejudicial to the latter, HELD: This competition, which is limited, should not be controlling in determination of a reasonable minimum on theater chairs. Theater Chairs to Southwestern Destinations, 113 I. C. C. 313, 318.

(d) Weight density, or the weight of an article in proportion to the space it occupies, is an important consideration in freight classification, whereas under the existing system of express rates practically all articles except food products are charged the first class rates regardless of their bulk. Parlor Frame Mfrs. Asso. v. A. A. R. R., 118 I. C. C. 154, 155.

(e) One factor of combination rate on a carload of sawmill machinery shipped in a car 41 feet 4 inches in length, was published at "$61 per car as per classification." Governing classification rated sawmill machinery sixth class, minimum 24,000 pounds, subject to rule 34, and exceptions thereto provided class N rating on "Machines and machinery, c. l., * * * minimum weight 20,000 pounds," for cars 36 feet 6 inches, or under, larger cars being subject to rule 34. Upon contention by carriers that under rule 34 the rate of $61 should be regarded as applicable to a unit of 23,400, the minimum weight for a car of size used, and that excess above such weight should be computed proportionately, HELD: The portion of rule 34 on which carriers rely fits ordinary situation where rates are applicable to specified units of weight, but has no reasonable application where, as here, the rate stated as a flat charge per carload, and charges collected were inapplicable. Reparation

awarded. West Florida Lbr. Co. v. G., F. & A., 129 I. C. C. 62.

(f) Fourth-class rate, minimum 30,000 pounds on shipments of varnish weighing less than 33,000 pounds, found not unreasonable as compared with fifth-class rate, minimum 36,000 pounds, contemporaneously applicable on paint. Under an intermediate clause, a lower commodity rate on varnish, minimum 40,000 pounds, would have been applicable to shipments had not an alternative rule provided for application of rate and minimum producing lowest charge. Transportation qualities of paint and varnish are not shown to be similar and fourth-class rate was prescribed on paint, between the same points, in 123 I. C. C. 203. Peaslee-Gaulbert Co. v. S. Ry., 129 I. C. C. 611.

§15½. Nesting.

(a) Paper cups, nested and flat, average substantially same value per pound, and risk of damage is negligible. When used for same purpose they compete commercially. While the greater density of flat cups when packed permits loading to a c. l. weight heavier than can be attained by the nested cup, this consideration alone does not justify ratings on flat cups lower than on nested cups. Public Service Cup Co. v. A. C. L., 118 I. C. C. 697, 701.

§16. Packing.

See Reasonableness of Rates §2.

(a) Meats: Rating in official classification of fourth class on dry-salted, dried, smoked, and pickled meats, loose, from Chicago and various other packing points to destinations in trunk-line territory east of Buffalo-Pittsburgh line and to New England territory found unjust and unreasonable for future to extent it exceeds fifth class on like traffic in packages. Reasonable rating prescribed for future. Morrell & Co. v. N. Y. C., 104 I. C. C. 104, 136, 137.

(b) Lubricating oils, lubricating greases, and paraffine wax were accorded same rates whether moving in tank cars or in packages. Carriers established lower rate on tank-car shipments and subsequently again equalized rates by reducing those on package shipments. FOUND: Rates assessed on shipments in packages moving during period when higher rates thereon were in effect were not unreasonable, since existence of lower rates on tank-car shipments and subsequent establishment of lower rates on shipments in packages do not alone demonstrate unreasonableness of higher rates. Texas Oil Co. v. T. & N. O., 104 I. C. C. 337.

(c) Long-established requirement that shipments of rosin be packed in barrels, found not unreasonable or otherwise unlawful. Prayer for a change in rules to permit shipment of that commodity loose, in box cars denied, doubt existing as to practicability of shipping in bulk in summer time. Vera Chemical Co. v. A. C. R. R., 104 I. C. C. 408.

(d) Rates on unfermented grape juice, in bulk, in barrels, found unreasonable and unduly prejudicial to extent they exceed rates contemporaneously in effect on same commodity, in glass, in boxes. Reasonable rates prescribed and reparation awarded. Joseph v. O.-W. R. R. & N., 104 I. C. C. 477.

(e) Following 96 I. C. C. 437, apples, in bulk or in lug boxes without tops, found unreasonable and unduly prejudicial to extent they exceeded lower rates on same commodity in boxes and crates. Lane v. S. P., 107 I. C. C. 253.

(f) Penalty charges collected on canned fruits in fiber boxes because of shipper's failure to mark boxes with a description of contents, in conformity with governing classification provision which provided that "boxes must show a description of contents," found unreasonable as applied to c. l. shipments. Ball & Co. v. D. & R. G. W., 109 I. C. C. 759.

(g) A description of contents outside of fiber boxes facilitates the policing of special packing requirements in connection with particular articles. However, as a practical matter, considering the large amount of traffic to be policed, it is probable that where articles liable to break, sift, or leak are enclosed in fiber boxes, inspections to determine whether packing requirements have been met should be limited to instances where boxes show external evidence of breakage, leakage, or sifting. Ball & Co. v. D. & R. G. W., 109 I. C. C. 759, 761.

(h) There has been and is a tendency to increase requirements for packing. These requirements vary but are generally that shipments shall be wrapped in paper, burlap, or fiber board, or boxed or crated. Suitable packing is advantageous not only to carrier but also to the trade, since it manifestly is better for the dealer to have satisfied customers

receiving consignments in good and merchantable condition than to have one of the parties to transaction burdened with a loss or damage claim and attendant delays and vexations. Nat'l. Council of Furniture Assos. v. A. A., 112 I. C. C. 289, 292.

(i) Refusal of carriers, parties to southern classification, to accept l. c. l. shipments of stoves or ranges made of cast iron, or of plate or sheet iron with cast-iron bases or tops, unless boxed or crated, found unreasonable. Reasonable rating of second class, or one class higher than on crated stoves or ranges, prescribed for future. Cairo Asso. of Commerce v. B. & N. W., 115 I. C. C. 3.

(j) Carriers assessed sixth-class rate applicable on rosin in bulk in barrels on shipments of rosin in boxes without tops. Governing classification which rated rosin in boxes at second class, defined a box as a closed container. It also provided for charging of rates one class higher where improperly closed containers are inadvertently accepted for transportation. HELD, while first-class rate was legally applicable, there is a general rate parity on dry and solid articles in barrels and in boxes and no reason appears why this parity should not obtain on rosin. Accordingly, rosin in barrels being rated sixth class, the applicable first-class rate on rosin in boxes was unreasonable to extent it exceeded fifth class which would apply under penalty provision for failure to comply with packing requirements. Adjustment of charges directed. Hyman-Michaels Co. v. A. C. L., 120 I. C. C. 127.

(k) Complainant sought same rating on l. c. l. shipments of fiberboard cans in paper bags as apply on l. c. l. shipments of same commodity in barrels, boxes, or crates, contending that although it might be proper to penalize shipments of cans in paper bags which do not fill the cars, such a penalty is unreasonable when cars are loaded to capacity, as possibility of damage is no greater than if the cans are boxed or crated. HELD, although commission has condemned the maintenance of minimum weights which ordinarily can not be loaded into cars of standard dimensions, evidence here does not establish a case of that kind with respect to fiberboard cans in general. Charges accruing on complainant's shipments based on c. l. rates and minima can not, therefore, be said to have been unreasonable. Brownell & Field Co. v. N. Y., N. H. & H., 120 I. C. C. 229.

(l) Upon further hearing, finding in 104 I. C. C. 408, that a requirement that rosin shipped c. l. be packed in barrels is not unreasonable, affirmed. Complainant, in attempting to show that rosin can be safely transported in bulk from southern producing points, showed lowest and highest mean temperatures over a 10-year period, but these figures are without probative value in that they fail to show daily temperatures. On certain days the temperature at several points through which rosin must move is considerably higher than figures presented, and in box cars, where air does not circulate freely, the temperature is still higher. Nor is it shown that this commodity, under pressure encountered, would not soften sufficiently to pass through the interstices of the cars. Moreover, complainant is the only user of rosin to request its transportation in bulk and facts of record do not warrant disturbing the long-established packing requirements of carriers. Vera Chemical Co. v. A. C., 120 I. C. C. 434, 437.

(m) Complainant alleged fifth-class rate charged on one car of paste shipped May 8, 1924 from Columbus, O., to Dallas, Tex., was unreasonable. Charged fifth-class of $1.38 applicable on paste, in bulk, in pails, or in barrels, minimum 36,000 pounds. Third class rate of $1.995 was applicable, and applied on adhesive paste, n. o. i. b. n., in glass or earthenware packed in barrels or boxes, in metal tubes in barrels or boxes, or in metal cans, or pails in barrels, boxes or crates. HELD, applicable third-class rate not unreasonable, complaint dismissed. Practical Drawing Co. v. N. Y. C. R. R., 126 I. C. C. 133.

(n) Rates on steel rods, in straight lengths and coils found discriminatory and unduly prejudicial to extent they exceeded the contemporaneous rates on same articles when shipped in coils. Since cost of both articles and transportation conditions are the same, no valid reason appears why rates on the two shapes of same material should be different. Standard Nut & Bolt Co. v. N. Y., N. H. & H., 126 I. C. C. 731.

(o) When an article is packed in inner containers in barrels there is less likelihood of loss or damage in transit than when packed in bulk in barrels, and that the rating for the former package should not be higher than on the latter,

except in cases where the article shipped in inner containers is of markedly better quality and hence of higher value than the same article shipped in bulk. Hires Co. v. A. C. & Y. Ry., 132 I. C. C. 29, 31.

(p) A regulation by the Interstate Commerce Commission relative to shipping carbon bisulphide in metal cans of not less than 28-gauge, being unauthorized under Act March 4, 1909 and Act June 18, 1910, § 12, imposed no duty on shippers, and violation thereof by shipper does not constitute negligence as matter of law, or evidence of negligence W. A. Hover & Co. v. Denver & R. G. W. R. Co., 17 Fed. (2d.) 881.

§16a. Penalty Charges.

See Passenger Fares and Facilities §4¼; Penalty Charges.

(a) Penalty charges collected on canned fruit in fiber boxes because of shipper's failure to mark boxes with a description of contents, in conformity with governing classification provision which provided that "boxes must show a description of contents," found unreasonable as applied to c. l. shipments. Ball & Co. v. D. & R. G. W., 109 I. C. C. 759.

(b) Upon contention that as shippers are charged with a knowledge of classification provisions but having for some reason elected to ship a commodity in a manner which did not comply with packing requirements, they should not be heard to complain of resulting penalty charges occasioned thereby, HELD: This view can not be sustained. Even if shippers knowingly subject themselves to higher rates, clearly they are not estopped thereby from complaining that charges exacted for service performed were excessive. Hyman-Michaels Co. v. A. C. L., 120 I. C. C. 127, 128.

(c) Classification rule provides that articles tendered for shipment in packages not specified in connection with ratings will be refused transportation but if such packages get into carrier's possession and are transported, ratings thereon will be determined in accordance with certain specifications embodied in the rule, among which is a provision that unauthorized shipments in boxes will be accorded rating provided for same commodity in barrels. HELD: Latter provision is plainly intended only to provide a legal basis for determining charges on shipments inadvertently accepted and does not negative requirement that shipments in boxes be rejected. If carriers are willing to transport shipments in boxes at ratings applicable on same commodity in barrels, they should amend classification accordingly, and until and unless that is done it is a violation of section 6 of the act for them knowingly to accept shipments in boxes. Best Foods v. C. R. R. Co. of N. J., 120 I. C. C. 169, 172.

§16¾. Valuable Articles.

(a) Principle underlying rates based on actual value of commodity is that articles covered by different groups of valuations are in fact so different as to constitute in effect different commodities. See 100 I. C. C. 471. Bourgoin & Co. v. M. & W. R., 123 I. C. C. 545, 546.

(b) Principal reason for rule of the classification that a manufactured article should properly pay a higher rate than raw materials from which it is produced is that a finished article is ordinarily more valuable per pound than the raw materials entering into its manufacture. Federated Metals Corp. v. C. R. R. Co. of N. J., 126 I. C. C. 703, 711.

IV. COMPARATIVE RATINGS.

See Infra §22; Supra §6, §16; Advanced Rates §5 (3); Commodity Rates II; Comparative Rates; Differentials §2½a; Evidence §12, §31, §64 (u); Live Stock Shipments; Reasonableness of Rates §28; Tariffs §7.

A. Analogous Articles.

§17. In general.

(a) Steam shovel parts: Official classification rating and rates on steam-shovel parts, l. c. l., found not unreasonable as compared with ratings on iron and steel castings, n. o. i. b. n., in the rough. Erie Steam Shovel Co. v. B. & O., 104 I. C. C. 367.

(b) Insulating material, viz., flax felt and wood-fiber felt: Proposed increased classification ratings on, in western and southern territories, which will have effect of making ratings uniform and provide same ratings for the several varieties of insulating materials, found justified. Earnings under proposed ratings will not be unduly high in comparison with those yielded by class rates applicable on analogous and comparable articles. Moreover, considering the rat-

ings applicable to other similar or heavier loading articles, and to light weight density of insulating materials, suggested ratings do not appear unreasonably high. Classification of Insulating Material, 104 I. C. C. 713.

(c) First-class rating and rates on rotary-tool joints, loose, l. c. l., in western classification, found unreasonable to extent they exceeded second class. While a rotary-tool joint is a much higher class article than an ordinary pipe connection, a rating as high as first class is not justified by usual classification considerations of value, weight density, and susceptibility to damage. Reasonable rating and rates prescribed and reparation awarded. Hughes Tool Co. v. A. & R. R. R., 107 I. C. C. 545.

(d) The analogous-article rule of classification can not be applied where an article has a specific rating or where it is embraced in classification as an article not otherwise indexed by name. Berninghaus Co. v. C. & N. W., 109 I. C. C. 104, 105.

(e) Fourth-class rating in official classification territory on automobile bow sockets found unreasonable to extent they exceeded fifth class the rating on other automobile parts. Reasonable rating prescribed. Chevrolet Motor Co. v. B. & O., 109 I. C. C. 185.

(f) Complainant attacked commodity rate charged on cars of crude and fuel oil received at Alexandria, La., between July 1, 1923, and June 15, 1924, from El Dorado, Norphlet and Smackover, Ark., as unjust and unreasonable. Shipments moved 175 miles from El Dorado, 183 from Norphlet and 189 miles from Smackover, charged 16c, reparation desired to 11c. During the period of movement the rate on refined oils was 28.5c. Subsequently, on June 5, 1924, that rate was reduced to 17.5c. From the latter rate complainant deducts 6.5c the differential on fuel and other low grade oils under refined oils, to arrive at the 11c rate sought. HELD: Rate attacked not unreasonable, complaint dismissed. Alexandria Refining Co. v. M. P. R. R., 112 I. C. C. 613.

(g) Complainant attacked sixth class rate of 85c charged on a car of wooden insulator pins shipped Sept. 28, 1922, from Chicago, Ill., to New Orleans, La., as unreasonable, unjustly discriminatory, and unduly prejudicial. Shipment moved C. & E. I., to Tamms, Ill., thence M. & O., to Meridian, Miss., and N. O. & N. E., beyond. There was a contemporaneous rate on lumber of 33.5c. HELD: Rate attacked unreasonable to extent it exceeded the rate on lumber, reparation awarded. Joslyn Mfg. & Supply Co. v. C. & E. I. Ry., 112 I. C. C. 743.

(h) Complainant attacked class rates charged on glass lighting bowls, glass globes, and glass lamp shades, less carloads, from eastern transcontinental groups to San Francisco, Calif., between March 15, 1918, and March 14, 1921, as inapplicable. Charged on globes, first class from Groups A and B, with the exception of one shipment from Monaca on June 27, 1928, on which a rate one and a half times first class was charged; on shades, first class rates from Groups A, B and E; on semidirect lighting bowls not exceeding $36 per dozen in value, first class rates, on bowls valued at between $36 and $72 per dozen, one and a half times first class, and on bowls exceeding $72 per dozen in value, double first class, from Groups A and B with the exception of one shipment from Monaca on Jan. 20, 1921. Less carload commodity rates considerably lower than class rates collected were applicable on glass semidirect lighting bowls, glass lamp shades, and glass lamp globes actual value not exceeding $24 per dozen. Following 100 I. C. C. 471, class rates charged applicable, complaint dismissed. Day v. Director General, 112 I. C. C. 749.

(i) Complainant attacked class rate charged on two cars of partly polished and partly rough granite shipped from Quincy Adams, Mass., to Plymouth and Keokuk, Ia., during 1918, as illegally assessed. Charged to Plymouth, Ind., fifth class rate of 43c, to Keokuk fifth class of 40c. Shipment to Plymouth was billed as 36 pieces dressed granity and to Keokuk 101 pieces granite monuments. Complainants shipping order described the granite shipped to Plymouth as 36 pieces of dressed granite monument, partly finished. None of the granite at the time of the shipment was carved or lettered. All of the granite underwent further manufacture by complainants and was used for monuments. When the shipments were made commodity rates of 27.5c to Plymouth and 26c to Keokuk were applicable on stone or granite classified sixth class in official classification. The granite rated sixth class was rough quarried and sawed granite. It is clear that the commodities shipped were not rough quarried granite or sawed granite and they were monu-

ment parts to be used in the manufacture of monuments. Commodity rates not applicable. The granite was partly polished and partly dressed, which brings it within the description of the commodities on which the fifth class rates were applicable. HELD: Fifth class applicable, complaint dismissed. Southworth & Son v. N. Y. N. H. & H. R. R., 113 I. C. C. 171.

(j) Complainant attacked class A rates charged on 11 cars of engines and engines with power machinery (power pumps) from Corliss, Wis., Cleveland and Hamilton, O., Philadelphia, Pa., and Auburn and Buffalo, N. Y., to Seattle, Wash., as in violation of section 6. The first question presented, with respect to the applicability to complainant's shipments of the commodity rate, is whether marine engines are comprehended in the term "engines" as used in the item in view of the limiting words in the heading, viz, "Electrical, Iron Working (Power), mining and smelting." In common acceptation the term "engine" does not include motors and generators or dynamos, which the item specifically names. It can not be said that engines used for operating iron working, mining, or smelting machinery are essentially different from other engines used to operate power machinery. Indeed the same kind and style of engines as are used for the purposes named are put to many other uses. Marine type engines are sometimes used on land for power purposes. The parenthetical expression in the heading clearly does not so restrict the term "engines" as to prevent its application to marine engines. The record indicates that all the items mentioned in connection with the shipment from Cleveland were either directly parts of the engine itself or for use in connection therewith, and that without such equipment the engine would be incomplete. With the exception of the shipment from Hamilton, the other shipments involved did not constitute complete engines, nor, so far as the bills of lading show, did they contain articles included in the commodity item. The note in connection with the commodity item prevents the rate from applying on straight carloads, but only in mixed carloads. HELD: Rate charged not illegal, complaints dismissed. Duthie & Co. v. Director General, 113 I. C. C. 255.

(k) Official classification fourth-class rating and rates on carbon flour found unreasonable to extent they exceeded sixth class. The classification contains but a limited number of ratings, and commodities possessing somewhat different transportation characteristics must often of necessity be assigned to same class. Carbon flour is shown to be a heavy low-grade commodity, more closely associated with carbons and carbon articles rated sixth class than with those rated fourth or fifth class. Reparation awarded. French Battery & Carbon Co. v. C. & N. W., 112 I. C. C. 128.

(l) Shipper requested that commission modify its conclusions in the Salt Cases of 1923, 92 I. C. C. 388, wherein it was held that all kinds of salt should be accorded a common rate and minimum weight, contending that lower rates on crude than on refined salt are justified. It was stated that crude salt is of low grade, is dirty and discolored, and about one-third or one-fourth the value of refined salt used for curing meats. Also that damage claims are practically unknown and that the two grades of salt do not compete. HELD: Finding in the general cases was based largely upon a practical unanimity of opinion between carriers and salt producers and commission is not prepared to depart from previous conclusion that refined and crude salt should take the same rate. Salt from Ludington Group, 112 I. C. C. 255, 258.

(m) Rates on worn-out autotruck rims with solid rubber tires attached found unreasonable and unduly prejudicial to extent they exceed rates on scrap iron. Reasonable and nonprejudicial rates prescribed for the future. Ames & Co. v. N. Y., N. H. & H., 112 I. C. C. 624.

(n) Rates on timbers, poles, piling, and spars cut from various kinds of wood which, on account of length, require two or more cars for their transportation, found not unreasonable, discriminatory, or unduly prejudicial, the additional expense and hazard incident to movement of multiple shipments of long timbers, etc., warranting charging of higher rates on such shipments than on single carloads of lumber. Dutton Lbr. Corp. v. Director General, 112 I. C. C. 661.

(o) Telescoped barrels were by analogy assessed fourth-class rate, minimum 16,000 pounds, applicable to wooden butter tubs. Complainant contended for lumber rate, or relative fixed percentage above, minimum 30,000 pounds. HELD: Transportation characteristics are quite dissimilar to those of lumber, and barrels

have greater value due to further manufacture. Moreover, regularity and volume of traffic do not warrant a commodity rate. There is marked similarity, however, between telescoped barrels and wooden cooperage stock rated sixth class, minimum 36,000 pounds, subject to rule 34, except that the former load lighter. For the future, therefore, charges on telescoped barrels should be collected on latter basis. J. D. Hollingshead Co. v. A. A. R. R., 115 I. C. C. 95.

(p) Box board is a low grade commodity made from scrap paper, comparable with wood-pulp board. Both commodities are used for similar purposes, are included under same general headings and given same rating in consolidated classification and exceptions thereto, and from a transportation standpoint are practically identical. Lynchburg Chamber of Commerce v. B. & O., 115 I. C. C. 465, 466.

(q) Coffin material was assessed sixth-class rate applicable on knocked-down coffins. Complainant contended for a lower class A rate on "Coffin stock, consisting of built-up or combined wood, bent or straight," carrier urged that shipment did not consist of built-up wood but was sap gum lumber cut to shape, and that since no commodity rate applied on coffin material there was no alternative but to assess the knocked-down coffin rate. HELD: Class A rate was applicable by analogy under a rule of the classification which provided that when articles are not specifically provided for, nor embraced as articles "N. O. I. B. N." classification provided for analogous articles should apply. Gum lumber cut to shape is closely analogous to built-up or combined wood, but neither are properly described as coffins until further manufactured, and to constitute knocked-down coffins would require the inclusion of all parts necessary to make up a complete coffin. Reparation awarded. Jackson Traffic Bureau v. I. C., 118 I. C. C. 515.

(r) In 98 I. C. C. 331, the commission found the ratings and rates on coconut stearine, in carloads and less carloads, from Bayonne, N. J., to official territory were unreasonable and unduly prejudicial to extent they exceeded ratings and rates on peanut, cottonseed and mixed stearines, reparation awarded. In complying with the order defendants published the same ratings and the same package specifications on coconut stearine as are applicable on stearine, n. o. i. b. n., but made no change in the ratings on coconut stearine in boxes, which were and are second class in less carloads and third class carloads. HELD, ratings and rates on coconut stearine in boxes or barrels unreasonable to extent they exceed third class less carloads and fifth class carloads, reparation denied. Best Foods, v. C. R. R. of N. J., 120 I. C. C. 169.

(st) Complainant attacked ratings in official, southern and western classifications, and rates thereunder, on sandwich spread from Cleveland, O., to all destinations in United States, as unreasonable, unjustly discriminatory and unduly prejudicial to extent they exceeded rates and ratings on salad dressing. No specific rating is provided for sandwich spread in these classifications. Defendants contend it is prepared food, n. o. i. b. n. Complainant contends it is a salad dressing. Sandwich spread is composed of mayonnaise 40%, sweet pickles 50%, olives and condiments 7% and shredded ham 3%. It is advertised for use as a salad dressing, as a relish, as a spread for sandwiches, and in various other ways. It is packed in glass. Complainants sandwich spread may be used as a salad dressing, but it is intended to be used principally for other purposes. The rates and ratings on salad dressing are applicable only to such preparations as are primarily and principally intended for the use suggested by their name. Accordingly they can not be applied to complainant's preparation. But sandwich spread clearly is a prepared food; and not being provided for in the classification under a more specific designation, it follows that the rates and ratings for prepared food, n. o. i. b. n., are applicable. Undercharges are outstanding. HELD, ratings attacked and rates for future unreasonable to extent they exceed second class less carloads in all three classifications, and fifth class in the official and western and sixth class in southern in carloads, minimum 36,000 pounds. Reparation awarded, undercharges waived to basis of prescribed rates and ratings. Sar-A-Lee Co. v. A. C. & Y. Ry., 120 I. C. C. 512.

(u) Wheels with propeller blades used to direct attention by their revolutions to advertising matter on signboards were not specifically listed in the classification. Carrier contended that classification item "Sheet Iron or Sheet Steel Ware, N. O. I. B. N.: Painted or Plain"

should apply, also suggesting a rating under "Wheels—Wooden." Complainant contended for a rating under "Windmills, K. D., or Parts." HELD, these wheels were not sheet-iron or sheet-steel ware, nor wood wheels, within meaning of classification descriptions; nor were they windmills parts, because they do not generate power which is the usual function of a windmill. However, they were more analogous to that article than to items suggested by carrier, and in absence of specific rating were entitled under the analogy rule to rating provided for windmill parts. Reparation awarded. Lynchburg Chamber of Commerce v. N. & W., 120 I. C. C. 64.

(v) Complainant sought same rating on l. c. l. shipments of fiberboard cans in paper bags as apply on l. c. l. shipments of same commodity in barrels, boxes or crates, contending that although it might be proper to penalize shipments of cans in paper bags which do not fill the cars, such a penalty is unreasonable when cars are loaded to capacity, as possibility of damage is no greater than if the cans are boxed or crated. HELD, although commission has condemned the maintenance of minimum weights which ordinarily can not be loaded into cars of standard dimensions, evidence here does not establish a case of that kind with respect to fiberboard cans in general. Charges accruing on complainant's shipments based on c. l. rates and minima, can not, therefore, be said to have been unreasonable. Brownell & Field Co. v. N. Y., N. H. & H., 120 I. C. C. 229.

(w) Rates on broom and mop handles, dowels, and curtain poles, not further finished than sawed, turned to shape, planed or sand belted, found unreasonable and unduly prejudicial to extent they exceeded rates contemporaneously in effect on lumber by more than 15 per cent; and rates on same articles when shellacked, painted, or varnished found unreasonable and unduly prejudicial to extent they exceeded by more than 3 cents per 100 pounds rates found reasonable herein when not shellacked, painted, or varnished. See 52 I. C. C. 598, 616, and other cited cases. Reasonable and nonprejudicial rates prescribed for future and reparation awarded. Lumberton Broom & Mop Handle Factory v. G. & S. I., 120 I. C. C. 233.

(x) Rate on basket tops found unreasonable to extent it exceeded rate contemporaneously maintained on lumber. Reasonable rate prescribed for the future and reparation awarded. Liberty Cooperage & Lbr. Co. v. N. Y., C. & St. L., 120 I. C. C. 271.

(y) An Austin backfiller equipped with swinging boom and adjustable steel scraper so that it could be used as a crane or a backfiller, was rated by analogy as a power shovel. Upon contention of shipper that it should have been rated as a scraper under general heading of grading and roadmaking implements, HELD: Classification rating on road scrapers does not cover machines of such character as the Austin backfiller, and mere possibility that in some cases this backfiller may be used on roads would not justify its classification as a road scraper. On the other hand, while this backfiller has a limited use as a crane or power shovel, it constituted a machine and was properly subject to a commodity rate on machines and machinery, n. o. i. b. n. Smith Co. v. A., T. & S. F., 120 I. C. C. 309.

(z) The analogous-articles rule in classification contains two conditions both of which must be met when the rule is invoked. First, it must be that there is no specific rating on the article, and, second, that it is not embraced in the classification as an article n. o. i. b. n. See 85 I. C. C. 383. Smith Co. v. A., T. & S. F., 120 I. C. C. 309, 311.

(aa) Rate on wooden insulator pins and brackets found unreasonable to extent it exceeded rate contemporaneously in effect on lumber. Reasonable rate prescribed for future and reparation awarded. Peninsular Teleph. Co. v. S. Ry., 120 I. C. C. 669.

(bbcc) Complainant attacked sixth class rate charged on 105 cars of acid phosphate shipped between March 9, 1923 and Dec. 29, 1924 from Lowell, Mass., to East Windsor, Conn., as unreasonable and unduly prejudicial to extent it exceeded subsequently established rate. Distance hauled 140 miles, charged sixth class 18.5 cents for the line haul plus 3 cents for switching at Lowell. A commodity rate of 17 cents was subsequently established. The record is not convincing that the rate on fertilizer affords a measure for the reasonableness of the rate on acid phosphate. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Consolidated Rendering Co. v. N. Y., N. H. & H. R. R., 123 I. C. C. 98.

(dd) Complainant alleged third class rates charged on four carloads of gas generators and parts, shipped in October, 1924 from Pittsburgh, Pa., to Seattle, Wash., as unreasonable to extent it exceeded $1.76, applicable on Edison electric storage batteries. A rate of $2.12 was applicable on electrical appliances rated class A or fifth class in the western classification. HELD, rate attacked unreasonable to extent it exceeded $2.12, reparation awarded. Pacific Nitrogen Corp. v. C. B. & Q. R. R., 123 I. C. C. 717.

(ee) Rates on glue stock, from El Paso, Tex., to Chicago and St. Louis, found unreasonable as compared with rates contemporaneously in effect on soap stock and with rates on various other unrelated commodities. Reasonable rates prescribed for future. Peyton Packing Co. v. A. & S., 122 I. C. C. 3, 9, 10.

(ff) Fifth-class rate assessed on granite monuments and parts thereof under classification description "Granite * * * carved, lettered, polished, or traced," found applicable. Governing classification carried no rating on monuments and while a lower commodity rate contemporaneously applied on polished granite, tariff item naming this rate specifically excluded monuments or parts. Accordingly, such lower commodity rate could not be applied to monuments, but under analogy rule carried in the classification articles here shipped may be regarded from a classification standpoint as polished granite. Kassebaum & Son v. N. Y., N. H. & H., 122 I. C. C. 59.

(gg) In the fixing of rates in the past on washed gravel, crushed stone, slag, sand, clay gravel, and unwashed gravel, the commission has not recognized existence of a difference in transportation characteristics, or in any other facts entitled to consideration in the fixing of rates, such as to warrant a different basis of rates on some as distinguished from others. Where scales have been prescribed in any territory they have been rated the same. Rates on Chert, Clay, Sand, and Gravel., 122 I. C. C. 133, 163.

(hh) Fourth-class rate covering that factor of a combination rate from Illco, Wyo., to Salt Creek, Wyo., assessed on shipment of copper wire, in coils, and copper-wire strand, on reels, from Black Eagle, Mont., to Salt Creek, found unreasonable to extent it exceeded lower commodity rate contemporaneously in effect on oil-well outfits, including such articles as copper sheets, iron or steel strand wire, and copper or iron wire, which rate was subsequently made applicable on copper wire. Reparation awarded against carrier publishing unreasonable factor. Midwest Refining Co. v. G. N., 122 I. C. C. 205.

(ii) Rate on pipe, wooden, water, found unreasonable to extent it exceeded a lower rate contemporaneously in effect on lumber and lumber products. Reparation awarded. Pacific Tank & Pipe Co. v. S. P., 122 I. C. C. 284.

(jj) Rate on basket tops, found unreasonable to extent it exceeded lower rate contemporaneously in effect on lumber. Reparation awarded. Liberty Cooperage & Lbr. Co. v. S. Ry., 122 I. C. C. 297.

(kk) Rate on wall paper, found not unreasonable as compared with lower rate on wrapping paper. Pan American Wall Paper & Paint Co. v. C., R. I. & P. Ry., 122 I. C. C. C. 333.

(ll) Rate on woodpulp, found not unreasonable as compared with rates on china clay, caustic soda, and cottonseed-hull shavings pulp. International Paper Co. v. B. & O., 122 I. C. C. 440, 441.

(mm) Class A rates on boilers, pumps, heaters, and engines, from defined territories to destinations in Louisiana and Arkansas and between points in Louisiana and Arkansas, found not unreasonable or otherwise unlawful as compared with lower commodity rates contemporaneously in effect on oil-well supplies, or with commodity rates on machinery and machines. In 104 I. C. C. 623, class A rate on internal-combustion engines, heat exchanges, and gas compressors from same origin points to Texas destinations was found not unreasonable. Moreover in 77 I. C. C. 473, class A rate was prescribed on machinery and machines for application throughout this territory at same time rates on oil-well supplies were prescribed, and no reasons have been advanced which warrant a change therefrom. Standard Pipe Line Co. v. T. & P., 122 I. C. C. 463.

(nn) Rates on linseed oil, found not unreasonable or otherwise unlawful as compared with rates on creosote oil, coconut oil, cottonseed oil, cooking oils, and various other commodities. Portland Linseed Oil Works v. G. N., 122 I. C. C. 484.

(oo) Although question of relationship between rates on grain and the rates on grain products has been presented frequently for commission's determination, it has never prescribed a fixed differential for universal application. The commission has been inclined rather to treat each case on its merits, recognizing the differences in conditions which prevail in various parts of the country. Accordingly, it has been held in some instances that there should be a substantial parity between rates on wheat and flour, in other cases differentials have been prescribed, and in others wheat and flour rates were prescribed on same basis. Ogden Grain Exchange v. A. & S., 122 I. C. C. 691, 714.

(pp) Fifth-class rate on ingots, brass, found not unreasonable as compared with rates on various other commodities. Complainant made no showing with respect to transportation, competitive, and other conditions, attending movement of the commodities with which comparisons were made, whereas, carriers showed that fifth class applies on numerous commodities of relatively low value which move in substantially greater volume than brass ingots. Hartman Ingot Metal Co. v. C., B. & Q., 123 I. C. C. 20, 21, 22.

(qq) Rates on rig irons, found unreasonable as compared with those on agricultural implements, fencing material, stoves and parts, wire, iron and steel tanks, canned goods, bags and bagging, machinery and machines, and various other articles. Parkersburg Rig & Reel Co. v. C., R. I. & P., 123 I. C. C. 79, 83.

(rr) Transportation characteristics of linseed oil are similar to those of cottonseed and other vegetable oils, and rates on such analogous oils should be same. See 109 I. C. C. 721. Fredonia Linseed Oil Works Co. v. A., T. & S. F., 123 I. C. C. 153, 156.

(ss) Carriers contended for establishment of rates on dairy products in the Southwest equal to rates on fresh meats, fruits, and vegetables, on ground that there is great similarity in transportation conditions, especially as between dressed poultry and fresh meats which compete in consuming markets. HELD: Similar contentions have been advanced in other cases but commission has never been of the view that dairy products should necessarily take the same rates as fresh meats or fruits and vegetables. Moreover, rates approved and prescribed in various cases were higher than those on fresh meats or on most fruits and vegetables, and upon reconsideration commission finds nothing to change its view that the diary-products rates should be higher. Consolidated Southwestern Cases, 123 I. C. C. 203, 253, 256.

(tt) Rates on nitrate of soda, in the Southwest may well be somewhat higher than those on other fertilizer. Consolidated Southwestern Cases, 123 I. C. C. 203, 269.

(uu) Rates on each commodity in any one class should be in reasonable proportion to rates on other articles in same class, and generally speaking, rates on each article should be determined with reasonable regard for rates on other articles classified the same. Consolidated Southwestern Cases, 123 I. C. C. 203, 306, 307.

(vv) Rates on printed and unprinted vegetable parchment and waxed wrapping paper, paper-box board, and plain and waxed paper boxes, printed and unprinted, found not unreasonable or otherwise unlawful as compared with rates on printing paper and manilla wrapping paper. Complainant's wrapping paper is of high grade, is not as extensively used as papers generally included within that description, and volume of traffic thereon does not compare with that on ordinary wrapping paper. Nor does record warrant a finding that rates on paper boxes or paper-box board are unduly high as compared with those applicable on other paper articles. Kalamazoo Vegetable Parchment Co. v. A., T. & S. F., 123 I. C. C. 493.

(ww) Rate on unfinished broom handles from Pellston, Mich., to Wichita, Kans., found unreasonable as compared with rates on sleigh wood, agricultural-implement wood, and vehicle wood, all in the rough, and various other lumber articles, and to extent it exceeded contemporaneous lumber rates by more than 1.5 cents. See 92 I. C. C. 574. Reasonable rate prescribed for future and reparation awarded. Wichita Chamber of Commerce v. A., T. & S. F., 123 I. C. C. 529.

(xx) Rate on granite, rough, found not unreasonable as compared with those on granite that is dressed or otherwise finished, except carved, lettered, polished, or traced. Bourgoin & Co. v. M. & W. R., 123 I. C. C. 545.

(yy) Rates on hollow building tile from Volant, Pa., to Hamersville, Ohio,

found unreasonable as compared with lower rates contemporaneously in effect on common, pressed, fire, or paving brick, and to extent that factor from Carrel Street (Cincinnati) to Hamersville exceeded lower rate subsequently established and contemporaneously applicable on commodities with which comparisons are made. In 68 I. C. C. 213, equal rates were accorded face, fire, and paving brick, hollow building tile, and other clay products of similar transportation characteristics from and to same points east of the Rocky Mountains. Reparation awarded. Moores-Coney Co. v. C., G. & P., 123 I. C. C. 559.

(zz) Rates on clay, ball and china, imported, found unreasonable as compared with those on domestic clay and other articles included in uniform brick list prescribed in 68 I. C. C. 213. Ceramic Traffic Asso. v. P. R. R., 123 I. C. C. 591.

(3a) Rates on sulphur, found not unreasonable as compared with those on iron and steel articles, soap, starch, terra cotta and molding sand. While car-mile earnings on latter commodities are considerably higher than those yielded by sulphur shipments, due to heavy car loading, there is no analogy between sulphur and these commodities nor any similarity in transportation conditions. Stauffer Chemical Co. v. H. & B. V., 123 I. C. C. 657, 658.

(3b) Third-class rate on cells, electrolytic, (electrolyzers), found unreasonable as compared with lower rates contemporaneously applicable on machinery and electrical appliances, including batteries, fans, motors, generators and engines combined, carbonating machines, and various other articles, and to extent it exceeded lower commodity rate applicable on machinery and machines, n. o. s. Reasonable rate prescribed for future and waiver of undercharges authorized. Pacific Nitrogen Corp. v. C., B. & Q., 123 I. C. C. 717.

(3c) The fact that two articles may resemble each other in respect of material appearance, process of manufacture, value and other characteristics is not sufficient to make them the same, but may afford a basis for a finding of unreasonableness or undue prejudice. Chicago Carton Co. v. N. Y. C. R. R., 126 I. C. C. 457, 458.

(3d) Complainant attacked commodity rates charged on numerous carloads of hot rolled unfinished steel, in coils and straight lengths, from Pittsburgh, and Johnstown, Pa., Youngstown, O., and Buffalo and North Tonawanda, N. Y., to Valley Falls and Pawtuckett, R. I., as unreasonable, unjustly discriminatory and unduly prejudicial. In a general way iron and steel articles, for rate making purposes, are separated in three groupings, first, pig iron and articles taking pig iron rates; second, steel billets and articles taking billet rates; and third, finished and manufactured articles of iron and steel, which, with the exceptions of the group hereinafter described, include all articles that have progressed in manufacture beyond the billet stage. From the points of origin from which complainants shipments moved the normal basis of rates on billets is sixth class or slightly lower, and that for manufactured iron and steel articles is fifth class or slightly lower. The billet rate is generally published in amounts per long ton, whereas the rates on manufactured iron and steel articles are generally published in cents per 100 pounds. Under recent decisions it is immaterial whether a rod be circular, rectangular, or hexagonal in cross section. When in straight lengths defendants differentiate the rods under the name of bar steel or steel bars, upon which the rates on manufactured iron and steel articles are applicable, which are about the fifth class rates. In other words, complainants materials when shipped in straight lengths take a higher rate than the identical article when shipped in coils, although the cost is the same per pound in each case. HELD, rates attacked not unreasonable but as to shipments in straight lengths, such rates will be unjustly discriminatory to extent they exceed the same rates on the same articles when shipped in coils. Reparation denied. Standard Nut & Bolt Co. v. N. Y. N. H. & H. R. R., 126 I. C. C. 731.

(3e) Circumstances and conditions under which freight rates on perishables were established between Boston and Chicago and conditions affecting divisions of such rates are substantially different from those affecting establishment of rates on milk for application within New England territory, and, aside possibly from some incidental feature in connection with so-called fast-freight service, the services are not comparable. Furthermore, divisions from perishable-freight traffic received by some of the New England roads do not afford a sound

basis upon which to judge reasonableness of rates on milk throughout New England. Milk and Cream Between New England Points, 126 I. C. C. 39, 63, 64.

(3f) Rates on tank material, iron and steel found unreasonable as compared with rates on iron and steel pipe. See 100 I. C. C. 245. Reasonable basis of rates prescribed and reparation awarded. Sinclair Crude Oil Co. v. A., T. & S. F., 126 I. C. C. 73.

(3g) Rates on iron and steel tank material from points in Pennsylvania, Ohio, Illinois, Indiana, and from Kansas City, Kans., to destinations in Kansas, Oklahoma, and Tex., found unreasonable to extent they exceeded those contemporaneously applicable on iron or steel pipe. Rates on tank material are same as those on pipe from Chicago territory to western trunk-line and lower Mississippi River points, from c. f. a. territory to points in Colorado, Wyoming, Montana, California, Oregon, and Washington, and from Pittsburgh territory to trunk-line points and no sufficient reason appears for a difference in rates on these commodities between points under consideration. See 100 I. C. C. 245. Reparation awarded. Sinclair Crude Oil Co. v. A., T. & S. F., 126 I. C. C. 73.

(3h) Rates on paste, adhesive, found not unreasonable as compared with rates on agricultural insecticides or fungicides, including calcium-arsenate or lead-arsenate paste. Practical Drawing Co. v. N. Y. C., 126 I. C. C. 133.

(3i) Fifth-class rates on tin oxide, found not unreasonable or otherwise unlawful as compared with lower commodity rates contemporaneously in effect on pig tin. Pig tin is an imported commodity and low basis of rates was undoubtedly established to assist industries, whereas record does not show competitive or other influences which would necessitate or justify establishment of lower commodity rates on tin oxide. Federated Metals Corp. v. P. R. R. Co., 126 I. C. C. 144.

(3j) Rating on component parts or raw material is not conclusive of rating to apply on a finished article. Troxel Mfg. Co. v. B. & O., 126 I. C. C. 169.

(3k) First-class l. c. l. rating on saddles, used on bicycles, motor cycles, and tricycles, from Elyria, Ohio, to points in official, southern and western classification territories, found not unreasonable as compared with c. l. rating on same commodity, or with first-class l. c. l. rating on bells, spark plugs, magnetos, gasoline-engine starters, and various other articles. First-class rating or higher applies on practically all bicycle parts and also on most articles in the saddle group including leather goods. Moreover, first-class rating was found reasonable on automobile horns which compare favorably, weights and values considered, with bicycle saddles. Troxel Mfg. Co. v. B. & O., 126 I. C. C. 169.

(3l) Rates on wall paper, found not unreasonable as compared with those on wrapping paper. Wall paper is more susceptible to damage than wrapping paper, and there is no relationship or analogy between these commodities. See also 122 I. C. C. 333. Tex-Mex-Jobbing House v. L. V., 126 I. C. C. 175.

(3m) Comparisons with rates on commercial coal are not conclusive of reasonableness of rates on lake cargo coal. Lake cargo coal has a more concentrated movement and moves at a more favorable season of the year than the heaviest movement of commercial coal. The larger proportion of joint-line hauls is in the case of commercial coal and there is a vast difference in the terminal delivery service of the two classes. Moreover, there is a greater availability of cars used for shipping lake cargo coal for return loading with ore. Lake Cargo Coal Rates, 1925, 126 I. C. C. 309, 361.

(3n) First-class rate provided for paper goods, n. o. i. b. n., any quantity, was assessed on cardboard trouser presses. Upon contention that lower sixth-class rate applicable on fiber-board boxes, k. d., flat, printed, is by analogy applicable on trouser presses since material, appearance, process of manufacture, value, and other characteristics of the two articles are the same, only difference being in uses to which each is put, HELD: Fact that two articles may resemble each other in these respects is not sufficient to make them the same. Rating on boxes applied definitely on that article, and as there was no specfic rating for trouser presses, it follows that rate applicable was rate on paper goods, n. o. i. b. n. Chicago Carton Co. v. N. Y. C. R. R., 126 I. C. C. 457.

(3o) First-class rate applicable on paper goods, n. o. i. b. n., any quantity, assessed on cardboard trouser presses from Chicago to New York, found applicable, but unreasonable as compared with lower rates contemporaneously in effect on numerous analogous paper arti-

cles. Reasonable rate and minimum weight prescribed for future and reparation awarded. Chicago Carton Co. v. N. Y. C., 126 I. C. C. 457.

(3p) Rates on fleshings, tannery, found unreasonable as compared with lower rates contemporaneously in effect on dry tanning extract and wood pulp. While carrier points out that no competition exists between these commodities, complainant shows that wood pulp and tanning extract move in volume, are of considerably higher value and afford some measure for testing rates on fleshings. Tanning extract requires a better class of equipment and involves greater transportation risks. Keystone Glue Co. v. S. Ry., 126 I. C. C. 507.

(3q) L. c. l. rating on chocolate and chocolate coating, in official, southern, and western classifications found not discriminatory or unduly prejudicial, but c. l. rating in official and western classifications found unreasonable as compared with rating on coffee and other comparable commodities, and to extent it exceeds fourth class, minimum 36,000 pounds. Reasonable rating prescribed for future. Cocoa & Chocolate Mfrs. Asso. v. A. & V. Ry., 126 I. C. C. 561.

(3r) Fifth-class rate on tubs, laundry, cement, found unreasonable as compared with lower commodity rate on wooden or iron barrels and refrigerators, higher rated articles, and to extent they exceeded lower commodity rate contemporaneously in effect on plumbers' goods, including enameled iron and porcelain laundry tubs, which was subsequently made applicable on cement laundry tubs. Reparation awarded. Chicago Granatine Mfg. Co. v. I. C. R. R., 126 I. C. C. 572.

(3s) In a general way iron and steel articles, for rate-making purposes, are separated into three groupings, first, pig iron and articles taking pig-iron rates; second, steel billets and articles taking billet rates; and, third finished and manufactured iron and steel articles, which, with few exceptions, includes all articles that have progressed in manufacture beyond the billet stage. Standard Nut & Bolt Co. v. N. Y., N. H. & H., 126 I. C. C. 731.

(3t) Rates on brick, paving, found unreasonable as compared with those contemporaneously in effect on cement. Reparation awarded. Buffalo Brick Co. v. M. P. Ry., 126 I. C. C. 744.

(3u) Rate on paper, waste, found unreasonable as compared with rate contemporaneously in effect on wood pulp. United Paperboard Co. v. B. & A. R. R., 126 I. C. C. 751, 753.

(3v) One and one-half times first-class rate collected on l. c. l. shipment of portable laundry tubs under heading "Sheet Iron or Sheet Steel Ware: Wash Tubs" found inapplicable. Carriers contended that, by analogy rule, applicable rating was double first class under item "Wash Sinks, n. o. i. b. n.: Plate or Sheet Iron or Steel: on legs: * * * In Boxes or crates," l. c. l., while complainant sought third-class rating on laundry tubs under head of "Plumbers' Goods" by use of analogy rule. At time of shipment, however, a commodity rate applicable on wash tubs appeared under caption "Sheet Iron or Sheet Steel Ware," l. c. l., and since Century Dictionary and Cyclopedia define a wash tub as "a tub for washing, especially one in which clothes are washed," articles shipped clearly fall within that description and lower commodity rate was therefore applicable. Reparation awarded. West Texas Utilities Co. v. M. C., 128 I. C. C. 57.

(3w) The analogy rule has no application where commodity shipped is clearly and definitely covered by a description set forth in an item of the classification and referred to in the tariff item naming a commodity rate. West Texas Utilities Co. v. M. C., 128 I. C. C. 57, 58.

(3x) Complainant attacked commodity rates charged on broom handles, in carloads, from Des Moines, Ia., Crandon, Glidden and Antigo, Wis., Atlantic and Sidnaw, Mich., and Chicago, Ill., to Pueblo, Colo., as unreasonable, unjustly discriminatory and illegal. Shipments consisted of broom handles in the white, turned to shape with a hole bored through one end, charged at rates of finished handles. Rates based upon an arbitrary of 1.5c over the current rates on lumber are sought. HELD, rates charged from Crandon unreasonable to extent they exceed 3c over lumber rate, and from other points of origin unreasonable to extent they exceeded 3c over lumber rate, reparation awarded. National Broom Co. v. A. T. & S. F. Ry., 128 I. C. C. 98.

(3y) Rate on asparagus roots found unreasonable as compared with rates on nursery stick, horse-radish, and chicory roots; and to extent it exceeded lower rate contemporaneously in effect on gin-

ger, celery, laurel, yucca, soap weed, and roots n. o. i. b. n. Reparation awarded. C. W. Kress v. C. R. R. of N. J., 128 I. C. C. 101.

(3z) Fifth-class rate on copper sulphate found not unreasonable as compared with lower commodity rate subsequently established on insecticides, including calcium arsenate, to which list copper sulphate was later added. While value of calcium arsenate and copper sulphate is the same and both are used in manufacture of agricultural insecticides, at time of movement calcium arsenate and all insecticides, including copper sulphate, were rated the same. Mere fact that copper sulphate was subsequently accorded the commodity rate is not of itself sufficient to justify an award of reparation on shipments moving prior to the reduction. See 112 I. C. C. 228; 20 I. C. C. 43. Peaslee-Gaulbert Co. v. C. & A., 128 I. C. C. 103.

(4a) Rate on earth crude infusorial found unreasonable as compared with rates on scrap lead crude or calcined magneste, magnesium chloride, crude lump pumice, crushed or ground stone, cement or magnesite stucco, crude iron ore, zinc ore and concentrates, flourspar, and sericite schist. Hylonite Products Co. v. A., T. & S. F., 128 I. C. C. 135, 136.

(4b) Second-class rate applicable on "Fresh Fruit n. o. i. b. n.," and assessed on cold-pack cherries found unreasonable to extent it exceeded lower fourth-class rate established subsequent to movement on cold-pack fruit. While at time of covering mold-pack cherries and by movement there was no specific rating analogy the fresh-fruit rate was applicable, complainant pointed out that cold-pack fruit is not as perishable as ordinary fresh fruit. Moreover, record indicates that cold-pack fruit loads much more heavily than ordinary fresh fruit, and should therefore be entitled to an appreciably lower rating. Reparation awarded. American Preserve Co. v. Reading Co., 128 I. C. C. 146.

(4c) Rates on paper, newsprint, found unreasonable to extent they exceed those contemporaneously maintained on blank wall paper. Reasonable rates prescribed for future. Iroquois Pulp & Paper Co. v. A. A. R. R., 128 I. C. C. 187.

(4d) Rate on talc found not unreasonable as compared with those on ground limestone. While both are used in the manufacture of paint, talc is used in the better grades of paint and both are rated separately in western classification. Sewall Paint & Glass Co. v. C., C. C. & St. L., 128 I. C. C. 247.

(4e) Rates on clay, pottery, imported china and ball, found not unreasonable or otherwise unlawful as compared with rates contemporaneously in effect on "clay, crude or ground (common or fire)." While complainants contend that all clays used in manufacture of pottery are crude, are formed through decomposition of feldspar in granitic rocks, and can be used in manufacture of brick, pottery clay is found only in restricted areas, is considerably more valuable than common or fire clay, and use to which it is put requires that it be transported in clean, tight box cars whereas common clay may be shipped in leaky or open-top cars. Although pottery claps can be used for making brick, brick clays can not be used for making pottery and because of their high value pottery clays are not ordinarily so used and can not be properly included as brick clays. Moreover, in 112 I. C. C. 7, differentiation was made as between high-grade and low-grade lime and applying that principle here, differentiation in classification and tariffs between types of clays involved is fully justified. United States Potters' Asso. v. A., C. & Y., 128 I. C. C. 249.

(4f) Rates on coal, bituminous found unreasonable as compared with those on mine props, crushed stone, and numerous other lighter-loading commodities of far greater value and susceptibility to damage. Illinois-Indiana Coal Cases, 128 I. C. C. 265, 269, 270.

(4g) Second-class rate applicable on games or toys n. o. i. b. n., and assessed on domestic mah-jongg sets from San Francisco and Paraffin, Calif., to Chicago, found applicable, but unreasonable as compared with lower commodity rate contemporaneously in effect on toys, and to extent it exceeded lower commodity rate applicable in opposite direction, to which basis rates assailed were subsequently reduced. Reparation awarded. Paraffine Companies v. S. P., 128 I. C. C. 421.

(4h) Third-class rate on oleomargarine found unreasonable to extent it exceeded rate on butter. While value of oleomargarine is about one-half that of butter, both have practically the same transportation characteristics. See 53 I.

C. C. 59, and other cited cases. Both are rated third class in principal classifications, and where commodity rates are published on the two they are generally the same. Record indicates that rates on oleomargarine should not be higher than those on butter, but it is not convincing that oleomargarine should take lower rates than those on butter. Moreover, in 60 I. C. C. 663, rate on oleomargarine was found unreasonable to extent it exceeded rate on butter. Reasonable rate prescribed for future and reparation awarded. Boren-Stewart Co. v. G., C. & S. F., 128 I. C. C. 493.

(4i) Sixth-class rate on clay, china found unreasonable as compared with sixth-class rate prescribed in 38 I. C. C. 120 on wrapping and newsprint paper. China clay is used as a filler in the manufacture of paper. Complainant showed that it is a low-grade commodity, of much lower value than newsprint and other kinds of paper. Newton Falls Paper Co. v. R. Co., 128 I. C. C. 563, 564.

(4j) Fifth-class rates on monuments, granite and pieces of, axed, lettered, and rock-faced granite, found not unreasonable or otherwise unlawful as compared with lower commodity rates contemporaneously in effect on granite not carved, lettered, polished or traced; with those on granite "carved, lettered, polished, or traced" when declared value does not exceed $2.25 per 100 pounds; or with lower commodity rates on marble for comparable distances. Here, declared value exceeded $2.25 and in 47 I. C. C. 91, the fifth-class rating on natural stone, sawed more than four sides, chiseled, dressed, hammered, or sand rubbed, carved, lettered, polished, or traced, was found justified. Dillie v. C. V., 128 I. C. C. 641.

(4k) Rates and rating on boxes, fiber, corrugated, k. d. found unreasonable as compared with lower third-class rating and rates in official, southern, and Illinois Classification, and intrastate within Kansas; with third-class rating in official and western and fifth class in southern classifications on solid fiber board; and with third-class rating on cover paper, building, roofing, or sheathing felt or paper and various other related commodities in western classification. Third-class rating and rates prescribed for future and reparation awarded. Eggerss-O'Flyng Co. v. C. & N. W., 128 I. C. C. 644.

(4l) Complainant alleged commodity rates charged on nine cars of broom handles in the white shipped in 1923 and 1924 from Antigo, Wis., and Tacoma, Wash., to Oklahoma City, Okla., were unreasonable and in violation of section four. Shipments from Antigo charged 79c on broom handles, in the white. From Tacoma charged 94.5c on broom handles, without metal fixtures. A rate of 87c was applicable from Tacoma to McAlester, Okla., and Little Rock, Ark., to which destinations Oklahoma City is intermediate. This violation was removed Nov. 15, 1924, by the publication of a rate of 90c to the three destinations. On April 15, 1926 the rate from Antigo to Oklahoma City was reduced to 52.5c. On Feb. 27, 1926 the lumber rate of 69c from Tacoma to Oklahoma City was made applicable on "handles, broom or mop as from the lathe or sanded, not oiled, waxed, primed or further finished, without metal fixtures." This description embraces the commodity here under consideration. On May 12, 1926 this rate was increased to 70c. In view of the fact that the present rates on handles are the same as or 1.5c higher than the lumber rates, no order for the future will be necessary. HELD, rates assailed were unreasonable to the extent that they exceeded by more than 1.5c the rates on lumber, reparation awarded. Oklahoma Traffic Asso. v. A. T. & S. F. Ry., 129 I. C. C. 403.

(4m) Complainant alleged rate charged on wood shipping blocks, carload, forwarded from March 13, 1924 from Kenosha, Wis., to San Francisco, Calif., was unreasonable and inapplicable. The commodity shipped consisted of rough blocks cut and formed in complainants wood mill at Kenosha, and is used in packing steel beds, charged class C rate of $1.65. Lumber rate was $1.14. HELD, rate attacked applicable, complaint dismissed. Simmons Co. v. W. P. R. R., 129 I. C. C. 511.

(4n) Complainants attacked the unreasonableness and unlawfulness in other respects of the rates on petroleum fuel, crude and gas oils from the midcontinent field in Kansas and Oklahoma to Kansas City, Mo., to Vale, Independence, and Leeds, Mo., and to Harrisonville and St. Joseph, Mo. The essential question is what differential, if any, the rates on low grade oils should have been, and should be, under the rates on refined oil. HELD, rates assailed not unreasonable

except that the rates from Argentine to Vale, were unreasonable to extent they exceeded 11c prior to July 1, 1922 and 9.5c, thereafter, that rate assailed from Argentine and Kansas City, Kas., to Harrisonville unreasonable to extent it exceeded 11c, reparation awarded. Haydite Co. v. A. T. & S. F. Ry., 132 I. C. C. 132.

(4o) Grapes and other deciduous fruits are close enough in their transportation characteristics to bear a comparable relation as a classification matter. Calif. Growers' & Shippers' Protective League v. S. P., 129 I. C. C. 25, 57.

(4p) Rates on seed, millet found unreasonable as compared with rates contemporaneously in effect on corn, coarse grains, and flaxseed, and to extent they exceeded by more than 12 per cent the contemporaneous rates on wheat. In 107 I. C. C. 35, rates on flaxseed were found unreasonable to extent they exceeded wheat rates by more than 12 per cent, and since from a traffic standpoint millet seed resembles flaxseed in many respects, although of less value, and the two seeds have been maintained on same rate basis in the past, this relationship, for convenience, should be preserved. Reasonable rates prescribed for future and reparation awarded. Northrup, King & Co. v. A., T. & S. F., 129 I. C. C. 125.

(4q) Rates on strawboard found not unreasonable or unduly prejudicial as compared with contemporaneous rates on building and roofing paper, fuller's earth, wrapping paper, agricultural implements and various other commodities. Comparisons were of doubtful value because neither volume of movement nor values of commodities compared were shown. United Paperboard Co. v. A. & R., 129 I. C. C. 131.

(4r) Rates on limestone containing 2.5 per cent or more of asphalt, broken, crushed or ground from Margerum and Colrock, Ala., to destinations in southern territory, except Florida, found unreasonable and unduly prejudicial as compared with rates on similar asphalt rock from Oklahoma and Texas to Mississippi River points and west thereof and with those on sandstone asphaltic rock produced at Kyrock, Ky., competitive products; with rates prescribed in 96 I. C. C. 319 on crushed asphalt rock from Dougherty, Okla., to Kansas City, Mo.-Kans.; and to extent they exceeded distance rates herein prescribed. Reasonable maximum rates prescribed for future and reparation denied. Colbert Limerock Asphalt Co. v. A. C., 129 I. C. C. 177.

(4s) Third-class l. c. l. rate, under official classification, on unprinted fruit wrappers from Hamburg, N. J., to Lynchburg, Va., found not unreasonable or otherwise unlawful as compared with fifth-class rate, under southern classification, contemporaneously in effect to Montview and Lone Jack, Va., more distant points. The general level of rates applicable in official territory is extended south of Lynchburg to and including more distant points, and reasons in justification therefor are fully discussed in 31 I. C. C. 145; 107 I. C. C. 249. Rates assailed are same as those from Cincinnati, Ohio, to Lynchburg, and compare favorably with those from Hamburg to various other Virginia districts for comparable distances, and presumption of unreasonableness of rate to Lynchburg is rebutted. See 269 U. S. 1. Moreover, since no movement of fruit wrappers has been shown from Hamburg to Montview, no finding of discrimination or undue prejudice can be made. See 34 I. C. C. 634. Lynchburg Chamber of Commerce v. E. R. R., 129 I. C. C. 230.

(4t) Following 89 I C. C. 251, in which third-class l. c. l. rating was found reasonable on steam superheaters, second-class l. c. l. rating on worn-out paper-mill grinding plugs in official, southern and western classifications, found unreasonable. No specific rating was made in the three classifications for paper-mill plugs as such, but they are somewhat analogous to steam superheaters from a classification standpoint. Third-class rating prescribed. Bahr Bros. Mfg. Co. v. C., C., C. & St. L., 129 I. C. C. 289.

(4u) Rates on liquid asphalt found unreasonable as compared with rates on petroleum oils, gasoline, sulphuric acid, creosote oil, and coal tar. Reasonable rates prescribed for future and reparation awarded. Continental Roofing & Mfg. Co. v. G. & S. I., 129 I. C. C. 313.

(4v) Sixth-class rates on "80-5-15" dry insecticides found not unreasonable as compared with lower rates based on cost of shipping separately the sulphur lead, arsenate, and lime, the ingredients of the mixture; nor with rates on blackstrap molasses insecticide, bicarbonate of soda, denatured alcohol, and various other commodities. While insecticides introduced for comparison are highly poisonous and more hazardous to handle than the "80-5-15" mixture, this difference does not warrant disturbance of class-rate basis generally applicable on insecticides in classification territory involved. General Sprayer Co. v. A., B. & A., 129 I. C. C. 318.

(4w) Rates on unfinished broom handles from Antigo, Wis., and Tacoma, Wash., to Oklahoma City, Okla., found unreasonable to extent they exceeded by 1.5 cents rates contemporaneously maintained on lumber. See 92 I. C. C. 574; 104 I. C. C. 183, 115 I. C. C. 437. Reparation awarded. Oklahoma Traffic Asso. v. A., T. & S. F., 129 I. C. C. 403.

(4x) Carload of wooden shipping blocks from Kenosha, Wis., to San Francisco, Calif., was assessed class C rates applicable on wooden automobile blocks under an analogous-article rule in governing classification, which provided for application of most analogous classification to shipments not specifically provided for in classification. Contention of complainant that under the analogous rule, shipment was entitled to commodity rate on lumber, not sustained, the rule in question referring to classification only and not to commodity rates. Rates assessed found applicable. Simmons Co. v. W. P., 129 I. C. C. 511.

(4y) Class rates on granite, rough quarried c. l., from East Weymouth, Mass., to local points on the N. Y., N. H. & H., found unreasonable and unduly prejudicial as compared with lower commodity rates contemporaneously applicable on common brick and on stone and granite paving and curbing; and to extent they exceeded, exceed, or may exceed, rates based on distance scale herein prescribed, minimum 48,000 pounds. Reparation awarded. Plymouth Quarries v. N. Y., N. H. & H., 129 I. C. C. 621.

(4z) Spread between rates on stone or granite curbing and paving and rough quarried granite is too great but it would seem that rough granite should be on somewhat higher basis than brick, in view of the heavier loading and lesser value of brick. Plymouth Quarries v. N. Y., N. H. & H., 129 I. C. C. 621, 625.

(5a) Rates on schoolbooks from Chicago to Oklahoma City, Okla., and Dallas, Tex., found not unreasonable, discriminatory, unduly prejudicial, or otherwise unlawful as compared with lower rates on paper articles, including school blanks or forms and school copy books. Complainant contends that as schoolbooks are approved by State educational authorities, and follow a prescribed form, they should take lower rates applicable on school blanks or forms. However, schoolbooks in question can not be termed forms. Moreover, rates assailed are lower than third-class rates on books n. o. i. b. n., between same points. Wheeler Publishing Co. v. A., T. & S. F., 129 I. C. C. 672.

(5b) While higher rates on grain than on products thereof is extraordinary and commission has frequently prescribed same rates on both commodities, mere showing that rates thereon differ is not conclusive that higher rates on grain are unreasonable, as it may indicate that rates on the products are too low. Indianapolis Board of Trade v. B. & O., 129 I. C. C. 675, 680.

(5c) Factor of applicable combination rates on wrought-iron pipe from Lorain, Ohio, to Mississippi River crossing, was full fifth-class rate applicable to iron and steel articles. Lower rates on wrought-iron pipe than on iron and steel articles were prescribed in 29 I. C. C. 544 and 36 I. C. C. 86, and ton-mile earnings under rates from Lorain were higher than from Chicago to same destination. Combination rates based on Mississippi River crossing found unreasonable to extent they exceeded combination based on Jacksonville, Ill. Reparation awarded and waiver of undercharges authorized. National Tube Co. v. A., T. & S. F., 129 I. C. C. 693.

(5d) Fourth-class rates on baking powder found not unreasonable or otherwise unlawful. Complainant contends that rate assailed was unreason-

able to extent it exceeded fifth-class rate subsequently established following decision in 112 I. C. C. 645, in which fourth-class rating was found unreasonable to extent it exceeded fifth class, and as it was a party to that complaint it now seeks reparation on shipments which moved during the two years previous to date lower rate was established. However, in 20 I. C. C. 43, it was found that subsequent reduction of a rate is not of itself sufficient to justify an award of reparation. Moreover, no reparation was sought in first cited case and Rule III (s) of Rules of Practice provides that reparation will not be awarded upon a complaint in which it is not specifically prayed for or upon a new complaint by same complainant based upon finding in original proceeding. Royal Distributing Co. Inc. v. B. & O., 129 I. C. C. 749.

§18. Specific Comparisons.

See Supra §17; Comparative Rates.

(a) Rates on wire rods, in coils, from Illinois, New York, Ohio, and Pennsylvania points to Kansas City, found not unreasonable or otherwise unlawful. Complainant seeks application of the billet rates to this commodity and shows that carriers in eastern territory and in a few instances carriers in western territory maintain or concur in that basis. The lower bases, however, are maintained by those lines to induce movement of traffic or meet rates of direct lines, do not constitute undue preference or prejudice, and have no effect upon rates under attack. Application of the billet rate in c. f. a. territory was accorded years ago and has more or less grown up with the industry. The classification of wire rods with other iron and steel articles in western territory is warranted and proper and fact that lower bases have been and are accorded east of Mississippi does not prove that iron and steel rates west thereof are unreasonable. Former report, 95 I. C. C. 739, affirmed. Black Steel & Wire Co. v. A., T. & S. F., 112 I. C. C. 739.

(b) The commission has in classification cases frequently considered comparisons between wholly dissimilar commodities where accompanied by a showing of value per pound and weight per cubic foot. See 78 I. C. C. 313; 96 I. C. C. 595. American Hatters & Furriers Co. v. C. N. E. Ry., 115 I. C. C. 283, 285.

(c) In the ordinary situation little is gained by comparing rating of a commodity in one classification with rating for same commodity in another classification when rating in neither classification has been fixed by us. However, the correctness of the principle of classification uniformity is well established. That principle presumes that if ratings on any given commodity in two classifications, as official and southern, are on the proper basis, the ratings will be substantially the same. If they are different there is presumptive error in one or both classifications. Kalamazoo Vegetable Parchment Co., v. C. K. & S., 128 I. C. C. 675, 681.

§19. Evidence and Procedure.

See Evidence; Procedure Before Commission.

(a) Reasonableness of a classification rating on any given article can not be determined merely by a showing of effect in increased revenue accruing to carriers thereby. Classification of Insulating Material, 104 I. C. C. 713, 716.

(b) Complainant attacked rates on cotton linters charged on numerous carloads of cottonseed hull fiber and shavings, other than bleached and dyed, shipped between Sept., 1922 and Oct., 1925, from Georgia, Alabama, Tennessee, Mississippi, Arkansas, and Pennsylvania to New York, Pennsylvania, Maryland, Ohio and other states as illegal. The material here considered was purchased by complainant from about 16 cottonseed oil producing companies as cottonseed hull fiber or shavings, resold by complainant to its customers as such, delivered to the carriers, and so described in the bills of lading. Shipments were examined by the carriers and in their judgment were found to consist of cotton linters, whereupon the description of the shipments was changed and higher charges collected. A question of fact is thus presented which must be determined by the evidence. There is no reason to question the good faith of the parties who made the invoices but such documents alone do not satisfactorily establish the character of the commodity shipped, when that is in issue, or determine the rate applicable. Concrete evidence from complainant, such as samples of the shipments which could have been examined by witnesses qualified to

testify as to their character, would have been helpful. In cases of this character there is no statutory burden upon defendants, and the commission is of the view that the complainant has not sustained the burden of proof in this instance. HELD, rates attacked not inapplicable, complaint dismissed. Fraser Jr. v. A. C. L. R. R., 122 I. C. C. 520.

(c) Rates on phosphate rock, found not unreasonable as compared with rates on coal, slag, sand, and various other commodities. In order to be used as a basis for a finding of unreasonableness such comparisons should be supported by data respecting traffic, transportation, and other pertinent conditions and considerations. Pelham Phosphate Co. v. A. C. L., 122 I. C. C. 509, 512.

(d) The rating on component parts or raw material is not conclusive of the rating to apply on a finished article. Troxel Mfg. Co. v. B. & O. R. R., 126 I. C. C. 169.

§20. Different Classification Territories.

See Through Routes and Joint Rates §20¾.

(a) Due chiefly to difference in traffic density, a higher rate level prevails generally in Southwest than in c. f. a. territory. West Coast Lumbermen's Asso. v. A. & S., 104 I. C. C. 695, 699.

(b) The commission can not assent to a proposition that a rate level in official classification territory lower than in southern and western territories can properly be offset by establishment of higher classification ratings in lower-rated territory. Classification of Radio Sets and Talking Machines, 107 I. C. C. 175, 177.

(c) Transportation conditions in c. f. a. territory are dissimilar to and more favorable than those in southern territory. Knoxville Iron Co. v. L. & N. R. R., 107 I. C. C. 627, 631.

(d) The class rates of official territory are much lower in level than the class rates of southern territory, and while transportation conditions justify some difference in level, they do not in themselves justify existing difference. The situation, however, is one that can not be radically changed without a complete reorganization of the rate structure, including both class and commodity rates, of both territories. Southern Class Rate Investigation, 109 I. C. C. 300, 303.

(e) Carriers showed that class rates governed by official classification are generally lower per mile than class rates bearing same numerical designation governed by western or southern classification, and urged that the lower rate level in official territory shows that there is no reason why ratings in official classification should be the same as those in southern and western classification. HELD: The commission has repeatedly pointed out that this contention is without force. Manifestly it would be improper to attempt to overcome differences in rate levels by rating articles higher in official than in western and southern classifications. Nat'l. Commercial Fixture Mfrs. Asso. v. A. A. R. R., 109 I. C. C. 479, 483.

(f) Ratings and rates on numerous articles of furniture in official classification territory found not unreasonable or otherwise unlawful as compared with ratings and rates on same articles in western, southern, and Illinois classifications, comparisons of rate levels in different sections simply showing that class-rate structure within the several territories are by no means homogeneous. Nat'l. Council of Furniture Assos. v. A. A., 112 I. C. C. 289.

(g) There is no such harmonious adjustment in rates on furniture as would constitute recognized rate levels in the respective classification territories, it being possible to select rates tending to support or overthrow other rates in comparison therewith, according to purpose sought. Furniture from Southern Points, 112 I. C. C. 302, 308.

(h) From standpoint of percentages of corresponding first-class rates, fifth class under the southern classification is the substantial equivalent of fourth class in official classification and class A in western classification. See 92 I. C. C. 340, 344. Tennessee Electric Power Co. v. L. & N. R. R., 112 I. C. C. 491, 493.

(i) The classification of wire rods, in coils, with other iron and steel articles in western territory found warranted and proper and fact that lower bases have been and are accorded east of Mississippi does not prove that iron and steel rates west thereof are unreasonable. Black Steel & Wire Co. v. A., T. & S. F., 112 I. C. C. 739, 741.

(j) While in numerous cases the commission has recognized the rate pro-rate basis as an approximate means of dividing rates in accordance with amount and

cost of service rendered, it is evident that the computation of divisions on such basis between carriers in official and western territories, made solely on basis of the respective first-class rates, is not convincing. Different classifications apply in the two territories, rates on lower classes bear considerably different percentage relationships to first class in the East from those in the West, and much traffic between the two territories moves on combinations of local or proportional factors to and from Chicago or Mississippi River gateways. Revenues in Western District, 113 I. C. C. 3, 24.

(k) One level of class rates should prevail in southern territory and no sound reason exists for departing from this principle by making distinctions in computation of distances, of necessity largely arbitrary, between single-line and joint-line routes. Not only will resulting rate structure be simpler without such distinctions, but it will also be more generally satisfactory to shippers served. Nor will carriers have any just cause of complaint if distance scale is made high enough to compensate fairly for its general application to routes of varying efficiency and for the measurement of distances in all cases by short-line routes. Southern Class Rate Investigation, 113 I. C. C. 200, 205.

(l) As to certain commodities, rates in Southeast are as a whole on a lower level than rates in Southwest. Fletcher-Wilson Coffee Co. v. L. & N., 113 I. C. C. 319, 321.

(m) Generally speaking, class rates for longer distances in trunk-line territory are not on a mileage basis, but are grouped, and some of these rate groups are quite extensive. Cardiff Green Marble Co. v. M. & P. R. R., 113 I. C. C. 655, 657.

(n) Although the Commission has frequently stated that uniformity of ratings in the classification is desirable, nevertheless it can not conclude that the rating of an article in one classification is unreasonable on a mere showing that the carriers parties to another classification have voluntarily established a lower rating. Parlor Frame Mfrs. Asso. v. A. A. R. R., 118 I. C. C. 154, 155.

(o) The commission has in many cases recognized that usually transportation conditions in the Southwest warrant a somewhat higher basis of rates than in the Southeast, and that fact may be judicially noticed. United Fig & Date Co. v A. C. L., 115 I. C. C. 643, 645.

(p) Although uniformity of ratings in varying classification territories is desirable, commission can not conclude that rating of an article in one classification is unreasonable on a mere showing that carriers parties to another classification have voluntarily established a lower rating. Parlor Frame Mfrs. Asso. v. A. A. R. R., 118 I. C. C. 154, 155.

(q) Rates from Mississippi Valley to the Southeast are generally on a lower level than rates to the Southwest. Jackson Traffic Bureau v. A. & V., 118 I. C. C. 217, 219.

(r) Meridian, Miss., and Mobile, Ala., are border-line points between Mississippi Valley and southeastern territories and are considered Mississippi Valley points for rate-making purposes. Teague Hardware Co. v. C., B. & Q., 118 I. C. C. 221.

(s) Transportation conditions east of Mississippi are more favorable than those west and justify a lower level of rates. Teague Hardware Co. v. C., B. & Q., 118 I. C. C. 221, 225, 226.

(t) Rates maintained or prescribed for application in or to Mississippi Valley can not be used as a gauge for reasonable maximum rates in or to the Southeast. Bradley & Woertz v. I. C., 118 I. C. C. 233, 235.

(u) Generally speaking, rates in c. f. a. territory are on a lower basis than those in the Southwest and the latter are on a lower basis than those in the Southeast. White Provision Co. v. A., B. & A., 118 I. C. C. 601, 603.

(v) The level of rates in Mississippi Valley territory is lower than in southeastern territory. See 87 I. C. C. 547. Florence Chamber of Commerce v. A., T. & S. F., 118 I. C. C. 710, 712.

(w) Transportation conditions in the Southeast do not warrant any higher basis of rates than in the Southwest. Capital Grain & Feed Co. v. I. C., 118 I. C. C. 732, 746.

(x) Sixth-class rates on commercial fertilizers between points in c. f. a. territory, found not unreasonable or otherwise unlawful in the past as compared with rates in the South and West, but for future found unreasonable to extent

they exceed distance rates herein prescribed. As volume of movement is substantial and increasing and use of fertilizers is an adjunct to successful farming, rates thereon should be more on a parity with those prescribed in 113 I. C. C. 389 in southern territory. However, on evidence presented, the commission is not convinced that sixth-class rate produces rates which might be condemned as exceeding the limits of maximum reasonableness if evidence covering conditions in c. f. a. territory in general was fully presented, and scale prescribed is, therefore, without prejudice to any future findings which may be made on a more comprehensive record. Ohio Farm Bureau Federation v. A. & W., 120 I. C. C. 361.

(y) It does not follow that because a lower rating exists in one of the three great classification territories the second class rate applied on complainants traffic is unreasonable. Western Cartridge Co. v. C. B. & Q. R. R., 123 I. C. C. 547, 549.

(z) Texas differential territory is recognized as a territory of comparatively light traffic density in which carriers require a higher level of rates than in Texas common-point territory to the east thereof. Peyton Packing Co. v. A. & S. Ry., 122 I. C. C. 3, 5.

(aa) Rates west of the Mississippi River should be somewhat higher than east of the river. Crescent Bed Co. v. C., R. I. & P., 123 I. C. C. 41, 46.

(bb) In so far as considerations which govern class percentages are concerned there are no differences in conditions as between the Southwest and western trunk-line territory. Accordingly, substantially same class percentages should apply in both these territories. Consolidated Southwestern Cases, 123 I. C. C. 203, 234.

(cc) Generally speaking, same class percentages should apply throughout any one classification territory and as rapidly as may be possible progress should be made to harmonize classification ratings and class percentages throughout the country. Consolidated Southwestern Cases, 123 I. C. C. 203, 233, 234.

(dd) While rates in the Southwest should be somewhat higher than in southern territory, there should be a reasonable relationship between the two territories, in which in many respects conditions are similar. Consolidated Southwestern Cases, 123 I. C. C. 203, 268.

(ee) In numerous cases commission has recognized that rates in the Southwest may properly be somewhat higher than in southern territory. Consolidated Southwestern Cases, 123 I. C. C. 203, 382.

(ff) Rates in southwestern territory may properly be somewhat higher than rates for comparable distances in southern territory. Sugar Between Louisiana and Texas Points, 128 I. C. C. 309, 316.

(gg) Fact that commodity moves within a given classification territory on class rates which have been found reasonable, is not proof that it should move on class rates from a point outside that territory to destinations therein. Memphis Freight Bureau v. A. G. S., 128 I. C. C. 445, 453.

(hh) Recognition must be given to more favorable transportation conditions and lower class-rate level in official territory as compared with those in southern territory. Rates over routes partly through official territory lower than rates for same distances wholly within southern territory are not necessarily unduly prejudicial or preferential. Southern Class Rate Investigation, 128 I. C. C. 567, 575.

(ii) Where two territories in which rate levels and classifications vary widely lie contiguous for long distances no plan of through rates can avoid some anomalous situations. Groups constitute a practical way of avoiding many of the difficuties and where this method is impracticable without undue sacrifice of revenue, the situation may be met, either by appropriate fourth-section relief or by establishment of rates over certain of the higher-rated routes that conform to the fourth section but do not in all cases meet the rates of lower-rated routes to and from relatively unimportant competitive points. Southern Class Rate Investigation, 128 I. C. C. 567, 577.

(jj) Shippers are entitled to benefit of reasonable rates over all routes operating between various classification territories and should not be forced to pay rates higher than reasonable over routes operating in part through one territory merely because higher-rated routes exist through another territory. Southern Class Rate Investigation, 128 I. C. C. 567, 583, 584.

(kk) A complicated situation exists along the border line between any two rate territories subject to rate levels as

different as those that exist in case of class rates in official and southern territories. However, there must be a border line somewhere. Generally speaking, the Ohio River is the natural boundary between the two territories and should be the boundary determining the application of official and southern classifications. Southern Class Rate Investigation, 128 I. C. C. 567, 585.

(ll) In the absence of unusual circumstances classification ratings should be uniform in all territories, and a showing of nonuniformity in the ratings of a particular article suggests the query as to whether the article has not been improperly classified in one classification, if not in both. Eggerss O'Flyng Co. v. C. & N. W. Ry., 128 I. C. C. 644, 649.

(mm) In the ordinary situation little is gained by comparing rating of a commodity in one classification with rating for same commodity in another classification when rating in neither classification has been fixed by us. However, the correctness of the principle of classification uniformity is well established. That principle presumes that if ratings on any given commodity in two classifications, as official and southern, are on the proper basis the ratings will be substantially the same. If they are different there is presumptive error in one or both classifications. Kalamazoo Vegetable Parchment Co. v. C., K. & S., 128 I. C. C. 675, 681.

(nn) Combination rates on enamel, other than watch dial, from Cicero, Ill., to Chattanooga, Tenn., found unreasonable to extent that factor south of Cairo, Ill., second class under southern classification, exceeded the fifth-class rating contemporaneously applicable in western and official territories and subsequently established in southern. Fact that no carload movement existed at time second-class rating was established found not sufficient to justify spread in rating between southern and other territories. Reparation awarded. Tennessee Furniture Corp. v. B. & O. C. T., 128 I. C. C. 701.

(oo) Petition for amendment of fourth-section order No. 144, general No. 5, so as to permit changes in classification ratings, rules, and regulations without observing the fourth section of the act, denied, except that temporary relief previously granted in that order should be continued until rates prescribed in Southwestern Class Rate Investigation, 100 I. C. C. 513; 109 I. C. C. 300; 113 I. C. C. 200, have become established. Petitioners do not contend that departures which result from classification changes justify lower charges for longer than for shorter distances as defined by the statute, but, on contrary, concede that investigation of individual departures would disclose a complete absence of justification. Moreover, petition does not present a "special case" for relief as provided by section 4, but a complete repeal of that section in so far as it relates to classification changes. This the commission has no power to effect. Fourth Section Departures, 129 I. C. C. 187.

(pp) Fourth-section departures resulting from changes in classification may be either of long-and-short-haul or aggregate-of-intermediates type. They may occur on local traffic within a classification territory, or on interterritorial traffic between points where joint through rates are in effect. Fourth Section Departures, 129 I. C. C. 187, 189.

(qq) In some instances class-rate scales to intermediate and more distant destinations, subject to different classifications, are constructed on such entirely different bases that fourth-section departures would still exist if ratings in the two classifications were unified; but, generally speaking, cooperation between classification committees with a view to promoting uniformity or preserving it where it now exists, will go far toward correcting existing violations, and preventing creation of new ones. In the mass, individual cases of this type are merely the product of a defective rate structure and without inherent justification. Fourth Section Departures, 129 I. C. C. 187, 193.

(rr) Differences between ratings in southern classification on the one hand and those in other major classifications on the other are perhaps more numerous and marked than differences between other classifications, and more changes will probably be necessary therein in order to bring about uniformity between classifications. Situation

created by overlapping of classifications is also more serious along boundary between southern and official classification territories because of condition of the southern classification. Fourth Section Departures, 129 I. C. C. 187, 195.

(ss) It does not seem unreasonable to require a carrier which maintains fourth-section departures under protection of an order, to keep in touch with changes in classification governing its class rates between same points and to revise its commodity rates conformably. Fourth Section Departures, 129 I. C. C. 187, 195.

(tt) Generally, rates in official classification territory are on a lower basis than in southern territory, or from southern territory to official territory. The reverse is true, however, on some of the heavy moving commodities. Jackson v. M. C., 129 I. C. C. 235, 239.

§21. Follow Lot Shipments.

See Follow Lot Shipments; Minimums.

(a) Applicable rate on cotton compresses, k. d.; loose or in packages, charged on shipments of castings and forgings, constituting parts of a compress, from Meridian, Miss., to Blytheville, Ark., found not unreasonable. These shipments were tendered on separate bills of lading, and moved on different dates, none consisting of a complete compress. Distance considered; the rate charged compares favorably with those contemporaneously applicable between various points, and higher rates were found not unreasonable on commodities having like transportation characteristics in 45 I. C. C. 549 and 51 I. C. C. 138, between other points in same general territory for comparable distances. Blytheville Compress & Warehouse Co. v. M. & O., 123 I. C. C. 95.

V. REASONABLENESS AND DISCRIMINATION.

See Advanced Rates §5 (8) (b); Class Rates; Commodity Rates §3.

§22. In General.

(a) Rating in official classification of fourth class on dry, salted, dried, smoked and pickled meats, loose, from Chicago and various other packing points to destinations in trunk-line territory East of Buffalo-Pittsburgh line and to New England territory found unjust and unreasonable for future to extent it exceeds fifth class on like traffic in packages. Reasonable rating prescribed for future. Morrell & Co. v. N. Y. C., 104 I. C. C. 104, 136, 137.

(b) Boxes, battery: Proposed increased rating in official classification on asphalt composition battery boxes found not justified on ground that facts shown in record as to their value, weight density, and other transportation characteristics fall far short of establishing propriety of a c. l. rating higher than fourth class now in effect. Classification of Asphalt Battery Boxes, 104 I. C. C. 190.

(c) Proposed increased c. l. minimum weight on asphalt composition battery boxes in official, southern, and western classifications from 20,000 to 24,000 pounds found justified, it being shown that such boxes readily load to the higher minimum. Classification of Asphalt Battery Boxes, 104 I. C. C. 190.

(d) Shipments of bull-wheel arms, cants, and pins, from Tulsa, Okla, to Bluffdale, Tex., found not to have been overcharged. Complainant contended these articles were not named in governing classification at time of movement and should therefore have been rated by analogy same as vehicle material. An examination of tariffs, however, discloses that articles were listed in classification under oil-well outfits and supplies and in absence of commodity rates were subject to class rates assessed. Marion Machine, Foundry & Supply Co. v. Director General, 104 I. C. C. 265.

(e) Cocoa powder: Fourth-class ratings, minimum weight 30,000 pounds, in official, southern and western classification, on cocoa powder, in bulk, in barrels, found unreasonable to extent they exceed fifth-class minimum weight 36,000 pounds. Comparisons are made with many commodities rated fifth class or lower, best analogy being with coffee, which is shipped in much same manner as cocoa, loads about same, and is to some extent competitive. Reasonable rating prescribed for future. Opler v. A. & R. R. R., 104 I. C. C. 468.

(f) Proposed increased minimum charge on articles, in peddler cars, from East St. Louis, Ill., to points on C. & O. in Kentucky and West Virginia, designed to place such charges on a basis similar to that from Chicago to same points,

found not justified. The loading of peddler cars is dependent upon consuming ability of destination territory. Territory served by the C. & O., especially the branch lines, is thinly settled, and limited refrigeration facilities render storage of perishable articles for extended periods impossible. Wilson & Co. v. C. & O., 104 I. C. C. 641.

(g) Brooms, bahia and bassine fiber: On reconsideration, rating of second class, minimum 12,000 pounds, on bahia and bassine fiber brooms, found unreasonable for future to extent it exceeds fourth class, minimum 24,000 pounds, subject to rule 34, in view of fact that difference in weight density between such brooms and broomcorn brooms is substantial. Former report, 92 I. C. C. 749, reversed in part. Edlund Broom Corp. v. B. & M., 104 I. C. C. 692.

(h) Proposed increased classification ratings on insulating material, viz., flax felt and woodfiber felt, in western and southern territories, which will make ratings uniform, and provide same ratings for the several varieties of insulating materials, found justified. Earnings under proposed ratings will not be unduly high as compared with those yielded by class rates applicable on analogous and comparable articles. Moreover, considering ratings on similar or heavier-loading articles, and light weight density of most of these insulating materials, suggested ratings do not appear unreasonably high. Classification of Insulating Material, 104 I. C. C. 713.

(i) Reasonableness of a classification rating on any given article can not be determined merely by showing of effect in increased revenue accruing to carriers thereby. Classification of Insulating Material, 104 I. C. C. 713, 716.

(j) Talking machines and radio sets combined: Proposal to increase from second to first class the rating in official classification on combined talking machines and radio sets found not justified. Granting contention that freight charge is a relatively small burden in marketing such a high-grade specialty, it nevertheless is incumbent upon respondents to show that rating proposed is reasonably consistent with those maintained on other comparable articles, and this they have failed to do. If schedules are permitted to become effective, both rating and minimum will be higher on combined machines than on orchestrions, notwithstanding that former are heavier and cheaper. Classification of Radio Sets and Talking Machines, 107 I. C. C. 175.

(k) Rotary-tool joints: First-class rating and rates on, loose, l. c. l., in western classification, found unreasonable to extent they exceeded second class. While a rotary-tool joint is a much higher-class article than an ordinary pipe connection, a rating as high as first class is not justified by usual classification considerations of value, weight density, and susceptibility to damage. Reasonable rating and rate prescribed and reparation awarded. Hughes Tool Co. v. A. & R. R. R., 107 I. C. C. 545.

(l) Rates on nails, washers, nuts, and bolts, l. c. l., from Birdsboro, Coatesville, Lebanon, and Pottstown, Pa., to Lynchburg, Va., found neither unreasonable nor unduly prejudicial as compared with rates on like traffic from same points of origin to other Virginia points for comparable distances. Lynchburg Chamber of Commerce v. R. Co., 107 I. C. C. 610.

(m) Barber-chair parts: Fourth-class rating and rates, minimum 36,000 pounds, applicable on shipments of barber-chair parts, consisting of seat rims, back rims, and arm rims, in straight carloads, or in mixed carloads with bases or pedestals, from North Chicago, Ill., to Cincinnati, Ohio., found not unreasonable. Such rating does not appear inconsistent with value and weight per cubic foot of articles, and compares favorably with that on rough iron or steel castings, on iron or steel hardware, and on various iron and steel furniture parts mentioned of record. Berninghaus Co. v. C. & N. W., 109 I. C. C. 104.

(n) Floor coverings: Carload rating of third class, minimum 30,000 pounds, in western classification territory on carpets and carpeting made of cork, linoleum, or asphalted and decorated paper felt and mats or rugs made of linoleum or of asphalted and decorated paper felt, found unreasonable for future to extent it exceeds fourth class, subject to a minimum not in excess of 36,000 pounds. Congoleum-Nairn v. C. & N. W., 109 I. C. C. 447.

(o) Armatures, automobile: Ratings and rates on new and on junked old worn-out electric automobile armatures, l. c. l., found not unreasonable as compared with ratings and rates on various automobile parts. Electric armatures are not rated as automobile parts. They are built in a variety of forms and sizes,

ranging from diminutive type used in very small motors to the gigantic type employed in generators for central-station equipment. The record refers almost entirely to one type of automobile electric armature, and contains little or no information as to automobile armatures generally and how such armatures compare with other small armatures in value, loading, weight per cubic foot, volume of movement, etc. It is here sought to segregate automobile electric armatures from other kinds, but there is no basis for assuming that they are entitled to more favorable ratings. Oklahoma Traffic Asso. v. A. & R., 109 I. C. C. 457.

(p) Soda fountains: Official classification ratings on soda-fountain counter interiors, on soda-fountain counters when packed with soda-fountain counter interiors, and on work boards, bar or counter, found unreasonable for l. c. l. and not unreasonable for c. l. shipments. Actual loading possibilities rather than mathematical weight density should be considered in fixing ratings on such commodities, and evidence shows that only two rows of fountains can ordinarily be loaded lengthwise in a car, and that the fountains can not well be top loaded. It nevertheless appears practicable, in loading merchandise cars with l.c.l. freight, to place other packages alongside and on top of fountains if carriers desire to use this car space. Nat'l. Commercial Fixture Mfrs. Asso. v. A. A. R. R., 109 I. C. C. 479.

(q) Carriers showed that class rates governed by official classification are generally lower per mile than class rates bearing same numerical designation governed by western or southern classification, and urged that the lower rate level in official territory shows that there is no reason why ratings in official classification should be the same as those in southern and western classifications. HELD: The commission has repeatedly pointed out that this contention is without force. Manifestly it would be improper to attempt to overcome differences in rate levels by rating articles higher in official than in western and southern classifications. Nat'l. Commercial Fixture Mfrs. Asso. v. A. A. R. R., 109 I. C. C. 479, 483.

(r) Metal columns: Ratings on, in official classification territory found not unreasonable, discriminatory, or unduly prejudicial, as compared with ratings on hollow wooden columns and other building sheet-metal work. Metal columns have a considerably lower weight per cubic foot and higher value per pound than commodities with which comparison is made, and mere fact that metal columns compete with wooden columns to some extent does not entitle them to same ratings. See 46 I. C. C. 40; 68 I. C. C. 213, 221. Union Metal Mfg. Co. v. A., C. & Y., 109 I. C. C. 490.

(s) Rates on canned goods from Illinois freight association territory to certain west-bank Mississippi River points in that territory found not unreasonable as compared with rates on cereal beverages in Illinois territory, or with cereal beverage rates and canneds goods rates in western trunk-line and c. f. a. territories, except to extent they exceeded fifth class. Transportation conditions in Illinois are not shown to be more favorable than in c. f. a. territory, and prescription of rates lower than fifth class would be based not on transportation conditions but on existence of commodity rates voluntarily established by carriers to meet competitive conditions and which they regard as too low. Burlington Shippers' Asso. v. A., T. & S. F., 109 I. C. C. 694.

(t) In 95 I. C. C. 9 the commission found not unreasonable or unjustly discriminatory the class A rates of $3.35 in effect prior to July 1, 1922 and $2.73 on 13 cars of automobile wheels from Portland, Ind., to Los Angeles and San Francisco, Calif., and Tacoma and Seattle, Wash. All of the wheels were made of wood and were without hubs, bearings or tires, and all except two of the shipments of wheels were shown as finished on the bills of lading or waybills or both. The consolidated classification provided that the finished wheel ratings would apply on wheels with more than one priming coat of paint. HELD: Original report affirmed. Bimel Spoke & Auto Wheel Co. v. L. E. & W. Ry., 112 I. C. C. 405.

(u) Complainant attacked combination rate charged on one car of electrical machinery, or transformer cores, shipped June 22, 1923, from Ocoee, Tenn, to Pittsfield, Mass., as unjust and unreasonable and in violation of section four. Ocoee is on the L. & N., 78 miles south of Knoxville, Tenn., and 118 miles north of Atlanta, Ga. Pittsfield is 154 miles northeast of New York served by the B. & A. and New Haven. Instructions to route L. & N. via Southern Ry. at Knoxville, Tenn., were inserted in the

bill of lading by the shipper. Rate charged first class of 69.5c to Knoxville plus first class $1.50 beyond. A lower combination was applicable via Cincinnati $1.36 to Cincinnati and fourth class 60.5c beyond. HELD: First class rating unreasonable to extent it exceeded fifth class, reparation awarded. Tennessee Electric Power Co. v. L. &. N. Ry., 112 I. C. C. 491.

(v) Complainant attacked commodity rate of $3.15 charged between April 15, 1922, and date of filing on numerous carloads of tin plate scrap from Baltimore, Md., stations to Carteret, N. J., as unreasonable. Tin plate scrap consists of the clippings from tin plate used by can manufacturers in the making of tin cans. Shipments moved B. & O. to Park Junction, Pa., just outside Philadelphia thence P. & R. to Bound Brook, N. J., Jersey Central beyond, 185 miles, via Pennsylvania route would be 207 miles. Commodity is rated sixth class. HELD: Rate attacked unreasonable to extent it exceeded $2.75 prior to July 1, 1922, and $2.475 thereafter, reparation awarded. Metal & Thermit Corp. v. C. R. R. of N. J., 112 I. C. C. 523.

(w) Complainant attacked sixth class rate on cottonseed hull fiber or shavings, carloads, during Jan. and Feb., 1924, from Memphis, Tenn., to Chicago, Ill., as unjust, unreasonable unjustly discriminatory and unduly prejudicial. Shipment moved on one bill of lading from Memphis over the Mississippi Warrior service. It apparently was for Pennsylvania delivery and moved from Cairo, Ill., part way over the I. C., not a defendant. Shipment was originally billed as cottonseed hull shavings or fiber, not bleached or dyed. When it reached Cairo the Southern Weighing and Inspection Bureau considered the commodity cotton linters, and billed rates were so changed. Rate on uncompressed cotton linters from Memphis to Chicago was 55.5c sixth class rate, cottonseed hull shavings 24.5c commodity rate. A joint rate of 38c applied on cotton hull fiber or shavings and on second cut linters to Chicago from Bridge Junction, Ark., 3 miles west of Memphis, via which city this rate applied all rail. HELD: Applicable rate was 55.5c, unreasonable to extent it exceeded 38c, reparation awarded. Stern Kauders Co. v. U. S. War Dept., 112 I. C. C. 580.

(x) Complainant attacked class rate charged on four cars of loose dried horsehides from New York, N. Y., to Milwaukee, Wis., delivered May 12, 14, 17 and 18, 1920, as unreasonable, unjustly discriminatory and unduly preferential. On Dec. 30, 1919, the rating on dry horsehides, loose, in official classification was changed from fourth to second class and on Sept. 10, 1920, the former rating was restored. The complaint was filed subsequent to the expiration of the two years period. HELD: Complaint barred. Pfister & Vogel Leather Co. v. Erie R. R., 112 I. C. C. 659.

(y) Official classification fourth-class rating and rates on carbon flour, found unreasonable to extent they exceeded sixth class. The classification contains but a limited number of ratings, and commodities possessing somewhat different transportation characteristics must often of necessity be assigned to same class. Carbon flour is shown to be a heavy low-grade commodity, more closely associated with carbons and carbon articles rated sixth class than with those rated fourth or fifth class. Reasonable rating and rate prescribed for future and reparation awarded. French Battery & Carbon Co. v. C. & N. W., 112 I. C. C. 128.

(z) Fifth-class rate on red oil, found not unreasonable or unduly prejudicial as compared with sixth-class rates under exception to classification on inedible stearine, tallow, grease, and other soap stock. While red oil compares favorably from a transportation standpoint with certain other articles used in manufacture of soap, the commission is not prepared to say that failure to accord red oil by exception the same rating as these other articles results in unreasonableness or undue prejudice. Williams Co. v. C. N. E., 112 I. C. C. 158.

(aa) Rates on cigar-box lumber found not unreasonable as compared with rates on lumber and various lumber articles, including box shooks. Rates assailed produce low ton-mile and car-mile earnings, and while earnings on shipments in question were shown to be slightly higher than those under comparable lumber rates instanced by complainant, that fact alone does not demonstrate that rates assailed were or are unreasonable. Eggerss-O'Flyng Co. v. A. G. S., 112 I. C. C. 218.

(bb) Transformer cores: First-class rating on, in southern classification territory, found unreasonable to extent it exceeded fifth class. Transformer cores

are rated Class A in western classification, but in official classification fourth class, or one class higher than armatures, generators, motors, and transformers. From standpoint of percentages of the corresponding first-class rates, fifth class under the southern classification is the substantial equivalent of the fourth class in official and class A in western classifications. Reparation awarded. Tennessee Electric Power Co. v. L. & N. R. R., 112 I. C. C. 491.

(cc) Rates on wire rods, in coils, from Illinois, New York, Ohio, and Pennsylvania points to Kansas City, found not unreasonable or otherwise unlawful. Complainant seeks application of the billet rates to this commodity, and shows that carriers in eastern territory and in a few instances carriers in western territory maintain or concur in that basis. The lower bases, however, are maintained by those lines to induce movement of traffic or meet rates of direct lines, do not constitute undue preference or prejudice, and have no effect upon rates under attack. Application of the billet rate in c. f. a. territory was accorded years ago and has more or less grown up with the industry. The classification of wire rods with other iron and steel articles in western territory is warranted and proper and fact that lower bases have been and are accorded east of Mississippi does not prove that iron and steel rates west thereof are unreasonable. Former report, 95 I. C. C. 739, affirmed. Black Steel & Wire Co. v. A., T. & S. F., 112 I. C. C. 739.

(dd) While in southern territory the predominant use of cottonseed meal is that of fertilization, in the southwest and in official territory it is used almost exclusively for feeding purposes. Its fertilizing characteristics are especially desirable in tobacco growing, although it it is also used quite extensively on cotton and other crops, principally in combination with other materials. The commission, therefore, finds that cottonseed meal should for the present be classified as a fertilizer material in southern territory. Fertilizers between Southern Points, 113 I. C. C. 389, 419.

(ee) Based upon sound economic grounds fertilizer is a commodity which should be leniently treated in distributing the burden of freight transportation. The need for continued progress in use of this commodity is so great and degree of its use is so dependent upon financial considerations that all burdens associated with its use should be made as light as possible. Fertilizers between Southern Points, 113 I. C. C. 389, 421.

(ff) Complainant attacked rates on alloys of lead, in pigs, bars, and ingots, carloads, from New York and Newark, N. J., to Buffalo, N. Y., Pittsburgh, Pa., Chicago, Ill., and other destinations in c. f. a. territory as unreasonable, unjustly discriminatory and unduly prejudicial. Respondents proposed to cancel commodity rates on terne metal, carloads, from Newark and Brills, N. J., to Buffalo and Buffalo rate points and destinations in central territory and to apply higher fifth class rates. The term "alloys of lead" as used herein comprehends babbitt, solder, terne, and type metal which have lead as a base in composition with tin, antimony, or other metals in varying proportions. These articles are rated fifth class, in official classifications, and have moved on this basis generally in the past, except during the period subsequent to Sept. 28, 1924, when lower commodity rates, the same as those on tin, were established on terne metal from Newark and Brills to Buffalo and central territory. Throughout territory governed by the official classification tin moves, with few exceptions, on the fifth class basis, such commodity rates as apply having been published from the ports through which tin is imported from the East Indies. Substantially no commodity rates now apply in that territory on solder, babbitt or type metal. Whatever may have lead to the publication of these commodity rates on terne metal, a test of their operation during the first nine months indicating a movement to only three destinations and in an aggregate of 11 cars does not show that a departure from the class basis is justified. HELD, proposed schedules have not been justified in their entirety but sixth class basis would be reasonable for application on terne metal; rates attacked from Newark unreasonable to extent they exceed sixth class rates, reparation awarded. Federated Metals Corp. v. C. R. R. Co. of N. J., 113 I. C. C. 487.

(gg) Respondents proposed certain changes in the commodity descriptions of various petroleum products applicable from points in California to destinations in several western and southwestern states. The proposed descriptions provide specifications for each commodity, the distinction between the several com-

modities with the exception of petroleum crude oil being gravity or flash point, or both, as the case may be. No rate changes are proposed. Respondents state that the purpose is to clarify the tariffs and to restrict the application of the rates to commodities for which they were established. Under the proposed changes refinery tops now billed by shippers as gas oil and moving under the gas oil rate of 38.5c at an estimated weight of 7.75 pounds per gallon from Los Angeles, and points taking same rates, to Phoenix will be assessed rates applicable on engine distillate, which at the time of the hearing varied, according to origin points, from 79 to 94c based on an estimated weight of 6.6 pounds per gallon. Gas oil is generally understood to be a low grade product containing no gasoline or kerosene, and that refinery tops are not considered to be gas oil for transportation purposes. The proposed descriptions for fuel oil and gas oil contain specifications as to gravity but do not indicate that those gravities are to be determined at any particular temperature. Inasmuch as petroleum oils have different gravities at different temperatures, any specification in the tariffs as to gravity should make it clear that the gravity is to be determined at a certain temperature, which should be stated. HELD, proposed schedules not justified, but without prejudice to the filing of schedules designed to reflect the suggestions here made. Commodity specifications on petroleum products, 113 I. C. C. 707.

(hh) Complainant attacked commodity and class rates charged on iron and steel derricks, carloads, from Sistersville, W. Va., to Honig, Kas., and Naptha, Tulsa, Bristow, Wetumka, and Wilson, Okla., as unreasonable. Iron and steel derricks, together with other oil well supplies and outfits, are rated class A in straight or mixed carloads in the western classification. The oil well outfits and supplies list includes many articles of varying values and weights, which are given like rates to permit mixing. Even if derricks are of lower value than some of the other commodities taking the same rates, that fact alone is not a controlling reason for according them lower rates. There are about 135 articles included in the oil well outfits and supplies mixture, the present description of which was published at the request of manufacturers of such supplies, has long been in effect, and apparently is satisfactory. There is no complaint against the rating and rates on the mixture and a lower rating and lower rates should not be published on derricks except upon a clear showing that the conditions surrounding their transportation differ materially from the conditions surrounding the transportation of the other articles on the list, or that they are the same as those surrounding the transportation of articles taking lower rates. HELD, rates attacked not unreasonable, complaint dismissed. Carter Oil Co. v. A. T. & S. F. Ry., 113 I. C. C. 757.

(ii) Complainant attacked second and third class rates of 105.5c and 79c charged on less carloads of waxed wrapping paper printed and not printed, from Cincinnati, O., to Lynchburg, W. Va., as unreasonable and unduly prejudicial. Shipment of printed paper moved over the N. & W. throughout, 510 miles. Shipment of paper, not printed, moved C. & O. throughout, 472 miles. In 96 I. C. C. 280, the Commission found the second class rates and ratings on printed waxed paper unreasonable to extent they exceeded third class. HELD, rates attacked not unduly prejudicial but unreasonable to extent they exceeded third class rate, reparation awarded. Lynchburg Chamber of Commerce v. N. & W. Ry., 115 I. C. C. 27.

(jj) Complainant attacked class rates charged on telescoped barrels, in carloads, from Thebes, Ill., and Louisville, Ky., to destinations in official classification territory as unjust, unreasonable, and unduly prejudicial. There is no specific provision in the official classification for telescoped barrels, and defendants have collected the fourth class rates observing a minimum of 16,000 pounds, under the classification rule of analogy. That rating and minimum is published specifically on wooden butter tubs. Complainant conceded that the rates might reasonably be made a fixed percentage over the lumber rates. It is quite evident that telescoped barrels, although made largely of wood, have passed far beyond the lumber stage of manufacture. The uses and transportation characteristics of telescoped barrels are dissimilar from those of lumber. Considerations of carrier and market competition, together with regularity and volume of movement, are of prime importance in fixing the rates on lumber, but they enter only slightly and then in a different manner

into the determination of rates on telescoped barrels. For these reasons, the Commission is not of the opinion that rates on telescoped barrels should be the same as, or definitely related to, the rates on lumber. HELD, rates for past not unreasonable. rates for future not to exceed sixth class, minimum 30,000 pounds, subject to rule 34. Hollingshead Co. v. A. A. R. R., 115 I. C. C. 95.

(kk) Complainant attacked ratings in official classification on clippings or scraps of dressed or tanned rabbit skins in car loads and less carloads as unreasonable. The present ratings were established on March 25, 1924, as a result of an application filed by complainant and others. Prior to that date there were in effect any quantity ratings of first class in official and western and first class in bags and second class in bales, barrels, or boxes in southern classification. The failure of the committee to accord in official classification the ratings now sought is the moving cause of the present complaint. The commodity can be transported in any kind of a car and the claims for loss and damage are negligible. HELD, less carload ratings not unreasonable but carload rating unreasonable to extent it exceeded fourth class minimum 24,000, reparation awarded. American Hatters & Furriers Co. v. C. N. Ry., 115 I. C. C. 283.

(ll) In 104 I. C. C. 183, Commission found that rates on broom handles, in carloads, from Michigan and Wisconsin to Des Moines, Ia., North Kansas City and Kansas City, Mo., and Deshler, Neb., were unreasonable. The handles contained in the shipments were turned to shape with a hole bored through one end. Commission found reasonable rates to be 1.5c over lumber rates. HELD, rates on handles (wooden) in the white, turned or tumbled to shaped, and not further finished beyond holes bored through one end unreasonable to extent they exceed 1.5c over lumber rates when such lumber rates were higher than 31.5c prior to July 1, 1922, and higher than 28.5c thereafter, and 2c over lumber rates when lumber rates were 31.5c or less prior to July 1, 1922, and 28.5c thereafter, reparation awarded. Deshler Broom Factory v. A. T. & S. F. Ry., 115 I. C. C. 437.

(mm) Complainant attacked charges for transportation on Dec. 12, 1923, of one steam road roller from Shreveport, La., to Bluff Springs, Fla., as illegal and unreasonable. Original destination was Flomaton, Ala., but reconsignment was effected without charge. The movement was over T. & P., to New Orleans and L. & N. beyond, charged 74.5c to New Orleans and 49.5c beyond. First factor not attacked. Sixth class factor applied from New Orleans. Self propelling road roller is a machine in an entirely proper and normal sense of the word. Rating on machines should apply. HELD, class L rate of 39.5c was applicable from New Orleans, overcharge should be refunded, complaint dismissed. Lawrence Construction Co. v. L. & N. Ry., 115 I. C. C. 439.

(nn) Reasonable maximum rates on building and roofing paper and paper boards between points within CFA territory and within trunk line territory and between the two territories and between either of them and points in New England territory should not exceed 90% of the sixth class rates. Lynchburg Chamber of Commerce v. B. & O R. R., 115 I. C. C. 465, 467.

(oo) Complainant attacked rates on spelter by-products, i.e.; zinc dross, ashes, skimmings, and residue, carloads, from Canada, New England, and trunk line territory to trunk line points, and from Pennsylvania, Ohio, West Virginia, Michigan, Indiana, Illinois, Wisconsin, Missouri to Trenton, N. J., as unreasonable and unduly prejudicial. From points in Canada the sixth class rates were applicable on this traffic to all of the destinations. Complainant contends that these rates were and are unreasonable to extent they exceed 85% of the sixth class rates, or the commodity rates on zinc between the same points, if lower. HELD, rates attacked unreasonable to extent they exceeded 85% of sixth class between the same points, except that between points where commodity rates were and are maintained on spelter, lower than 85% of sixth class rates, they should not be exceeded. HELD, rates attacked on spelter by-products between points in central territory, or western terminal points and Trenton, N. J., not unreasonable except that from Pittsburgh to Trenton unreasonable to extent it exceeded 17c. From Canada to New England and Trunk Line unreasonable to extent they exceeded 85% of sixth class, reparation awarded. Lissberger & Co. v. Pennsylvania R. R., 115 I. C. C. 521.

(pp) Complainant attacked class rate of 81c charged on three cars of metallic couch frames, folded flat, from Chicago, Ill., to Memphis, Tenn., as unreasonable, unjustly discriminatory, and, as compared with rates on kitchen safes, knocked down, in the white, or shellaced, from and to the same points, unduly preferential of latter traffic, to extent it exceeded 59.5c. Shipments moved I. C. and Y. & M. V., 527 miles. The classification provides a distinction as between furniture and metallic couch frames and since April 1, 1922, save for the eight months period from July, 1923, to March, 1924, defendants have recognized such a distinction in the fixation of commodity rates. A rate equal to 75% of the rate on furniture would have been 61c. HELD, rate attacked unreasonable to extent it exceeded 61c, reparation awarded. Memphis Furniture Mfg. Co. v. I. C. R. R., 115 I. C. C. 554.

(qq) Complainant attacked first class rate charged on l. c. l. shipments of so-called tinsel wire from New York and Brooklyn, N. Y., and Weehawken, N. J., to Manitowoc, Wis., as inapplicable and that second class rate provided for wire, n. o. i. b. n., should have been collected, and that rate charged was unreasonable to extent it exceeded second class. The shipments in question consisted of metal threads or strands, usually flattened, for use in making tinsel articles. They are made of silvered, lacquered, or plain copper or of tinned iron. It is imported by complainant from France and Germany. The German name for it is "lahn." The official classification provides a rating of first class on tinsel in any quantity. Wire and lahn are similar in that both are manufactured by extruding metal through dies. But in the manufacture of wire tensile strength or electrical conductivity, or both, are the qualities principally sought, without much reference to the appearance of the finished article. The reverse is true of lahn. It has but little tensile strength, and except for its glitter and sparkle it would be practically valueless. Lahn is a form of tinsel and is not wire. Complainants shipments have not been overcharged. HELD, rate attacked, applicable and not unreasonable, complaint dismissed. National Tinsel Mfg. Co. v. C. & N. W. Ry., 115 I. C. C. 631 .

(rr) Complainant alleged third class rates of $3.675, minimum 12,000 pounds, charged on four cars of servidor doors, not further finished than primed, shipped during July, August and Sept., 1924, from Milwaukee, Wis., to Seattle, Wash., as unreasonable and unlawful to extent they exceeded $1.14, minimum 30,000 pounds. Servidors are patented doors designed with double panels enclosing a narrow compartment to permit the delivery or removal of clothes and other articles from hotel rooms without an employee having to enter a room. There was a commodity rate of $1.14 minimum 30,000 pounds applying on doors in the white or having one coat of shellac in addition to priming. Servidors compete with all ordinary types of doors used in such buildings as hotels and apartment houses. It is plain from the evidence that the servidors doors comprising the shipments under consideration were combination articles having characteristics of both doors and cabinets. Although they possess qualities in addition to those of the ordinary doors, it must be admitted that their primary purpose and use continues to be that of a door. Unless, therefore, the commodity rate on doors was restricted to certain types or qualities of doors, it was applicable to complainant's shipments although the servidor doors were of more value and possessed features not common to ordinary doors and presumably not contemplated when the commodity rate on doors was published. Such articles might reasonably take higher rates than those provided for the relatively low priced common doors. HELD, rate charged inapplicable, applicable rate was $1.14, minimum 30,000 pounds, reparation awarded. Servidor Co. v. C. M. & St. P. Ry., 118 I. C. C. 49.

(ss) Complainant attacked ratings and rates applied on numerous carload and less carloads of electric automobile horns between Oct. 11, 1922, and June 16, 1923, as unreasonable. Shipments moved from Lowell, Mass., to New York, Brille, N. J., Detroit, Mich., and Ford, Ont. Can., charged one and half times first, less carload and second class carloads. Effective June 16, 1923, following 78 I. C. C. 313, the ratings were charged to first less carloads and third class carloads. HELD, rates and ratings not unreasonable, reparation denied, complaint dismissed. Heinze Electric Co. v. B. & M. R. R., 118 I. C. C. 77.

(tt) Complainant alleged the classification ratings of sticky fly paper, in

carloads, and less carloads, and rates thereon, from Grand Rapids, Mich., are unreasonable and unduly prejudicial. Sticky fly paper is used to catch and exterminate the house fly. Ordinary box cars with a good roof are required for the transportation of this commodity. It is stated that about 20 years ago, in response to an application for lower ratings, the carload ratings in the three major classifications were reduced from third to fourth class, the minimum was increased from 24,000 to 30,000 pounds, and the less than carload rating in the western classification was reduced from first to second class. HELD, ratings attacked not unduly prejudicial and carload rating and less carload rating in western classification not unreasonable and less carload ratings in the official and southern classifications not unreasonable for the future to extent they exceed second class. Tanglefoot Co. v. N. Y. C. R. R., 118 I. C. C. 131.

(uu) Complainant attacked commodity rates on common brick, carloads, shipped since July 1, 1923, from Albion, Ill., to St. Louis, Louisville, Ky., and Princeton and English, Ind., as inapplicable and unreasonable. Charged at rates applicable on brick included in the uniform brick list. Effective July 1, 1923, in compliance with 68 I. C. C. 213 defendants established between Albion and specified destinations rates on common brick which were 80% of the rates on brick included in the uniform brick list. The use to which the brick is put does not, of course, alone determine its essential character or the charges which may be legally exacted for its transportation, but it tends to show that it has qualities which distinguish it from the ordinary common brick. HELD, rates complained of applicable, complaint dismissed. M'Ewing & Thomas Co. v. C. & E. I. Ry., 118 I. C. C. 211.

(vv) Complainant attacked charges on a shipment of horse hair from Philadelphia, Pa., to Chicago, Ill., in April, 1923, as based on an excessive weight and were illegal and unreasonable. Complaint is barred as to unreasonableness. Charged 64c, fourth class rate and weight of 124,200 pounds. Fourth class rate was applicable on hair, horse mane or tail, not curled. Rate claimed 54.5c applicable on hair, cattle, goat, horse, or hog, including crude hog bristles, not curled, n. o. i. b. n. HELD, rate and weight applicable, overcharge of $1 ordered refunded, complaint dismissed. Smolin & Gumbiner v. Pennsylvania R. R., 118 I. C. C. 293.

(ww) Complainant attacked fifth class rates, minimum 36,000 pounds, charged on wet rag pulp, carloads, from Ohio to official classification territory as unreasonable, unjustly discriminatory and unduly prejudicial to extent they exceed 90% of the sixth class rates minimum 60,000 pounds. Commission has heretofore found justified the fifth class rating 48 I. C. C. 515. Rag pulp is used in the manufacture of high grade and low grade papers, such as waxed, vegetable parchment, tissue, and surface coated papers, etc. There is practically no movement of dry rag pulp. The record indicates that wet rag pulp on account of the high water content has a value, per pound of shipping weight, but little, if any, in excess of that of rags. Rags doubtless move in greater volume, but, on the other hand, rag pulp-loads vary much heavier. HELD, rating unreasonable to extent it exceeds sixth class minimum 50,000 pounds. Cheney Pulp & Paper Co. v. A. C. & Y. Ry., 118 I. C. C. 477.

(xx) Complainant attacked as unreasonable third class rating carloads on paper cups in official classification territory. Flat and nested paper cups are accorded the same ratings in official classification which are third class, subject to rule 34, which provides for graduated minimum according to the size of the car, and first class in less carloads. Southern and western classifications carry the same rating and minimum for carloads but for less carloads each provides first class for nested and second class for flat cups. Paper cups, nested and flat, average substantially the same value per pound and risk of damage is negligible. When used for the same purpose they compete commercially. While the greater density of the flat cups when packed permits loading to a carload weight heavier than can be attained by the nested cup, this consideration alone does not justify ratings on flat cups lower than on nested cups. HELD, first class and third class ratings attacked unreasonable to extent they exceed second class in less carloads and fourth class in carloads, subject to rule 34, reparation awarded. Public Service Cup Co. v. A. C. L. R. R., 118 I. C. C. 697.

(yy) Complainant contended that

rates and ratings assessed on automobile horns were unreasonable to extent they exceeded lower rates and ratings subsequently established in conformity with commission's decision in 78 I. C. C. 313, and sought reparation to that basis, citing cases wherein commission awarded reparation in connection with reductions in classification ratings, HELD: Assailed ratings had been maintained for many years and subsequent reductions applied throughout a large territory affecting shippers at many points. Under such circumstances commission has frequently denied reparation. See 37 I. C. C. 81, and other cited cases. Heinze Electric Co. v. B. & M., 118 I. C. C. 77.

(zz) Complainant attacked rates charged on a car of unfinished yellow pine mop handles shipped Jan 17, 1924, from Lumberton, Miss., to Boston, Mass., and on a car of unfinished yellow pine dowels shipped June 17, 1923, from Lumberton to Giard, Pa., as unreasonable and unduly prejudicial. To Boston charged sixth class rate of 97 cents. To Giard charged 80.5 cents to Cincinnati and fifth class 30 cents beyond. The articles here considered are manufactured by complainant from material which has no other commercial use, such as slabs and edgings. Because of the low grade of the material from which these commodities are turned, sand belting has been found necessary. HELD, rates charged unreasonable to extent they exceed by more than 15% the rate on lumber, reparation awarded. Lumberton Broom & Mop Handle Co. v. G. & S. I. Ry., 120 I. C. C. 233.

(3a) Upon further hearing, former report 98 I. C. C. 331, modified in part, and ratings and rates on coconut stearine, in boxes or barrels, found unreasonable to extent they exceed third class, l. c. l., and fifth class, c. l., minimum 30,000 pounds; and unduly prejudicial to extent they exceed ratings and rates contemporaneously applicable on palm-kernel, palm, and mixed stearines, in bags, boxes, or barrels. Reasonable ratings and rates prescribed for future and reparation denied. Best Foods v. C. R. R. Co. of N. J., 120 I. C. C. 169.

(3b) Ratings and rates in official, southern, and western classifications on sandwich spread found unreasonable to extent they exceeded second class, l. c. l., in all three classifications and fifth class in official and western classifications and sixth class in southern classification, in carloads, subject to a 36,000-pound minimum. Reasonable ratings and rates prescribed for future and reparation awarded on shipments moving from Cleveland, Ohio, to various destinations. Sar-A-Lee Co. v. A., C. & Y., 120 I. C. C. 512.

(3c) Double first-class rating applied on rolls of woven curled hair, l. c. l., found unreasonable to extent it exceeds rating of one and one-half times first class. Reasonable rating prescribed for future. Blocksom & Co. v. M. C., 120 I. C. C. 521.

(3d) Complainant attacked class rate charged on a car of dressed and polished granite on March 26, 1924 from Quincy Adams, Mass., to Aurora, Ind., as unreasonable and inapplicable. The consignor invoiced them as monuments and bases and described them in the bill of lading as granite monuments. Shipment moved over New Haven, B. & M., C. P., Wabash and B. & O., charged fifth class rate of 50.5 cents, on stone, natural, other than bituminous asphalt rock, granite, carved, lettered, polished or traced, in carloads. It did not carry a rating on monuments. A commodity rate of 33 cents was applicable on polished granite. It is equally clear that in the absence of a specific rating on monuments the articles shipped may be regarded for classification purposes as polished granite. As the tariff item naming the 33 cent rate specifically excluded monuments or parts thereof, it is clear that it was not applicable on complainants shipment. HELD, rate charged applicable, but unreasonable to extent it exceeded 33 cents, reparation awarded. Kassebaum & Son v. N. Y., N. H. & H. R. R., 122 I. C. C. 59.

(3e) Classification ratings can not be condemned as unreasonable merely upon showing that there are a limited number of commodities which load as heavily as, and are rated lower than, the commodity under consideration. Childers v. A., T. & S. F. Ry., 122 I. C. C. 116, 118.

(3f) Complainant attacked class rates charged on fresh berries, preserved in sugar, in barrels, in carloads, shipped between Feb. 3, 1922 and Jan. 31, 1925 from Seattle and Tacoma, Wash., Portland, East Portland, Salem and Eugene, Ore., to Los Angeles, Calif., as illegally assessed and unreasonable and unduly prejudicial as compared with rates on the same commodity to New York, Philadelphia and Pittsburgh, Pa., Chicago, Ill.,

St. Louis, Mo., Cincinnati, O., and Louisville, Ky. The commodities on which the rates are attacked are strawberries, blackberries, raspberries, and loganberries, to which sugar has been added in the proportion of 1 pound of sugar to 2 pounds of berries. The mixture is packed in barrels, and is placed in a cold storage plant, where it is subjected to a temperature of from 5 to 10 degrees above zero. It is shipped to complainants upon their order, in refrigerator cars. The sugar is added and the mixture is frozen to preserve the color and flavor of the berries and to hold them in their original shape. These sugared berries were used by complainants in the manufacture of preserves and jams. Contemporaneously commodity rates were in effect on fresh fruits from the points of origin to Los Angeles, and upon the assumption that sugared berries are fresh fruits. This contention is without merit. It is clear that sugared berries, the sugar having been added for preservation, are not fresh fruits in the commonly accepted meaning of the term. Sugared berries can be kept in ice storage for a year, and often remain in a solid frozen mass for several days after the barrels in which they are shipped have been removed. Applicable rates were charged and collected. The rates attacked are higher than the rates not only on canned goods but on fresh fruits. HELD, rates attacked applicable, but unreasonable to extent they exceed 80 cents from Portland, East Portland, Salem and Eugene and 94 cents from Seattle and Tacoma, subject to minimum of 43,000 pounds, reparation awarded. North Ontario Packing Co. v. O. W. R. & N. Co., 122 I. C. C. 360.

(3g) Complainant attacked class A rate charged on a car of crushed stone in sacks, shipped Jan. 1, 1924 from Gantts Quarry, Ala., to Biloxi, Miss., as unreasonable, unjustly discriminatory and unduly prejudicial. Complainant's averment is that the commodity was crushed stone. Defendant states it was crushed marble known to the trade as terrazzo, and actually used in terrazzo flooring. Shipment moved 333 miles, charged class A rate of 70 cents. Rate of $1.69 was contemporaneously in effect on stone, rubble, crushed or broken, from Gantts Quarry to New Orleans, La., 412 miles. Defendant proposed a rate of $2.10 which is the equivalent of the rate from Moretti, Ala., to Gulfport, Miss., 349 miles. HELD, rate attacked unreasonable to extent it exceeded $2.10, reparation awarded. Dagostin & Angelini Bros. v. L. & N. R. R., 122 I. C. C. 385.

(3h) Complainant attacked class rates charged on internal combustion engines, boilers, pumps, and heaters, in carloads, from defined territories to Louisiana and Arkansas, and between Louisiana and Arkansas, as unreasonable, unjustly discriminatory and unduly prejudicial. Majority of shipments originated at Oil City, Pa., Quincy, Ill., and Seneca Falls, N. Y. Charged class A rates. This basis is in effect on machinery, carloads, throughout this entire territory. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Standard Pipe Line Co. v. T. & P. Ry., 122 I. C. C. 463.

(3i) Complainant attacked class rates charged on scrap brass and scrap copper, carloads, from official and southern classification territories, and certain points in western classification territory to East Liberty, Pa., as unreasonable and unduly prejudicial. Complaint was withdrawn as to rates from the southern classification territory as satisfactory rates were to be established. Scrap brass and scrap copper are rated fifth class in the official classification from points in central territory to East Liberty commodity rates equivalent to the sixth class rates are generally in effect, the only exception to this basis being the rate on scrap copper of the Pennsylvania from Chicago, Ill., to East Liberty which is less than the sixth class rates. Commodity rates less than the sixth class are in effect from many of the large cities in trunk line and New England territories to East Liberty. The rates on scrap brass and scrap copper from Little Rock, Oklahoma City, Okla., Minneapolis and St. Paul, Minn., and Kansas City, Mo. The rates attacked to East Liberty from Little Rock and Oklahoma City are less than, and from Minneapolis and St. Paul equivalent to, 85% of the sixth class rates from and to the same points. From Kansas City to East Liberty the attacked rate is lower than the combination sixth class rate from and to these points, but more than 85% of that rate. HELD, rates attacked not unreasonable except in so far as they exceed rates approved in 109 I. C. C. 351 and 118 I. C. C. 725, reparation denied. Federated Metals Corp. v. B. & O. R. R., 122 I. C. C. 513.

(3j) Complainant alleged that the

fifth class rate on foundry flasks, carloads, from New Castle, Del., to Chicago Heights, Ill., is unreasonable. Foundry flasks are rough iron box shaped containers for the sand and patterns used in making castings. They are not subject to damage by the elements and are not readily breakable. Complainant has never filed a claim for loss or damage in transit. Rate charged 54.5 cents. HELD, rate attacked not unreasonable, complaint dismissed. Chicago Heights Mfrs. Asso. v. Pennsylvania R. R., 123 I. C. C. 167.

(3k) Complainant alleged third class rate of 50 cents charged on fresh and frozen fish and on bait fish in carloads from Boston to New York has been and is unreasonable, unjustly discriminatory and unduly prejudicial and unlawful in violation of section 6. Respondents proposed to cancel fifth class carload and third class less carload on bait, fish, in packages, such as shucked clams, fish, etc., used for fish bait carried in exceptions to the classification. The cars used for fish must be washed and fumigated before they can be used to transport high grade merchandise or commodities subject to contamination. While loss and damage claims on the fish are negligible, there have been claims filed when the train was too late for the market. If the suspended schedules become effective the rates on fresh and frozen fish will apply on fish heretofore used for bait. The alleged violation of section 6 appears to be based on the fact that since August, 1925, fish formerly shipped as bait were charged the rate on fresh and frozen fish. It appears, however, that all shipments of fish made by the consolidator to complainant since that time consisted of fresh and frozen fish, were tendered defendant as such, and were properly charged the rate applicable thereto. HELD, rates on fresh and frozen fish here attacked were not and are not unreasonable or otherwise unlawful, suspended schedules justified, complaint dismissed. Harlem & Morrisiana Transp. Line v. N. Y., N. H. & H. R. R., 123 I. C. C. 480.

(3l) Complainant alleged that the rates charged on vegetable parchment and waxed wrapping paper, printed and unprinted, and on paper box board, and paper boxes, plain or waxed, printed and unprinted in carloads, from Kalamazoo, Mich., to Indiana, Illinois and Wisconsin were, and present rates are and for future will be, unreasonable and as compared with the rates on printing paper, unjustly discriminatory and unduly prejudicial. Most of the shipments moved to Chicago, Ill., short line distance 141 miles. Sixth class rates apply on waxed and vegetable parchment wrapping paper under exceptions, sixth class rate 18 cents. A commodity rate applies on printing paper of 15 cents. Sixth class rates also apply on paper boxes, paper box board takes 90% of sixth class, making the rate to Chicago 16 cents. Complainants wrapping paper is of a high grade and is not as extensively used as the papers generally included within that description. The volume of traffic thereon does not compare with that on ordinary wrapping paper. The record does not warrant a finding that rates on waxed and vegetable parchment wrapping papers and paper boxes should be lower than sixth class or that rates on paper box board are unduly high as compared with the rates on other paper articles. HELD, rates assailed not unreasonable or otherwise unlawful, complaints dismissed. Kalamazoo Vegetable Parchment Co. v. A., T. & S. F. Ry., 123 I. C. C. 493.

(3m) Complainant attacked class C rates charged on 6 cars of sulphur from Bryanmound, Tex., refined in transit at Freeport, Tex., and reforwarded thence to Fresno, Livny, and Los Angeles, Calif., in June, July and August, 1922 as unreasonable. Charged $1.50 prior to July 1, 1922 and $1.35 thereafter. In Southern Acid & Sulphur Co. v. A. & N. M. Ry., 74 I. C. C. 641 the commission found reasonable rates to be $1.05 prior to July 1, 1922 and 94.5 cents thereafter. HELD, rates assailed unreasonable to extent they exceed $1.05 prior to July 1, 1922 and 94.5 cents thereafter, reparation awarded. Stauffer Chemical Co. v. H. & B. V. Ry., 123 I. C. C. 657.

(3n) Southern classification rating of double first class on geographical globes with or without stands, in boxes, l. c. l., found unreasonable to extent it exceeded a rating of one and a half times first class. Reasonable rating prescribed for future. Official and western classification ratings of one and a half times first class found not unreasonable. Chicago Heights Mfrs. Asso. v. A., T. & S. F., 122 I. C. C. 582.

(3o) Eastbound rates on flour, minimum 40,000 pounds, from points in Colorado, Utah, Idaho, Montana, Oregon, and Wyoming found unreasonable and unduly

prejudicial in favor of dealers located at points in Montana and Colorado, to extent they exceed corresponding rates on wheat. Ogden Grain Exchange v. A. & S., 122 I. C. C. 691, 718.

(3p) Complainant attacked combination class rates charged on 19 cars of steam road rollers from Springfield, O., to Kentucky, Tennessee and Florida and on 3 cars from Sangully, Olympia and Boulevard, Fla., to Springfield, O., between Dec. 6, 1922 and Sept. 26, 1924 as inapplicable. Charged combinations constructed on Cincinnati, O., and Jacksonville, Fla., based on fifth and sixth class rates north and south of the Ohio river. The sole point of controversy is as to the application of the rates from Cincinnati to destinations in Kentucky and Tennessee and between Jacksonville and points beyond in Florida. In the southern classification steam road rollers are rated sixth class under the heading of grading and road making implements. By exceptions to the southern classification a class L rating was provided from Cincinnati on machinery, machines rated sixth class in the southern classification. A class N rating was provided between Jacksonville and points on machinery, machines carload, rated sixth class in southern also dredging machinery and parts thereof. HELD, class L rates were applicable from Cincinnati and class N rates from Jacksonville, overcharges to be refunded, complaint dismissed. Buffalo Springfield Roller Co. v. D. T. & I. R. R., 126 I. C. C. 177.

(3q) Complainant alleged that the second class rates charged on carloads of parlor or furniture frames, from Chicago, Ill., to Burlington, Ia., were unreasonable and unduly prejudicial as compared with third class rates to western trunk line territory. Rates to Burlington are subject to the official classification, and western trunk line territory western classification. Rates were 69.5c prior to July 1, 1922 and 62c since that date. Commodity rates were published to New London, Ia., 19 miles beyond Burlington 52.5c prior to July 1, 1922, 47.5c from that date to Nov. 1, 1922 and 49c since that date subject to rule 77. HELD, charges prior to April 7, 1926 unreasonable to extent they exceeded rates to New London. Present rate not unreasonable or unduly prejudicial, reparation awarded. Burlington Shippers Asso. v. C. B. & Q. R. R., 126 I. C. C. 179.

(3r) Complainant alleged fifth class rates on scrap brass and scrap copper from New York Harbor and Greater New York points to Bridgeport, Waterville, Hartford, Waterbury, Springdale, and Stamford, Conn., and Taunton, New Bedford and Boston, Mass., have been and are unreasonable, unjustly discriminatory and unduly prejudicial. The issues in this case are practically identical with Lissberger & Co. N. Y. N. H. & H., 96 I. C. C. 231. Scrap copper and brass are used in place of new metal. Commodity rates substantially lower than fifth class rates are in effect from Pittsburgh, Cleveland, Chicago and St. Louis groups to Boston group destinations on both new and scrap copper and brass. By an exception to the classification sixth class rates have applied from all central territory points from which specific commodity rates are not applicable. The rate from Pittsburgh to Boston was 25c, and it applied via New York. The fifth class rates charged from New York to Boston was 27.5c. The sixth class basis would provide uniformity in the rating on scrap copper and brass, and the earnings thereunder appear adequate on carload traffic of this character even for the generally higher rated New England territory. HELD, rates attacked not unreasonable, unjustly discriminatory or unduly prejudicial but for future unreasonable to extent they exceed sixth class rates and unduly prejudicial to extent they exceed rates from Pittsburgh and Cleveland group points to the same destinations. Federated Metals Corporation v. N. Y. N. H. & H. R. R., 126 I. C. C. 439.

(3s) Complainant alleged as unreasonable, unduly prejudicial and in violation of section four rates on tannery fleshings, from tanning points in the south to West Williamsport, Pa. Fleshings is a low grade commodity, and is used in making glue. As shipped it consists of 80% water and 20% solid matter. It is not easily damaged and may be and is transported in either box cars or open top equipment. After the shipments are unloaded the cars are cleaned out by the consignee and may be used for other kinds of freight generally. West Williamsport is on the S. & N. Y., 3 miles west of Williamsport, Pa., and generally takes the same rates. Springdale is on the Pennsylvania, 17 miles northeast of Pittsburgh. Gowanda is on the Erie, 32 miles south of Buffalo. It is rated sixth class in southern and fifth class in official, but by exceptions to the official sixth

class rates are applicable from and to points in trunk line and central territories. Most of the rates on fleshings between the points here considered are commodity rates but they are on a higher level than the commodity rates on fertilizer in the south. HELD, rates attacked unreasonable, reparation awarded. Keystone Glue Co. v. Southern Ry., 126 I. C. C. 507.

(3t) Complainant attacked rates on alloys of lead, in carloads, from New York, N. Y., and Newark, N. J., to Buffalo, N. Y., Pittsburgh, Pa., Chicago, Ill., and other destinations in Illinois, Indiana, Ohio, Pennsylvania, New York, Kentucky, and Tennessee, as unreasonable unjustly discriminatory and unduly prejudicial. Respondents proposed to cancel commodity rates on terne metal, an alloy of lead in carloads, from Newark and Brills, N. J., to Buffalo, Buffalo rate points, and destinations in central territory, and apply higher fifth class rates. The two cars were heard in one report by division 3, 113 I. C. C. 487, by which it was found that the rates from Newark were unreasonable to extent they exceeded the sixth class rates. Complainant attacked rates on solder, carloads, from Newark to Buffalo, Black Rock and other points in the Buffalo district. Division 1 in 92 I. C. C. 319 found the fifth class rates not unreasonable, unjustly discriminatory or unduly prejudicial and dismissed the complaint. Metals intended for manufacturing purposes are cast into various shapes, designated pigs, bars, slabs, cakes, blocks and ingots, varying in weight from 25 pounds to 100 pounds or more each. They are not finished in any respect and are remelted in the course of their use. The term alloys of lead is applied to any alloy having lead as a base. Copper and brass occupy a large field of industrial usefulness where no competition with lead alloys is encountered, and the Commission should not, therefore, require the maintenance of a definite relationship between the rates on copper and brass and those on lead alloys on a showing that the commodities meet competitively in relatively limited uses. HELD, rates on lead alloys not unreasonable, respondents have justified the proposed schedules, but rates on alloys of lead including terne metal for the future should not be higher than rates on tin. Federated Metals Corp. v. C. R. R. of N. J., 126 I. C. C. 703.

(3u) Rating on component parts or raw material is not conclusive of rating to apply on a finished article. Troxel Mfg. Co. v. B. & C., 126 I. C. C. 169.

(3v) C. l. and l. c. l. ratings on cocoa beans in official, southern, and western classifications found not discriminatory or unduly prejudicial, but unreasonable as compared with lower ratings contemporaneously maintained on coffee, chicle, and crude rubber, and to extent they exceed third class, l. c. l., and fifth class, c. l. minimum 36,000 pounds. Reasonable ratings prescribed for future. Cocoa & Chocolate Mfrs. Asso. v. A. & V. Ry., 126 I. C. C. 561.

(3w) In a general way iron and steel articles, for rate-making purposes, are separated into three groupings, first, pig iron and articles taking pig-iron rates; second, steel billets and articles taking billet rates; and, third, finished and manufactured iron and steel articles, which with few exceptions, includes all articles that have progressed in manufacture beyond the billet stage. Standard Nut & Bolt Co. v. N. Y., N. H. & H., 126 I. C. C. 731.

(3x) Complainant attacked class rates charged on four cars of asparagus roots shipped from Seabrook, N. J., to Kress, S. C., in Nov. and Dec. 1923, as unreasonable. Shipments moved C. of N. J., Reading, B. & O. R. F. & P. and A. C. L., 767 miles, charged at first class rate of 176.5c. Effective June 15, 1924 the rate was reduced to 112.5c through a change in the classification rating from first class, any quantity, to fourth class in carloads. HELD, reparation awarded to basis of 112.5c. Kress v. C. R. R. of N. J., 128 I. C. C. 101.

(3y) Complainant attacked fifth class rate of $1.245 charged on a carload of copper sulphate from Chicago, Ill., to Dallas, Tex., as unreasonable to extent it exceeded 87c. Shipment moved Dec. 7, 1923 via C. & A. to East St. Louis, Ill., St. L. S. W. to Texarkana, Tex., and St. S. W. of Texas to destination. Effective April 20, 1924 a commodity rate of 87c on agricultural insecticides, and fungicides, including calcium arsenate, was established. When the shipment moved, calcium arsenate and all other insecticides including copper sulphate was rated the same and took the same rates from Chicago to Dallas. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Peaslee Gaulbert Co. v. C. & A. R. R., 128 I. C. C. 103.

(3z) Complainant attacked class rate charged on seven carloads of cold pack cherries shipped between Aug. 8, 1924 and Aug. 21, 1925 from Sodus and Buffalo, N. Y., to Philadelphia, Pa., as unreasonable. Shipments moved N. Y. C. to Newberry Junction, Pa., Reading beyond, charged second class rate of 68.5c and third class 54.5c. No joint commodity rates were in effect and no specific rating was named in the governing classification. Second class rate was applicable under the classification on fresh fruit, n. o. i. b. n., in barrels, boxes and crates, minimum 20,000. Fifth class rates were applicable on fruit, other than dried, evaporated or fresh; canned or preserved in juice or syrup, or in liquid other than brine or alcoholic liquor. The term "preserved" as applied to fruit contemplates only fruit that has been treated in such a manner that it will keep for an indefinite but substantial length of time at ordinary temperatures. On the other hand cold pack fruit is fresh fruit, the deterioration of which has been arrested by freezing and refrigeration. Effective Aug. 25, 1925 fourth class rating was published on fruit, fresh, cold pack, in bulk, in barrels, fourth class rate being 34c from Sodus and 37.5c from Buffalo. The record indicates that the cold pack fruit loads much more heavily than ordinary fresh fruit, and should therefore be entitled to an appreciably lower rating. Defendants admit rate charged unreasonable and express willingness to award reparation. HELD, second class rates applicable but unreasonable to extent they exceed 34c from Sodus and 37.5c from Buffalo, reparation awarded. American Preserve Co. v. Reading Co., 128 I. C. C. 146.

(4a) Rates on furniture from Memphis, Tenn., to destinations in c. f. a., Buffalo-Pittsburgh, and southern territories, found unreasonable to extent they exceed: In case of mixed furniture, minimum 12,000 pounds, 60 per cent of the corresponding first-class rates; in case of iron beds and articles classified therewith, minimum 12,000 pounds, the fourth-class rates, and minimum 30,000 pounds, the sixth-class rates, all of which are to be established under Southern Class Rate Investigation 100 I. C. C. 513; 109 I. C. C. 300; 113 I. C. C. 200; and in the case of l. c. l. rates on all articles of furniture, the class rates so established applicable under the southern classification. Reasonable bases of rates prescribed for future. Memphis Freight Bureau v. A. G. S., 128 I. C. C. 445.

(4b) Complainant attacked third class rate charged on oleomargarine, carloads, from Chicago, Ill., to Dallas, Tex., as unreasonable. Shipments moved via Santa Fe, 1,110 miles, third class rate charged $1.765. Oleomargarine is used as a substitute for butter, and except as value it has practically the same transportation characteristics. Its weight density is the same, the same kind of containers are used, and it is shipped in refrigerator cars and requires expedited service. Loss and damage claims are few. The facts of record indicate that from and to the points here in issue, oleomargarine should not pay rates higher than those on butter. HELD, rate attacked unreasonable to extent it exceeds $1.48 reparation awarded. Boren Stewart Co. v. G. C. & S. F. Ry., 128 I. C. C. 493.

(4c) Complainant attacked commodity rate charged on seven cars of "cold pack" blackberries, strawberries, and cherries, in barrels, from Fredonia and Sodus, N. Y., Camden station, Md., and Port Norfolk, Va., to Pittsburgh, Pa., from June 9 to Oct. 2, 1924 as inapplicable. Cold pack fruit, socalled, is prepared by freezing fresh fruit, which has been cleaned, pared, and hulled or pitted, depending upon the variety. Sugar is usually added before freezing. The frozen product is packed in tight cooperage and is shipped under refrigeration. Charged second class on cherries, third class on berries, rate claimed fifth class on fruit, other than dried, evaporated or fresh, canned or preserved in juice or syrup, or in liquid other than brine or alcoholic liquor. The term "preserved" as applied to fruit contemplates only fruit that has been treated in such a manner that it will keep for an indefinite but substantial length of time at ordinary temperatures. The record shows that cold pack fruit is simply fresh fruit, the deterioration of which has been arrested by freezing and refrigeration. HELD, rates charged applicable, complaint dismissed. Lutz & Schramm Co. v. P. & L. E. R. R., 128 I. C. C. 521.

(4d) Complainant alleged that rates charged on 12 shipments of cottonseed shavings shipped between July 27, 1923 and Nov. 26, 1924 from Georgia, North Carolina, and South Carolina to Ken-

tucky, Georgia, Florida, Pennsylvania, Ohio, New York, Delaware, West Virginia, Connecticutt and District of Columbia as inapplicable. The bills of lading covering the shipments described the commodity as cottonseed hull fiber or shavings, cottonseed hull fiber, or merely as hull fiber, but complainants allege that the commodity actually shipped was cottonseed shavings. The shipments were examined at points of origin or en route by the Southern Weighing & Inspection Bureau, and in its judgment were found to consist of cotton linters, whereupon the description of the shipments was changed, and charges collected on basis of rates on cotton linters, which were higher than those applicable on cottonseed hull fiber or shavings. Neither the tariffs publishing the commodity rates nor the classification define the terms "cotton linters" or "cottonseed hull fiber or shavings." The material here considered was bought and/or sold by complainants as cotton seed shavings. The Commission will not attempt to determine from the samples introduced whether the commodity shipped was cotton linters or cottonseed shavings, but from the price quotations introduced by complainants, together with the other evidence of record, it is of the view that complainants have sustained the burden of proof, and that the applicable rate or ratings on the shipments here considered was that published and in effect at the time of the respective shipments on cottonseed shavings. HELD, rates attacked inapplicable to extent they exceeded the rates on cottonseed shavings, reparation awarded. Speir & Co. v. A. & W. P. R. R., 128 I. C. C. 559.

(4e) In absence of unusual circumstances, classification ratings should be uniform in all territories, and a showing of nonuniformity in ratings of a particular article suggests the query as to whether the article has not been improperly classified in one classification, if not in both. Eggerss-O'Flyng Co. v. C. & N. W., 128 I. C. C. 644, 649.

(4f) Complainant alleged that the ratings in the official, southern and western classifications for waxed wrapping paper, printed or unprinted, and for vegetable parchment wrapping paper, printed or unprinted are unjust and unreasonable and unduly prejudicial. Complainant sought the ratings applicable to plain wrapping paper, except that in the official classification it asks that the carload rating be made sixth class. It is shipped either printed or unprinted, in boxes or crates. While it is true that all kinds of wrapping paper are to some extent competitive, it is nevertheless apparent that vegetable parchment and waxed wrapping paper do not compete with plain wrapping paper to the same extent that they compete with each other. It can neither be said that printed paper should always be rated higher than the same paper unprinted, nor that printed and unprinted paper should always be rated the same. In General Baking Co. v. P. R. R. 96 I. C. C. 280, division 4 found that the less carload rating of second class in official classification for printed waxed wrapping paper, in crated rolls, was unreasonable to extent it exceeded third class. Fifth class appears to be a reasonable carload rating for waxed wrapping paper, either printed or unprinted, in the official classification. This record does not warrant the conclusion that any of the carload ratings in issue are unreasonable except in the western classification. There the rating of fourth class appears to be excessive for application to a commodity of the weight and value of vegetable parchment wrapping paper particularly in view of the maintenance of fifth class, two classes lower, on the competitive waxed wrapping paper. Under the circumstances, the carload rating in the western classification should not reasonably exceed class A. In the southern classification vegetable parchment wrappers are rated first class in bundles and second class in crates; while vegetable parchment wrapping paper in bundles or crates is rated fourth class. Less carload rating in southern classification for vegetable parchment wrappers in bundles should not reasonably exceed second class, reparation awarded. Kalamazoo Vegetable Parchment Co. v. C. K. & S. Ry., 128 I. C. C. 675.

(4g) In fixing commodity rates slight differences between two articles in respect of their value, weight density, or other factors necessary to be considered, may be reflected in rate differences as narrow as may be desired; but in compiling a freight classification all articles, both in carloads and less, must be grouped into from 8 to 12 classes, and it is therefore manifest that commodities with somewhat different classification characteristics must often be assigned

the same rating. Kalamazoo Vegetable Parchment Co. v. C. K. & S., 128 I. C. C. 675, 678, 679.

(4h) First-class l. c. l. southern classification rating on, wrappers, paper, vegetable-parchment, printed in flat sheets cut to size and a quantity of such sheets wrapped in heavy paper and placed in a wood frame enclosing four sides but not the ends, found unreasonable as compared with fourth-class rating on vegetable-parchment wrapping paper in bundles, and to extent it exceeds contemporaneous second-class ratings in official and western classifications. While paper having been cut to size constitutes wrappers rather than wrapping paper, wrappers should not be rated three classes higher than uncut paper. Moreover, although package described is a bundle and takes first class as compared with second class when in crates, southern is only classification that distinguishes between boxes, bundles, or crates, and it, as well as other classifications, disregards this distinction on other similar commodities whether in bundles, boxes, or crates. Reasonable rating prescribed for future. Kalamazoo Vegetable Parchment Co. v. C., K. & S., 128 I. C. C. 675, 683, 684.

(4i) Complainant alleged rates charged on 80-5-15 dry insecticide, in carloads, from Jacksonville, Fla., to Fort Valley, Marshallville and Perry, Ga., were and are unreasonable. Dry insecticide consists of 80% sulphur, 5% lead arsenate and 15% lime. Lead arsenate is a poison. Sulphur, although not considered a poison, assists in destroying the plum curculio and brown rot. As lead arsenate constitutes only 5% of the mixture, apparently this insecticide is not highly poisonous. Rated sixth class, southern classification, charged 51c, distances 234 to Fort Valley and 227 to Marshallville, and 52c to Perry, 247 miles. HELD, rates assailed not unreasonable, complaint dismissed. General Sprayer Co. v. A. B. & A. R. R., 129 I. C. C. 318.

(4j) Complainant alleged that ratings applicable on school books, in the official, southern and western classifications under the item "books, n. o. i. b. n." are unreasonable. Books, n. o. i. b. n., are uniformly rated first class in less carloads and third class, minimum 30,000 pounds, in carloads, while school blanks and forms are rated less carloads, third in official second in southern and western, and carloads fifth in official and fourth in southern and western. HELD, ratings assailed unreasonable, complaint dismissed. American Book Co. v. A. A. R. R., 129 I. C. C. 372.

(4k) Complainant assailed fifth class rates charged on 20 cars of certain rods known as nut flats, shipped from North Tonawanda, N. Y., to Columbus, O., between Sept. 27, 1922 and July 23, 1923 as inapplicable and unreasonable. These nut flats were iron or steel wire rods, in coils, rectangular in cross sections, not further processed than hot rolled, and were used to make nuts, charged fifth class of 29.5c and 29c applicable to iron or steel bars. Rate of $4.28 per long ton was applicable on rods, bolt, nail, rivet and wire (iron or steel) in coils (not in straight lengths) unfinished, not drawn through a die, not lighter than No. 8 gauge, nor greater than 1¼ inches in diameter, which can be transported in open cars without damage from exposure to weather in carloads. HELD, applicable rate $4.28 per long ton, not unreasonable, complaint dismissed. Columbus Bolt Works Co. v. Pennsylvania R. R., 129 I. C. C. 512.

(4l) Complainant alleged carload rates charged on rough quarried stone from East Weymouth, Mass., to local points on the New Haven were unreasonable and unduly prejudicial to the extent they exceeded the rates on common brick. Rough quarried stone is rated sixth class and moves on sixth class distance rates betwen local points on the New Haven, with 20c as the maximum. This maximum is reached at a distance of about 175 miles. New York, N. Y., about 225 miles from East Weymouth appears to be the only important destination where the distance rate is held down by the maximum of 20c. HELD, rates unreasonable and unduly prejudicial to extent they exceed under 25 miles 9c to 16c 220 miles and over, reparation awarded. Plymouth Quarries v. N. Y. N. H. & H. R. R., 129 I. C. C. 621.

(4m) Complainants allege that the interstate rates on well boring outfits and oil well supplies, including derricks and casing, new and secondhand iron and steel pipe, iron and steel tanks and tank material, and rig iron, in carloads, between Kansas, Oklahoma, Arkansas, Texas and western Louisiana were unreasonable. The governing western classification provides ratings of class A on well boring outfits and oil well sup-

plies, including rig irons, subject to minima of 24,000 and 36,000 pounds, respectively, and fifth class on pipe and tanks and tank material, knocked down, minimum 36,000 pounds. It may be said that there are at least seven different rate bases or levels applying in this territory. Speaking generally, complainants contend that this anomalous rate situation would be corrected by the extension of the 9702 scales into their territory. Defendants admit generally that the various bases of rates in effect on these commodities result in a very unsatisfactory rate adjustment. Little, if any, defense is made of the rate applied. They propose, to remedy the existing chaotic condition by establishing for the future distance scales applicable to the respective commodities. Derricks and rig irons are included in the general term "oil well supplies." However, in Parkersburg Rig & Reel Co. v. C. R. I. & P. Ry., 95 I. C. C. 181, rates on these commodities were prescribed on the basis of 85% of the rates on oil well supplies. Damage has not been shown with that degree of certainty required for an award of reparation under a finding of undue prejudice. HELD, the assailed interstate rates prior to Nov. 27, 1923 were not unreasonable, but on and since that date they were, are, and for the future, will be unreasonable to the extent they exceeded rates and differentials wherever applicable from and to the same points prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203; except that the assailed interstate rates on and since Nov. 27, 1923 which did not exceed rates on the basis prescribed in the 9702 case, were not unreasonable, reparation awarded. Prairie Pipe Line Co. v. A. W. Ry., 132 I. C. C. 56.

(4n) Complainant alleged that combination rate charged on carloads of wooden handles and rollers for lawn mowers from Marquette, Mich., to Newburgh, N. Y., between March 1, 1924 and Feb. 1, 1926 were unreasonable. The handles and rollers are finished products of birch, beech or maple. The handles are varnished, the cross handle is drilled and belted to he long handle, and the long handle is drilled at the lower end for bolts. Charged rates ranging from 75.5c to 86c according to the junction point on which the combination was based. The correct rate was 80c, composed of fifth class of 48c to Buffalo and 32c beyond. The record indicates that shipments of lawn mower handles and rollers are constantly being made from Marquette to Newburgh. The shipments here in question were not isolated shipments. Commodity rates are effective on other articles of wood manufacture, or lighter loading and greater value. It would seem to be compatible with the practice of the carriers as to the other wooden articles from this same general territory, and to be justified by the nature and substantial loading of the commodity, to establish a commodity rate not to exceed 61.5c on shipments of the kind here in question. HELD, rates assailed unreasonable to extent they exceeded 61.5c, reparation awarded. Coldwell Lawn Mower Co. v. N. Y. C. R. R., 132 I. C. C. 390.

(4o) Complainant alleged class A rate of 31 c charged on ground feldspar, carloads, shipped since Jan 11, 1924 from Trenton, N. J., to Hopewell, Va., was and is unreasonable. Shipments moved Pennsylvania to Norfolk, Va., thence N. & W. to destination, 387 miles. From the standpoint of value and general transportation characteristics, ground feldspar is fairly comparable with most of the following commodities: Poultry grit, lime, limestone, chrome ore, phosphate rock, and rough granite. In Ceramic Traffic Asso. v. M. C. R. R., 92 I. C. C. 675, the Commission found a rate of 22.5c from Maine on the Maine Central to Trenton, 405 miles, unreasonable to extent it exceeded 21c. HELD, rate assailed unreasonable to extent it exceeded 21c, reparation awarded. Hopewell China Corp. v. A. C. L. R. R., 132 I. C. C. 565.

(4p) Complainant alleged rates charged on fiberboard cans, in paper bags, in carloads, from Jersey City, N. J., to Providence, R. I., were unreasonable and unduly prejudicial. Previous report, 120 I. C. C. 229. Generally speaking, however, the car mile revenue for the transportation of such light and bulky articles as these, should be considerably less than the average for all freight. Moreover, the Commission can not overlook the fact that the car mile revenue under the basis of charges sought by complainant is exactly the same as the defendants would receive, under rates of their own making, for transporting these shipments of cans as less carloads from Jersey City to Providence if the cans were in boxes or crates and out of the revenue thus re-

ceived they would be obliged to absorb the expense of loading and unloading. Tender as carloads received defendants of this expense and as defendants concede that it is a matter of indifference to them whether carload shipments of cans are loose or in packages, it follows, that the complaint must be sustained. HELD, with respect to these shipments in cars fully loaded the charges assailed were, are, and for future will be unreasonable to extent they exceed charges based on actual weight and on the less carload rate applicable to the cans comprised in the shipments when in boxes or crates, reparation awarded. Brownell & Field Co. v. N. Y., N. H. & H. R. R., 132 I. C. C. 599.

(4q) Complainant alleged first class rating and rates charged on paper pan liners, in less carloads, from Boston, Mass., to destinations to which rates are subject to official, southern, and western classifications were since Aug. 1, 1924, unreasonable, unjustly discriminatory and inapplicable to extent they exceeded third class ratings and rates. Paper pan liners consist of flat paper of varying sizes and shapes dependent upon the dimensions and shapes of the pans for which designed. They are cut to size and shape by machinery about 90% from newsprint paper and the remainder from grease proof parchment chipboard silicated on one surface high finish wrapping paper, or book printing paper. There is no specific rating on paper pan liners, and they have been classified by defendants under "paper goods, n. o. i. b. n.," first class any quantity. Witness for the classification committee conceded that the articles here considered should not be rated higher when shipped in bundles than when shipped in boxes. If a rating lower than first class is warranted on the unprinted pan liners the fact that these liners are of somewhat greater value when printed does not of itself justify a higher rating on the latter. HELD, first class rating and rates unreasonable to extent they exceed second class, reparation awarded. Sherman Paper & Box Co. v. A. C. & Y. R. R., 132 I. C. C. 605.

(4r) Complainant alleged class rate of $4.80 charged on 48c less carloads of rayon from New York to San Francisco, from Sept. 25, 1925 to Jan. 13, 1926 was and is unreasonable and unduly prejudicial. Applicable rate commodity of $4.80 on dry goods, n. o. i. b. n., any quantity. There was contemporaneously in effect a rate of $3.75 on cotton underwear including womens underwear manufactured of rayon. HELD, rate assailed unreasonable to extent it exceeded $3.75, reparation awarded. Pacific Embroidery Co. v. Erie R. R., 132 I. C. C. 679.

(4s) Rates on canned goods in straight or mixed carloads from Mobile, Ala., to destinations in Georgia, Mississippi, Tennessee, Kentucky, Missouri, Ohio, and Illinois, and from New Orleans to Nashville, Tenn., found unreasonable as compared with those prescribed in 77 I. C. C. 473; 123 I. C. C. 203; with lower rates contemporaneously maintained from Neely, Ala., a point within Mobile switching limits to same destinations; and to extent they exceed class 7 rates approved in 113 I. C. C. 200, applicable between same points. Reasonable rates prescribed for future. Mobile Chamber of Commerce v. A. & V., 129 I. C. C. 147.

§24. Exceptions to Classification.

See Infra §28 (l); Supra §5 (4e); Commodity Rates §5 (h) (4d); Refrigeration §3½ (b), §6½ (c).

(a) Fact that carriers in certain territories have seen fit, under exceptions to classification, to apply a low basis of rates on a commodity, to encourage its movement, can not be taken as a measure of reasonable rates. Coco-Cola Co. v. A., T. & S. F., 104 I. C. C. 377, 379.

(b) Exceptions to classification which require reference to tariffs naming class rates can not be considered specific commodity rates. See 62 I. C. C. 471. Elaborated Ready Roofing Co. v. C. & E. I., 109 I. C. C. 401, 402.

(c) Complaint is that the application of ratings provided in the southern classification and notes A and 4 of exceptions thereto in connection with rates on classes 1 to D, both inclusive, from Augusta, Ga., to points in South Carolina resulted in unreasonable charges, and, as compared with ratings provided in note 5 exceptions governing the rates on intrastate traffic in South Carolina, in undue prejudice to Augusta and shippers there located, in undue preference of points in South Carolina. The underlying cause of the complaint is that note 53 exceptions generally provide lower ratings than those in the southern classi-

fication and note 4 exceptions thereto, and therefore result in lower rates on intrastate traffic in South Carolina than from Augusta to South Carolina for similar distances. Augusta is located on the west bank of the Savannah river, which is the boundary at that point between South Carolina and Georgia. At the present time the exceptions do not apply on any interstate traffic to points in South Carolina. That the situation disclosed of record results in undue prejudice to Augusta and shippers there located and in undue preference of shippers in intrastate commerce in South Carolina is admitted by defendants as well as by the South Carolina interveners. The record indicates that competition between shippers from Augusta and from South Carolina points is and has been generally restricted to a territory in South Carolina not more than 100 miles from Augusta. HELD: Exceptions do not result in unreasonable charges but unduly prejudicial as compared with interstate rates. City of Augusta v. A. C. L. R. R., 113 I. C. C. 303.

(d) Application of ratings provided by southern classification and notes A and 4 of exceptions thereto in connection with rates on classes 1 to D, both inclusive, from Augusta, Ga., to South Carolina points for distances of 100 miles, found not unreasonable but unduly prejudicial to Augusta and shippers located there, unduly preferential of South Carolina points, and unjustly discriminatory against interstate commerce, as compared with lower ratings provided in note 53 exceptions governing rates on intrastate traffic in South Carolina for comparable distances. City of Augusta v. A. C. L., 113 I. C. C. 303.

(e) Rates were published in exceptions to the classification in two-column form numbered 1 and 2. Method of determining rates on oil between specified points was to first determine the fifth-class rate and amount in column 2 opposite amount in column 1 which equaled the fifth-class rate was the oil rate. Individual tariffs in effect carried so-called intermediate rules and published specific commodity rates to farther distant points which were lower than those computed under tariff naming rates in column form. Upon contention that computation of oil rates under above method did not provide specific rates to intermediate points and that therefore lower rates provided under the intermediate rule were applicable, FOUND: That the methods of determining oil rates were sufficiently specified under the tariff as to render intermediate rules inoperative. Standard Oil Co. v. A., T. & S. F., 113 I. C. C. 597, 598, 601.

(f) Exception sheets frequently appear to be inconsistent and prepared without due regard for the terms of the classification proper, and classification exceptions must be interpreted in the light of the classification. General Motor Truck Co. v. G. T. W. Ry., 118 I. C. C. 99, 104.

(g) Shipments of condensing machinery, condensers, pumps, and parts thereof from North Philadelphia, Pa., to Florida points moved under combinations, the factor beyond Jacksonville being based on rates per carload, minimum 20,000 pounds, excess in proportion. Tariff naming rates was governed by exceptions to the classification which omitted the words "excess in proportion." Upon contention of shipper that, due to such omission, the rates stated in the tariff were the applicable total charges for each carload, regardless of weight of contents, HELD: While omission of phrase made application of rates confusing, the tariff naming them stated that they applied "Per carload. As prescribed in classification, excess in proportion," thereby supplying the measure of the carload unit while the minimum weight was supplied by the classification exception. Rates assailed were, therefore, applicable. Wheeler Mfg. Co. v. A. C. L., 115 I. C. C. 527.

(h) Upon contention that an exception to classification takes item in the exception out of the classification and the exception governs, HELD: Contention is sound in part only as description in exception must be read in connection with classification item, and not wholly by itself. See 36 I. C. C. 519. General Motors Truck Co. v. G. T. W., 118 I. C. C. 99, 103.

(i) The language of classification exceptions should conform substantially with that of classification item it is intended to displace. Much progress in simplification of tariffs can be made and many controversies obviated if more care is exercised in preparation of individual rules and items. General Motors Truck Co. v. G. T. W., 118 I. C. C. 99, 104.

(j) Complainant attacked sixth class rate of 25.5 cents charged on cement roofing slabs, reinforced with metal, in carloads, from Wampum, Pa., to Toronto, Ont., Can., between April 6 and July 27, 1923, as unreasonable to extent it exceeded 75% of sixth class. By exceptions to the official classification a rating of 75% of sixth class is provided on slabs, cement, building and roofing (reinforced with metal), in mixed carloads with roofing cement (other than liquid) not to exceed 5% of the total weight of the slabs, minimum 50,000 pounds, from Chicago, Ill., Wampum, and other producing points to destinations in central territory. HELD, rates attacked unreasonable to extent they exceed 75% of sixth class, reparation awarded. American Cement Tile Co. v. V. P. R. R., 120 I. C. C. 611.

(k) Carriers authorized to cancel existing l. c. l. classification exceptions and commodity rates applicable to and from the Southwest and to substitute prescribed class rates, subject to western classification ratings. Consolidated Southwestern cases, 123 I. C. C. 203, 401, 402.

(l) Commodity rates or rates published as exceptions to the classification are usually determined by the peculiar conditions surrounding each transaction, and the elements entering into their adjustment are so numerous and varied that there is no presumption that on different articles such rates should be a fixed percentage of the class rates. American Maize Products Co. v. N. Y. C. R. R., 126 I. C. C. 137, 139.

(mn) Where exceptions have general application, it would appear that the classification should be revised and no exceptions maintained. One of the objects sought in interterritorial rates prescribed is the elimination of undue prejudice to interterritorial shippers. Mere establishment of class rates on interterritorial traffic properly aligned with class rates within southern territory will not bring about equality between shippers if different classifications or exceptions are applied on the two kinds of traffic. Southern Class Rate Investigation 128 I. C. C. 567, 582.

(o) Complainant alleged combination rates charged were in excess of those applicable on carloads of plaster from Grand Rapids, Mich., and Gypsum, O., to Logan, W. Va. Complainants shipments are routed over the N. Y. C. to Barboursville, W. Va., and C. & O. beyond, no joint rates in effect, charged 33c from Grand Rapids and 25c from Gypsum, based on commodity rates of 24 and 16c, to Barboursville, and sixth class proportional rate of 9c beyond. The applicable commodity rates are 24c and 16c. The item in the exceptions to the classification applies only when sixth class rates are appicable from points of origin named therein. HELD, rates assailed applicable, complaint dismissed. Beaver Products Co. v. C. & O. Ry., 132 I. C. C. 721.

(p) Carriers were authorized generally, in 123 I. C. C. 203, to cancel all less-than-carload classification exceptions and commodity rates, and no reason appears why, under section 1, exception should be made in case of granite, but an exception should be made to rule 10 of western classification to provide for application to the mixed carloads of granite of highest rate and highest carload minimum applicable to any granite in the mixture. West Texas Chamber of Commerce v. H. & T. C., 129 I. C. C. 546, 554.

§25. **Refusal to Transport.**

(a) Classification rule provides that articles tendered for shipment in packages not specified in connection with ratings will be refused transportation, but if such packages get into carrier's possession and are transported, ratings thereon will be determined in accordance with certain specifications embodied in the rule, among which is a provision that unauthorized shipments in boxes will be accorded rating provided for same commodity in barrels. HELD: Latter provision is plainly intended only to provide a legal basis for determining charges on shipments inadvertently accepted and does not negative requirement that shipments in boxes be rejected. If carriers are willing to transport shipments in boxes at ratings applicable on same commodity in barrels, they should amend classification accordingly, and until and unless that is done it is a violation of section 6 of the act for them knowingly to accept shipments in boxes. Best Foods v. C. R. R. Co. of N. J., 120 I. C. C. 169, 172.

(b) Proposed cancellation of commodity rates on limestone, fluxing in box cars between points in eastern trunk-line territory and restriction

thereof to shipments in open-top cars, found not justified. While respondents intended ground-limestone rates to become effective on this commodity in box cars by proposed cancellation, sixth-class rates would become applicable thereon. Ground-limestone rates are but 45 per cent of sixth class. Since in 112 I. C. C. 7, rates on fluxing lime were found unreasonable to extent they exceeded 80 per cent of rates on common lime, hydrated, quick or slaked, and in 128 I. C. C. 23, increases to sixth-class rates resulting from proposal to restrict rates on fluxing limestone to shipments in box cars were found not justified, record is persuasive that rates on ground limestone will not be unreasonable for application on fluxing limestone in box cars. Fluxing Limestone, 129 I. C. C. 574.

§27. Reparation.

See Reparation.

(a) Where classification ratings throughout an extensive territory affecting shippers at many points have been maintained for many years and are subsequently ordered reduced by commission, under such circumstances reparation on shipments moving under higher ratings will be denied. See 37 I. C. C. 81. Heinze Electric Co. v. B. & M., 118 I. C. C. 77, 78.

(b) An order by the commission for reduction of a classification rating of long standing does not create a right to an award of reparation on past shipments. Kalamazoo Vegetable Parchment Co. v. C., K. & S., 128 I. C. C. 675, 684.

(c) Contention of carrier that reparation should be denied on shipments moving prior to change in classification rating, citing 88 I. C. C. 103, and other cases, not sustained. Ratings assailed in cases cited were not shown to have been unreasonable as applied to past shipments. Tennessee Furniture Corp. v. B. & O. C. T., 128 I. C. C. 701, 702.

VI. TARIFFS AND CONSTRUCTION.

§28. In General.

See Tariffs.

(a) Fourth-class rating and rates in official classification territory on automobile bow sockets assessed under tariff item on "Carriage or wagon irons: * * * Bow sockets" found illegal. Fifth-class rating carried in same tariff on "Automobile parts, n. o. i. b. n.," found applicable. Automobile bow sockets are not carriage or wagon irons. They are designed and manufactured solely for automobiles, and are not interchangeable with the analogous parts of horse-drawn vehicles. Tariff description of latter being specific, analogous article rule could not be applied; hence bow sockets must be considered to have been embraced in item of automobile parts n. o. i. b. n. Refund of overcharges directed. Chevrolet Motor Co. v. B. & O., 109 I. C. C. 185, 186, 187.

(b) Governing classification accorded rating of class A to bridge builders', contractors', graders' outfits, n. o. i. b. n. Commodity item carried a lower rate on "Graders', bridge builders', and contractors' outfits," qualified by further description "Graders' outfits." Upon contention that general heading in commodity item stands alone and establishes specific commodity rates applicable on shipments of contractors' outfits. HELD: Terms in general heading are merely descriptive of what follows and may only be read in connection therewith. They are not to be treated alone, but must be considered as qualified by further descriptions appearing in the item. Commission can not consider only that part of the rule that is favorable to shipper's contention and ignore other provisions of the tariff that make clear its application. The tariff must be construed in its entirety, considering both the limitations in the particular item and in the general index to commodities. Dolese Bros. Co. v. C. R. I. & P., 109 I. C. C. 561, 562.

(c) Governing classification provided fifth-class rate on red oil. By exceptions thereto "soap stock" was rated sixth-class. HELD: Red oil is a "soap stock" and is so described in a definition from the Condensed Chemical Dictionary. While it may not have been carrier's intention that classification exception should embrace red oil, the familiar rule of construction is that ambiguities in a tariff must be resolved against the maker. Shipments found overcharged and refund directed. Williams Co. v. C. N. E., 112 I. C. C. 158.

(d) Fourth-class rate charged on a l. c. l. shipment of malleable link belting from Indianapolis, Ind., to Algoma, Oreg., found inapplicable. Applicable rate found to be a lower commodity rate to Modoc Point, Oreg., under an intermediate rule in the tariff, Algoma being

directly intermediate between Indianapolis and Modoc Point. Reparation awarded. Algoma Lbr. Co. v. Director General, 113 I. C. C. 311.

(e) Complainant attacked commodity rates charged on newsprint paper, carloads, shipped from Nov. 1, 1921, to July 31, 1923, from Millinocket and East Millinocket, Me., to Providence, South Providence and Pawtucket, R. I., as unreasonable and unduly prejudicial. Shipments moved B. & A., to North Maine Jct., Me. Cent., either to Portland, or Deering Jct., B. & M., to Boston, Lowell or Worcester, Mass., and New Haven beyond. There were no joint rates combination being 38.5c and 35c from Nov. 1, 1921, to and including June 30, 1922, and from July 1, 1922, to July 31, 1923. The fact that a specific commodity rate, either proportional or otherwise, was published on printing paper did not take newsprint paper out of the classification. No specific commodity rate was published on paper or newsprint paper until July 1, 1923, and Aug. 1, 1923. HELD, rates attacked not unduly prejudicial but unreasonable to extent they exceeded 36.5c prior to July 1, 1922, and 33c thereafter, reparation awarded. Great Northern Paper Co. v. B. & A. Ry., 113 I. C. C. 463.

(f) Complainant attacked combination rates charged on 15 cars of condensing machinery, steam condensers, pumps, and parts thereof shipped between Jan. 10, 1923, and Oct. 20, 1924, from North Philadelphia, Pa., to points in Florida as inapplicable. Charged sixth class rate of 70.5c to Jacksonville, Fla., and class N of 4,100 to 6,500 c per carload, minimum 20,000 pounds, excess if proportion beyond. The factor to Jacksonville is not assailed. The tariff naming the class N rates was governed by note 10 of exceptions to the southern classification. Effective Nov. 15, 1922, that note was changed to provide as follows: Machinery and machines C. L., rated 6th class in southern classification, also dredging machinery and parts thereof, C. L., minimum weight 20,000 pounds-N. The words "excess in proportion" had formerly been included in the applicable description, following the word "pounds." The rates charged were the same as the rates previously in effect and those in effect when the note was corrected, on April 15, 1925, to again include those words. HELD, rates attacked applicable, complaint dismissed. Wheeler Mfg. Co. v. A. C. L. R. R., 115 I. C. C. 527.

(g) Complainant attacked first, second and third class rates charged on less carloads of defective or damaged radiators, enameled or cast iron bath tubs, sinks, lavatories, and other articles, which moved during the two years prior to Sept. 18, 1925, from New England, Eastern and Central states to Uniontown, Pa., as unreasonable and illegal. The sole question for determination is whether the shipments came within the tariff description of "scraps or pieces of iron or steel suitable for remelting purposes only." The evidence shows that the various articles were transported in their original form and generally crated or boxed; that they were described in the bills of lading under the names of the individual pieces, sometimes with such notations as "damaged," "defective" "scrap value, for remelting purposes;" and charges collected at rates applicable to the articles described. It appears that the damage or defects consisted mainly of chips in the enamel or other imperfections arising in the manufacture or subsequent handling. It is well settled that to come within the tariff description referred to the articles must not be shipped in their original form, but must be so reduced to fragments, scraps or pieces so as to be useless for any purpose other than remelting. It is the nature of the article shipped, not the price at which it is sold or the use to which it is put, that determines whether the rate on scrap iron applies. The record does not disclose that the shipments in this case conformed to these requirements. HELD, rates attacked applicable and not unreasonable, complaint dismissed. Richmond Radiator Co. v. C. & N. W. Ry., 115 I. C. C. 743.

(h) Complainant attacked sixth class rate of 45.5c charged on one car of coffin material shipped June 5, 1924, from Jackson, Miss., to New Orleans, La., as unreasonable and inapplicable. Shipment was described as 515 packages KD coffin in white state. Sixth class applicable on knocked down coffins. Complainant contends class A rate of 30.5c rating on coffin stock. On Dec. 30, 1924, defendant established commodity rate of 20c on coffin material or stock, wooden, in the white. The evidence sustains the contention of the defendant that the material shipped did not conform to the classification description of coffin stock.

Under the analogous rule class A rate of 30.5c was applicable. HELD, class A rate of 30.5c applicable by analogy and not unreasonable, reparation awarded. Jackson Traffic Bureau v. I. C. R. R., 118 I. C. C. 515.

(i) When missing parts of a complete article are insufficient to affect its identity, rating on complete article applies. Parkersburg Rig & Reel Co. v. B. & O., 115 I. C. C. 539, 540.

(j) Shipments of defective or damaged radiators, bathtubs, sinks, and lavatories were transported in their original form and described in bills of lading under names of individual pieces, charges being collected at rates applicable to articles as described. Upon contention that shipments came properly within tariff description of scrap iron and should be accorded rate applicable thereto, HELD: In order to come within tariff description of scrap iron, articles must not be shipped in original form but must be reduced to fragments, scraps, or pieces so as to be useless for any other purpose except remelting, for it is nature of the article shipped and not price at which it is sold or use to which it is put that determines whether scrap iron rate shall apply. See 102 I. C. C. 325, 326. As shipments did not conform to these requirements, rates assailed were applicable and not unreasonable. Richmond Radiator Co. v. C. & N. W., 115 I. C. C. 743.

(k) Upon contention that an exception to classification takes item in the exception out of the classification and the exception governs, HELD: Contention is sound in part only as description in the exception must be read in connection with the classification item, and not wholly by itself. See 36 I. C. C. 519. General Motors Truck Co. v. G. T. W. Ry., 118 I. C. C. 99, 103.

(l) The language of classification exceptions should conform substantially with that of classification item it is intended to displace. Much progress in simplification of tariffs can be made and many controversies obviated if more care is exercised in preparation of individual rules and items. General Motors Truck Co. v. G. T. W., 118 I. C. C. 99, 104.

(m) Complainant alleged charges which defendants are seeking to collect on a carload of rosin waste or rosin refuse shipped Dec. 14, 1923, from Pig Point, Va., to Schenectady, N. Y., as unreasonable and unduly prejudicial. Shipment moved A. C. L., Pennsylvania and N. Y. C. Classification rated rosin, in boxes, second class, any quantity; and rosin in bulk in barrels, fifth class, less carload and sixth class carloads. Charged sixth class. Since open boxes were used for this shipment first class rate was applicable. Barrels doubtless are the standard containers for rosin. There is, however, a general parity in the rates on dry or solid articles in barrels and the same articles in boxes and no reason is suggested why this parity should not obtain in connection with rosin. Had the sixth class rate, applicable on rosin in barrels been applicable on rosin in boxes when the shipment moved the fifth class rate of 52 cents would have applied. HELD, applicable rate unreasonable to extent it exceeded 52 cents, reparation awarded. Hyman Michaels Co. v. A. C. L. R. R., 120 I. C. C. 127.

(n) Upon further hearing, decision in 91 I. C. C. 378, approving an l. c. l. rating of one and one-fourth times first class in western classification and second-class c. l. rating in official, southern, and western classifications on adding machines in boxes, affirmed. Complainants contend that l. c. l. rating was prescribed in error due to incomplete or erroneous evidence submitted as to value, numerous instances being cited where comparable articles are rated lower, value and weight per cubic foot considered. However, complainants fail to cite any case in which commission has prescribed an l. c. l. rating as low as first class or a c. l. rating lower than second class for any article as high in value as adding machines. Burroughs Adding Machine Co. v. M. C., 120 I. C. C. 19.

(o) Complainant attacked sixth class rate charged on three cars of castings and forgings, parts of a cotton compress, from Meridian, Miss., to Blytheville, Ark., between June 7 and June 20, 1923 as unreasonable. Shipments moved M. & O., to Memphis and Frisco beyond, 355 miles. Charged rate applicable on cotton compresses, knocked down, loose, or in packages, minimum 30,000 pounds. The three shipments were tendered to the carriers on separate bills of lading and moved on different dates. None consisted of a complete compress and obviously the sixth class rate was not applicable. A commodity rate of 45 cents was applicable on iron and steel articles, including cast-

ings and forgings. HELD, rate applicable was 45 cents, not unreasonable, reparation awarded. Blytheville Compress & Warehouse Co. v. M. & O. R. R., 123 I. C. C. 95.

(p) First-class rating on "Dry goods: braid, n. o. i. b. n., cotton or other than cotton" applied on round braided twine, found to have been legally assessed. Contemporaneously lower third-class rating applied on "Twine, n. o. i. b. n." While this particular article may not have been used for braid, it is made of cotton on a braiding machine, could be used as a cheap braid, and clearly falls within the generic group of woven or braided trimmings. It does not fall within the correct description of twine described in Standard Dictionary as "A string of some fibre, composed of two or more threads or strands twisted together." Fall River Chamber of Commerce v. B. & O., 122 I. C. C. 100.

(q) Rates applicable on septic tanks assessed on shipments described as clay sewer pipe and sewer-pipe fittings, found applicable and not unreasonable. Carrier showed that commodities involved were in fact material for construction of individual septic tanks; that complainant's catalogue describes them as such and also shows tank to be patented; and that application of various shippers for establishment of specific classification entries for septic tanks, both clay and concrete, is evidence that term "septic tank" is an appropriate description. Moreover, in 4 I. C. C. 41, the commission stated that manufacturer's description of an article for selling purposes describes it for transportation, and carriers may accept such description for classification and rate purposes and are not required to analyze the freight to ascertain whether it is in fact inferior to description or public representation in order to give it a lower rate corresponding to actual value. Southern Sewer Pipe Works v. L. & N., 122 I. C. C. 721.

(r) Complainant attacked rates charged on iron and steel articles between March 30 and Oct. 24, 1923 from Norfolk and Port Norfolk, Va., to Newark, N. J., and McKees Rocks, Pa., as unreasonable, unduly prejudicial and inapplicable. The parties agreed at the hearing to limit the issues to the question of whether the shipments lawfully came within the tariff description of "scraps and pieces of iron and steel which have value only for remelting purposes" and therefore subject to commodity rates on scrap iron and steel. The evidence shows that these articles were transported in their original form, either boxed or loose, that they were described in the bills of lading by the names of the individual articles, and that the charges thereon were collected at the rates applicable to the articles so described. It is well settled that to come within the above tariff description the articles may not be shipped in their original form, but must be reduced to fragments, scraps or pieces so as to render them useless for any purpose other than remelting. It is the nature of the article shipped, not the price at which it is sold the use to which it is put, or the commercial demand, that determines whether the rate on scrap iron and steel applies. HELD, rates applicable, not unreasonable or otherwise unlawful, complaint dismissed. Hyman Michaels Co. v. N. & W. Ry., 126 I. C. C. 195.

(s) Complainant alleged that the rates charged on numerous shipments of lumber, veneer, and built up woods, in mixed carloads, shipped since Oct. 19, 1923 from Knoxville, Tenn., to Dubuque, Ia., Muskegon, Mich., and Rockford, Ill., were inapplicable and unreasonable. Most of the shipments consisted of mixed carloads of veneer and built up woods, but some were mixed carloads of lumber, veneer and built up woods. Charges were collected at the rate applicable on the highest rated article in the car, subject to the highest minimum weight on any article in the car, on the theory that the mixed carload rules were applicable. Clearly seat cores are not plumbers goods and they are not embraced in that classification. Considering the mixed carload rules and the tariffs in their entirety, and the conflicting interpretation thereof by the defendant carriers, it is evident that there is a reasonable doubt which should be resolved in favor of complainant. HELD, rates charged applicable, undercharges to be waived, complaint dismissed. Brunswick Balke Collender Co. v. B. & O. R. R., 126 I. C. C. 747.

(t) First-class rate on passenger and freight automobiles in straight or mixed carloads moving in 36-foot cars, or longer lengths furnished for carrier's convenience on orders for 36-foot cars, under tariff item providing minimum weight of 10,000 pounds, found applicable. While lower commodity rate was listed in same tariff, shipments involved weighed less

than minimum weight provided thereunder and with exception of two shipments on which lower rate applied, actual weights of shipments at first-class rates produced lower charges than minimum weight and rates provided under the commodity rate. Moreover contention that since tariff is goverened by western classification and contains nothing which relieves it from provisions thereof, minimum weight provided thereby should be used rather than minimum weight carried in item itself, is untenable. Rates assessed, except on two cars mentioned, were therefore applicable. Refund of overcharges directed. Chevrolet Motor Co. v. A., T. & S. F., 128 I. C. C. 638.

(u) C. l. rate on shipment of one boiler and parts from Kewanee, Ill., to Wichita Falls, Tex., found applicable. Complainant's evidence failed to support its contention that charges should have been collected on basis of l. c. l. rate. Carrier showed that while at time of movement an embargo was in effect against c. l. shipments of like traffic, complainant obtained a permit for one c. l. shipment and that in accordance with bill of lading and permit shipment was handled as a carload from origin to destination. See also 92 I. C. C. 639. Kinnison Bros. v. Director General, 128 I. C. C. 703.

(v) Complainant attacked charges on numerous carloads of what it describes as cottonseed hull fiber and shavings, not bleached or dyed, shipped between April 17, 1922 and Oct. 31, 1924 from Georgia, South Carolina, and Alabama to destinations in D. of C., Virginia, New York, New Jersey, Pennsylvania, Connecticut, and Louisiana as inapplicable and unduly prejudicial. Shipments were billed as cotton seed hull shavings and were set up by the carriers to cotton linters, which takes a higher rate. The terms "hull fiber or shavings" and "linters" were not defined in the governing tariffs or classification. Commission suggests that carriers and shippers confer with a view to devising an appropriate and lawful tariff rule or test which would make more definite the determination of the correct rate on a given shipment of these commodities, and thereby avoid the disputes and discriminations which may occur under the present tariffs. In cases of this character there is no statutory burden upon defendants, and the Commission is of the view that the complainant has not sustained the burden of proof in this instance. HELD, rates charged applicable and not unduly prejudicial, complaint dismissed. Glarner & Co. v. Southern Ry., 129 I. C. C. 75.

(w) Complainant attacked rate charged on 177 cars of cottonseed hull fiber or shavings, as inapplicable, unjust and unreasonable from Georgia, North Carolina, South Carolina, Mississippi and Alabama to Hopewell, Va., between Nov. 1924 and April 1925. Complainant contends that the commodity shipped was cottonseed hull fiber or shavings and should take the rates applicable on that commodity, or, if not, was of so low a grade that a reasonable rate would have been that applicable on cotton seed hull fiber or shavings. During the time of movement cotton linters were rated sixth class in the southern classification and cottonseed hull fiber or shavings, other than bleached or dyed, class A. Commodity rates on cottonseed hull fiber or shavings lower than the class rates, and lower than the rates on cotton linters, were contemporaneously in effect to Hopewell from all points of origin in this case. The record does not support a finding that the shipments here considered were of so low a grade that they should have been rated as cottonseed hull fiber or shavings. HELD, shipments consisted of cotton linters, rate charged applicable and not unreasonable, complaint dismissed. Virginia Cellulose Co. v. N. & W. Ry., 129 I. C. C. 297.

(x) From samples alone the commission is not prepared to make a positive finding on question of classification nor is it especially qualified as an official body to determine therefrom of just what a certain shipment consists. See 122 I. C. C. 520. Eblin & Co. v. N., C. & St. L., 129 I. C. C. 629, 631.

(y) Grain and grain products originating at points exclusively on defendant's line was forwarded to and milled at established transit points which are also junction points with other lines, thence shipped over defendant's line to destinations where delivery was accomplished through a switching service performed by another carrier. Upon contention that as shipments moved from "junction points with foreign lines" within meaning of provision of governing tariff the switching charges should have been absorbed by defendant,

construing words "from junction point with foreign lines" as applying to all shipments from transit stations, irrespective of origin, HELD: Such interpretation would, in effect, require defendant to absorb destination switching charges on traffic local to its line and for which it does not compete with other lines and there is no provision in its published tariff covering such absorption of noncompetitive traffic. Southern Kansas Millers Club v. A., T. & S. F., 129 I. C. C. 632.

CLAYTON ACT

(a) Provisions of section 10 of the Clayton anti-trust act found not to have been violated in purchase by New York Central lines of automatic train-stop or train-control apparatus of the General Railway Signal Co., no officer or employe of carrier being shown to have or hold any "substantial interest" in the Signal Company as that expression is used in section 10. Automatic Train Control Devices, 112 I. C. C. 259, 267, 268.

COASTWISE TRAFFIC

See Advanced Rates §5 (2) (o); Import Traffic; Port-to-Port Rates; Rail-and-Water Rates.

COMBINATION RULE

See Basing Points and Lines §1 (a); Local Rates and Combinations; Long and Short Hauls §12 (2) (i); Routing and Misrouting §7½ (g) (h) (i).

COMMODITIES CLAUSE

(a) Whether or not a carrier is violating the commodities clause of the interstate commerce act is a matter over which the courts alone have jurisdiction. American Salt & Coal Co. v. C., R. I. & P., 126 I. C. C. 7, 11.

COMMODITY RATES

I. CREATION AND PURPOSE.
§1. Nature in general.
§2. Relation to class rates.
II. APPLICATION AND CONSTRUCTION.
§2½. In general.
§3. Specific commodity rating.
§4. Creation subsequent to shipment.
III. REASONABLENESS AND DISCRIMINATION.
§5. In general.

CROSS REFERENCES

See Advanced Rates §18 (4); Alternative Rates; Class Rates; Classification §4; Differentials; Evidence §13 (1½); Special Rates and Services; Tariffs.

I. CREATION AND PURPOSE.

§1. Nature in General.

(a) Proposed establishment of special commodity rate on wagon skeins from Chattanooga to Montgomery lower than applicable class rate now in effect, found justified. Wagon Parts to Southern Destinations, 104 I. C. C. 179.

(b) Volume of movement, present or prospective, is one of the controlling factors in establishment of commodity rates. Western Paper Makers' Chem. Co. v. A. A. R. R., 109 I. C. C. 133, 135.

(c) Establishment of commodity rates on l. c. l. traffic is a pronounced departure from usual practice and should be required only upon a clear showing of compelling reasons. See 52 I. C. C. 439, 477. Western Paper Makers' Chem. Co. v. A. A. R. R., 109 I. C. C., 133, 137.

(d) Mere fact that a commodity moves in considerable volume during an annual period of 60 days does not entitle it to a commodity rate. Commodities may move in considerable volume and yet remain on a class-rate basis. Heinz Co. v. Director General, 112 I. C. C. 206, 212.

(e) Rates on certain alloys of lead, viz., babbitt, solder, terne, and type metal which have lead as a base in composition with tin, antimony, and other metals in varying proportions, from Newark, N. J., to Buffalo, Pittsburgh, Chicago, and other destinations in Illinois, Indiana, Ohio, Pennsylvania, New York, Kentucky, and Tennessee, found unreasonable to extent they exceeded sixth-class. While no substantial movement of these commodities has been shown which would warrant establishment of commodity rates thereon, the present rates on these alloys are clearly out of line with rates found reasonable by commission on cop-

per, brass, bronze, lead, antimonial lead, and tin. Reasonable rates prescribed for future and reparation awarded. Federated Metals Corp. v. C. R. R. Co. of N. J., 113 I. C. C. 487.

(f) Proposal to cancel commodity rates on terne metal from Newark and Brills, N. J., to Buffalo, N. Y., and Buffalo rate points and destinations in c. f. a. territory, and to apply higher fifth-class rates, found not justified. Transportation and other characteristics do not justify different rates on this commodity than on other alloys of lead and whatever may have been circumstances surrounding establishment of commodity rates on this article, the small volume of traffic therein does not justify a continuance of commodity basis. Sixth-class rates found reasonable for application thereon. Federated Metals Corp. v. C. R. R. Co. of N. J., 113 I. C. C. 487.

(g) It is a well established principle of rate making that a regular and considerable movement of a given commodity between specified points may justify or require the establishment of commodity rates lower than would otherwise be warranted. Russellville Compress Co. v. G. M. & N. R. R., 120 I. C. C. 481, 485.

(h) Commodity rates must be applied strictly. Paraffine Companies v. S. P., 128 I. C. C. 421, 423.

§2. Relation to Class Rates.

See Class Rates; Commodity Rates §5 (r).

(a) Class rates and commodity rates bearing a direct relation thereto from points in c. f. a. and border territories to Williamson, W. Va., found unreasonable as compared with rates from same territories of origin to Charleston, Gauley, Kenova, Huntington, and other West Virginia destinations, and to extent they exceed rates constructed on distance scale of class rates applicable in c. f. a. territory for short-line distance to Williamson, plus specific arbitraries for the six classes respectively. Williamson Chamber of Commerce v. A., C. & Y., 107 I. C. C. 639.

(b) A commodity rate applicable on l. c. l. traffic is a pronounced departure from usual practice. See 52 I. C. C. 439, 477. Given a reasonable level of class rates, under few, if any, circumstances will the commission be justified in requiring maintenance or establishment of l. c. l. commodity rates. Bananas from Gulf Ports, 109 I. C. C. 211, 218.

(c) So many elements enter into determination of a commodity rate that it can not be said that a commodity rate must bear a fixed relation to corresponding class rate, even as between competing points. See 83 I. C. C. 503. Bliss Syrup Refining Co. v. A., T. & S. F., 109 I. C. C. 393, 394.

(d) The general fabric of commodity rates in Illinois classification territory is low and a source of difficulty in dealing with relative adjustments in that territory and c. f. a. territory. Burlington Shippers' Asso. v. A., T. &. S. F., 109 I. C. C. 694, 699.

(e) Following Southern Class Rate Investigation, 109 I. C. C. 300, commodity rates which are constructed on basis of previously existing class rates to and from river crossings should be adjusted with relation to class rates prescribed as reasonable therein. Birmingham Traffic Bureau v. Director General, 115 I. C. C. 33, 38.

(f) Proposal of carriers to cancel commodity rates on tin cans from Virginia points to destinations in Alabama, Florida, and the Mississippi Valley, and apply higher fifth-class rates from Roanoke and Bedford, with rates from Buchanan and Troutville revised to reflect customary differential relationship over rates from Roanoke, found not justified. Carriers showed that class rates formerly applied on this traffic and that commodity rates were published through inadvertence, and introduced evidence showing higher rates from various sections of the country to numerous destinations in southeastern territory. The latter, however, demonstrate that rates generally in southern and Mississippi Valley territories are in great confusion. Distances considered, many of the proposed rates present inconsistencies, and rates based on existing fifth-class rates would result in inequalities. Tin Cans from Virginia, 118 I. C. C. 91.

(g) Commodity rates on strawberries from North Carolina points to Providence, R. I., found unreasonable to extent they exceeded southern classification first-class rates contemporaneously in effect. Carrier in justification of commodity rates higher than corresponding class rates contended that classification rating is too low because of liability incurred and extra handling necessary in

transporting strawberries. However, considering fact that first-class rating has been maintained in southern classification for more than five years and ratings in the other two major classifications have been same or lower, showing in instant case is not persuasive that rating in southern classification is subnormal. Reasonable rate prescribed for future and reparation awarded. Providence Exchange v. N. Y., N. H. & H., 118 I. C. C. 190.

(h) Presumption of unreasonableness attached to a commodity rate which exceeds corresponding class rate. Providence Exchange v. N. Y., N. H. & H., 118 I. C. C. 190, 191.

(i) So many elements enter into the determination of a commodity rate that even if a definite relation of the class rates were shown it would not at all follow that a similar relation must be observed as between commodity rates. Peyton Mfg. Co. v. A. & S. Ry., 122 I. C. C. 3, 6.

(j) The classification generally imposes the highest rate which a particular commodity should bear under normal conditions. A commodity rate which is higher than the class rate is an abnormality which on its face requires special justification. Gay Sullivan & Co. v. A. G. S. R. R., 122 I. C. C. 201, 203.

(kl) If a definite relationship is shown in class rates, it does not follow that a similar relationship should be observed as between commodity rates, in view of the many elements entering into the determination of the latter. Peyton Packing Co. v. A. & S., 122 I. C. C. 3, 6.

(m) A commodity rate which exceeds the class rate is an abnormality which requires special justification. Grain and Products to Southwest, 123 I. C. C. 569, 572.

(n) Commodity rates or rates published as exceptions to the classification are usually determined by peculiar conditions surrounding each situation, and elements entering into their adjustment are so numerous and varied that there is no presumption that on different articles such rates should be a fixed percentage of the class rates. American Maize Products Co. v. N. Y. C., 126 I. C. C. 137, 139.

(o) Given a reasonable level of class rates, it seems that under few, if any, circumstances will the Commission be justified in requiring the maintenance or establishment of less carload commodity rates. Knoxville Iron Co. v. L. & N. R. R., 128 I. C. C. 513, 514.

(p) In fixing commodity rates slight differences between two articles in respect of their value, weight density, or other factors necessary to be considered, may be reflected in rate differences as narrow as may be desired; but in compiling a freight classification all articles, both in carloads and less, must be grouped into from 8 to 12 classes, and it is therefore manifest that commodities with somewhat different classification characteristics must often be assigned the same rating. Kalamazoo Vegetable Parchment Co. v. C. S. & G. Ry., 128 I. C. C. 675, 678.

(q) The publication of a commodity rate on an article, whether in specific or general terms, removes that article from application of class rates between the same points. Sunbury Converting Works v. Pennsylvania R. R., 132 I. C. C. 230, 231.

(r) The classification generally imposes the highest rate which a particular commodity should bear under normal conditions. A commodity rate which is higher than the class rate is an abnormality which on its face requires special justification. Lynchburg Chamber of Commerce v. D. L. & W. R. R., 132 I. C. C. 321, 322.

(s) The establishment of a commodity rate between two points takes that commodity out of the classificaton between those points and that rate is the only one that may be applied. Beaver Products Co. v. C. & O. Ry., 132 I. C. C. 721, 722.

II. APPLICATION AND CONSTRUCTION.

See Application of Rates; Tariffs §7.

§2½. In General.

(a) A commodity rate should be applied strictly; and where, in the original classification, provision is separately made for two articles, closely resembling each other in form and nature, and a commodity rate is subsequently established naming one of such articles, the commodity rate so established can not be applied on similar articles specifically named in classification, but not specifically named in commodity tariff. Great Northern Paper Co. v. B. & A., 113 I. C. C. 463, 465.

(b) Commodity rates between official classification territory and western trunk-line terrtiory, on one hand, and Fulton and Mayfield, Ky., on other, not shown unreasonable, but found unduly prejudicial to extent that differences between these rates, on the one hand, and corresponding commodity rates to or from Paducah, Cairo, and Metropolis, on the other, will be greater than differences in rates from and to same points on the classes to which respective commodities belong in official classification when to or from points in official territory and in western classification when to or from points in western trunk-line territory. Nonprejudicial basis of rates prescribed. Mayfield Chamber of Commerce v. A. & W., 120 I. C. C. 137, 145.

(c) Publication of a commodity rate removes commodity covered thereby from application of classification rules. Market Street Ry. Co. v. S. P., 120 I. C. C. 654, 656.

(d) Commodity rates or rates published as exceptions to the classification are usually determined by peculiar conditions surrounding each situation, and elements entering into their adjustment are so numerous and varied that there is no presumption that on different articles such rates should be a fixed percentage of the class rates. American Maize Products Co. v. N. Y. C., 126 I. C. C. 137, 139.

(e) Rule that established carload commodity rate removes class rates does not abrogate rule that commodity rates govern only when lower than class rates. Norfolk Southern R. Co. v. Treeman Supply Corporation, (Va., 1926) 133 S. E. 817.

(f) Where rate applies to specific commodity alone, it is a "commodity rate"; and, where single rate applies to number of articles of same general character, it is a "class rate." Norfolk Southern R. Co. v. Treeman Supply Corporation, (Va., 1926) 133 S. E. 817.

(g) Complainant attacked commodity rate charged on one boiler and parts, shipped Nov. 1, 1919 from Kewanee, Ill., to Wichita Falls, Tex., as unreasonable and inapplicable. No complaint was filed to cover the allegation of unreasonableness until more than one year after the termination of federal control and the claim is barred. Shipment was routed C. B. & Q. and M. K. T., charged $1.10. minimum 24,000 pounds. HELD, carload rate charged applicable, complaint dismissed. Kinnison Bros. v. C. B. & Q. R. R., 128 I. C. C. 703.

(h) General commodity tariff found applicable on shipments of horses and mules from Sikeston and Oran, Mo., to Memphis, Tenn., moving prior to date of its cancellation, although tariff, by exception, referred specifically to other tariffs for rates from points on carrier's lines in Missouri to Memphis. Contention of carrier that exception prohibited application of general tariff not sustained in view of fact that tariffs referred to failed to provide rates on livestock from and to points in question. Under rule 4(c) of Tariff Circular 18-A it is permissible for a general commodity tariff to refer to other tariffs in which certain named class or commodity rates may be found, but where, as here, the tariff referred to fails to publish any rate on commodity in question, rate in general commodity tariff remains applicable. Maxwell Sons Commission Co. v. St. L.-S. F., 128 I. C. C. 725.

(i) Complainant alleged that rates and stated refrigeration charges on straight and mixed carloads of beets and carrots with "clipped tops" from points in lower Rio Grande Valley of Texas, to destinations east of the Mississippi river and north of the Ohio river are unreasonable and unduly prejudicial and illegal. Complainants beets are shipped as taken from the ground, except that the leaf stems are clipped off from 3 to 6 inches from the top, enabling them to be bunched, tied, and packed in baskets. Beets with "clipped tops" deteriorate considerably less in transit than when shipped "with tops." Loss and damage claims are negligent as compared with claims on other perishable commodities. Rates on beets from the valley to eastern destinations are constructed by adding a differential of 3c to the proportional commodity rate from Texas common points to East St. Louis, Ill., plus the established arbitraries beyond. Beets and carrots are rated class C in western classification, and the commission has approved commodity rates on such vegetables in that territory not to exceed the class C rates. With respect to the portion of the haul east of the river, beets "with tops" are rated fourth class in official classification, and the same vegetable "without tops" fifth class. The beets with "clipped tops" shipped by complainant do not come within the literal meaning of either des-

cription. In Beets and Carrots from Texas, 92 I. C. C. 141, the Commission found that the proposed schedules had not been justified, and held that beets shipped by these Texas growers are green vegetables, with their tender leafy tops removed, and are within the description of "beets, without tops." The Commission has generally recognized that potatoes should take rates lower than those on other vegetables, and there is no showing that the transportation characteristics of cabbage and beets are such as to demand any relationship in rates. In the absence of any such information the rates on cabbage do not afford a reliable guide. Considering the fact that the rates from the Rio Grande Valley apply for a large part of the haul through a territory of lower traffic density, the rates and ton mile earnings under such rates, distance considered, are not greatly out of line with rates from the adjoining Louisiana-Mississippi territory. The carload minimum in effect from most of the origin territories, including the valley, is 20,000 pounds, although complainants must load in excess of 24,000 pounds, because that minima applies in connection with the factor of the rate east of the Mississippi river. REFRIGERATION CHARGES. Valley points take group D rates. The same stated refrigeration charges, however, are applicable upon these vegetables whether shipped in the winter or summer months and complainants point to this fact as well as the fact that the farther north the commodity is shipped the colder the climate and naturally the smaller the amount of reicing necessary for its protection. No ice is placed in the baskets as is the practice in Louisiana and certain other territories, but instead the car is top iced with from 2 to 4 tons of ice. Complainants claim that the cost to the carrier of icing and reicing is necessarily reduced by this practice. The Commission would not be warranted in distributing these refrigeration rates. HELD, through transportation on beets and carrots with "clipped tops" in straight or mixed carloads, from the valley to destinations east of the Mississippi river and north of the Ohio river unreasonable to the extent the factors or arbitraries for the haul east of the Mississippi river in official territory exceeds the rates on beets or carrots "without tops," but not unduly prejudicial. In Consolidated Southwestern Cases 123 I. C. C. 203, the Commission prescribed maximum carload rates on fruits and vegetables, rated class C, including beets and carrots without tops, 27.5% of first class. Reparation awarded. Carfiel & Morris v. N. Y. C. R. R., 129 I. C. C. 658.

§3. Specific Commodity Rating.

See Tariffs §18.

(a) Commodity description "Soapstone manufactured and in slabs * * *" found to have been legally applied to shipments of soapstone furnace linings sawed on six sides to specific sizes. Although manufacturing process in case of furnace linings is not carried to as great an extent as in case of certain other soapstone products, process of sawing blocks on all six sides to specific sizes is clearly a manufacturing process. Moreover, fact that classification carried a more specific description "Soapstone or Talc: Linings, Fire Box or Furnace," did not prevent commodity rate from applying. See also 89 I. C. C. 395, 396. Thilmany Pulp & Paper Co. v. N. & A., 104 I. C. C. 186.

(b) Commodity tariff on tinware from Chicago, Rockford, and Waukegan, Ill., Milwaukee, Wis., and points taking same rates, made St. Louis basis of rates applicable to McIntosh, Mo. Such tariff carried an intermediate clause but index of stations named neither Burlington nor Keokuk, Iowa. HELD: That such tariff authorizes application of the McIntosh and St. Louis basis of rates to Keokuk and Burlington since routing from Milwaukee is specified through Chicago and from Waukegan through Chicago or Sterling, Ill., with no routing specified beyond these junction points. In absence of routing instructions over direct route such tariff therefore authorizes application of the McIntosh and St. Louis basis to Burlington and Keokuk as intermediate points over permissible routes through those points. Burlington Shippers' Asso. v. C., B. & Q., 112 I. C. C. 533, 536, 537.

(c) The commission's tariff rules provide that where a commodity rate is established between two points it removes application of the class rate between the same points without requiring cancellation of the class rate. Indian Refining Co. v. L. & N., 112 I. C. C. 732, 736.

(d) Class rate on "Salt, live stock, medicated," assessed on shipments of medicinal sheep salt found applicable

and not unreasonable. Lower commodity rate applied on salt and sulphurized rock salt, complainant contending for such lower rate upon ground that "Salt, livestock, medicated," is an item shown in classification under the general heading "Salt," that commodity not being specifically excepted in commodity tariff. FOUND: Commodity shipped was not salt within commonly accepted meaning of that word, could not have been substituted for common salt, and was more in the nature of a medicine. Commodity tariff covered only common salt and sulphurized rock salt, and if any salt mixtures had been intended to be covered by that tariff, it is reasonable to assume that sulphurized rock salt only of all the other kinds and combinations would not have been singled out for mention in addition to the general term "Salt." Yakima Grocery Co. v. O.-W. R. R. & N. Co., 112 I. C. C. 751.

(e) A commodity rate should be applied strictly; and where, in the original classification, provision is separately made for two articles, closely resembling each other in form and nature, and a commodity rate is subsequently established naming one of such articles, the commodity rate so established can not be applied on similar articles specifically named in classification, but not specifically named in commodity tariff. Great Northern Paper Co. v. B. & A., 113 I. C. C. 463, 465.

(f) Publication of a commodity rate removes commodity covered thereby from application of classification rules. Market Street Ry. Co. v. S. P. Co., 120 I. C. C. 654, 656.

III. REASONABLENESS AND DISCRIMINATION.

§5. In General.

See Advanced Rates §5 (3); Discrimination; Distance Rates; Reasonableness of Rates.

(a) Proposal to cancel commodity rate on clean rice from New Orleans to Bowling Green, Ky., thereby making effective by application of an intermediate rule, higher c. l. rate from New Orleans to Louisville, to which Bowling Green is intermediate, found justified. Higher rate compares favorably with rates from New Orleans and other points in Louisiana, Arkansas, Tennessee, and Texas, to a number of destinations for comparable distances, and will remove departures from long-and-short-haul provision of section 4 of the act. Rice from New Orleans, 104 I. C. C. 333.

(b) Rates on empty tight wooden barrels and kegs from St. Louis to Los Angeles found not unreasonable. Carmile earnings do not compare unfavorably with those under rates on numerous articles. Empty wooden barrels and kegs are light articles and generally move under class rates, and fact that carriers in certain territories have seen fit, under exceptions to classification, to apply lower bases to encourage movement can not be taken as a measure of reasonable rates. Coco-cola Co. v. A., T. &. S. F., 104 I. C. C. 377.

(c) Volume of movement is an important and not infrequently a determinative element in establishment of a commodity rate, and when a request for such a rate from a particular point is predicated upon existence of a commodity rate from another point volume of movement from both points should be made known. Griess-Pfleger Tanning Co. v. E., J. & E., 104 I. C. C. 464, 466.

(d) Commodity rates on fresh fruits and vegetables, c. l. and l. c. l., from San Francisco, Los Angeles, and related points, to Prescott, Ariz., found unreasonable to extent they exceeded lower contemporaneous class rates from and to same points. Reasonable rates prescribed for future on l. c. l. shipments and reparation awarded. Hill v. A., T. & S. F., 107 I. C. C. 101.

(e) Proposal to cancel commodity rates on cheese from southern Wisconsin points to Chicago and certain other destinations, leaving in effect higher class rates, designed for purpose of aligning rates on this traffic with general level of rates to Chicago, found not justified. Present earnings on cheese from and to points involved compare favorably with earnings on other commodities between points in western trunk-line territory. Moreover, many of the rates which it is proposed to cancel are those prescribed in 16 I. C. C. 85, as subsequently modified by general changes. Cheese to Illinois and Wisconsin, 107 I. C. C. 340.

(f) Peanuts: Proposal to cancel commodity rates on peanuts from Virginia and North Carolina points to destinations in southeastern and Mississippi Valley territories, leaving in effect higher class rates, found not justified. Proposed increase would result in increasing existing

discrimination against such destination points as are intermediate to river crossings, and create departures from long-and-short haul provision of section 4 of the act. Peanuts from Virginia and North Carolina, 107 I. C. C. 343.

(g) Joint commodity rates on newsprint paper from points in Maine and Vermont to points in Massachusetts, Rhode Island, Connecticut, and New York, found unreasonable to extent they exceeded lower contemporaneous class rates from and to same points. Reparation awarded. Hartford Times v. M. C., 107 I. C. C. 536.

(h) After establishment of joint commodity rates on paper when classified fifth class, carrier published an exception to classification providing a rating of sixth class from points on its line to destinations to which joint rates were published. Contention that this exception removed newsprint paper from fifth class rating and, therefore, rendered commodity rates inapplicable, not sustained. The exception did not change description of paper, nor did it have effect of canceling specific commodity rates applicable to commodities covered by that description. Hartford Times v. M. C., 107 I. C. C. 536, 537.

(i) Commodity rates on cabbage from South Carolina producing districts to interstate destinations found not unreasonable as compared with class rates. Commodity rates have been the rule from South Carolina and other southern producing points for long period of time and they are not made with relation to class rates. Moreover, from this territory along the coast of South Carolina class rates are on a relatively low basis due to influence of water competition. South Carolina Produce Asso. v. A. & R., 107 I. C. C. 613, 615, 618.

(j) Proposal to cancel commodity rates on coal tar and pitch based on a minimum of 60,000 pounds from Birmingham, Ala., and group points, to certain points in the Carolinas, leaving applicable higher commodity rates based on a minimum of 40,000 pounds, designed to forestall requests for publication of lower rates to intermediate points under rule 77 of Tariff Circular 18-A, found not justified. Extension of these lower rates to intermediate points for private consumption seems not only proper, but they should be extended further to all intermediate points to which these commodities move for road-building and roof-making purposes. Coal Tar and Pitch from Birmingham, 109 I. C. C. 73.

(k) A commodity rate applicable on l. c. l. traffic is a pronounced departure from usual practice. See 52 I. C. C. 439, 477. Given a reasonable level of class rates, under few, if any, circumstances will the commission be justified in requiring maintenance or establishment of l. c. l. commodity rates. Bananas from Gulf Ports. 109 I. C. C. 211, 218.

(l) Commodity rates on sheet-metal automobile parts from Detroit, Mich., to Ft. Worth Tex., found unreasonable to extent they exceeded lower class rates contemporaneously in effect from and to same points. The classification generally imposes highest rate which a particular commodity should bear under normal conditions, and commodity rate which is higher than class rates is an abnormality which on its face requires special justification. See 29 I. C. C. 18. Chevrolet Motor Co. v. C. & A., 109 I. C. C. 462.

(m) Volume of movement is not infrequently a determinative element in the establishment of a commodity rate. Chicago Hts. Mfrs. Asso. v. B. & O., 109 I. C. C. 545, 547.

(n) The general fabric of commodity rates in Illinois classification territory is low and a source of difficulty in dealing with relative adjustments in that territory and c. f. a. territory. Burlington Shippers Asso. v. A., T. & S. F., 109 I. C. C. 694, 699.

(o) Complainant attacked commodity rates charged on petroleum products, carloads, shipped since Dec. 17, 1922, from Kansas, Oklahoma, Texas and Wyoming to Colorado on the D. & R. G. W., as unjust and unreasonable. The general basis of rates to and from the points in question is combination of local rates to Pueblo or Walsenburg, Colo., and proportionals beyond. The attack is directed principally against the factors west of the gateways. HELD: Rates attacked unreasonable to extent they exceed from Augusta, Tulsa and Fort Worth to Delta and Montrose $1.01 and to Hotchkiss $1.10; to Monte Vista from Augusta 74.5c and from Tulsa and Fort Worth 77c; from Fort Worth to Glenwood Springs, Rifle and Grand Jct. 93c prior to Feb. 1, 1926; and from Casper to Delta and Montrose 74c, to Hotchkiss 83c, to Canon City 45c, to Westcliffe and Buena Cista 54c and to Salida 51c. Reparation awarded. White Eagle Refining Co. v. D. & R. G. W. Ry., 112 I. C. C. 605.

(p) Complainant attacked combination rates charged on canned meats, carloads, from Atlanta, Ga., to Chicago, Ill., as unreasonable. In 93 I. C. C. 360, division 3 found that the rates attacked were not unreasonable and dismissed the complaint. Charged fifth class of 83c to Ohio River and 31.5c beyond prior to July 1, 1922, and 74.5c and 28c thereafter. Component north of the Ohio River is not attacked. Complainant contended that the factor south of the river was unreasonable to extent it exceeded the proportional commodity rate of 39.5c prior to July 1, 1922, and 35.5c thereafter which applied on certain other canned goods, namely milk, oysters, fish, fruits, jellies, preserves, pork and beans, and vegetables. The omission of canned meats from the canned goods list under the rates from Atlanta to the Ohio River clearly was and is an exception to the general basis of commodity rates on canned goods in the southeast. No reason has been assigned for higher rates on canned goods or meats from Atlanta than from New Orleans to the Ohio River or to Chicago. The fact that canned meats are classified with other canned goods and that the proportional carload rate on canned meats exceeded both the local and proportional carload rate on other canned goods is prima facie evidence of the alleged unreasonableness. HELD: Rate attacked unreasonable to extent it exceeded 61c prior to July 1, 1922 and 54c thereafter from Atlanta to Ohio River crossings, reparation awarded. Armour & Co. v. L. &. N. R. R., 112 I. C. C. 695.

(q) Complainant attacked commodity rate charged on 87 cars of crushed stone shipped between March 1 and Aug. 1, 1923, from New Ulm, Minn., to Holstein, Ia., as unjust and unreasonable. Shipments moved C. & N. W., and C. St. P. M. & O., 263 miles charged 8.5c. Prior to March, 1923, the applicable rate was class E rate of 24.5c. At the request of a shipper in New Ulm who was interested in road building contract at Holstein, the rate was reduced on that date to 8.5c and has since remained unchanged. HELD: Rate attacked not unreasonable, complaint dismissed. Everist & Co. v. C. & N. W. Ry., 113 I. C. C. 267.

(r) A commodity rate which is higher than the class rate is an abnormality which on its face requires special justification. Lynchburg Chamber of Commerce v. N. Y. N. H. & H. R. R., 113 I. C. C. 270, 271.

(s) Rates on fresh tomatoes from Silver Creek, N. Y., district to Pittsburgh, Pa., found not unreasonable, and findings in 91 I. C. C. 358 reversed. Evidence does not indicate that rates assailed are too high to move traffic or that they are unreasonable per se. There are no commodity rates on this traffic from Silver Creek district to any destination, or from any point of origin to Pittsburgh. Assailed rates are those prescribed and approved in numerous cases, and while various commodity rates are in effect, both in c. f. a. and trunkline territories, but few apply for distances comparable to the haul here considered, ripe tomatoes generally moving short distances under commodity rates made with reference to truck competition. Here traffic moves in considerable volume only during an annual 60-day period, which fact does not entitle it to a commodity rate, since commodities may move in considerable volume and yet remain on a class-rate basis. Heinz Co. v. Director General, 112 I. C. C. 206.

(t) Class rates on tinware from Chicago, Rockford, and Waukegan, Ill., Milwaukee, Wis., and points taking same rates, to Burlington and Keokuk, Iowa, found not unreasonable, but maintenance of lower commodity rates from same points to St. Louis, Mo., and Quincy, Ill., would subject Burlington and Keokuk to undue prejudice and disadvantage, and give to St. Louis and Quincy an undue preference and advantage. Burlington Shippers' Asso. v. C., B. & Q., 112 I. C. C. 533.

(u) The difference in spread in class rates on common salt and medicated livestock salt applied to commodity rates on common salt does not of itself fix the measure of a proper commodity rate on medicated salt. Yakima Grocery Co. v. O.-W. R. R. & N. Co., 112 I. C. C. 751, 753.

(v) Proposal to cancel commodity rates on terne metal from Newark and Brills, N. J., to Buffalo, N. Y., and Buffalo rate points and destinations in c. f. a. territory, and to apply higher fifth-class rates, found not justified. Transportation and other characteristics do not justify different rates on this commodity than on other alloys of lead, and whatever may have been circumstances sur-

rounding establishment of commodity rates on this article, the small volume of traffic therein does not justify a continuance of commodity basis. Sixth-class rates found reasonable for application thereon. Federated Metals Corp. v. C. R. R. Co. of N. J., 113 I. C. C. 487.

(w) Complainant attacked commodity rates charged on anthracite silt, carloads, from Scranton and other Pennsylvania mines to Buffalo, N. Y., and Erie, Pa., for transshipment by lake to interstate destinations as unreasonable. Silt is coal which will pass through one sixteenth inch screen. The rates applicable on anthracite coal from Pennsylvania mines to Buffalo and Erie are grouped as to points of origin and destination. The rates to Buffalo are maintained to Erie because of carrier competition. Erie is in the extreme western portion and Buffalo in the extreme northern portion of the group. The average short line distance to Buffalo is about 300 miles. To Erie the average distance is 352 miles over D. & H. and Pennsylvania. Present rates on anthracite to Buffalo and Erie for local delivery or transshipment are $3.28 on prepared sizes and $2.77 on pea and smaller sizes, with the exception that f. o. b. vessel rates of $3.53 on prepared sizes and $3.28 on pea and smaller sizes are published to Buffalo by the D. & H. in connection with the Erie and L. V. Originally the f. o. b. vessel rates at Buffalo were 25c higher than those for local delivery, but after various changes the difference on pea and smaller sizes is now 51c. Defendants are willing to restore the 25c differential by reducing the f. o. b. vessel rate of $3.28 on those sizes to $3.02. From the facts of record it appears that washed silt is a variety of anthracite, but of extremely low value at the mine. Although used to some extent for other purposes, it has value as a domestic fuel only when manufactured into briquets. Furthermore the Commission is here dealing with transshipment rates which contemplate a movement beyond the ports, and such rates may reasonably be somewhat lower than those applicable on other traffic. HELD, rates attacked to Buffalo and Erie unreasonable to extent they exceed $2.50 per long ton, not including delivery on board vessel at those ports. Reparation awarded. Scott Briquet Co. v. Pennsylvania R. R., 113 I. C. C. 693.

(x) Complainant attacked commodity rates charged on wheat, carloads, from Missouri between Sept. 25, 1923, and July 5, 1924, milled at Jefferson City, Mo., and the resulting flour reshipped to destinations in Arkansas as unreasonable to extent they exceeded the rates which became effective from and to the same points on July 5, 1924. For a long time prior to Sept. 26, 1923, there was a spread of 6c between the proportional rate on grain from Kansas City, Mo., when from beyond, to Little Rock, Ark., and the local rate to Little Rock from the points of origin covered by the complaint. The local rates to the Arkansas destinations were obtained by adding named differentials to the Little Rock rate, and although the proportional rates from Kansas City were published in specific amounts, the differences over the rates to Little Rock were the same on shipments under the Kansas City proportional rates and under the local rates from the points of origin here concerned. The rate adjustment which became effective July 5, 1924, included increases as well as reductions in the rates up to Little Rock, and as the rates to the Arkansas destinations were based on differentials over Little Rock, this was equivalent to increases and reductions in the rates to the destinations of the shipments. HELD, rates attacked not unreasonable, complaint dismissed. Dulle Milling Co. v. M. P. R. R., 113 I. C. C. 742.

(y) Complainant attacked rates charged on 90 cars of paper strawboard and boxboard shipped between May 10, 1922, and Aug. 15, 1924, from New Haven and Windsor Locks, Conn., to Ridgefield, N. J., as unreasonable and in violation of the fourth section. Those from New Haven moved over New Haven to Danbury, Conn., C. N. E., to Campbell Hall, N. Y., and Erie to destination; those from Windsor Locks moved New Haven to New Haven and thence same route, distances from the two origin points being 195 and 244 miles, respectively, over the route of movement. Charged 27c prior to July 1, 1922, and 24.5c thereafter, 90% of sixth class rate. Subsequently a rate was established Aug. 16, 1924, of 20.5c. Ridgefield is about 9 miles north of Jersey City, N. J., on the Northern of New Jersey, a division of the Erie extending from Jersey City to Nyack, N. Y. HELD, rates attacked unreasonable to extent they exceeded 22.5c prior to July 1, 1922, and 20.5c thereafter, reparation awarded. Lowell Paper

Co. v. C. N. E. R. R., 115 I. C. C. 189.

(z) Complainant attacked rates charged on iron and steel pull and sucker rods from Marion, Ind., to Oklahoma and Texas as unjust and unreasonable. The shipments move in open top cars. Their transportation is practically free from hazard. Rates charged during the past were generally 92c to Oklahoma and $1.09 to Texas. Present rate to Texas destinations is 0.5c higher. These were and are specific commodity rates on iron pull and sucker rods. The class rates applicable in the absence of commodity rates were and are much higher than the rates charged. HELD, rates attacked not unjust or unreasonable, complaint dismissed. Marion Machine, Foundry & Supply Co. v. C., C., C. & St. L. Ry., 115 I. C. C. 327.

(aa) Complainant attacked rate of $1.05 on seven cars of iron beds shipped from Kenosha, Wis., to Meridan, Miss., during Dec., 1923, and Jan., 1924, as unreasonable to extent it exceeded 78c minimum 30,000 pounds. Following 64 I. C. C. 107, a rate of 71c minimum 30,000 pounds was published, increased on July 1, 1923, to $1.05, minimum 12,000 pounds, and on March 5, 1924, the present rate of 78c minimum 30,000 pounds was established. The rate attacked did not exceed the general level of rates applicable on iron beds from points in central territory to Mississippi valley and southeastern destinations. HELD, rate attacked not unreasonable, complaint dismissed. Hulett & Son v. C. & N. W. Ry., 115 I. C. C. 399.

(bb) Complainant attacked commodity rate charged on box board, carloads, from Halltown, W. Va., to Lynchburg, Va., as unreasonable, unjustly discriminatory and unduly prejudicial as compared with the rate on wood pulp board, carloads, from Covington, Va., to Richmond, Va. Halltown is on the B. & O., about 6 miles south of Harpers Ferry, W. Va., and about 4 miles north of Charlestown, W. Va. The short line route from Halltown to Lynchburg of 201 miles is over the B. & O., to East Lexington, W. Va., and C. & O. beyond. However, traffic generally moves over the initial line to Charlestown, W. Va., and N. & W. beyond, 269 miles. Average distance over all routes is 249 miles. Box board is a low grade commodity made from scrap paper, comparable with wood pulp board. Both commodities are used for similar purposes are included under the same general headings and given the same rating in the classification and exceptions thereto, and from a transportation standpoint are practically identical. Rate for C. & O. delivery is 28c, or 90% of sixth class. In connection with N. & W., delivery a specific commodity rate of 28c is published. A commodity rate of 16c applies from Covington to Richmond, 244 miles on wood pulp board for intrastate movement. Movement from Covington to Richmond is local over the C. & O., whereas the movement from Halltown to Lynchburg is over two or more roads. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Lynchburg Chamber of Commerce v. B. & O. R. R., 115 I. C. C. 465.

(cc) Complainant attacked commodity rate charged of $3.20 on agricultural limestone, carloads, from Buffalo, N. Y., to Troy and Canton, Pa., two years prior to July 15, 1925, as unreasonable, unjustly discriminatory and unduly prejudicial to extent it exceeded $1.70. The Pennsylvania does not publish commodity rates from Buffalo to Troy and Canton on agricultural limestone by that name, but does publish a rate of $3.20 applicable on both agricultural lime and ground limestone. Agricultural lime and agricultural limestone are used as fertilizers, are similar from a transportation standpoint, and between stations on the Pennsylvania usually take the same commodity rates. Troy and Canton are on the Pennsylvania 25 and 38 miles south of Elmira, N. Y., 272 and 259 miles from Buffalo and charged $3.20. No evidence was introduced tending to show that the Pennsylvania maintains rates on agricultural lime, or commodities comparable therewith, anywhere on its line lower for similar distances than it maintains from Buffalo to Troy and Canton. HELD, rate of $3.20 not unreasonable or otherwise unlawful, complaint dismissed. Case & Sons v. Pennsylvania R. R., 115 I. C. C. 694.

(dd) Complainant attacked commodity rates on finished oak staves and oak heading, carloads, from Mississippi and Louisiana to Pacific coast as unreasonable and unduly prejudicial as compared with rates on rough or dressed lumber. Rates charged $1.02 from Jackson and 96c from Winnsboro, rates on rough and

dressed lumber 85c from Jackson and 80c from Winnsboro. The governing western classification provides a rating of class D on wooden cooperage stock, including staves and heading. The record does not warrant a finding of undue prejudice. Neither is unjust discrimination established since staves and lumber do not constitute such "like traffic" that a different charge for their transportation is violative of section 2 of the act. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Chess Wymond Co. v. A. & V. Ry., 115 I. C. C. 703.

(ee) Complainant attacked commodity rates on pulpwood, car loads, shipped between Jan. 1, 1923, and Jan. 1, 1925, from Reedsport, Oreg., to Camas, Wash., as unjust and unreasonable to extent it exceeded $4 per cord. Reedsport is on a branch line of the S. P., 92.8 miles from Eugene, Ore., the junction with the main line. It is 120.9 miles from Eugene to East Portland, and 27.8 miles from East Portland to Camas, a total distance of 241.5 miles. Shipments moved S. P. to Portland and S. P. & S. beyond, charged $4.20. The rate attacked is a joint rate applying not generally for average conditions but between specific points through a country where transportation conditions are for much of the distance unfavorable and for a part of the distance extremely costly, and HELD, rate attacked not unreasonable, complaint dismissed. Crown Willamette Paper Co. v. S. P. Co., 118 I. C. C. 95.

(ff) Complainant attacked commodity rates charged on 34 cars of riveted steel conduit pipe shipped between June 10, and Nov. 15, 1920, from Duluth, Minn., to Howells, Calif., as illegal, unreasonable, unjustly discriminatory and unduly prejudicial to the extent they exceed rates on iron conduits. Original report 92 I. C. C. 692, division 3 found that the shipments consisted of riveted steel pipe and charges not unreasonable, unjustly discriminatory or unduly prejudicial. The evidence is not persuasive that the rates on riveted steel pipe should exceed the rates on pipe, wrought iron or steel, welded or seamless, boiler flues or large steel conduit. HELD, rates attacked unreasonable to extent they exceeded $1.125 between June 10 and August 25, 1920, and $1.50 from August 26, 1920, to Nov. 15, 1920, reparation awarded. Duluth Boiler Works v. A. T. & S. F. Ry., 118 I. C. C. 161.

(gg) There is a presumption against the reasonableness of a commodity rate higher than the corresponding class rate. Providence Exchange v. N. Y., N. H. & H. R. R., 118 I. C. C. 190, 191.

(hh) Commodity rate charged on sporadic shipments of phosphate rock from Milldale, Fla., to Shreveport, La., found not unreasonable. Milldale is not a producing point in the Florida group accorded lower rates; moreover, rate charged was actually less than contemporaneous rate from entire Florida phosphate rock group to Shreveport and such group rate was found not unreasonable in 78 I. C. C. 107. Meridian Fertilizer Factory v. A. C. L., 115 I. C. C. 226.

(ii) Complainant attacked commodity rate charged on hardwood lumber, including Oak, Hickory, and gum, in carloads, from Mississippi to Loudon and Harriman, Tenn.. as unreasonable. The distances from points of origin to Harriman range from 415 to 517 miles, to Loudon 2 miles greater. Present rate of 24.5c to Loudon and 27c to Harriman are joint rates. The record is not persuasive that the present rates are unreasonable as compared with the rates in the same general territory or those maintained in other territories, and the mere fact that they reflect voluntary reductions is not sufficient in and of itself to indicate that the prior rates were unreasonable. HELD, rates attacked not unreasonable, complaint dismissed. Jackson Traffic Bureau v. I. C. R. R., 120 I. C. C. 3.

(jj) Complainant alleged that rates on wet wood pulp, in carloads, shipped since Jan. 1, 1922 from Lockport, N. Y., to Wabash, Ind., was unreasonable, unjustly discriminatory and unduly prejudicial. Lockport is 22 miles northeast of Buffalo and is on the N. Y. C. and Erie. Wabash is on the Big Four and Wabash. Wood pulp is rated sixth class and by exception takes 90% of sixth class. Charged 25.5c prior to July 1, 1922 and 23.5c thereafter. Wet wood pulp is not susceptible of damage in transit and can be moved in any kind of closed equipment. So far as the record shows, the rates on wood pulp between points in central territory are, with few exceptions, on the basis of 90% of sixth class. HELD, rate attacked not unreasonable, unjustly discriminatory or unduly prejudicial, complaint dismissed. United Paperboard Co. v. C. & E. R. R., 120 I. C. C. 27.

(kk) Complainant attacked commodity rates of 15c prior to Feb. 17, 1924

and 14.5c subsequent, charged on cars of sand shipped over an interstate route from Provincetown, Mass., to Westfield, Mass., as unreasonable. Provincetown is a local point on defendants line at the extreme end of Cape Cod. Westfield is also served by defendant. Distance 294 miles, short line distance 243 miles, rate attacked as unreasonable to extent it exceeded 9c. The shipments do not require expedited service and no unusual operating difficulties are encountered over the route traversed. Sand, n. o. i. b. n. is rated sixth class. Defendant publishes a commodity rate of 9c on common run of bank or building sand for 200 to 360 miles. HELD, rate attacked unreasonable to extent it exceeded 12.5c, reparation awarded. Smith Co. v. N. Y. N. H. & H. Ry., 120 I. C. C. 43.

(ll) Complainant attacked commodity rates on brick, carloads from Perla and Fort Smith, Ark., to Texas between Nov. 27, 1923 and June 26, 1924 as unreasonable and in violation of section four. The case grows out of the failure of defendants to establish on Nov. 27, 1923 from Arkansas to Texas the same basis of rates on brick as they established generally in the southwest on that date. It was not made effective to Texas until June 5 and 27, 1924. HELD, rates attacked unreasonable to extent they exceeded those prescribed in 77 I. C. C. 473, reparation awarded. Acme Brick Co. v. A. & N. R. R. R., 120 I. C. C. 112.

(mm) Complainant attacked commodity rate of 25.5c charged on seven cars of zinc ore between Jan. 8 and Feb. 28, 1924 from Henryetta, Okla., to Caney, Kas., as unjust, unreasonable, unduly prejudicial and in violation of the fourth section. Henryetta is served by the Frisco and the K. O. & G. Caney by the Santa Fe and M. P. Zinc ore is rated class D although it generally moves on commodity rates. Shipments moved Frisco to Tulsa, Okla., and Santa Fe beyond. On Aug. 5, 1924 a joint commodity rate of 12c was established. HELD, rate attacked unreasonable to extent it exceeded 12c, reparation awarded. Weir Smelting Co. v. A. T. & S. F. Ry., 120 I. C. C. 155.

(nn) Complainant attacked commodity rate charged of $1.50 on 13 cars of hollow building brick and hollow building tile in 1924 from Haviland, O., to Fort Wayne, Ind., as unreasonable to the extent it exceeded $1.05. Shipments moved C. N. to Latty, O., and N. Y. C. & St. L., 33.7 miles. The $1.50 rate was applicable on hollow building tile only and was established in purported compliance with 68 I. C. C. 213. Building brick and hollow building tile are rated sixth class, carloads, sixth class rate being $2.30 on hollow building brick. The rate of $1.05 was established effective Aug. 18, 1924. HELD, rate charged on brick not applicable and that applicable rate was $2.30, unreasonable to extent it exceeded $1.05, reparation awarded. Haviland Clay Works Co. v. C. N. R. R., 120 I. C. C. 241.

(oo) Complainant attacked commodity rates charged on refined oils, carloads, from Oklahoma to Arkansas as unreasonable. Points of origin are in Group 3, destinations are in northwestern Arkansas intermediate to Memphis, Tenn., and Helena, Ark., distances ranging from 175 to about 300 miles. Rates charged 38.5c to 43.5c but in most instances a rate of 39c was charged on and after July 1, 1922. Since July 1, 1922 the rate to Memphis has been 28.5c. The 33c established after the shipments moved was published as a result of a request from complainant for a rate comparable with the rates from El Dorado, Ark. HELD, rates attacked unreasonable to extent they exceeded 36.5c prior to July 1, 1922 and 33c thereafter, reparation awarded. Bear State Oil Co. v. A. T. & S. F. Ry., 120 I. C. C. 301.

(pp) Complainant attacked commodity rate of 47c charged on 37 tank cars of petroleum crude oil shipped between July 14 and Aug. 3, 1922 from Currie, Tex., to Minneapolis, Minn., as unreasonable and unduly prejudicial to extent it exceeded 42.5c. Currie is on the H. & T. C. 92 miles south of Fort Worth, shipments moving as routed H. & T. C. to Fort Worth, C. R. I. & G. and C. R. I. & P. beyond. The 47c rate was cancelled on Oct. 10, 1924 and a combination rate of 53c became applicable. Defendants concede that the rate charged was unreasonable. HELD, rate attacked unreasonable to extent it exceeded 42.5c, reparation awarded. Pure Oil Co. v. C. R. I. & P. Ry., 120 I. C. C. 422.

(qq) Complainant attacked commodity rates and rules on rosin from south Atlantic and Gulf ports to Burlington, Ont. Can., as unreasonable and unduly prejudicial. In 104 I. C. C. 408 division 3 found the rules not unreasonable but rates from south Atlantic ports unreasonable to extent they exceeded 56.5c from April 15 to June 30, 1922 and 51c on and after July 1, 1922 and awarded

reparation. It is suggested that defendants herein give consideration to the matter of equalizing the Hamilton and Burlington rates, the rates so established to apply as maximum rates from interior intermediate producing points. The facts of record do not warrant disturbing the long established packing requirements of the carriers. HELD, former finding affirmed. Vera Chemical Co. v. A. C. R. R., 120 I. C. C. 434.

(rr) Complainant attacked joint commodity rate of $8.06 charged on six cars of scrap iron shipped between June 11, 1924 and Feb. 7, 1925 from East Radford, Va., to Brackenridge and Pittsburgh, Pa., and Steubenville, O., as unreasonable. Shipments moved N. & W. to Columbus, O., and Pennsylvania beyond. Effective March 20, 1925 the rate was reduced to $6.17. The record fails to show anything peculiar to the traffic in scrap iron from East Radford as related to that from main line points which warranted a rate on a higher relative basis than that accorded Hopewell. HELD, rate attacked unreasonable to extent it exceeded $6.17, reparation awarded. Dreifus Co. v. Pennsylvania R. R., 120 I. C. C. 680.

(ss) Complainant attacked commodity rates on crushed stone carloads, shipped since June 1, 1923 from Racine, Wis., to Chicago, Evanston and other points in Illinois as unreasonable. Shipments originated within switching limits of Racine on the C. N. S. & M. Ry., and moved over that road to Racine Jct., 2 miles, thence C. M. & St. P. to destinations. North Shore charged $5 per car for switching to Racine Jct, which was absorbed in whole or in part. From the record the rates attacked do not appear unreasonably high. HELD, rate attacked not unreasonable, complaint dismissed. Racine Crushed Stone Co. v. C. M. & St. P. Ry., 120 I. C. C. 717.

(tt) Commodity rates between official classification territory and western trunk-line territory, on one hand, and Fulton and Mayfield, Ky., on other not shown unreasonable, but found unduly prejudicial to extent that differences between these rates, on the one hand, and corresponding commodity rates to or from Paducah, Cairo, and Metropolis, on the other, will be greater than differences in rates from and to same points on the classes to which respective commodities belong in official classification when to or from points in official territory; and in western classification when to and from points in western trunk-line territory. Nonprejudicial basis of rates prescribed. Mayfield Chamber of Commerce v. A. & W., 120 I. C. C. 137, 145.

(uu) Complainant sought rates on cotton-pulp board from Nitro, W. Va., to Marcus Hook and Lewiston, Pa., and Roanoke, Norfolk, and Newport News, Va., lower than 90 per cent of sixth class, the basis prescribed for all kinds of paperboards in 52 I. C. C. 84, contending that rates therein were prescribed as maximum only, instances being cited where carriers have departed therefrom and published lower commodity rates on some of these articles. HELD: Rates established in case cited have been maintained quite generally throughout this territory and an effort to secure a lower rate on strawboard in 101 I. C. C. 273 was not sustained. As no exception was made in that case, an exception in favor of higher grade of pulpboard here involved would be still less justifiable. Viscose Co. v. N. Y. C., 120 I. C. C. 352.

(vv) Complainant attacked commodity rates charged on roasted zinc ore, carloads, from Moundsville, W. Va., to Newport, Del., as unreasonable and unduly prejudicial. Moundsville is 11 miles south of Wheeling, W. Va., on the B. & O. Newport is 4 miles south of Wilmington, Del., on the Penn., distance 418 miles, charged $3.30 prior to July 24, 1924 and $3.20 beyond. HELD, rate attacked not unreasonable, complaint dismissed. United Zinc Smelting Corp. v. B. & O. R. R., 120 I. C. C. 431.

(ww) It is a well-established principle of rate making that a regular and considerable movement of a given commodity between specified points may justify or require establishment of commodity rates lower than would otherwise be warranted. Russellville Compress Co. v. G., M. & N., 120 I. C. C. 481, 485.

(xx) Complainant attacked commodity rate of 12.5 cents charged on 10 cars of paving brick shipped between Sept. 11 and 17, 1924 from Murphysboro, Ill., to Hickman, Ky., as unreasonable to extent it exceeded 9 cents. Murphysboro is 92 miles south of St. Louis, Mo. Hickman is 125 miles south of Murphysboro and 218 miles south of St. Louis. Shipments moved M. & O., to Union City, Tenn., and N. C. & St. L., beyond. Rate attacked represents the rate originally established in compliance with the order in 64 I. C. C. 306, reduced 10% July 1,

1922. In accordance with 68 I. C. C. 213 the rate became 9 cents on Dec. 12, 1924. HELD, rate attacked not unreasonable, complaint dismissed. Murphysboro Paving Brick Co. v. M. & O. R. R., 122 I. C. C. 15.

(yy) Complainant attacked commodity rate of 17.5 cents charged on numerous carload shipments of petroleum products from Bayonne, N. J., to Fresh Pond, N. Y., between Jan. 24, 1924 and Jan. 10, 1925 and from Tremley Point, N. J., during the period of Sept. and Oct., 1924 as unreasonable and unduly prejudicial. Shipments moved Jersey Central to Jersey City thence via car float or ferry to Long Island City, thence Long Island to destination. HELD, rate attacked unreasonable to extent it exceeded 16 cents, reparation awarded. Transcontinental Oil Co. v. C. R. R. of N. J., 122 I. C. C. 61.

(zz) Complainant attacked commodity rates on silica sand in carloads shipped since March 21, 1923 from Ottawa and Utica, Ill., to St. Joseph and Benton Harbor, Mich., as unreasonable and unduly prejudicial. Ottawa is on the Burlington and the Rock Island, 81 miles south of Chicago. Rates on sand from Ottawa are combination commodity rates Prior to Oct. 15, 1924 St. Joseph and Benton Harbor were treated as a separate group, to which the rate was 214 cents. On that date it was reduced to 202 cents in order to conform to the fourth section at Buchanan, Mich., to which point the latter rate applied over the P. M. through Benton Harbor. In 73 I. C. C. 588 the commission found the rates attacked not unreasonable except to extent they exceeded the aggregate of intermediates. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Manufacturers Traffic Bureau v. B. Ry. of Chicago, 122 I. C. C. 188.

(3a) Complainant attacked commodity rates on window glass, carloads, from Fort Smith, Ark., to Texas as unreasonable, and unduly prejudicial to Fort Smith and unduly preferential of Shreveport, La. The issues properly before the commission will be deemed to embrace the rates on window glass from both Fort Smith and Okmulgee and on rough rolled glass from Okmulgee. Complainants are interested primarily in the relationship of their rates with those from Shreveport, at which point its principal competitor in Texas markets is located. Strong competition has to be met also with an import movement from Belgium through the Gulf ports. From certain Kansas producing points the rate is 45.5 cents to the Dallas-Fort Worth group and 56 cents to other Texas common points. From other Kansas producing points the rate to Texas common points is 64 cents. The average distance from Fort Smith and Okmulgee to the seven Texas points to which Shreveport has made shipments is 372 miles and from Shreveport 288 miles, or a difference of 84 miles. It is admitted that the transportation conditions from these three origin points to Texas are substantially the same. Under these circumstances a substantial difference in distance, can not be disregarded without trespassing upon the rights of the Shreveport competitor under section 3. HELD, attacked rates from Fort Smith and Okmulgee not unreasonable except that to Gainesville, Sweetwater and San Antonio unduly prejudicial to the extent they exceed to Gainesville 6 cents less than from Shreveport, to Sweetwater and San Antonio 4 and 5 cents higher than the rates from Shreveport. Harding Glass Co. v. A., T. & S. F. Ry., 122 I. C. C. 217.

(3b) Complainant attacked commodity rate charged of 66 cents prior to April 5, 1925 and 61 cents thereafter on specified paper and paper articles, carloads, shipped since Nov. 30, 1923 from Denver, Colo., to Oklahoma City, Okla., as unreasonable to extent it exceeds 52.5 cents. The evidence makes no mention of past or prospective future shipments of box board from Denver to Oklahoma City. HELD, rate attacked not unreasonable, complaint dismissed. Oklahoma Paper Co. v. M. K. T. R. R., 122 I. C. C. 229.

(3c) Complainant attacked commodity rate charged on wooden water pipe, carloads, during October and Nov., 1923 from Sather, Calif., to Ajo, Ariz., as unjust and unreasonable. Sather is within the switching limit of Oakland, Calif. Ajo is on the T. C. & G., 44 miles south of its junction with the S. P., at Gila, Ark., and about 880 miles from Oakland. Contemporaneously a rate of 64.5 cents applied on lumber and lumber products. The item carrying the lumber description did not include wooden water pipe although throughout Pacific coast territory it is the practice to apply the same rates as on those articles. They were reduced to the lumber basis March 20, 1925. HELD, rate attacked unreasonable to extent it exceeded 64.5 cents,

reparation awarded. Pacific Tank & Pipe Co. v. S. P. Co., 122 I. C. C. 284.

(3d) Complainant attacked commodity rate charged of $1.35 on four cars of wall paper shipped between Dec. 19, 1924 and May 9, 1925 from Joliet, Ill., to Dallas, Tex., as unreasonable as compared with rate of 78 cents on wrapping paper from Chicago, Ill., territory which includes Joliet, to Texas common points. Reparation to basis of 90 cents is sought. HELD, rate attacked not unreasonable, complaint dismissed. Pan American Wall Paper & Paint Co. v. C. R. I. & P. Ry., 122 I. C. C. 333.

(3e) Complainant attacked commodity rate of $1.24 on furniture, carloads, from Fort Smith, Ark., to Florence, Ala., and that as compared with a rate of 82 cents from Fort Smith to Birmingham, Ala., is prejudicial and in violation of section 1 of the act. Fort Smith is served by several lines, two of which, the Frisco and the M. P., are defendants. Florence is on the L. & N. and Southern. Sheffield and Tuscumbia are served by the L. & N., Southern and N. A. Birmingham is about 130 miles southeast of Florence, and is served by the L. & N., Frisco and Southern. No joint rate is in effect, rate attacked being combination of 68 cents to Memphis, Tenn., and 56 cents beyond. It is evident that the $1.24 rate is unduly prejudicial to the Florence group. HELD, rate attacked not unreasonable but unduly prejudicial to extent it exceeds the rate to Birmingham. Florence Chamber of Commerce v. L. & N. R. R., 122 I. C. C. 367.

(3f) Complainant attacked commodity rate of $4.48 charged on 37 cars of bituminous coal screenings from Harrisburg, Ill., to Sioux City, Ia., between Aug. 7 and 15, 1923 as unreasonable, unjustly discriminatory and unduly prejudicial to extent it exceeded $3.78. Cars were routed Big Four to Danville, Ill., N. Y. C. to Chicago, Ill., C., M. & St. P., to Sioux City, 831 miles, charged $4.48. A rate of $3.78 was applicable from southern Illinois on Big Four to Sioux City for distances of 814 to 829 miles over various routes, and effective Feb. 28, 1924, defendants published this rate over route shipments moved. HELD, rate attacked unreasonable to extent it exceeded $3.78, reparation awarded. Saline County Coal Corp. v. C., M. & St. P. Ry., 122 I. C. C. 467.

(3g) Complainant attacked commodity rate on common brick, carloads, from Harrisonville, Mo., to Kansas City, Kans., and Argentine, Kans., between Nov. 15, 1922 and Feb. 21, 1924, unreasonable and unduly prejudicial, in violation of section 6 and that they violated the order in 68 I. C. C. 213. Kansas City and Argentine are within the switching limits of Kansas City, Mo. Harrisonville is on the M. P., Frisco and K. C. C. & S. Complainants case seems to be based primarily on the fact that defendants, in compliance with that order, in respect of rates on common brick for distances of 150 miles and less, made the rates on common brick 80% of the rates on other brick from many other Kansas and Missouri points on Oct. 16, 1922 but delayed making that adjustment from Harrisonville until later dates. HELD, applicable rates unreasonable to extent they exceeded 5 cents for the 45 miles via M. P., 5.5 cents for 45 miles over Frisco plus switching service required, 6 cents for the 56 miles over K. C. C. & S. F., plus switching charge required, and 6.5 cents for 62 miles over the K. C. C. & S. F., when delivery is made to the Santa Fe for switching at Kansas City, and 7 cents over the latter route when delivery is made to the Santa Fe at Olathe, reparation awarded. Harrisonville Brick & Tile Co. v. A., T. & S. F. Ry., 122 I. C. C. 489.

(3h) Complainant attacked commodity rate charged on lumber, carloads, from Weir, Sallis, Kilmichael, Kosciusko, Sapa, Theadville and Brandon, Miss., to Mariemont, O., as unreasonable. Shipments were delivered by the N. & W. Mariemont is a station on that line outside the corporate limits and about 8 miles east of Cincinnati. It is about 3 miles east of Newburg, O., the last station within the eastern switching limits of the N. & W., at Cincinnati. Red Bank, O., on the Pennsylvania is 7.4 miles east of the station at Cincinnati, and within the corporate and switching limits of Cincinnati. The rates on lumber from Mississippi to Mariemont prior to June 22, 1924 were made on Cincinnati combination, subject to the combination rule. On June 22, 1924 the N. & W. established a proportional rate of 2 cents from Cincinnati to Mariemont on shipments originating in the south. HELD, rates attacked on and after June 22, 1924 not unreasonable but prior to that date unreasonable to extent they exceeded the rates established on that date, reparation awarded. Stanley Lumber Co. v. A. & V. Ry., 122 I. C. C. 506.

(3i) Complainant attacked rates charged on wood pulp, carloads, shipped prior to Feb. 12, 1925 from Wilmington, Del., to New England territory as unreasonable. Pulp is packed in laps or rolls, and averages about 55,000 pounds per car. Complainant has never filed a damage claim. Sixth class rates apply on pulp from Wilmington to all points in New England except Holyoke, Mass., where a 25 cent commodity rate applies. The general basis in central territory is 90% of sixth class and from eastern trunk line territory to New England it is sixth class, but wherever pulp actually moves it apparently receives the benefit of commodity rates which are considerably lower. Within central territory the applicable commodity rates are the equivalent of 80% of sixth class. HELD, rates attacked since Feb. 12, 1925 unreasonable to extent they exceed rates ranging from 17 cents for 160 miles to 29.5 cents for 600 miles, reparation awarded. Jessup & Moore Paper Co. v. B. & O. R. R., 122 I. C. C. 543.

(3j) Complainant attacked commodity rates on cement, carloads, during the period August 8, 1918 to Feb. 29, 1920, from Ilasco, Mo., to Illinois, Wisconsin, Michigan, Minnesota, Iowa, South Dakota, Nebraska, Kansas and Missouri as unjust, unreasonable and unduly prejudicial. The rates charged were established Aug. 8, 1918 following 48 I. C. C. 210, and 52 I. C. C. 225. While it is evident that the distances used by the carriers were not in all instances in accordance with a proper interpretation of the term "short line workable route" there is no soundness in the extreme view taken by complainant. Generally the record does not show the distances or routes upon which the rates attacked were based. While the distances are shown over the routes claimed by complainant to be the short line workable routes, such distances can not be accepted in many instances. Moreover, the record is lacking in other evidence regarding the circumstances and conditions which might affect the question of whether a particular route was "workable." It is obvious, therefore, that it would be impracticable for the commission to determine whether the rates to each of more than 1,200 destinations covered by the complaint were based on the proper distances under the original order. HELD, rates attacked not unreasonable or unduly prejudicial, complaint dismissed. Atlas Portland Cement Co. v. Director General, 122 I. C. C. 680.

(3k) Complainant attacked commodity rates on crude sulphur, carloads, to Mooar, Ia., from Sulphur Mine, La., and Bryanmound, Tex., since May 1, 1922 as unreasonable and unduly prejudicial. Mooar is located just west of the Mississippi River on the Burlington about 15 miles north of Keokuk, Ia. At the time of the hearing the rate to Mooar from Sulphur Mine and Bryanmound was 45.5 cents. The corresponding rates to St. Louis and Chicago were 36 and 39.5 cents. The short line distances are 887 and 940 miles to Mooar, 710 and 763 miles to St. Louis, and 980 and 1,047 miles to Chicago. The St. Louis rate applied to numerous points in Kansas, Missouri and southern Illinois. Chicago rate applied to numerous intermediate points in northern and central Illinois. The rates to Mooar do not apply over the short line. From Sept., 1905 to Dec., 1919 the rate from Sulphur Mine to Mooar and from Oct., 1919 to Feb., 1922 the rate from Bryanmound to Mooar was the same as the rates to Chicago and St. Louis rate points. By the increases in the rates to Mooar and reductions in the rates to Chicago and St. Louis rate points this parity was destroyed. On Jan. 10, 1926 some months after the hearing, the rates from Sulphur Mine and Bryanmound to the Chicago and St. Louis rate points were reduced to 35 and 32.5 cents, respectively. The rate of 35 cents was also established from Sulphur Mine to the Iowa points, including Mooar. The distance from the mines to Mooar is greater than to any point taking the St. Louis rate, and considerably greater than the average distance to St. Louis rate points. Crude sulphur is rated class C in the western classification. Mooar is in a somewhat higher rated territory than are the competing points in Illinois and Indiana. It is not directly intermediate to Chicago. The reduced rates established on Jan. 10, 1926 afford no gauge for the determination of reasonable maximum rates to Mooar. HELD, rates from Sulphur Mine and Bryanmound and Hoskins, Tex., to Mooar, not unreasonable, and that since Jan. 10, 1926 the rate from Sulphur Mine to Mooar has not been and is not unduly prejudicial; that prior to Jan. 10, 1926 the rates from Bryanmound, Hoskins and Sulphur Mine were unduly prejudicial to Mooar and unduly preferential of Chicago to extent they exceeded the rates to Chicago; that since

Jan. 10, 1926 the rates from Bryanmound and Mooar are unduly prejudicial to Mooar to extent they exceed the rates to Mooar by more than 4.5 cents, reparation denied. Du Pont de Nemours & Co. v. H. & B. C. Ry., 122 I. C. C. 729.

(3l) Complainant attacked commodity rate charged on 17 cars of drag line machinery from Dayton and Tippecanoe City, O., to Tarke, Calif., during July and August, 1923 as unreasonable. Shipments moved B. & O., C. & N. W., U. P., S. P., and S. N., at rate of $2.35. Complainant contends that there was contemporaneously in effect a rate of $2.03 on machinery and machines, carloads, from Mount Vernon and Villa Grove, Ill., to Seattle, Wash., for greater distances. HELD, rates attacked not unreasonable, complaint dismissed. Smith Bros., Inc. v. B. & O. R. R., 122 I. C. C. 745.

(3m) Complainant attacked rates on coke, bituminous coal and anthracite, from eastern points to Beaver Dam, Wis., as unreasonable and unduly prejudicial. The rates on coke are combinations of proportional rates to Milwaukee, Wis., plus the local rates beyond and that was true as to rates on soft coal until March 15, 1926 which was subsequent to the hearing herein, when joint rates equal to the combinations on Milwaukee were established. The rates on hard coal are the sums of the local rates to Black Rock, N. Y., to Milwaukee and thence to Beaver Dam. The attack is directed against the factors Milwaukee to Beaver Dam. The rates from Milwaukee to Beaver Dam appear to be in line with the general level throughout the state. Exceptions which obtain at competitive points within a short distance of one or more docks do not show unreasonableness of the rates to Beaver Dam. HELD, rates attacked not unreasonable or unduly prejudicial, complaint dismissed. Beaver Dam Chamber of Commerce v. C, M.. & St. P. Ry., 123 I. C. C. 5.

(3n) Complainant alleged as unreasonable commodity rates on linseed oil, carloads, from Fredonia, Kans., to Illinois, Indiana, Missouri, Michigan, Kentucky, Ohio, Pennsylvania, and New York. Fredonia is on the M. P., Santa Fe and Frisco in the southeastern part of Kansas about 150 miles southwest of Kansas City, Mo., and 385 miles southwest of St. Louis, Mo., in the gas belt district. Linseed oil is rated fifth class, but there are a number of commodity rates lower than the fifth class rates, principally to large distributing centers. The other vegetable oils also are rated fifth class. M. P. expressed willingness, so far as destinations on its line are concerned, to publish the vegetable oil scale of rates on linseed oil from Fredonia. If complainant finds it difficult to meet competition of manufacturers at other points because of the relatively higher freight rates from Fredonia, that in itself may be one of the contributing causes which prevent the growth and enlargement of its plant. It seems clear that the rates on linseed oil from Fredonia to points in Missouri, Illinois, and northern Michigan are unreasonable; that the vegetable oil scale, which was prescribed to that territory from origin territory contiguous to Fredonia, affords a reasonable basis of rates on linseed oil, although it will not give complainant rates as low as those from Minneapolis, which are not before the commission in this proceeding. HELD, rates on linseed oil from Fredonia to Missouri, Illinois and northern Michigan unreasonable to extent they exceed rates prescribed in 98 I. C. C. 183. To Indiana, lower Michigan, Ohio, Pennsylvania, Kentucky and New York rates are unreasonable to extent they exceed combinations made up of rates to points in the territory west of the Illinois-Indiana state line, constructed under the scale herein prescribed, plus the existing applicable rates beyond. Reparation awarded. Fredonia Linseed Oil Works Co. v. A., T. & S. F. Ry., 123 I. C. C. 153.

(3o) Complainant attacked commodity rate of 9.5 cents charged on clay, in carloads, from Calhoun, Mo., to Pittsburgh, Kans., between Nov. 6, 1923 and May 23, 1925 as unreasonable. Calhoun is on the M. K. T. The shipments moved over that line to Fort Scott, Kans., and Frisco beyond, 119 miles. Effective August 3, 1925 a rate of 6.25 cents was established at complainants request. That rate had previously been established over the M. K. T. and K. C. S. via Eve, Mo., and M. K. T. and M. P. via Nevada, Mo., on June 30, 1925 distances of 106 and 103 miles. HELD, rate attacked unreasonable to extent it exceeded 6.25 cents, reparation awarded. Pittsburgh Clay Products Co. v. M. K. T. R. R., 123 I. C. C. 605.

(3p) Complainant alleged carload rates on paraffin wax from Ponca City, Okla., and Casper, Wyo., sulphur from Gulf Hill, Tex., and Berkeley, Calif., and

nitrate of soda from New Orleans, La., Galveston and San Pedro and Wilmington, Calif., to Curtiss and Kennard, Ariz., are unreasonable and unduly prejudicial. Curtiss and Kennard, in southeastern Arizona, on a branch line of the S. P. PARAFFIN WAX. This commodity usually moves at the rates applicable on gasoline and other refined petroleum products. Rate from Ponca City is $1.135, which is the rate to the Pacific coast terminals applied intermediate. Rate from Casper to Curtiss, 1,283 miles is 89.5 cents same also being applicable to San Francisco 1,486 miles. In Associated Oil Co. v. A. E. R. R., 112 I. C. C. 350, rates of $1.035 prior to July 1, 1922 and 93 cents on and after that date were prescribed, and reparation awarded. HELD, rates from Ponca City should not exceed those prescribed in the Associated Oil case. Crude glycerin is rated fifth class, but commodity rates apply from and to the points here considered. The rates attacked are generally lower than the rates on many other fifth class commodities between the same points and are substantially lower than the rates to Bacchus, about the same distance from the producing points as Curtiss. HELD, rates attacked not unreasonable or unduly prejudicial. SULPHUR. Sulphur is rated class C but generally moves at commodity rates substantially lower than the class basis. Rate from Gulf Hill to Curtiss, 1,092 miles was 83.5 cents prior to July 1, 1922, reduced to 75 cents on that date and on April 2, 1926 reduced to 40 cents. The 83.5 cent rate also applied to San Francisco about 1,030 miles beyond Curtiss, and on Jan. 30, 1923 reduced to 55 cents, with permission to apply higher rates at intermediate points. This rate was reduced to 40 cents when the rate to Curtiss was made 40 cents. No reason appears on this record why the rate from Gulf Hill to Curtiss should be relatively higher than from San Francisco to Curtiss and Ogden, 58.5 and 56.5 cents. NITRATE OF SODA. Under exceptions rated class E but it usually moved under commodity rates substantially lower than the class basis. Rates of $1.28 and $1.13 applied from New Orleans and Galveston to Hercules, Calif., about 1,000 miles beyond Curtiss. HELD, rates on paraffin wax from Casper and crude glycerin from all points of origin were not and are not unreasonable, and present rate on sulphur from Gulf Hill is not unreasonable. HELD, rates attacked on sulphur from Gulf Hill and on paraffin wax from Ponca City and nitrate of soda from San Pedro, Wilmington, Galveston and New Orleans unreasonable to extent they exceeded, respectively, prior to July 1, 1922, 66.5 cents, 103.5 cents, 44.5 cents, 66.5 cents and 72 cents and on and after that date 60, 93, 40 and 60 and 65 cents, respectively, reparation awarded. Apache Powder Co. v. A., T. & S. F. Ry., 123 I. C. C. 639.

(3q) Complainant assailed commodity rate charged on wooden box shooks, carloads, shipped since August 14, 1922 from Baltimore to Jersey City, N. J., as unreasonable and unduly prejudicial. Present rate from Baltimore to Jersey City is 20.5 cents. A review of the record indicates that defendant relies principally upon the alleged water competitive character of the rates from the competing points in the southeast. HELD, rate attacked unreasonable and unduly prejudicial to extent it exceeded 18 cents, reparation awarded. Canton Box Co. v. P. R. R., 123 I. C. C. 663.

(3r) Complainant attacked commodity rate charged on scrap iron, carloads, from Fowler and Rensselaer, Ind., to Kewanee, Ill., and from Rensselaer to Gibson, Ind., over an interstate route, as unreasonable. From Rensselaer to Kewanee shipment moved C. I. & L., Chicago, C. B. & Q. Those from Fowler moved Big Four and Burlington. Rate charged $2.90, or 66% of the sixth class rate. That applicable through Indianapolis and Peoria was full sixth class rate. It is evident that distance has been largely disregarded by the carriers in making their rates on scrap iron. Shipments to Gibson moved C. I. & L., and I. H. B., distance 52 miles, charged $1.80. HELD, rates charged not unreasonable, complaint dismissed. Karnowsky v. C. B. & Q. R. R., 123 I. C. C. 749.

(3s) Commodity rates on cowpeas from various points in South Carolina to New Orleans, found unreasonable to extent they exceeded lower class D rates contemporaneously in effect. In 10 I. C. C. 281, the commission recognized propriety of class D ratings on this commodity in southern territory; moreover, the situation here presented is an abnormality requiring special justification. See 29 I. C. C. 18 and 101 I. C. C. 424. Reasonable rates prescribed for future, and reparation awarded. Gay, Sullivan & Co. v. A. G. S., 122 I. C. C. 201.

(3t) Circumstances and conditions surrounding the interstate transporta-

tion of cement from points in the Kansas gas belt, on the one hand, and interstate and intrastate transportation of like traffic from Cement City (Sugar Creek), Mo., and Bonner Springs and Sunflower, Kans., on the other hand, to destinations in the Kansas City, Mo.-Kans., switching district found to be substantially similar, and interstate rate from points in the Kansas gas belt, including Chanute, Fredonia, Mildred, Humboldt, Independence, and Iola, Kans., and Dewey, Okla., to said destinations found not unreasonable. Iola Cement Mills Traffic Asso. v. A., T. & S. F., 122 I. C. C. 337.

(3u) In arriving at the rates on cement prescribed in Western Cement Rates, 48 I. C. C. 201; 52 I. C. C. 225; 69 I. C. C. 644; and the related rates prescribed in various other cases, the commission has not been controlled by the general level of rates on other commodities, whether switching or line haul, but rates prescribed have been made with special regard to the conditions surrounding transportation and marketing of that particular commodity with the view to establishing, and securing the maintenance of, general levels of rates in and between the several scale territories not only reasonable per se as applied to that commodity but under which the rates from competing producing points are related to each other with close regard to distance. Iola Cement Mills Traffic Asso. v. A., T. & S. F., 122 I. C. C. 337, 347.

(3v) Commodity rate on packing-house products, in mixed carloads with fresh meats, from Jacksonville, Ill., to Detroit, Mich., found unreasonable to extent it exceeded fifth-class rate contemporaneously in effect on packing-house products for the same haul. Reparation awarded. Powers-Begg & Co. v. W. Ry., 122 I. C. C. 476.

(3w) On further hearing, original report 98 I. C. C. 352, prescribing reasonable and nonprejudicial rates for interstate transportation of fresh meats and packing-house products, from Duluth to St. Paul, Minn., affirmed. Transportation conditions being substantially same in both directions, there is a clear discrimination in charging lower rates from St. Paul to Duluth than from Duluth to St. Paul, and under circumstances, it is impossible to conclude that Duluth packing plant suffers no injury because of this discriminatory freight-rate situation, or that its competitive position would not be improved if such discrimination were removed. It is an unfair situation for which no justification has been offered and should be corrected. Duluth Chamber of Commerce v. C., St. P. M. & O., 122 I. C. C. 739.

(3x) Complainant alleged commodity rate of $2.37 charged on pig iron, in carloads, from Birmingham, Ala., and points taking same rates to Nashville, Tenn., were and are unreasonable and as compared with the rates from the same points to Chattanooga, Tenn., and other destinations in Tennessee, Georgia and Alabama, unduly prejudicial. Defendant expressed a willingness to establish a rate of $2.04, and it was established on March 27, 1926. The record indicates that the carriers which control the rates to the competitive destinations named do not control the rate to Nashville. It is clear, therefore, that there is no basis for a finding of undue prejudice. HELD, rate attacked not unduly prejudicial but prior to March 17, 1926 unreasonable to extent it exceeded $2.04 per long ton, reparation awarded. Allen Mfg. Co. v. A. G. S. Ry., 126 I. C. C. 515.

(3y) Complainant attacked commodity rates charged on petroleum crude oil, in tank cars, from Kentucky to Owensboro, Ky., for shipment by pipe line to Lawrenceville, Ill., during the period April 1, 1922 to Jan. 31, 1924 as unreasonable, unduly prejudicial, in violation of section 4 and unlawful in violation of section 6. Shipments were forwarded from Bowling Green, Memphis, Jct., Scottsville, Rodemer, and Petroleum, Ky., over the L. & N. to itself at Owensboro. At that point the oil was unloaded into storage tanks owned by complainant, whence with the exception of 58,387 barrels, it was shipped by pipe line of the Indiana Pipe Line Corporation to Lawrenceville. There was at no time any intention that Owensboro should be the destination of this traffic. It moved beyond that point through the pipe line in quantities equal to the average daily receipts owing to the limited storage facilities. Charged local rates to Owensboro. No request was ever made by complainant for the establishment of proportional rates to Owensboro for application in connection with the pipe line. No reason appears why proportional rates to that point, if they had been established, should have been higher than those to Louisville and Evansville. On the other hand, the local rates charged

appear not to exceed maximum reasonable rates for the service performed. The pipe line has been extended to the oil fields and no more shipments from the points of origin named to Lawrenceville will be made by rail. HELD, rates attacked not unreasonable, unduly prejudicial, or otherwise in violation of the act, complaint dismissed. Indian Refining Co. v. L. & N. R. R., 126 I. C. C. 543.

(3z) Complainant alleged that the commodity rate charged on newsprint paper, carloads, from Carthage, N. Y., to Newark, N. J., between April 24, 1924 and Dec. 5, 1924 was unreasonable, unjustly discriminatory and unduly prejudicial. Shipments moved 308 at commodity rate of 28.5c. When the shipments moved there was in effect over the N. Y. C. a rate of 25c from Carthage to New York, and it was also in effect from Glen Falls, N. Y., to New York and Newark in connection with the D. & H. With the exception of the rate of 25c via National Junction the rate from Carthage to Newark is 28.5c via all routes. Newsprint paper, carloads, is rated fifth class, but by exceptions the rating is reduced to sixth class from points on the New York Central in northern New York and to 90% of sixth class in New England territory. Sixth class rate is 30c or 1.5c higher than the rate attacked and 5c higher than the rate subsequently established over the route of movement. HELD, rate attacked not unreasonable, unjustly discriminatory or unduly prejudicial, complaint dismissed. Newark Call Printing & Publishing Co. v. C. R. R. of N. J., 126 I. C. C. 569.

(4a) Complainant attacked commodity rates charged on sand and gravel, carloads, prior to July 1, 1922 from Montgomery, Ala., to La Grange, Ga., as unreasonable. In the original report, Roquemore Gravel Co. v. A. & W. P. R. R., 85 I. C. C. 184, division 3 found the rates of $1 and $1.13 unreasonable to extent they exceeded $1 prior to July 1, 1922 and 90c on and after that date, reparation awarded. Subsequent to the further hearing the Commission rendered its decision in Rates on Chert, Clay, Sand and Gravel, 122 I. C. C. 133. The single line scale rate for 104 miles, the distance from Montgomery to La Grange is $1.10 or 20c per ton more than the rates prescribed in the previous decision in the present case. The rate for the future from Montgomery to La Grange has been determined in the case cited. HELD, rates attacked not unreasonable, complaint dismissed. Roquemore Gravel Co. v. A. & W. P. R. R., 126 I. C. C. 575.

(4b) Complainant attacked commodity rate charged on 14 cars of wrapping paper shipped between April 28, 1924 and July 31, 1925 from Bastrop, La., to Dallas, Tex., and on one car shipped Nov. 20, 1924 from Bastrop to Wichita Falls, Tex. Bastrop is on the A. & L. M., 23.4 miles north of Monroe, La. Dallas and Wichita Falls are in Texas common point territory. Shipments were routed and moved A. & L. M. to Monroe, V. S. & P. to Shreveport, La., L. R. & N. to Greenville, Tex., thence M. K. T. Charged 56c and there was contemporaneously in effect a rate of 42c from Elizabeth, La., to Dallas. On Jan. 23, 1926 the rate attacked was reduced to 42c. HELD, rate attacked not unreasonable, complaint dismissed. Dallas Paper Co. v. A. & L. M. Ry., 126 I. C. C. 739.

(4c) Complainant attacked commodity rate of 22.5c plus $2.25 per car, charged on 30 cars of paving brick shipped during Oct. and Nov. 1924 from Buffalo, Kans., to McCook, Nebr., as unreasonable. McCook is on the Burlington, and Buffalo is on the M. P. Rates to and beyond Superior, Nebr., were 14.5c and 10.5c, subject to combination rule or 22.5c. There was no direct track connection between these carriers at Superior and the combination rate was subject to an additional charge of $2.25 for a switching service by the C. & N. W. Some shipments moved M. P. to Kansas City and Burlington beyond, at rate higher than through Superior, but shipments were unrouted by shipper and Superior combination protected. A rate of 16.5c was subsequently established following Mason City Brick & Tile Co. v. Director General, 77 I. C. C. 22. HELD, rate attacked unreasonable to extent it exceeded 18.5c, reparation awarded. Buffalo Brick Co. v. M. P. Ry., 126 I. C. C. 744.

(4d) Commodity rates or rates published as exceptions to the classification are usually determined by peculiar conditions surrounding each situation, and elements entering into their adjustment are so numerous and varied that there is no presumption that on different articles such rates should be a fixed percentage of the class rates. American Maize Products Co. v. N. Y. C., 126 I. C. C. 137, 139.

(4e) Commodity rates cannot gener-

ally be considered upon manufactured products with fairness to both shipper and carrier, except in conjunction with the entire traffic and the completed process of collecting the raw material and subsequently distributing it as a finished product. Chicago, M. & St. P. Ry. Co. v. Public Utilities Commission of Idaho, (Idaho, 1925) 238 Pac. 970.

(4f) Rate on sand and gravel of 40 per cent. less than L. Virginia classification, is in a lettered class, and therefore can be considered as a commodity rate in constructing a combination rate. Norfolk Southern R. Co. v. Treeman Supply Corporation, (Va. 1926) 133 S. E. 817.

(4g) Proposed cancellation of commodity rates on dolomite and fluxing stone in box cars between specified points in c. f. a. territory, and restriction thereof to shipments in open-top cars, on ground that shipments in box cars should take higher rates because of nature of equipment and lighter loading, found not justified. Dolomite is crushed limestone and falls within description of "agricultural limestone." Carrier participates in Indiana intrastate rate applicable on both agricultural limestone and dolomite; rates on agricultural limestone were prescribed in 112 I. C. C. 7, from various points to c. f. a. territory equal to present rate on that commodity between points involved, and record is persuasive that latter rate will be reasonable for application on commodities in box cars here involved. Dolomite and Fluxing Stone, 128 I. C. C. 23.

(4h) Complainant attacked commodity rates charged on denatured alcohol, carloads, from New Orleans, La., to Oklahoma City, Lawton, Chickasha, McAlester, Muskogee, Tulsa, Enid, Cushing and Ardmore, Okla., as unreasonable and in violation of the fourth section. The commodity rates are pubished as such to enable the routes through Texas, which publish higher class rates from New Orleans to Oklahoma than do the routes through Arkansas, to participate in the traffic. Denatured alcohol is rated fifth class. HELD, rates attacked unreasonable to extent they exceed to Oklahoma City, Cushing, Lawton, McAlester, Muskogee, Chickasha, and Tulsa, 82c, Enid 90c, Ardmore 73c, reparation awarded. Rates for future to be column 38 rates fifth class, in Consolidated Southwestern cases, 123 I. C. C. 203. Oklahoma Traffic Asso. v. A. & V. Ry., 128 I. C. C. 89.

(4i) Complainant attacked commodity rate of 75c on infusorial earth in carloads, from Lovelock, Nev., to Chicago, Ill., unreasonable, unjustly discriminatory and unduly prejudicial to extent it exceeded a rate of 50c, value not to exceed $10 per net ton. Crude infusorial earth is a raw material used in the manufacture of insulating materials. Its value is approximately $8.92 per ton, which represents the cost of taking it from the ground and loading into the cars at Lovelock. Complainant competes with producers at Lompoc, Calif., and with manufacturers along the Atlantic seaboard who can obtain crude infusorial earth from Lompoc at a rate of 65c. HELD, rate attacked not unjustly discriminatory or unduly prejudicial but unreasonable to extent it exceeds 70c, minimum 60,000 pounds. Hylonite Products Co. v. A. T. & S. F. Ry., 128 I. C. C. 135.

(4j) Complainant attacked commodity rate charged on coke, coke dust and coke breeze, carloads, from Martins Ferry and Steubenville, O., to Moundsville, W. Va., as unreasonable, unjustly discriminatory and unduly prejudicial. Coke breeze or dust is the term applied to the screenings from beehive or by product coke rejected for use in steel making. It is shipped in open top cars and averages over 80,000 pounds per car. Shipments from Martins Ferry apparently moved over B. & O. 14 miles, charged commodity rates of $1.39 prior to Nov. 11, 1925 and $1.01 on and after that date. From Steubenville routes ranged from 34 to 36 miles, charged at commodity rate of $1.76. HELD, rate from Martins Ferry not unreasonable; rate of $1.76 from Steubenville not unreasonable prior to Nov. 11, 1925 but on and after that date unreasonable to extent it exceeded $1.60 reparation awarded. United Zinc Smelting Corp. v. Pennsylvania R. R., 128 I. C. C. 139.

(4k) Complainant attacked sixth class rate of $5.40 charged on 12 cars of scrap iron moving from Pedricktown, N. J., to Catasauqua, Pa., between August 13 and Sept. 2, 1923 as unreasonable. Shipments moved over Pennsylvania and C. R. R. of N. J. A commodity rate of $3.78 was established Dec. 1, 1923. Scrap iron is a heavy loading commodity, and the rate charged and earnings thereunder are out of line with the subsequently established commodity rate, as well as with other interstate rates in-

stanced. HELD, rate attacked unreasonable to extent it exceeded $3.78, reparation awarded. Davies & Thomas Co. v. C. R. R. of N. J., 128 I. C. C. 241.

(4l) Complainant attacked commodity rate charged on eight cars of rosin dross shipped from Jacksonville, Fla., to Pensacola, Fla., over an interstate route in Nov. 1925 as unreasonable to extent it exceeded a rate of 24.7c. Rosin and rosin dross are rated sixth class and generally take the same commodity rates. Shipments were tendered to the A. C. L. and moved over that line via Waycross, Valdosta and Thomasville, Ga., to River Jct., Fla., thence L. & N., charged 31c. A rate of 24.7c was applicable over S. A. L. to River Jct., thence L. & N., an intrastate route. A rate of 24.7c was made applicable over route of movement on July 1, 1926. Defendants expressed willingness to make reparation to the basis of the 24.7c rate, but were unwilling to pay interest. HELD, rate attacked unreasonable to extent it exceeded 24.7c, reparation awarded. Western Paper Makers Chemical Co. v. A. C. L. R. R., 128 I. C. C. 244.

(4m) Complainant attacked commodity rate charged on three cars of talc shipped during 1924 and 1925 from Emeryville, N. Y., to Dallas, Tex., as unreasonable to extent it exceeded rate of 60c. Distance 1,718 and 1,668 miles. A commodity rate of $1.195 was applicable. Talc and limestone, in carloads, are rated class C and class E, respectively, in the western classification. HELD, rate attacked not unreasonable, complaint dismissed. Sewall Paint & Glass Co. v. C. C. C. & St. L. Ry., 128 I. C. C. 247.

(4n) Class rate assessed and commodity rate subsequently established on gravel from Holliday, Kans., to Standish, Mo., found unreasonable and unduly prejudicial as compared with lower rate contemporaneously in effect to St. Joseph, Mo.; with those under distance scales prescribed in 77 I. C. C. 473 and 88 I. C. C. 1; and to extent they exceeded lower rates contemporaneously in effect from Grinter, Muncie, and Morris, Kans., competing producing points. Various other comparisons showed that rate charged and present rate were in excess of rates on sand and gravel for both interstate and intrastate hauls in same general territory of equal or greater length. Reasonable rate prescribed for future and reparation awarded. Spencer Co. v. A., T. & S. F., 128 I. C. C. 346.

(4o) Complainant attacked commodity rate charged on three cars of printing and wrapping paper, shipped June 5, July 6 and Sept. 16, 1922 from Appleton and Neenah, Wis., to Dallas, Tex., as unreasonable. Shipments moved C. & N. W., Belt, Wabash, St. L. S. W., charged $1.17 from Appleton and 98.5c from Neenah. Rate claimed 90c and 98.5c. HELD, rate of 98.5c charged on shipments of July 6 and Sept. 16, 1922 from Neenah and Appleton not unreasonable, rate charged on shipment of June 5, 1922 from Appleton unreasonable to extent it exceeded 90c, reparation awarded. Practical Drawing Co. v. C. & N. W. Ry., 128 I. C. C. 540.

(4p) Complainant attacked commodity rates charged on creosote oil, carloads, from Indianapolis, Ind., to Cincinnati, O., Louisville, Ky., St. Louis, Mo., East St. Louis, Granite City, Madison and Chicago, Ill., as unreasonable and unduly prejudicial. Commodity rates on creosote oil are a lower percentage of class rates in Illinois and southern territories than in central territory. It is pointed out that transportation conditions through central territory are substantially similar to those in Illinois territory and that conditions in southern territory are such as to warrant a higher level of rates than within central territory. The rates in Illinois and southern territories shown herein are considerably lower than those in central territory. HELD, rates from Indianapolis unreasonable to extent they exceed 14c to Cincinnati and Louisville, 17.5c to Chicago and 18.5c to St. Louis, East St. Louis, Granite City and Madison. Republic Creosoting Co. v. A. G. S. R. R., 128 I. C. C. 547.

(4q) Complainant attacked commodity rates charged on passenger automobiles, carloads, and on passenger and freight automobiles, in mixed carloads, from St. Louis, Mo., from March 19, 1922 to Dec. 9, 1923 to American Fork, Helper, Magna, Manti, Murry, Ogden, Provo, Richfield, Salt Lake City and Spanish Fork, Utah., as unreasonable and inapplicable. HELD, rates charged applicable, complaint dismissed. Chevrolet Motor Co. v. A. T. & S. F. Ry., 128 I. C. C. 638.

(4r) Complainant assailed charges on

two cars of wrought iron scrap shipped during Nov. and Dec. 1919 from Cincinnati, O., to Cleves, O., as unreasonable. Complainant, under a written contract, purchased the wrought iron scrap, from L. & N., F. O. B., L. & N. track at Cincinnati. This carrier was then under federal control. The scrap was sold on the basis of a delivered price to the Cincinnati Horseshoe & Iron Co., at Cleves. Cleves is a short distance outside of Cincinnati. One car was billed from Paris, Tenn., to Cincinnati. Complainant ordered the car reconsigned to the horseshoe company at Cleves and it was finally delivered there. No charges were made for the transportation to Cincinnati, but charges amounting to $15.06 were paid by the consignee for the movement to Cleves. The charges were made up of switching charge of 17.5c per long ton from Cincinnati to Cleves, plus a reconsignment charge of $5 and demurrage charges of $4. Later the L. & N. refunded the reconsignment and demurrage charges plus war tax, a total of $9.27, and admitted that their collection was caused by delay on their part. Director General promised to reimburse the L. & N. for the amount refunded, so this disposes of the complaint so far as that shipment was concerned. The second car was billed through from Etowah, Tenn., to the horseshoe company at Cleves. The applicable combination rate of $4.10 per ton to Cincinnati and 17.5c per long ton from Cincinnati to Cleves was charged and paid. The testimony shows that the material was purchased from the railroad administration; that it was received by the carrier at point of origin from an official of the railroad administration; and that the contract of carriage in effect called for delivery to the complainant by the railroad administration, free of transportation charges at Cincinnati. Collection of charges in excess of 17.5c per long ton was unauthorized. HELD, reparation awarded down to basis of 17.5c per long ton. Hyman Michaels Co. v. Director General, 128 I. C. C. 689.

(4s) Complainant attacked commodity rates charged on 37 cars of coal during May 1923 from Avoca, Carbondale, Olyphant and Parsons, Pa., to Fort Snelling, Minn., as unreasonable, unduly prejudicial and in violation of the Erie and D. & H. and moved over those lines and P. M. and car ferry to Milwaukee, Wis., thence C. M. & St. P. via St. Paul, Minn., and Minneapolis to destination, charged $7.34 the rate to Minneapolis and St. Paul. Fort Snelling was not named as a point to which that rate applied and defendants brought suit to collect outstanding undercharges based on the local rate of $1.22 over the C. M. & St. P. from Minneapolis to Fort Snelling. The $7.34 rate was subsequently established over route of movement. HELD, rate attacked unreasonable to extent it exceeded $7.34, reparation awarded, complaint dismissed. Hostler Coal & Lumber Co. v. P. M. Ry., 128 I. C. C. 731.

(4t) Complainant attacked as inapplicable commodity rate charged on two cars of clayed cotton bagging, in rolls, from Chickamauga, Ga., to St. Joseph, Mo., on Dec. 29, 1923 and Jan. 21, 1924 as inapplicable. Rate of 80.5c applied. Governing tariff published a joint rate of 70.5c applicable on bagging, brown cotton or clayed, in bales or rolls, when same is unbranded. HELD, applicable rate was 70.5c, shipments overcharged, complaint dismissed. Cleveland Akron Bag Co. v. C. of Ga. Ry., 128 I. C. C. 733.

(4u) Complainant attacked commodity rates on pig iron, carloads, from Roanoke, Pulaski, and East Radford, Va., on the N. & W., Jenkins, Iron Gate, Covington and Low Moor, Va., on the C. & O. and Buena Vista, Va., to Maryland, Pennslyvania, Delaware, New Jersey, New York and New England states as unreasonable and unduly prejudicial. The Virginia iron producing points named are within a comparatively close range, and the same rates apply on pig iron from all of them. To the destination territory here considered traffic originating at the furnaces served by the C. & O. moves via Potomac Yard, Va. HELD, rates attacked to Baltimore, Philadelphia, New York and Boston unreasonable to extent they exceed $3.88, $4.54, $4.87 and $5.21, respectively. Virginia Pig Iron Asso. v. C. & O. R. R., 128 I. C. C. 737.

(4v) Complainant attacked commodity rate charged on bituminous coal, carloads, from Clearfield, Meyersdale and Cumberland Piedmont districts in Pennsylvania, Maryland and West Virginia to Black Tom Pier, New York as unreasonable and unduly prejudicial. Black Tom Pier is in the upper harbor and is owned and served by the L. V. Except

from mines on the B. R. & P. complainant paid and pays a rate of $3.09 which is the rate applicable for local track delivery in Jersey City. Its competitors in upper New York harbor, operating from piers on both sides of complainant, pay a transshipment rate of $2.79 which applies on coal dumped into vessels for bunker use or for transshipment. The record is persuasive that the assailed rate was not and is not unreasonable in and of itself. HELD, assailed rate unduly prejudicial to extent it exceeeds the rates to other consignees in the upper harbor, reparation denied. Harbor Coaling Corp. v. B. & O. R. R., 128 I. C. C. 747.

(4w) Complainant attacked commodity rates charged on newsprint and wrapping paper, carloads, moving between July 5 and Dec. 19, 1922 from Camas, West Lynn, and Lebanon, Oreg., to Oregon, California, Nevada, Montana, Wyoming, Colorado, Arizona and Texas as unreasonable and unduly prejudicial to the extent they exceeded the rates subsequently established. HELD, rates charged not unreasonable or unduly prejudicial, complaint dismissed. Crown Willamette Paper Co. v. W. T. Co., 129 I. C. C. 79.

(4x) Complainant alleged that the interstate carload rates since Feb. 1, 1926 on lumber from points on the B. & A. R. R. to New England territory are unreasonable and unlawful. The rates under attack are based on rates found reasonable in New England Lumber Rates, 43 I. C. C. 641. In Oct. 1924 due to emergency in the lumber industry, defendants reduced the rates from 0.5c to 4c, and on Jan. 31, 1926 the rates were restored to the prior level. Lumber is rated sixth class in the official classification but from this territory moves on commodity rates much lower than the class basis. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Woodstock Lumber Co. v. B. & A. R. R.. 129 I. C. C. 255.

(4y) Complainants alleged that the all rail, rail water and rail and water and rail rates on finished wall paper, in carloads, from Illinois, Missouri, Pennsylvania, and New York to Dallas, and Fort Worth, Tex., were, and are, unjust and unreasonable. All rail shipments originated at York, Pa., Kansas City, Mo., Chicago, Galewood, Fordham and Joliet, Ill. Water and rail shipments originated at Brooklyn and New York and moved in vessels of S. P. to Galveston, Tex., and rail lines beyond. Rail water and rail shipments originating at New York and Philadelphia, Pa., and Brownville, Cortland and Hudson Falls, N. Y., and moved rail to New York or Philadelphia thence in vessels of S. P. to Galveston or Southern Steamship to Houston, Tex., and rail lines beyond. Commodity rates lower than class rates are in effect. Record shows that finished wall paper generally moved on fourth class. In Consolidated Southwestern Cases, 123 I. C. C. 203 the Commission prescribed reasonable maximum fourth class rates, for application in a territory of which the points here considered form a part, which are, with the exception of the rates from Kansas City and North Kansas City, higher than the rates assailed. HELD, rates assailed not unreasonable, complaint dismissed. Apex Co. v. A. & V. R. R., 129 I. C. C. 283.

(4z) Complainant attacked commodity rates charged on lard substitutes, carloads, since Dec. 2, 1922 from Greenville, Tex., to destinations in Oklahoma, Arkansas and Louisiana and to Joplin, Mo., as unreasonable. Greenville, 83 miles northeast of Fort Worth, Tex., is served by the M. K. T., L. R. & N., St. L. S. W. and T. M., charged on basis of rates equal in each instance to the rates applying from Fort Worth to the same destinations. In Texas Refining Co. v. A. & V. Ry., 32 I. C. C. 192, the Commission found that lard substitutes should take the same rates from points of origin in Texas as packing house products. HELD, rates assailed from Greenville to Arkansas, in Louisiana west of the Mississippi river and to Joplin, Mo., were and are unreasonable to the extent they exceed rates under the 1716 scale as modified, reparation awarded. Texas Refining Co. v. C. R. I. & G. Ry., 129 I. C. C. 304.

(5a) Complainant attacked commodity rates charged on liquid asphalt carloads, since April 24, 1924 from Mereaux, Destrehan, and New Orleans, La., to Mobile, Ala., as unreasonable. Liquid asphalt moves in tank cars furnished by the shipper on which the carriers pay rental, and is loaded while heated, solidifying when cool. It is not dangerous to transport and claims for loss or damage are negligible. Mereaux is 8 miles southeast of New Orleans. Destrehan is 18 miles west of New Orleans. HELD, rates attacked unreasonable to extent they ex-

ceed 14.5c from New Orleans and 16c from Mereaux and Destrehan to Mobile, reparation awarded. Continental Roofing & Mfg. Co. v. G. & S. I. Ry., 129 I. C. C. 313.

(5b) Respondents proposed the cancellation of commodity rates and the application of fifth class rates on soap and related articles, in carloads, from Missouri river points to various destinations in western trunk line territory and to Ohio river crossings and Memphis, Tenn., and between points in Illinois territory. Commodity rates on soap, in carloads, have been in effect from Kansas City to St. Paul and Minneapolis, Minn., Twin Cities. For many years, respondents have also maintained commodity rates on soap from Kansas City to many destinations in Iowa, Minnesota, and Wisconsin as well as to a few destinations in North Dakota, South Dakota, and Nebraska. Commodity rates have been in effect from Chicago and Milwaukee to St. Louis, Mo., and there are, in addition, commodity rates from those producing points to other destinations in Illinois territory and between other points in that territory. Soap is rated fifth class in official, western, and Illinois classifications and is transported at fifth class rates in central and Illinois territories, except from Chicago and Milwaukee and related points to St. Louis and related points, and from Burlington to Chicago and St. Louis and related points. Between points in old western trunk line territory, soap moves fifth class rates except from Missouri river points to the destinations in the territory involved in this case. HELD, proposed schedules have been justified except to the extent that the class rates resulting on the commodities in question in carload lots exceed 35% of the present first class rates from and to the same points. Soap and soap powder, 129 I. C. C. 392.

(5c) Respondents proposed certain changes in their carload commodity rates on scrap lead and zinc from Pittsburgh, Pa., group points to destinations in trunk line and New England territories. PENNSYLVANIA RATES. Pittsburgh is in the territory taking 60% of the Chicago-New York rates and the rate of 19c now in effect from Pittsburgh to New York on pig lead, slab zinc and scrap lead and zinc is 60% of the Chicago-New York rate of 32c. The rate from Pittsburgh to New York over the B. & O. is 23c. Pennsylvania proposed 23c to apply. These articles are rated sixth class in official but under exceptions scrap lead and zinc take 90% of sixth class. PITTSBURGH AND LAKE ERIE RAILROAD RATES. At present they take sixth class of 28.5c from Pittsburgh. A commodity rate of 23c is named but under the restriction in a reference note that rate is made inapplicable on lead and zinc and scrap lead and zinc. In the suspended schedule the restriction is eliminated as to scrap but not as to the primary metals. The result would be to make the commodity rate of 23c applicable on scrap lead and zinc and the sixth class rate of 28.5c on pig lead and slab zinc. HELD, suspended schedules justified. Scrap and zinc from Pittsburgh. 129 I. C. C. 541.

(5d) Complainants alleged that commodity rates charged on several carloads of school books from Chicago, Ill., to Dallas, Tex., and Oklahoma City, Okla., since July 15, 1923 were and are unreasonable, unlawful, unduly prejudicial. They are shipped in box cars, and the loss and damage claims are negligible, charged $1.54. Commodity rates of $1.065 and 84c were applicable on various paper articles such as paper drinking cups, school blanks or forms, including school copy books. Books, n. o. i. b. n., are rated third class whereas school blanks or forms, including school copy books, carloads, are rated fourth class. HELD, rates assailed not unreasonable, unjustly discriminatory, unduly prejudicial or otherwise unlawful, complaint dismissed. Wheeler Publishing Co. v. A. T. & S. F. Ry., 129 I. C. C. 672.

(5e) Complainant alleged commodity rates charged on bituminous coal, carloads, from Brazil-Clinton, Linton-Sullivan, Princeton and Booneville, Ind., groups to Hoopeston, Ill., were unreasonable. Original report 113 I. C. C. 606. In 102 I. C. C. 269, division 3 found not unreasonable or unduly prejudicial the rates on bituminous coal from certain mines in southern Illinois group to Hoopeston, interstate, and dismissed the complaint. HELD, rates assailed were, are and for future will be unreasonable to extent they exceed $1 from Clinton and Coal Bluff, Ind.; $1.25 from Latta, Midland, Seifert, Riley, Paxton and Sullivan, Ind.; $1.55 from Petersburg and Oakland City, Ind., $1.70 from Enos and Lincoln City, Ind., and from Harrisburg, Ledford, El Dorado, Carrier Mills, and Norris City, Ill., $2 prior to July 1, 1922

and $1.80 thereafter, reparation awarded. Illiff Bruff Chemical Co. v. C. & E. I. Ry., 132 I. C. C. 282.

(5f) Complainant alleged commodity rates on wrapping paper and paper bags from Camas, Wash., to Pendleton, Ore., and Lewiston, Ida., of 49 and 54.5c were unreasonable and unjustly discriminatory to the extent they exceeded a rate of 40c on newsprint and poster paper from Camas to certain destinations. Camas, on the north bank of the Columbia river 24 miles northeast of Portland, Oreg., is served by the S. P. & S. Pendleton is on the N. P., 260 miles east of Camas. These carriers connect at the intermediate point of Pasco, Wash. To Lewiston, in western Idaho the traffic moves over these lines to a point approximately equidistant between Pasco and Lewiston, and the Camas Prairie beyond, 355 miles. The 40c interstate rate on newsprint paper from Camas to Pendleton, and between other points, strongly relied upon by complainant, has been permitted to be canceled effective Nov. 8, 1926, following Paper between North Pacific coast and Spokane, 118 I. C. C. 123. The traffic here considered is not affected by competition such as compelled the temporary 35c intrastate rate on newsprint paper from Millwood to Seattle and Tacoma. HELD, rates assailed not unreasonable or unjustly discriminatory, complaint dismissed. Crown Willamette Paper Co. v. N. P. Ry., 132 I. C. C. 295.

(5g) Complainant alleged commodity rates charged on carloads of mine props, mine ties, and bars, shipped between Aug. 28, 1922 and May 30, 1924 from Missouri to Illinois were unreasonable. Complainant relies on Palmer v. M. P. R. R., 87 I. C. C. 622 and Collins Timber Co. v. B. & O. R. R., 102 I. C. C. 467. HELD, rates assailed unreasonable to extent they exceeded rates prescribed in Palmer supra, reparation awarded. Delano v. St. L. S. F. Ry., 132 I. C. C. 333.

(5h) Complainant alleged that the commodity rates on bituminous coal, carloads, from Dundon, W. Va., to destinations east of Cumberland, Md. eastern trunk line and New England territories and in Quebec are unreasonable, unjustly discriminatory and unduly prejudicial and also that it is denied through routes and joint rates. Widen, at which point complainants mine is located, is 18 miles from Dundon. The transportation between these points is over the Buffalo Creek & Gauley R. R., which is owned by complainant and, in connection with the B. & O. from Dundon, furnishes the only outlet for complainants coal shipments. Prior to Feb. 1920, Dundon was accorded the West Virginia district basis and the primary purpose of this complaint is to bring about the restoration of that adjustment. In character, grade and quality complainants coal is very much like the coals produced in the West Virginia-Pittsburgh-Youghiogheny, and and Westmoreland districts and competes with those coals. The record shows that in times of coal shortage the freight rate is a negligible factor. On the other hand, when demand for coal is light the freight rate is an important consideration and complainant sometimes has been compelled to absorb the difference between the rates from Dundon and lower rates from competing mines. HELD, rates assailed not unreasonable or unduly prejudicial, complaint dismissed. Elk River Coal & Lumber Co. v. B. & O. R. R., 132 I. C. C. 371.

(5i) Complainant alleged commodity rate of 66c charged on five cars of wrapping paper shipped between Dec. 26, 1924 and Oct. 17, 1925 from Bogulusa, La., to Dallas, Tex., was unreasonable. Bogalusa is on the N. O. G. N. about 71 miles north of New Orleans, La. The shipments moved over that line to New Orleans. Average distance over routes of movement 727 miles, short line distance 523 miles. The rate assailed also applied on wrapping paper to Dallas from St. Louis territory generally. On Dec. 12, 1925 the rate from Bogalusa to Dallas was reduced to 47c. HELD, rate assailed not unreasonable, complaint dismissed. Dallas Paper Co. v. T. & N. O. Ry., 132 I. C. C. 591.

(5j) Complainant alleged commodity rate of 68c charged on numerous carloads of gasoline shipped since Jan. 1, 1925 from Burkburnett, Tex., to Bluefield, W. Va., and Pearlsburg, Va., was unreasonable. Burkburnett is on the M. K. T., 14 miles north of Wichita Falls, Tex., Bluefield is on the N. & W. on the border of trunk line territory and southwestern territory and about 102 miles west of Roanoke, Va. Pearlsburg is on the N. & W. 33 miles east of Bluefield. Rate charged 68c, was a joint comodity rate composed of proportional rates to and from Vicksburg, Miss., of 17c and 51c. HELD, rates charged not un-

reasonable, complaint dismissed. Tidal Western Oil Corp. v. M. K. T. R. R., 132 I. C. C. 681.

(5k) Complainant alleged commodity rate charged on two cars of hollow building tile, one shipped from El Reno, Okla., to Spur, Tex., and the other from Wagoner, Okla., to Wellington, Tex., on May 7 and June 4, 1924 were unreasonable, unduly prejudicial, inapplicable and in violation of the fourth section. El Reno is on the Rock Island. Spur is in western Texas, and is the western terminus of the Wichita Valley. Shipment from El Reno moved over Rock Island to Waurika, Okla., and W. V. beyond, 329 miles, charged 36c, applicable rate 34.5c. In the absence of the commodity rate, a rate of 21c would have applied, constructed by the application of the socalled combination rule to the distance commodity rate of 16c from El Reno to Sagerton, Tex. and 7.5c beyond. Wagoner is about 16 miles north of Muskogee Okla., and Wellington is about 57 miles west of Altus. Shipment from Wagoner moved K. O. & G. to Denison, Tex., and M. K. T. beyond, 474 miles, charged 32c, applicable rate 33c. Under Memphis Southwestern Investigation, 77 I. C. C. 473, the rates for the distances would be 17c and 20.5c. HELD, rates charged unreasonable to extent they exceed 17c to Spur and 20.5c to Wellington, reparation awarded. Reliance Brick Co. v. K. O. & G. Ry., 132 I. C. C. 711.

(5l) Complainant alleged commodity rates charged on slack coal, carloads, shipped to Peru, Neb., from the Pittsburgh, Kas., district between Dec. 19, 1923 and Dec. 3, 1924 and to Wilber, Kas., from Pittsburgh and Arcadia, Kas., between April 24, 1923 and April 30, 1924 were unreasonable, unjustly discriminatory, and in violation of the fourth section. Points of origin are in the Pittsburg district about 140 miles south of Kansas City, Mo. Peru is on the Burlington which extends from Salem, Neb. to Nebraska City, Neb., and Wilber is on the same line which extends from Wyomore, Neb., to Crete, Neb., distances from Kansas City 155 and 215 miles. Charged $2.55 to Peru and $3.04 to Wilbur. On June 5, 1924 the rate to Omaha, Paul and Nebraska City was reduced to $2.25 and the rate to Wilbur was reduced to $2.55. On Dec. 15, 1924 the rate to Peru was likewise reduced to $2.25. These reductions were made under the adjustment prescribed in Southwestern Coal Operators Asso. v. A. W. Ry., 89 I. C. C. 73, and it was solely through oversight that the rate to Peru was not reduced on the same date as the others. HELD, rates assailed not unreasonable, except the rate of $2.55 to Peru was unreasonable between June 5, and Dec. 3, 1924 to extent it exceeded $2.25, reparation awarded. Nebraska v. C. B. & Q. R. R., 132 I. C. C. 717.

(5m) Commodity rates on cotton linters from Lakewood Station and Rome, Ga., to Chattanooga, Tenn., found unreasonable as compared with lower commodity rates from points in Mississippi to points in Tennessee for greater distances; and to extent they exceeded the contemporanous sixth-class rate which was applicable from points in Southeast to points in North Carolina, South Carolina, and Virginia; and from Carolina points and Mississippi Valley terriory to points in Alabama, Georgia, Florida, and Tennessee. Reparation awarded. Southern Cotton & Paper Co. v. A. & W. P., 129 I. C. C. 433.

(5n) Proposed cancellation of commodity rates on fluxing limestone in box cars between points in eastern trunkline territory and restriction thereof to shipments in open-top cars, found not justified. While respondents intended ground-limestone rates to become effective on this commodity in box cars by proposed cancellation, sixth-class rates would become applicable thereon. Ground-limestone rates are but 45 per cent of sixth class. Since in 112 I. C. C. 7, rates on fluxing lime were found unreasonable to the extent they exceeded 80 per cent of rates on common lime, hydrated, quick or slaked, and in 128 I. C. C. 23, increases to sixth-class rate resulting from proposal to restrict rates on fluxing limestone to shipments in box cars were found not justified, record is persuasive that rates on ground limestone will not be unreasonable for application on fluxing limestone in box cars. Fluxing Limestone, 129 I. C. C. 574.

(5o) Rates on beets and carrots with "clipped tops," in straight or mixed

carloads, from points in lower Rio Grande Valley of Texas to destinations east of Mississippi River and north of Ohio River, found not unduly prejudicial but unreasonable as compared with rates between the same and various other points for comparable distances, and to extent that factors or arbitraries east of Mississippi River exceeded rates contemporaneously applicable on same commodities "without tops." Reasonable rates prescribed for future and reparation awarded. Carfiel & Morris v. N. Y. C., 129 I. C. C. 658.

COMMON CARRIER

I. TEST OF STATUS.
§½. In general.
§1. Incorporation.
§2. Lease of line.
§3. Public offer to carry.
§4. Refusal to publish tariffs.
§5. Stock ownership.
§6. Transportation of private cars.

II. DETERMINATION OF STATUS.
§6½. In general.
§7. Question of fact.
§7½. Who are common carriers.

III. OBLIGATIONS.
§8. In general.

IV. ALLOWANCES.
§9. In general.

V. CONTROL AND REGULATION.
§10. In general.

VI. RELATION TO TRUNK LINES.
§11. In general.

CROSS REFERENCES

See Branch Lines §3; Electric Lines; Express Companies; Pipe Lines II, §4; Tap Lines §6; Telephone and Telegraph Companies; Stock Yard Companies; Water Carriers.

I. TEST OF STATUS.

§½. In General.

(a) Short line, in seeking a common-carrier status, contended that it was organized in the hope that upon completion of construction it would be purchased by another railroad, and that such an agreement was entered into. HELD: That a discussion of this phase of the case would serve no useful purpose for reason that such an agreement, if in fact entered into, is properly cognizable by the courts and not by the commission. American Fuel Co. v. A., T. & S. F., 123 I. C. C. 101, 109.

(b) A lumber company which owned and operated a rail road for transportation of its own products, but later extended it into an oil field and held itself out as willing to carry any freight offered under private contract, HELD, a common carrier, and subject to the jurisdiction of the Arkansas Railroad Commission, though not authorized by its charter to operate as a common carrier. Smitherman & McDonald v. Mansfield Hardwood Lumber Co., 6. Fed. (2d.) 29.

(c) When the relationship of shipper and carrier is established, there is a duty imposed by law arising out of the relation which the carrier sustains to the public, and no special contract is necessary. The Henry W. Breyer, 17 F. (2d.) 423.

(d) A "common carrier" of personal property is one who agrees for a specified compensation to transport such property from one place to another for all persons that may see fit to employ him. Gerhard & Hey, Inc., v. Cattaraugus Tanning Co., (N. Y., 1926) 150 N. E. 500.

(e) One employed by oil company to sell oil and gasoline on commission basis, and incidentally to deliver products sold, using own truck, on which employer's tank is mounted, and carrying nothing but employer's products, is not "carrier for hire," within the South Dakota law, relating to class C motor carriers. Griffin v. Murphy State Board of Railroad Com'rs. (S. D. 1927) 211 N. W. 804.

(f) Evidence that lumber company, not incorporated as a common carrier, transported passengers for hire on its line for accommodation of a separate railway company owned by it, and transported freight under contract for two companies only as a necessary part of its lumber business, HELD not to show that lumber company was a common carrier. Dawkins Lumber Co. v. L. Carpenter & Co., (Ky., 1926) 281 S. W. 1013.

(g) Existence or exercise of right of eminent domain is not essential to constitute a common carrier, if it can acquire right of way by purchase, in view of Kentucky law. Dawkins Lumber Co. v. L. Carpenter & Co., (Ky., 1926) 281 S. W. 1013.

(h) Maintenance of stations and depots is not necessary to make lumber company operating railway a common carrier. Dawkins Lumber Co. v. L. Carpenter & Co., (Ky., 1926) 281 S. W. 1013.

(i) Carriage of goods by lumber company maintaining railway only as required by contracts with two other companies does not make it a common carrier. Dawkins Lumber Co. v. L. Carpenter & Co., (Ky., 1926) 281 S. W. 1013.

(j) That railway lines maintained by lumber company are only temporary structures does not prevent them from being used for common carriage of goods. Dawkins Lumber Co. v. L. Carpenter & Co., (Ky., 1926) 281 S. W. 1013.

(k) Lumber company, possessing extensive powers to operate railway, may become common carrier, though it is not incorporated as such. Dawkins Lumber Co. v. L. Carpenter & Co., (Ky., 1926) 281 S. W. 1013.

(l) Lumber company, operating railway, is not required to receive and haul freight for others, unless it makes itself a common carrier. Dawkins Lumber Co. v. L. Carpenter & Co., (Ky., 1926) 281 S. W. 1013.

§3. Public offer to carry.

(a) The real criterion determinative of character of a carrier is right of the public to use its railroad facilities and to demand service. American Salt & Coal Co. v. C., R. I. & P., 126 I. C. C. 7, 10.

(b) To constitute one a common carrier, he must be engaged in a business necessarily involving a public interest. Gerhard & Hey, Inc., v. Cattarangus Tanning Co., (N. Y., 1926) 150 N. E. 500.

(c) One is not a "common carrier" unless he indicates to the public that he is ready and willing to do business for all that may see fit to employ him up to the capacity of his facilities. Gerhard & Hey, Inc., v. Cattarangus Tanning Co., (N. Y., 1926) 150 N. E. 500.

(d) Test of "public carrier is" whether he holds himself out as being ready and willing for hire to carry particular classes of goods for all who may desire transportation between places between which he professes to carry. State v. Washington Tug & Barge Co., (Wash., 1926) 250 Pac. 49.

(e) Whether carrier is a "public carrier" must be determined by business actually carried on, and not by secret intention or mental reservation of owners or operators. State v. Washington Tug & Barge Co., (Wash., 1926) 250 Pac. 49.

II. DETERMINATION OF STATUS.

§6½. In General.

(a) There are essential differences between a public utility and a common carrier such as a railroad, so that returns on the two classes of property are not necessarily to be the same. Rates on Hawaii Consolidated Ry., 118 I. C. C. 489, 492.

(b) Upon contention that the Ballard & Thompson, a single-track railroad connecting a coal mine with main line five miles distant, is a common carrier, HELD: As this line owns no equipment, publishes no tariffs, files no annual report with commission, and traffic handled over its line is exclusively coal traffic, it is not a common carrier but a plant facility. Moreover, an application for a certificate of public convenience and necessity for authority to become a common carrier was denied in 72 I. C. C. 644. American Fuel Co. v. A., T. & S. F., 123 I. C. C. 101, 109.

(c) The real criterion determinative of the character of a carrier is the right of the public to use its railroad facilities and to demand service. American Salt & Coal Co. v. C. R. I. & P. Ry., 126 I. C. C. 7, 10.

§7½. Who Are Common Carriers.

(a) The Cuyahoga Valley Ry. Co. found to be a common carrier subject to the act, which may lawfully participate in joint rates and have its switching charges on interstate shipments absorbed under proper tariff provision by carriers which perform the line haul. Otis Steel Co. v. C. V., 109 I. C. C. 238.

(b) Upon contention that the Ballard & Thompson, a single-track railroad connecting a coal mine with main line 5 miles distant, is a common carrier, HELD: As this line owns no equipment, publishes no tariffs, files no annual report with commission, and traffic handled over its line is exclusively coal traffic, it it not a common carrier but a plant facility. Moreover, an application for a certificate of public convenience and necessity for authority to become a common carrier was denied in 72 I. C. C. 644. American Fuel Co. v. A., T. & S. F., 123 I. C. C. 101, 109.

IV. ALLOWANCES.

§9. In General.

See Allowances.

(a) Divisions of through rates accorded certain short lines in lower Mississippi Valley by Illinois Central and other carriers on coal moving from Illinois and Kentucky districts, found not unlawful as compared with divisions accorded such short lines by carriers moving similar traffic from Birmingham district of Alabama. Illinois Central reserves same or about same amount of through rate at common junction points as is reserved by carriers serving, Alabama mines, and as long as this basis of equality is maintained, and divisions of the Illinois Central are not so low as to throw a burden upon other traffic, and weak short lines are beneficiaries of a liberal policy in respect of divisions, there is no undue prejudice or discrimination. Alabama Mining Institute v. I. C., 109 I. C. C. 740, 752, 755.

(b) Complainant alleged that certain agreements made by defendant Hutchinson & Northern Ry. with other defendants, whereby the former assesses switching charges at Hutchinson, Kas., of $4.25 and $5.25 per car, which are absorbed by the other defendants, constitutes an unlawful device by which a rebate was and is made on interstate shipments of salt from the plant of the Carey Salt Co. at Hutchinson, and that higher rates are thereby charged complainant on its salt shipped over the lines of the same line haul carriers, resulting in unjust discrimination and undue prejudice, and also that the switching charges are unreasonable. Complainant and Carey Salt Co. are competitors in the sale of salt. The Hutchinson & Northern and the Carey Salt Co. are owned by the same interests. The H. & N. serves the Carey Salt Co., but not complainant. No evidence was presented upon the issue of unreasonableness of the switching charges. These charges are the outgrowth of a conference between the H. & N. and M. P., Santa Fe and C. R. I. & P., the connecting line haul carriers and the latter carriers agreed to absorb those charges. This is the agreement referred to in the complaint and is embodied in the tariffs. The case resolves itself primarily into the question whether the H. & N. was and is a common carrier and may have its charges as such absorbed by line haul connections. The H. & N. operates a line of railroad extending from a point 1 mile east of the eastern boundary of Hutchinson in a general westerly direction to the junction with the tracks of the M. P. a distance of 4.731 miles. It appears that an occasional movement for individual shippers has been handled by the H. & N. and that it is willing and holds itself out to move traffic for any and all shippers. Several team tracks have been set aside for the use of the public and over these tracks shipments for independent shippers have been delivered. The record leaves no doubt that the H. & N. has held and is holding itself out as a common carrier and that the public has demanded, and has a right to demand, service from it. HELD, H. & N. was and is a common carrier engaged in interstate commerce, and that the absorption of its switching charges as alleged was not and is not unjustly discriminatory or unduly prejudicial, complaint dismissed. American Salt & Coal Co. v. C. R. I. & P. Ry., 126 I. C. C. 7.

(c) Absorption by trunk-line carriers of switching charges of Hutchinson & Northern Ry., at Hutchinson, Kans., on salt shipments, found not unjustly discriminatory or unduly prejudicial. Hutchinson & Northern is a common carrier engaged in interstate commerce; files its tariffs and reports with the Kansas Public Utilities Commission and with this commission; is recognized by connecting lines as a common carrier, and as such may have its charges absorbed by line-haul connections. American Salt & Coal Co. v. C., R. I. & P., 126 I. C. C. 7.

V. CONTROL AND REGULATION.

See Control and Regulation.

§10. In General.

(a) Where a line of railroad is not a common carrier, but a plant facility, commission is without jurisdiction to prescribe rates from a point thereon or compel common carriers subject to commission's jurisdiction to perform transportation service over that line or grant an allowance for performance of that service. American Fuel Co. v. A., T. & S. F., 123 I. C. C. 101, 112.

VI. RELATION TO TRUNK LINES.

§11. In General.

(a) Refusal of carriers to pay interest on complainant's investment in a privately owned or plant-facility track

does not constitute a violation of the act. No such interest is paid to owners of other private lines in same district, and the fact that carriers have purchased and now own certain branch lines which formerly had a similar status is not sufficient to bring this phase of the complaint within the purview of the law administered by commission. American Fuel Co. v. A., T. & S. F., 123 I. C. C. 101, 113.

COMPARATIVE RATES

See Advanced Rates §5½, §8½, §18 (7); Blanket Rates §18; Branch Lines §2, §18, §22; Classification §3½, §18, IV; Discrimination §4; Divisions §7; Equalization of Rates §3; Evidence §11, §12, §13 (1) (1½) (3) (5) (6), §30, §47, §58, §59, §66; Express Companies §11, §20, §23; Long and Short Hauls §6¼; Penalty Charges; Reasonableness of Rates §7½, §12½, §27½, §27¾, §28; Routing and Misrouting §5; Through Routes and Joint Rates §15.

COMPETITION

See Advanced Rates §5 (7), §7 (4), §7 (5); Blanket Rates §19; Branch Lines §4; Classification §6, §17, §20; Concentrating Rates and Privileges; Differentials; Discrimination §8, §8 (2), §8 (4); Equalization of Rates §4; Evidence §10, §14 (1) (1½) (2½); Express Companies §21; Long and Short Hauls §4, II, §4¼, §4½, §14 (1½), IV; Motor Truck Competition; Panama Canal Act; Reasonableness of Rates §8.

COMPLAINT

See Discrimination §18; Long and Short Hauls §11; Procedure Before Commission II; Reparation §21.

COMPRESS COMPANIES AND CHARGES

I. CONTROL AND REGULATION.
II. REASONABLENESS OF CHARGES.
III. RULES AND REGULATIONS.

CROSS REFERENCES

See Absorption of Charges §1½ (a); Allowances §8 (1); Concentrating Rates and Privileges; Facilities and Privileges §3.

II. REASONABLENESS OF CHARGES.

See Reasonableness of Rates.

(a) Upon contention of port interests that as many interior shippers of cotton are stockholders in interior compress companies, profits from carriers' compression allowance gives them an unreasonable and unlawful advantage over port shippers and compress companies, and that such companies render services to interior shippers either free or at less than reasonable charges, HELD: Since selection of compress point rests entirely with carriers, shippers whether stockholders or not can secure no favor or advantage not accorded any other shipper. If they direct carriers to compress their cotton at a point beyond the first compress point in route, they must not only bear compression charge but are assessed a higher rate on the uncompressed cotton. Prior reports 77 I. C. C. 388; 100 I. C. C. 159. Rates on Cotton to Gulf Ports, 123 I. C. C. 685, 700, 701.

CONCENTRATING RATES AND PRIVILEGES

See Compress Companies and Charges; Facilities and Privileges §4; Penalty Charges; Through Routes and Joint Rates; Transit.

CONCURRENCES

See Tap Lines §10; Tariffs §10; Through Routes and Joint Rates §2, §20½.

CONFISCATION OF FUEL

See Cars and Car Supply §29½; Transportation §3½.

CONFLICT IN RATES

See Bills of Lading §9 (1), §9 (3); Routing and Misrouting §3, §3½; Tariffs §11; Through Routes and Joint Rates §18, §21.

CONSIGNOR AND CONSIGNEE

See Demurrage §4; Discrimination §6; Transportation §6, §7½.

CONSOLIDATION OF CARRIERS

See Finance Dockets III.

CONSTITUTIONAL LAW

See Act to Regulate Commerce I; Commodities Clause I; Crimes §1; Interstate Commerce §4, §5; Long and Short Hauls §1, §3; Loss and Damage §1; Pipe Lines §2; Special Contracts §1; State Rates and Regulation.

CONTRACTS

See Cars and Car Supply IV; Exclusive Contracts; Special Contracts; Tariffs IV.

CONTROL AND REGULATION

See Absorption of Charges III; Accounting I; Adjacent Foreign Country; Advanced Rates I; Allowances I; Bills of Lading I; Blanket Rates I; Branch Lines III; Bridge and Tolls III; Cars and Car Supply I; Compress Companies and Charges; Demurrage I; Differentials I; Discrimination I; Divisions I; Electric Lines I; Equalization of Rates I; Export Rates and Facilities I; Express Companies I; Finance Dockets I; Foreign Commerce I; Import Traffic III; Interstate Commerce II; Lighterage I; Long and Short Hauls I; Overcharges; Passenger Fares and Facilities I, §½; Pipe Lines I; Proportional Rates V; Reasonableness of Rates I; Reduced Rates I; Refrigeration I; Released Rates I; Routing and Misrouting I; Sleeping Car Companies; Special Contracts; Storage I; Substitution of Tonnage; Switch Tracks and Switching I; Tap Lines I; Tariffs I; Telephone and Telegraph Companies III; Terminal Facilities I; Through Routes and Joint Rates I; Transportation III; Undercharges I; Water Carriers I; Weights and Weighing I.

COST OF SERVICE

See Finance Dockets §7.

COURTS

I. ACTIONS.
§1. In general.
§2. Defenses.
§3. Mandamus.
§4. New trial.
§5. Suits against Commission.
II. APPEAL.
§6. In general.
III. UNITED STATES COURTS.
§6½. Jurisdiction in general.
§7. Concurrent jurisdiction.
§8. Exclusive jurisdiction.
§9. Original jurisdiction.
IV. UNITED STATES SUPREME COURT.
§10. In general.
V. STATE COURTS.
§11. In general.
VI. PRACTICE AND EVIDENCE.
§12. In general.
§12½. Parties.
§13. Pleading.
§14. Injunctions.
§15. Limitation of actions.
§16. War legislation and venue.
§16a. Enforcement of Commission's orders.
§17. Election of remedies.

CROSS REFERENCES

See Actions at Law; Allowances §14½; Cars and Car Supply §33; Discrimination §16; Express Companies §1½; Finance Dockets VIII; Freight Charges; Interstate Commerce Commission II, §2, §3, VII, §17; Loss and Damage; Reparation §23; Special Contracts IV; Tariffs §20; Undercharges §1½; War Legislation.

I. ACTIONS.

§1. In General.

See Actions at Law; Discrimination §16; Reparation §23.

(a) It is a familiar principle of equity jurisprudence that equity courts alone have power to reform contracts, and that this power is exercisable only in the case of fraud or mutual mistake. However, this equitable principle applies only to private contracts, of concern only to parties thereto. But other considerations enter into a contract, impressed with

public interest, entered into between carriers or between them and a State or municipality, provisions of which encroach upon latent or exerted authority of Congress under commerce clause of the Constitution. No such contract can be placed beyond the reach of a competent exercise of such authority merely by inclusion therein or relation thereto of outside interests not themselves subject to the act, however cautiously the power should be exercised in such cases. Nor does fact that franchise grants are among mutual convenants make it immune, as was settled in New York v. U. S., 257 U. S. 591. M.-K.-T. v. K. C. T., 104 I. C. C. 203, 222.

II. APPEAL.

§6. In General.

(a) Where freight charges claimed by plaintiff were made up by adding together balances due on various shipments, none of which were within jurisdiction of lower court, but complaint stated total as one debt, appellate court must assume that parties treated account as continuing one and debt due at any time as total of various charges that had been incurred. New York, N. H. & H. R. Co. v. Salter, (Conn., 1926) 134 Atl. 220.

(b) Reasonableness of rates and charges in interstate commerce cannot be considered by Appellate Division without preliminary resort to Interstate Commerce Commission. Erie R. Co., v. F. Kreser & Son Co., (1926) 215 N. Y. S. 576.

(c) Where defendant, in railroad's action to collect special tariff, tried by court without jury, under the Federal Law did not present to trial court any question of law as to whether there was any evidence to support judgment for plaintiff, HELD, such question was not reviewable by Circuit Court of Appeals. Oyler v. Cleveland, C. C. & St. L. Ry. Co., 16 Fed. (2d.) 455.

(d) In railroad's action to collect special tariff, tried without jury, question of exclusive preliminary jurisdiction of Interstate Commerce Commission HELD reviewable on error, where question was raised by bill of exceptions containing all the evidence, though there was no special finding. Oyler v. Cleveland, C. C. & St. L. Ry. Co., 16 Fed. (2d.) 455.

(e) In appellate court, evidence adduced before Interstate Commerce Commission in hearing as to railroad's overcharge, if offered on trial in District Court in action on Commission's reparation order, and any additional evidence properly received, may be considered in support of or to correct findings stated in order. Krauss Bros. Lumber Co. v. Mellon, 18 Fed. (2d.) 369.

(f) Under the Federal Law, suits to review order of Interstate Commerce Commission authorizing Louisiana railroad corporations to lease their lines to Texas corporation, made on petition of Texas corporation domiciled in Southern district of Texas, must be brought in the federal District Court in district in which Texas railroad resides, and neither state nor federal courts in Louisiana have jurisdiction. State of Louisiana v. Morgan's Louisiana & T. R. & S. S. Co., 18 Fed. (2d.) 645.

III. UNITED STATES COURTS.

§6½. Jurisdiction in General.

See Commodities Clause (a).

(a) Federal courts have jurisdiction of suits by citizens of one state to enjoin officers of another from enforcing unconstitutional statutes, such not being suits against state, forbidden by Const. Amend. 11. Wrigley Pharmaceutical Co. v. Cameron, 16 Fed. (2d.) 290.

(b) Suit by lumber company, to recover of railroad penalty exacted for detention of car containing interstate shipment of lumber awaiting reconsignment being one arising under a law regulating commerce, is within jurisdiction of District Court, under Judicial Code, § 24, par. 8 (Comp. St. § 991), irrespective of amount involved. Turner, Dennis & Lowry Lumber Co. v. Chicago, M. & St. Paul Ry. Co., 46 Sup. Ct. 530.

§7. Concurrent Jurisdiction.

See Interstate Commerce Commission §2, §16.

(a) Upon contention that filing of suit in district court constituted an election of remedies under section 9 of the act and requires dimissal of the case before commission, HELD: Instant proceeding was filed prior to and was still pending at time of filing suit in district court, and would certainly have been considered such an election of remedies as to

result in dismissal of the suit in court had that action come on for hearing. Filing in the court was, therefore, a practical nullity from the beginning and case has since been dismissed. Burns & Knapp v. B. S. & K. R., 126 I. C. C. 410, 411, 412.

IV. UNITED STATES SUPREME COURT.

§10. In General.

(a) It is not province of the Supreme Court to consider the weight of evidence before the Interstate Commerce Commission, the soundness of its reason by which its conclusions are reached, or whether its findings are consistent with those made in other cases. Virginian Ry. Co. v. United States. United States v. Virginian Ry. Co., 47 Sup. Ct. 222.

V. STATE COURTS.

See Actions at Law; Discrimination §16; Interstate Commerce Commission §2; Loss and Damage §5; Overcharges; State Rates and Regulation; Undercharges §7½; War Legislation.

§11. In General.

(a) Action for total amount of freight charges on various shipments HELD within jurisdiction of lower court, though no individual shipment was large enough, where parties treated account as continuing one and debt due at any time as total of various charges that had been incurred. New York, N. H. & H. R. Co. v. Salter, (Conn., 1926) 134 Atl. 220.

(b) Remedy which must be pursued in state courts alone is not adequate, where plaintiff has constitutional right to resort to federal courts. Standard Oil Co. of Ky. v. Atlantic Coast Line R. Co., 13 Fed. (2d) 633.

(c) State court is without jurisdiction to set aside, modify or nullify finding and order of Interstate Commerce Commission, since such jurisdiction is vested solely in federal courts, in view of Judicial Code, §§ 208, 211 (U. S. Comp. St. §§ 997, 1004), and Act Cong. Oct 22, 1913 (38 Stat. 219). St. Louis Connecting R. Co., v. Blumberg, (Ill., 1927) 156 N. E. 298, 299.

(d) If there be no issue of fact involved in the charge or controversy between the shipper and carrier as to its reasonableness or unreasonableness, the question is one for trial by a court of competent jurisdiction, and not a question for the Interstate Commerce Commission, as the function of the latter is to try and settle issues or questions of fact which relate to the reasonableness or unreasonableness of the charge or service. Chicago, R. I. & P. Ry. Co. v. Howe-McCiertain Coal & Coke Co., (Okla., 1926) 247 Pac. 986.

(e) State Court has jurisdiction of action against carrier to recover overcharge on freight shipment, involving only question of fact relative to lawful and prescribed commission rate and not the reasonableness of the rate or an administrative discretion, without first resorting to the Interstate Commerce Commission. W. L. Shepherd Lumber Co. v. Atlantic Coast Line R. Co., (Ala., 1927) 112 So. 333.

(f) In absence of evidence of custom or usage giving it a different meaning, "rate" HELD used in Interstate Commerce Act, and carrier's tariffs, in its common meaning as a proportional estimation according to some standard, and not in any peculiar sense, such as to deprive court of jurisdiction of action to recover overcharges. Lothrop v. Spokane, P. & S. Ry. Co., 10 Fed. (2d.) 225. Same v. Oregon-Washington R. & Nav. Co., 10 Fed. (2d) 225. Same v. Southern Pac. Co., 10 Fed. (2d.) 225.

(g) In action for excessive demurrage charges paid, receipted freight bills of connecting carrier, by which goods were shipped to reconsignment point after delay for which excessive charges were made, HELD admissible as best evidence, where identified by officer of plaintiff company as originals paid by it. Buschow Lumber Co. v. Union Pac. R. Co., (Mo. 1925), 276 S. W. 409.

(h) Consignee of interstate shipment being entitled to sue in state court for excessive demurrage charges, in view of proviso in Interstate Commerce Act, § 22, saving existing remedies, court did not err in striking from answer allegations as to reconsignment tariffs set up as defense, on theory that rulings of Interstate Commerce Commission were controlling and prevented defendant from accepting and acting on reconsignment order without subjecting itself to penalties of the act. Buschow

Lumber Co. v. Union Pac. R. Co., (Mo. 1925), 276 S. W. 409.

(i) In view of proviso in Interstate Commerce Act, § 22, saving existing remedies, section 9 of such act does not supersede jurisdiction of state courts in matters not calling for exercise of administrative power and discretion of Interstate Commerce Commission, or relating to subject of which federal courts have exclusive jurisdiction. Buschow Lumber Co. v. Union Pac. R. Co., (Mo. 1925), 276 S. W. 409.

VI. PRACTICE AND EVIDENCE.

See Evidence; Procedure Before Commission; Reparation §23.

§12. In General.

(a) Plaintiff submitted to defendant a proposed statement of facts as a basis for settlement of accounts relating to demurrage charges. Defendant assented to the facts, subject to the proviso that plaintiff, by likewise assenting, would waive certain other claims, and asked if this was what plaintiff wished to do. Plaintiff never replied, and dropped the whole matter. HELD that, as the stipulation was not unqualifiedly assented to by both parties, it was ineffective as an admission of facts. Lehigh Valley R. Co., v. Maas & Waldstein Co., (N. J., 1926) 131 Atl. 884.

(b) District Court of certain circuit is bound by rulings of Circuit Court of Appeals of such circuit as to validity of exclusive franchise to operate interstate ferry. McNeily v. Mayor and Board of Alderman of Town of Vidalia, 6 Fed. (2d.) 21.

(c) Decisions of Interstate Commerce Commission relating to construction of tariffs are helpful guidance to courts in arriving at correct conclusions in such matters. Empire Refining Co. v. Davis, Director General 6 Fed. (2d.) 305.

(d) Court is not charged with duty, and has not power, to fix value of railroad property on which rates are authorized to be fixed by Interstate Commerce Commission, but only to suspend, enjoin, or annul action of Commission itself in proper cases. Los Angeles & S. L. R. Co., v. United States, (Interstate Commerce Commission, Interveners) 8 Fed. (2d.) 747.

(e) Generally remedy in equity as to matters of complicated accounting is regarded as more adequate and efficient than remedy at law. Standard Oil Co., of Ky. v. Atlantic Coast Line R. Co., 13 Fed. (2d.) 633.

(f) Equity HELD to have jurisdiction of cause of action for recovery of excess charges on freight shipments in Florida by nonresident corporation against nonresident railroad company. Standard Oil Co., of Ky. v. Atlantic Coast Line R. Co., 13 Fed. (2d.) 633.

(g) Common-law action permitted in Florida for recovery of excess of freight charges over just and reasonable rates does not preclude equity jurisdiction of suit to recover excess over rates fixed by railroad commissioners, since plaintiff would be required to establish that rates charged were unreasonable, and complicated accounting would be involved, where shipments were numerous. Standard Oil Co. of Ky. v. Atlantic Coast Line R. Co., 13 Fed. (2d.) 633.

(h) Under Judicial Code, § 24 (Comp. St. § 991), giving District Courts jurisdiction of "all suits and proceedings arising under any law regulating commerce," such court has jurisdiction of an action to recover freight on an interstate shipment, without regard to the amount involved. Gulf, C. & S. F. Ry. Co., v. Beatty Brokerage Co., 13 Fed. (2d.) 950.

(i) Notice of claims against railroad is insufficient to destroy any estoppel established by laches of shipper, but may be considered as an element bearing on question of laches. Spiller v. St. Louis & S. H. R. Co., 14 Fed. (2d.) 284.

(j) General appearance of Director General of Railroads in actions to enforce reparation awards of Interstate Commerce Commission constituted general appearance as to all carriers involved, and could not be limited by him to certain carriers. World Pub. Co., v. Davis, Agent; Tulsa Paper Co., v. Same. Democrat Printing Co., v. Same. 16 Fed. (2d) 130.

(k) Director General of Railroads, by filing answers and other pleadings in actions to enforce reparation awards of Interstate Commerce Commission, made general appearance, and cases were properly before court, notwithstanding defective service of process on him. World Pub. Co., v. Davis, Agent; Tulsa Paper Co., v. Same. Democrat Printing Co., v. Same. 16 Fed. (2d) 130.

(l) Remedy at law, which will preclude bringing of suit in federal court of equity, must be remedy on law side of federal court, and not remedy in state courts. Wrigley Pharmaceutical Co., v. Cameron, 16 Fed. (2d.) 290.

(m) To defeat jurisdiction of equity on ground of adequate remedy at law, remedy at law must be as complete, practical, and efficient to ends of justice, and its prompt administration, as remedy in equity. Wrigley Pharmaceutical Co. v. Cameron, 16 Fed. (2d.) 290.

(n) Trial court's determination on facts not in serious dispute that tug company was public carrier HELD not a finding of fact which Supreme Court would not disturb. State v. Washington Tug & Barge Co., (Wash. 1926) 250 Pac. 49.

(o) Rules of Interstate Commerce Commission, which have force and effect of public statutes, are not required to be pleaded. Houston Belt & Terminal Ry. Co., v. Davis, (Tex., 1925) 273 S. W. 676, 677.

(p) Though, under U. S. Comp. St. § 8584(12), and Ky. St. §§ 1635-1637, certified copies of carrier's tariffs and freight classifications must be received as evidence, they are not evidence until offered, and attaching them to answer, does not prevent plaintiff from denying allegations of answer, in view of Civ. Code Prac. §§ 120, 128. Gardner v. Louisville & N. R. Co., (Ky., 1926) 279 S. W. 947.

(q) Court cannot substitute its judgment for that of Interstate Commerce Commission finding that similar circumstances and conditions prevailed as basis for order to remove discrimination against electric railroad. Chicago, I. & L. Ry. Co. v. United States, 46 Sup. Ct. 226.

(r) Effect of order of Interstate Commerce Commission dismissing pending proceeding must be determined by its terms, unless and until modified by formal action of the Commission, and cannot be affected by informal declaration of member therof. Minneapolis & St. L. R. Co. v. Peoria & P. U. Ry. Co., 46 Sup. Ct. 402.

(s) Jurisdiction of lower court depends on facts existing when suit was brought, and appeal from decree dismissing for want of jurisdiction, suit to enforce compliance with order of Interstate Commerce Commission not in fact in force will not be remanded, with instructions to allow filing of supplemental bill in nature of bill of review, because of matters arising after filing of record in appellate court, nor will court treat record as supplemented by statement of facts of such later occurrences. Minneapolis & St. L. R. Co. v. Peoria & P. U. Ry. Co., 46 Sup. Ct. 402.

(t) Reasons for decree of federal court, restraining enforcement of orders of state authorities, should be fully disclosed by an opinion of the court. Arkansas Railroad Commission v. Chicago R. I. & P. R. Co., 47 Sup. Ct. 724.

(u) Shipper may not, in suing carrier, ignore the Hepburn Act, where its terms apply, and bring his suit at common law. Williams v. New York, P. & N. R. Co., 11 Fed. (2d.) 363.

(v) While order of Interstate Commerce Commission is necessary in most instances before recovery of railroad's overcharges may be had, it is not conclusive, but only prima facie evidence of facts therein stated, establishing rebuttable presumption. Krauss Bros. Lumber Co. v. Mellon, 18 Fed. (2d.) 369.

(w) Carrier cannot plead strike as reason for failure to carry out contract of carriage and diversion order, so as to entitle it to charge demurrage and war tax for resulting delay in transportation; there being presumption of negligence, entitling shipper to damages, in absence of legal explanation or excuses. Buschow Lumber Co. v. Union Pac. R. Co., (Mo. 1925), 276 S. W. 409.

§14. Injunctions.

See Injunctions.

(a) Suit in federal court to enjoin state officers from enforcing law HELD premature, where court could not determine that intention of state authorities was to undertake direct interference with interstate commerce. Wrigley Pharmaceutical Co., v. Cameron, 16 Fed. (2d.) 290.

(b) Citizens of another state HELD entitled to maintain bill in equity to restrain state officers from enforcing provisions of Pennsylvania Securities Act (Pa. St. Supp. 1924, §§ 19867a1-19867-

a36), as not having adequate remedy at law. Wrigley Pharmaceutical Co. v. Cameron, 16 Fed. (2d.) 290.

(c) Notwithstanding Const. Amend. 11, suit by citizens of another state may be prosecuted against state officer to enjoin enforcement of an unconstitutional enactment, or illegal application of such enactment, by officers of state. Wrigley Pharmaceutical Co. v. Cameron 16 Fed. (2d) 290.

(d) In suit, under Transportation Act Feb. 28, 1920, §402, par. 20 (Comp. St. Ann. Supp. 1923, § 8563), to enjoin a railroad's construction of an alleged "extension" of its line without the certificate of public convenience and necessity required by paragraph 18, on denial by defendant that line is an extension, court may proceed to determine such fact essential to the cause of action, and is not required to dismiss for want of jurisdiction, or postpone pending determination by Interstate Commerce Commission of that question. Texas & P. Ry. Co., v. Gulf, C. & S. F. Ry. Co., 46 Sup. Ct. 263.

(e) In suit to enjoin enforcement and set aside in part order of Interstate Commerce Commission, where all evidence before Commission is introduced in trial court and in substance incorporated in record on appeal, Supreme Court must consider objections that essential findings were not made, and that essential findings made were not supported by evidence. State of Colorado v. United States, 46 Sup. Ct. 452.

(f) In suit to enjoin enforcement of order of Interstate Commerce Commission, force and effect of a decree of a federal court dismissing bill and dissolving interlocutory injunction is not suspended by an appeal to the Supreme Court, even if a supersedeas be allowed. Virginian Ry. Co., v. United States. United States v. Virginian Ry. Co., 47 Sup. Ct. 222.

(g) Injunction in terms, dissolved by decree dismissing suit of which has expired by limitation cannot be revived to take effect during pendency of appeal, except by a new exercise of power by a court having the authority. Virginian Ry. Co., v. United States. United States v. Virginian Ry. Co., 47 Sup. Ct. 222.

(h) Under Act Oct. 22, 1913, c. 32, 38 Stat. 208, 220, and in view of Judicial Code, § 266 (Comp. St. § 1243), and Act June 26, 1906, § 5 (Comp. St. § 8584), District Court, in suit to restrain enforcement of order of Interstate Commerce Commission, has the power to stay enforcement of Commission's order pending appeal from decree dismissing suit. Virginian Ry. Co., v. United States. United States v. Virginian Ry. Co., 47 Sup. Ct. Ct. 222.

(i) The Supreme Court, or a justice thereof, has power to stay enforcement of order of Interstate Commerce Commission pending appeal from decree dismissing suit to enjoin enforcement. Virginian Ry. Co., v. United States. United States v. Virginia Ry. Co., 47 Sup. Ct. 222.

(j) Disregard of requirement of U. S. C. tit. 28, § 383 (Comp. St. § 1243c), to effect that every order for an injunction shall set forth reasons for issuance thereof, does not necessarily render an interlocutory decree void. Lawrence v. St. Louis-San Francisco Ry. Co., 47 Sup. Ct. 720.

(k) U. S. C. tit. 28, § 381 (Comp. St. 1243a), providing that temporary restraining order shall define injury and state why it was irreparable, or why order was granted without notice, HELD applicable to suits brought under Judicial Code, 266, as amended (Comp. St. § 1243), requiring applications for interlocutory injunctions affecting the state statutes to be heard before three judges. Lawrence v. St. Louis-San Francisco Ry. Co., 47 Sup. Ct. 720.

(l) Injunction HELD erroneously issued, setting aside order of Arkansas Railroad Commission suspending for examination intrastate commodity tariff, filed by railroad on theory that Interstate Commerce Commission had found existing intrastate class and commodity tariff discriminated unjustly against interstate commerce, where such commission considered propriety of ordering higher rates, but refused to so order. Arkansas Railroad Commission v. Chicago, R. I. & P. R. Co., 47 Sup. Ct. 724.

(m) Suits in state courts to enjoin domestic railroad corporations from leasing their lines to foreign corporations because of possible violation of Louisiana law, commenced by state after application to Interstate Commerce Commission for authority to make leases was made, HELD to involve controversy under laws of United States, removable to federal District Court where leases were not to be effective until approved by Commission,

notwithstanding state is not a citizen, as respects removal for diversity of citizenship. State of Louisiana v. Morgan's Louisiana & T. R. & S. S. Co., 18 Fed. (2d.) 645. Same v. Franklin & A. Ry. Co., 18 Fed. (2d.) 645. Same v. Lake Charles & N. R. Co., 18 Fed. (2d.) 645. State of Louisiana v. Louisiana Western R. Co. 18 Fed. (2d.) 645.

(n) Injunction of state court restraining domestic railroad corporations from leasing their lines to a foreign corporation conflicts with order of Interstate Commerce Commission authorizing such leases, even if order authorizing leases is permissive only, and not mandatory, and involves power of Commission and legality of its order, determination of which is vested in federal courts, and in which United States is necessary party. State of Louisiana v. Morgan's Louisiana & T. R. & S. S. Co., 18 Fed. (2d.) 645. Same v. Franklin & A. Ry. Co., 18 Fed. (2d.) 645. Same v. Lake Charles & N. R. Co., 18 Fed. (2d.) 645. State of Louisiana v. Louisiana Western R. Co., 18 Fed. (2d.) 645.

CRATE ICING

See Refrigeration.

(a) Upon contention that assessment of commodity rates on top ice in lettuce crates was unjustly discriminatory and unduly prejudicial to shippers of vegetables and unduly preferential of shippers of packing-house products, fresh meats, and analogous commodities in that tariffs provide for free transportation of ice and salt for preservation of latter commodities, HELD: Vegetables are not sold in competition with fresh meats and fish and transportation conditions surrounding the two are dissimilar. Moreover, mere showing that a practice exists with respect to transportation of ice with shipments of certain commodities which differs from that applicable to transportation of ice with lettuce, is not sufficient to establish unjust discrimination or undue prejudice. Hulsey-Bessent Co. v. D. & R. G. W., 118 I. C. C. 707, 709.

CREDIT ACCOUNT

See Crimes §3; Discrimination §5; Evidence §19.

(a) Complainant alleged that refusal of defendant to accept a carload of watermelons at Barnwell S. C., for transportation to Potomac Yard, Va., without the prepayment of freight charges as published in the tariff was unlawful and unjustly discriminatory. A mail carrier at Barnwell, tendered a carload of watermelons to defendant at that station for billing to Potomac Yard, charges collect, complainant to be named as consignor and consignee. The shipment was refused on that date because the records at Barnwell did not show that the required bond had been furnished. On the following day defendants agent learned that the bond had been filed, and the shipment was again tendered to him, but he refused to accept it, charges collect, because Harris' authority to ship on complainants bond was not satisfactory. The application for the bond, the bond itself, and the tariff specifically set forth that the privilege of shipping watermelons "collect" is subject to the carriers right to require prepayment of the freight charges at any time. The right of a carrier to demand prepayment of charges is well settled. The record indicates that the agent at Barnwell had reason to believe that it was not unusual for unauthorized persons to attempt to ship on bonds of other parties, and that he had been instructed to be cautious in accepting shipments. The determination of what constitutes sufficient evidence of authority must necessarily be left to the sound discretion of agents at points of origin unless shippers take the precaution to have the agents advised before tender of the shipments that the persons tendering them are authorized to ship on their bonds. Clearly it was not the abuse of discretion on the part of the agent to refuse to accept the telegram presented by Harris as a general authority to ship watermelons on complainants bond. There is no evidence of record indicating that the agent acted arbitrarily. On the contrary, he appears to have acted in good faith. HELD, complaint dismissed. Edgerton & Beers, v. A. C. L. R. R., 126 I. C. C. 422.

CREOSOTING-IN-TRANSIT

See Storage-In-Transit (d).

CRIMES

I. THE ELKINS ACT.
§1. Constitutionality.
§2. Construction.

II. DISCRIMINATION.
§2½. In general.
§3. Credit account.

III. FREE TRANSPORTATION.
§4. In general.
IV. MISBILLING.
§5. In general.
V. OVERCHARGES.
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VI. REBATING.
A. Elements of Offense.
§7. In general.
§8. Intent and knowledge.
§9. Payment.
§10. Posting of tariff.
§11. Route and "common arrangement."
§12. Transportation.
B. Number of offenses.
§13. Payment.
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C. Liability.
§15. Act of agent.
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VII. INDICTMENT.
A. Charging Elements of Offense.
§17. In general.
§18. Concession or rebate.
§19. Description device.
§20. Language of statute.
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§22. Posting or filing of tariff.
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B. Joinder of Defendants.
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D. Venue.
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VIII. DEFENSES.
§26½. In general.
§27. Former jeopardy.
§28. Statute of limitations.
§28½. Mistake.
IX. PROCEDURE.
§28¾. In general.
§29. Province of court.
§30. Province of jury.
§31. Extent of verdict.
X. PENALTIES.
§32. Excessive fine.
XI. STATE REGULATION.
§33. In general.
XII. ALLIED OFFENSES.
§34. In general.
§35. False accounts or claims.
§36. Theft.
XIII. APPEAL FROM CONVICTION.
§37. In general.

CROSS REFERENCES

See Allowances IV, VII, VIII; Credit Account; Divisions IV; Express Companies IX; Loss and Damage IV; Overcharges; Special Contracts §3; Tap Lines §7.

I. THE ELKINS ACT.

See Elkins Act.

§2. Construction.

(a) Administrative rulings cannot add to terms of an act of Congress and make conduct criminal which such laws leave untouched. United States v. Zenith Radio Corporation, 12 Fed. (2d.) 614.

VI. REBATING.

A. Elements of Offense.

§7. In General.

See Allowances VII; Crimes §18; Discrimination §5; Evidence §48; Water Carriers II.

(a) Grain elevators, receiving export wheat from lake vessels, and thereafter loading it into railroad cars as part of through shipment which receive compensation for such service from the carrier, violate Elkins Act if they in turn rebate or refund to consignees a part of the elevating charge so collected, though there be no connivance or collusion between elevators and carriers; the act being applicable to "any person or corporation." United States v. Spencer Kellogg & Sons, Inc., 12 Fed. (2d.) 612. Same v. Great Eastern Elevator Corp., 12 Fed (2d.) 612. Same v. Buffalo Elevating Co., 12 Fed. (2d.) 612.

(b) A railroad company was required by city ordinance to elevate its tracks from 12 to 15 feet to avoid grade crossings, and manufacturers and other shippers in interstate commerce, who had built plants with reference to the old grade, some on ground leased from the company and some not, made claims for damages because of the change. On advice of competent counsel that it was probably liable for damages, the company compromised and settled all claims, paying as much as $50,000 to one claimant, who was not a lessee. HELD that, under such facts, the settlements could not be considered a device

to indirectly grant concessions on freight rates to its tenants, in violation of Elkins Act. United States v. Northern Pac. Ry. Co., 18 Fed. (2d.) 299.

(c) A railroad company leased sites on its unoccupied right of way for buildings to be erected by manufacturers and others who were shippers in interstate commerce. The leases were for long terms, the rentals being based on a valuation of the ground, and provided for revaluation at the end of 10 years and at intervals of five years thereafter. HELD that, after the 10 years had expired or was about to expire, and before any revaluations had been made, the United States could not maintain a suit against the company and certain of its tenants under Elkins Act, § 3 to compel discontinuance of the granting of concessions in rates to the tenants, and discrimination against other shippers, alleged to arise from the device of leasing at substantially less than fair and reasonable rentals; the court being without jurisdiction to grant relief with respect to the 10-year period which had passed, or to direct what future rentals shall be. United States v. Northern Pac. Ry. Co., 18 Fed. (2d.) 299.

VII. INDICTMENT.

A. Charging Elements of Offense.

§17. In General.

See Allowances VII; Discrimination §5; Evidence §48; Water Carriers II.

(a) Indictment under Criminal Code, § 37 (Comp. St. § 10201), for conspiracy to assault or interfere with employee of Bureau of Animal Industry of Agricultural Department in execution of duties, denounced by section 62 (Comp. St. § 10230), need not allege that the cattle being dipped by employees were subject-matter of interstate commerce; it being sufficient to describe generally that they were performing their duties under Act May 29, 1884 (23 Stat. 31), in supervision and dipping of cattle, without further definition. Thornton v. United States, 46 Sup. Ct. 585.

(b) Indictment under Criminal Code, § 37 (Comp. St. 10201), for conspiracy to commit offense denounced in section 62 (Comp. St. § 10230), by assaulting or interfering with employees of Bureau of Animal Industry of Agricultural Department in execution of duties, need not allege that regulations of Secretary of Agriculture for suppression and extirpation of disease among live stock were certified to executive authority of state and accepted, since under provisions of Act May 29, 1884 (23 Stat. 31), Act Feb. 9, 1889 (Comp. St. § 789 et seq.), Act Feb. 2, 1903 (Comp. St. §§ 8698-8700), and Act March 3, 1905 (Comp. St. § 8701 et seq.), authority of Secretary of Agriculture to direct employees of Bubureau of Animal Industry to engage in quarantine measures and inspection of animals is not limited to cases where there is co-operation by the United States and state authorities. Thornton v. United States, 46 Sup. Ct. 585.

B. Joinder of Defendants.

§24. Principal and Agents.

(a). Under Elkins Act, § 1, as amended by Hepburn Act, § 2 (Comp. St. § 8597), declaring it unlawful to receive any concession in respect to the transportation of property in interstate commerce whereby any advantage is given or discrimination practiced, guilty knowledge of carrier is not necessary to offense, and coal company, which, by misrepresentation obtained preference in coal shipments to which it was not entitled under Interstate Commerce Commission's order issued under Transportation Act 1920, § 402, par. 15 (Comp. St. Ann. Supp. 1923, § 8563), was guilty, though no collusion between it and carrier existed. United States v. P. Koenig Coal Co., 46 Sup. Ct. 392.

VIII. DEFENSES.

See Courts §2.

§26½. In General.

(a) Delivery of coal to common carrier, consigned to purchasers outside state, or sale and delivery thereof to another corporation in state, which sold and shipped it to purchasers outside state, would not be in violation of Hepburn Act. Sisters of Providence of St. Mary's of the Woods v. Lower Vein Coal Co., (Ind. 1926) 154 N. E. 659, 660.

XII. ALLIED OFFENSES.

§34. In General.

See Anti-Trust Act.

(a) Indictment, under section 10 of

Interstate Commerce Act Feb. 4, 1887, as amended (Comp. St. § 8574), of employee of Pullman Company for accepting less than legal fare for transportation between points over three railroads, HELD not subject to charge of duplicity, notwithstanding fare involved service of transportation and sleeping car accommodations; service rendered being a single one, involving several elements for which a certain specific rate had been prescribed. United States v. Estes, 6 Fed. (2d) 902. Same v. Kinnett, 6 Fed. (2d) 902.

(b) Indictment, under section 10 of Interstate Commerce Act Feb. 4, 1887, as amended (Comp. St. § 8574), of agent of Pullman Company for accepting less than legal rate for transportation in sleeping car, HELD not required to allege that accused was employed by railroad companies transporting the sleeping cars, or state the exact relations between defendant and carriers or the proportions of fares collected chargeable to transportation, sleeping car accommodations, and surcharge. United States v. Estes, 6 Fed. (2d) 902; Same v. Kinnett, 6 Fed. (2d) 902.

(c) Violation by carrier's agent of section 10 of Interstate Commerce Act Feb. 4, 1887, as amended (Comp. St. § 8574), by the transportation of passenger for less than legal fare, HELD not to require collusion between carrier and accused agent; purpose of act being to establish a reasonable and uniform rate for service, making all other rates unlawful and any violation a misdemeanor, irrespective of any collusion. United States v. Estes, 6 Fed. (2d) 902; Same v. Kinnett, 6 Fed. (2d) 902.

(d) Open Port Law 1925 (Pen. Code 1925, arts. 1904-1100), making it felony to use physical violence or threats thereof to interfere with any person engaged in movement of commerce, HELD violative of Fourteenth Amendment of federal Constitution as class legislation for failure of article 1094, defining nature of crime to make specific intent to hinder commerce essential element thereof, as act provides penalty for ordinary assult on employee of common carriers in excess of penalty for assault on other classes of persons. Ratcliff v. State, (Tex., 1926) 289 S. W. 1072.

(e) Under Elkins Act, § 1, as amended by Hepburn Act, § 2 (Comp. St. § 8597), declaring it unlawful to receive any concession in respect to the transportation of property in interstate commerce whereby any advantage is given or discrimination practiced, it is not necessary that preference in distribution of cars under order of Interstate Commerce Commission violate a published tariff. United States v. Michigan Portland Cement Co., 46 Sup. Ct. 395.

§35. False Accounts or Claims.

See Claims.

(a) In a prosecution for presenting false claims for damages in shipping coal, evidence by bookkeeper of coal company as to price of coal was not prejudicial; amount of claim being unimportant, and actual purchase price of coal being conclusively established, in view of other testimony. Michael v. United States, 7 Fed. (2d) 865.

(b) In a prosecution for presenting false and fraudulent claims for damages sustained in interstate shipment of coal, where indictment was on several counts, conviction sustainable, where defendant was shown to be consignee named in bill of lading as to one or more of charges, and whether or not he was consignee, within meaning of Interstate Commerce Act, §10, par. 3 (Comp. St. § 8574), as to other charges, need not be determined. Michael v. United States, 7 Fed. (2d.) 865.

§36. Theft.

(a) The Dyer Act prohibiting transportation in interstate commerce and sale of stolen automobile, HELD not unconstitutional, if interpreted as covering automobile moving under its own power. Hagan v. United States, 9 Fed. (2d.) 562.

(b) Indictment for transportation and sale of stolen automobile in violation of Dyer Act describing automobile as a Marmon four-passenger touring automobile, bearing designated motor and body numbers and being property of named person, HELD sufficientiy to describe car. Hagan v. United States, 9 Fed. (2d.) 562.

XIII. APPEAL FROM CONVICTION.

§37. In General.

(a) Whether accused is prejudiced by any particular language in charge of court can only be ascertained by an examination of entire charge, and, where bill of exceptions did not contain all instructions given, appellate court is unable to say whether or not defendant was preju-

diced. Michael v. United States, 7 Fed. (2d.) 865.

CUMMINS AMENDMENT

See Loss and Damage I, §2½; Released Rates.

CUSTOMS

See Blanket Rates §5.

(a) The commission has no jurisdiction over transportation of shipments moving in bond from points in adjacent foreign countries through United States to foreign destinations or Porto Rico. Fernandez & Co. v. S. P., 104 I. C. C. 193.

(b) Shipments moved in bond from points in Mexico to points in United States where they were stored in bonded warehouses and subsequently forwarded, in bond, to New Orleans and exported to foreign destinations or Porto Rico. Contention that inasmuch as shipments came to a temporary rest in bond at New Orleans, the transportation should be considered as ended there found without merit. Fernandez & Co. v. S. P., 104 I. C. C. 193, 195.

(c) Shipment of whiskey was consigned to shippers' order c/o collector of customs, El Paso, notify a drug store at Juarez, Mex. Upon arrival at El Paso consignee was notified but shipment remained unclaimed and was subsequently stored. Thereafter, by command of United States court, customs collector was notified to detain shipment in his custody. This was done until dismissal of court proceedings when, upon payment of accrued storage charges, shipment was returned to point of origin. Tariff rule provided that no storage charges should be collected for detention due to delay by U. S. customs and that free time lost through such delay shall be allowed. FOUND: While detention here was for purposes other than those incident to customs inspection and clearance for export, terms of the rule, which clearly comprehend any delay by U. S. customs, are sufficiently broad to preclude assessment of storage charges under circumstances. Refund of overcharges directed. Sunny Brook Distillery Co. v. A., T. & S. F., 107 I. C. C. 77.

DEMURRAGE

I. CONTROL AND REGULATION.
- §1. Jurisdiction of Commission.

II. RIGHT TO ASSESS.
- §2. In general.
- §2¼. Commandeering of vessels, or customs delay.
- §2½. Dangerous commodity.
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- §8. Pending dispute or demanding charges.
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- §9. Prior to actual delivery.
- §9½. Refused shipments.
- §10. Private and trap cars.
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III. PUBLICATION AND TARIFFS.
- §10¾. In general.
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IV. DEMURRAGE RULES.
- §12. Construction in general.
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- §14. Bunching.
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- §14¾. Deviation from route.
- §15. Free time.
- §15½. Legal rate.
- §16. Placement or arrival notices.
- §16a. Notice to shipper.
- §17. Railroad errors or omissions.
- §18. Reciprocal demurrage.
- §18¼. Switching reclaims.
- §18½. Uniform demurrage code.
- §19. Weather interference.
- §20. Advance in demurrage during transit.
- §20a. Waiver.

V. REPARATION.
- §21. In general.
- §22. Actions at law.

VI. LIABILITY TO PAY.
- §23. In general.
- §24. Actions to recover.

CROSS REFERENCES

See Detention Charges; Embar-

goes; Export Rates and Facilities VI; Lighterage VI; Storage.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) Shipper's resort to Interstate Commerce Commission, preliminary to action against railroad to recover penalty exacted for detention of car containing interstate shipment of lumber awaiting consignment, HELD unnecessary; no administrative question being presented. Turner, Dennis & Lowry Lumber Co. v. Chicago, M. & St. Paul Ry. Co., 46 Sup. Ct. 530.

II. RIGHT TO ASSESS.

§2. In General.

(a) Upon arrival of shipment at originally billed destination it was accepted by consignee who unloaded and paid freight and demurrage charges. Becoming dissatisfied with goods they were reloaded and forwarded to a new destination, carrier advancing such consignee demurrage, unloading, and reloading charges. These were collected from new consignee who deducted them in settlement with consignor. FOUND: Later movement being separate and distinct under a new bill of lading, and governing tariff providing that no charges of any description be advanced, the advancement made to original consignee was illegal. Moreover, in Conf. Ruling 249, commission ruled that outbound charges may not be refunded by a carrier and charged back against consignor. Refund of overcharges directed. Heineman Lbr. Co. v. C., St. P., M. & O., 107 I. C. C. 62.

(b) Placement tracks, from standpoint of tariff description, are either public or private; there is no middle ground. A plug track used for inspection of hay and leased to a hay exchange for that purpose could not be described as a public delivery track on which any or all shippers could receive or ship any or all freight. Consequently it falls into the general category of private tracks. Brown & Co. v. E. R. R., 109 I. C. C. 109, 111.

(c) During an acute car shortage the American Ry, Asso. issued an order requiring certain carriers, including defendant, to discontinue local loading of western-owned cars and move such cars toward western junctions for delivery to owning lines. Defendant's agents construed this order as prohibiting either the eastbound movement of western-line equipment after arrival at original destination or its reconsignment or diversion in transit. Upon contention that defendants refusal to permit reconsignment or diversion of western-owned cars when under load consigned to complainant resulted in assessment of unreasonable demurrage charges. HELD: A carrier may not arbitrarily set aside its tariff provisions without due notice in proper form. However, while defendant's agents misconstrued the order, complainant was unable to point out any car on which reconsignment was requested and refused and on which demurrage accrued. Assessment of demurrage charges found not unreasonable. Lexington Elevator & Mill Co. v. B. & O., 109 I. C. C. 542.

(d) Failure of carrier to furnish cars promptly and in sufficient number for outbound loading of grain or feed at Lexington, Ohio, thereby preventing unloading of inbound cars until additional room could be provided in elevators and warehouses which were filled to capacity, found not to have resulted in assessment of unreasonable demurrage charges. To allow assessing of demurrage on inbound shipments to depend upon the furnishing of cars for outbound movement, a separate transaction, opens the way to abuses not necessary in order to protect a shipper from unlawful acts of the carrier. See also 57 I. C. C. 398. Lexington Elevator & Mill Co. v. B. & O., 109 I. C. C. 542, 544.

(e) Demurrage charges are no part of the rate or through charges in effect at the time the shipment is forwarded from point of origin. Although they may follow the shipment and be collected together with the transportation charges, they are for a distinct and separate service. Manassa Timber Co. v. L. & N. R. R., 115 I. C. C. 421, 425.

(f) Demurrage charges have nothing to do with transportation rates. Before a shipment is made it can not possibly be known what the demurrage charges will amount to or whether there will be any at all. If the cars are unloaded or reconsigned within the free time there will be none. In every case the question of whether or not there will be car service depends upon the consignee or own-

er or upon conditions which can not possibly be known in advance. Demurrage charges are not part of and are separate from and distinct from transportation charges and do not arise, if at all, until the transportation is ended. Manassa Timber Co. v. L. & N. R. R., 115 I. C. C. 421, 425.

(g) Complainant attacked charges collected on a car of lumber shipped Jan. 15, 1920 from White Sulphur, W. Va., to Harrisburg, Pa., and reconsigned to Hershey, Pa., were inapplicable and unreasonable. Shipment was tendered without routing instructions to the C. & O., consigned to Harrisburg, moving over C. & O., to Durbin, W. Va., W. M., to Lurgan, Pa., and P. & R., beyond. Request for reconsignment to Hershey was made by complainant in a letter addressed to and received on Jan. 20, 1920 by the agent of the N. & W., at Hagerstown, Md., who referred it on the same date to the agent of the W. M. at Hagerstown Jct., Md. The car passed Hagerstown on Jan. 25, five days after the agent of the W. M. at Hagerstown Jct. had received the reconsigning instructions, was held at Harrisburg beyond the free time provided by the tariffs, and was then reconsigned to Hershey. Charged 21 cents to Harrisburg and 9 cents beyond, plus $8 demurrage, $30 penalty charge and $5 reconsigning charge. The request was not confirmed in writing to the general freight agent of the W. M. at Baltimore in accordance with the tariffs. Demurrage charges and storage which accrued at Harrisburg were applicable. HELD, complaint dismissed. Shreiner Lumber Co. v. Director General, 123 I. C. C. 551.

(h) Where railroad having contract with tie-creosoting company requiring it to furnish for treatment more ties than it needed annually, and to itself unload incoming ties or pay creosoting company therefor, made contract with another road for treatment of ties for it on payment of proportionate share of cost, and thereafter elected to have unloading done by creosoting company, but retained exclusive control and supervision thereof, it was not entitled to charge such other company demurrage on cars loaded with its ties and detained for unloading beyond tariff free time. Cleveland, C. C. & St. L. Ry. Co. v. New York, C. & St. L. Ry. Co., 11 Fed. (2d) 850.

(i) Contract between railroads, if construed as not allowing one of them having charge of unloading of ties at creosoting plant to charge demurrage on cars loaded with ties of the other and retained for unloading beyond tariff free time, HELD not to result in discrimination, in violation of Interstate Commerce Act, inasmuch as transaction was independent of railroad's duty to public as common carrier. Cleveland, C. C. & St. L. Ry. Co. v. New York, C. & St. L. Ry. Co., 11 Fed. (2d) 850.

(j) "Demurrage" is charge against consignee for detention of cars. James v. Norfolk & W. Ry. Co., (Va. 1925) 129 S. E. 321.

(k) A railroad company has the right to impose a reasonable charge, called "demurrage," for the detention of cars beyond a reasonable time for the loading or unloading thereof, and it has a lien therefor on the goods transported in such cars while it retains the dominion and control thereof. Vanderbilt v. Planters' Oil Mill & Gin Co., (Miss., 1925) 106 So. 14.

(l) The payment of demurrage, claimed by a railroad company because of the unreasonable detention of cars, discharges any lien securing the payment thereof which the railroad company may have had on cars or their contents. Vanderbilt v. Planters' Oil Mill & Gin Co., (Miss., 1925) 106 So. 14.

(m) Supreme Court held that a tariff rule requiring a written notice to furnish cars to load, could not be waived by the carrier; and therefore, a verbal notice made by the shipper and accepted by the carriers agent was insufficient ground upon which to base a claim for damage. Turner Lumber & Investment Co. v. C. & N. W. Ry., 129 I. C. C. 84, 85.

§2¼. Commandeering of Vessels, or Customs Delay.

(a) Demurrage charges on import shipments held under constructive placement between docks and a warehouse at Seattle, Wash., found legally assessed. Tariff provided that no demurrage would be assessed where delay is caused by United States Customs and that free time lost through such delays will be allowed. Complainant urges that detention while cars were under constructive placement was caused by United States Customs ordering goods into cars while tracks at the warehouse were congested. It admits, however, that by payment of import duty to collector of customs, these shipments could have been released

at docks and demurrage avoided, and that this course was not taken because food administration desired goods to remain in bond so that upon submission to customs collector of a certificate of landing there would be no duty to pay. Western Import Co. v. Director General, 104 I. C. C. 396.

§3½. Embargo as Reason.

See Embargoes.

(a) Refusal of director general, due to an embargo, to reconsign to Syracuse, N. Y., a carload of lumber shipped from Sweetwater, Ala., to Cincinnati, Ohio, necessitating ultimate reconsignment to Detroit, Mich., found to have resulted in collection of reconsignment, demurrage, and storage charges that were unreasonable and inapplicable. Shipment was tendered for transportation without complete routing instruction and while an embargo did exist over certain routes, others over which no embargo existed were open via which shipment could have moved from Cincinnati to Syracuse which would have been consistent with routing instruction given. Reparation awarded. Thames v. Director General, 112 I. C. C. 677.

(b) Complainant attacked demurrage charges collected during April and May, 1923 at Louisville, Ky., and Detroit, Mich., on 5 cars of yellow pine lumber shipped during March, 1923 from Lugo, Ala., to Louisville, thence reconsigned to Detroit and Cambria, Ill., as inapplicable; also that the provisions of the tariffs with respect to the time allowed for the filing of claims for refund of demurrage collected on account of bunching of cars is unreasonable. Shipments were consigned by complainant to itself at Louisville and moved between March 23 and 30, 1923, but, due to an embargo at Louisville, the cars were bunched at Nashville, Tenn., and all arrived at Louisville on April 9, 1923. The first three cars were reconsigned to Detroit, April 20, 1923. In view of the language of the rule and the fact that the arrival notice was duly received by complainant it seems clear that the carriers action in notifying complainant, who was the consignee of the shipments, at St. Louis constituted compliance with the tariff rule. The 30 day rule attacked as unreasonable is a tariff provision which must be complied with as a condition precedent to refund on account of bunching. The present record contains nothing to indicate that complainant was unable to prepare and file a claim for refund within the 30 day period, or to warrant a finding that the provision here attacked is unreasonable. HELD, rule attacked not unreasonable, demurrage attacked not unreasonable, complaint dismissed. Manassa Timber Co. v. L. & N. R. R., 115 I. C. C. 421.

(c) Coal moving during Federal control was consigned to a car pool and due arrival notices furnished. After expiration of free time shipments were held under constructive placement and demurrage accrued. Thereafter an embargo was placed against consignee and consignor ordered shipments reconsigned upon ascertaining that they were refused by consignee. Upon contention that failure of carrier to make delivery on or before effective date of the embargo and acceptance by carrier of other shipments for transportation to consignee after that date without advising complainant of the embargo constituted railroad error, HELD: Governing tariff made no provision for notice to consignor of refused or unclaimed shipments and no part of the demurrage accrued before complainant had knowledge of the situation. Its position was same as if there had been no embargo. It therefore follows that demurrage did not accrue because of observance of the embargo and thus because of railroad error. Superior Coal Co. v. Director General, 115 I. C. C. 710.

(d) Shipment of lumber from Charleston, S. C., to Boston, Mass., moved as routed by shipper. Certain routes were embargoed but not route of movement, and upon request for diversion of shipment to Armory, Mass., complainant was notified that same could not be effected on shipments moving under permits. Shipment moved through to Boston, where demurrage accrued. HELD: As shipment moved via an unembargoed route over which no permit was necessary and delivering carrier at Boston was in possession of diversion instructions prior to arrival of car, a reconsignment charge less than that assessed was applicable, and demurrage assessed was illegal due to erroneous detention at Boston. Reparation awarded. National-American Wholesale Lbr. Asso. v. A. C. L., 120 I. C. C. 665.

(e) To evade an embargo, complainant consigned shipment to its agent. Upon arrival at destination carrier's

agent recognized consignee as complainant's employee and wired arrival notice to complainant. Shipment was held as unclaimed, and pending its disposition demurrage charges accrued which complainant contended were unlawfully assessed because of carrier's failure to comply with tariff governing furnishing of notice of refused and unclaimed shipments, under which consignor is not held liable for demurrage charges between date notice should have been sent and date actually sent. HELD: Contention is without merit. Tariff rule does not require carrier, which has given notice to consignee, later to notify the same party as consignor that it has not claimed its own shipment, the law not requiring the performance of a vain act. See 74 I. C. C. 461. Milne Lbr. Co. v. D., T. & I., 123 I. C. C. 573.

(f) Complainant consigned shipment to its agent. Carrier's agent recognized consignee as complainant's employee, and upon arrival of car wired arrival notice to complainant. Pending disposition of shipment demurrage accrued, which complainant contended was inapplicable because of carrier's failure to notify consignee in writing of arrival of car, in accordance with demurrage tariff. HELD: Contention is without merit, since evidence is conclusive that shipment was consigned to complainant's agent for purpose of evading an embargo. In reality, complainant was both consignor and consignee, and written notice to complainant instead of its agent, whose address was same as complainant's, was a substantial compliance with tariff provision respecting notice of arrival. Milne Lbr. Co. v. D., T. & I., 123 I. C. C. 573.

(g) Since carrier, knowing of wheat embargo, was under duty to prevent shipper from loading cars in ignorance of embargo, failure to warn shipper estopped carrier from setting up embargo as bar to shipper's recovery of demurrage charges paid. Davis, Director General, v. Martin, (Tex., 1926) 287 S. W. 113.

§4. Failure of Consignee to Accept.

See Consignor and Consignee.

(a) Shipment was routed for Erie delivery in New York City without any particular point being specified. Upon arrival at Croxton, N. J., the point at which such shipments destined to New York are held, consignee was notified and car ordered to Duane Street, New York. Due to congestion at that station, carrier requested and consignee acquiesced in elimination of shipment from its order. Car remained on hand and subsequently an order for Duane Street delivery was received and executed. Demurrage and extra refrigeration charges for the hold period during which shipment awaited disposition orders found applicable under tariffs providing for their assessment under above circumstances. Northwestern Fruit Exchange v. E. R. R., 112 I. C. C. 29.

(b) Complainant attacked demurrage charges in amount of $163 for detention at Roselle, N. J., of a car of lumber originating at Pontotoc, Miss., on August 24, 1922 as illegal to extent it exceeded $13. Shipment was originally billed to complainant at Marine, Ill., and on Sept. 15, 1922 after arrival at East St. Louis, Ill., it was reconsigned to Roselle, arriving there Oct. 25, 1922 over the defendant and consignee was so notified. Defendant states that on Oct. 30 it advised complainant by letter that the car was on hand at destination unclaimed, and requested prompt and definite disposition orders. Complainant avers that it never received the letter. On Nov. 18 complainant learned that the consignee was in financial difficulty and wired defendant not to make delivery of the shipment but to hold pending further instructions. By wire of Nov. 20 defendant advised complainant that disposition orders must be furnished immediately or the shipment would be stored. Complainant replied by wire on the following day not to store the shipment and it would arrange disposition as soon as possible. On Dec. 8, 1922 complainant ordered the car reconsigned to East New York, and it was waybilled from Roselle on Dec. 18, 1922. The consignee did not claim the shipment herein considered, and it was therefore defendants duty after the expiration of five days following the giving of notice of arrival of the car, to notify complainant by wire that it was unclaimed. It is immaterial whether complainant received defendants letter of Oct. 30 advising that the shipment was unclaimed, for the tariff requirement that consignor be advised by wire could not be waived, such notice being a prerequisite to the accrual of demurrage after the expiration of the five days mentioned in rule 4, section E 2 b. Defendants telegram of Nov. 20 was sufficient compliance with

the rule providing that when a shipment is unclaimed the consignor must be notified to that effect by wire and the shipment was subject to demurrage from that date. It is apparent from the evidence of record, particularly the fact that orders reconsigning the shipment from Roselle were not furnished until several days after the charges were corrected that the detention of the car from Nov. 23 to Dec. 2 the period over which the dispute concerning overcharges extended, was not due to the demand for such charges. The demurrage charges applicable for the detention of the car at Roselle was $83. HELD, shipment overcharged $80, which should be refunded, complaint dismissed. Milne Lumber Co. v. C. R. R. of N. J., 122 I. C. C. 67.

(c) The term "unclaimed" implies in the absence of an actual refusal, the failure of the consignee of the shipment to claim or accept it. The mere advice to the carrier that it expects to accept at some time is not the equivalent of claiming the shipment, which would contemplate a demand for delivery and a readiness to pay the charges. Milne Lumber Co. v. S. Ry., 122 I. C. C. 113, 114.

(d) Upon arrival of shipment at originally billed destination due notice of arrival was sent consignee. At various times thereafter such consignee advised carrier that he was making arrangements to dispose of shipment. Five days after such arrival notice, carrier notified consignor by letter that the car was on hand unclaimed and disposition orders requested, similar notice being subsequently sent by wire. HELD: Under interpretation of the term "unclaimed" in 85 I. C. C. 331, consignee did not claim shipment, and it is immaterial whether or not consignor received the letter originally sent. Requirement of applicable tariff that consignor be advised by wire within five days from date of notice of arrival to consignee was a prerequisite to the accrual of demurrage and could not be waived. However, carrier's telegram subsequently sent was sufficient compliance with the tariff and the shipment was subject to demurrage from that date. Refund of overcharges directed. Milne Lbr. Co. v. C. R. R. Co. of N. J., 122 I. C. C. 67.

(e) Shipment of lumber was placed for unolading on consignee's private track and all accrued freight and demurrage charges were paid. Thereafter, shipment was refused and due notice thereof was given by carrier to consignor. Additional demurrage accrued and eventually consignee unloaded shipment and deducted accrued demurrage charges in making settlement with consignor. Upon contention that shipment was "unclaimed" and that detention was due to carrier's failure to notify consignor to that effect by wire as provided by demurrage rule, HELD: There was no duty of carrier to assume that, or inquire whether, consignee intended from day to day to refuse the shipment, delivery of which had been effected. Since there was a valid acceptance and payment of charges, shipment was not "unclaimed" within definition of that term laid down in 85 I. C. C. 331. Primary cause of detention having resulted from failure of consignee to unload or to notify carrier it would not accept it, demurrage charges assailed were applicable. Milne Lbr. Co. v. S. Ry. Co. 122 I. C. C. 113.

(f) Complainant sought refund of demurrage charges which accrued on a shipment held pending disposition orders, contending that order releasing the car had gone forward by mail, and under the demurrage tariff, whether or not it was actually received, car should be considered released as of date order should have been delivered. HELD: Record fails to substantiate contention that release order was mailed on date claimed, and fact that delivery was not made until subsequent to actual receipt of order was due to fact that consignee refused to accept shipment until demurrage charges had been paid. However, since there is no evidence that carrier failed to tender shipment for delivery promptly upon receipt of order, demurrage charges assessed were applicable. Milne Lbr. Co. v. C., T. & I., 123 I. C. C. 573.

(g) Alleged failure of carrier to promptly notify complainant in accordance with demurrage rule that shipments of cabbage were held unclaimed at destination thereby resulting in loss said to be equal to invoice price of shipments, found not in violation of section 6 of the act. In 112 I. C. C. 567, similar complaint based upon same tariff rule was found to be a loss and damage claim not covered by provisions of the act but

cognizable only in the courts. See also 91 I. C. C. 611. Independent Produce Shippers Inc. v. N. & W., 129 I. C. C. 747.

§5¾. Diversion Orders.

See Reconsignment §5½.

(a) After shipment had received one reconsignment, complainant directed further reconsignment but was advised by carrier that same could not be effected at through rate. Thereafter, complainant, in prolonged correspondence insisted upon reconsignment at through rate and in one letter directed that shipment be not held pending reply. Carrier, however, continued to request disposition orders and finally upon directions from complainant desired delivery was effected. Governing tariff permitted only one change in destination and provided that any subsequent change necessitating movement would be treated as a reshipment. FOUND: Combination to and from second reconsignment point was legally applicable but demurrage and track-storage charges assessed on and after date of receipt by carrier of the letter directing that delivery be not withheld were illegal. Reparation awarded. Milne Lbr. Co. v. C. & N. W., 107 I. C. C. 653.

(b) Complainant alleged that demurrage charges collected on two cars of lumber at Detroit, Mich., were inapplicable. Shipment in I. C. 172155 from Ripley, Miss., on August 6, 1924 consigned to complainant at Marine, Ill., reconsigned to complainant at Detroit and arrived there Aug. 27, 1924 on which date a postal card giving notice of arrival and showing $220.30 in freight charges due was mailed addressed to the Milne Lumber Co., Detroit, Mich. Also on that date defendant telegraphed the same information to complainant at St. Louis, stating further that the car was on hand unclaimed and asking disposition. On the following day, Aug. 28, defendant confirmed its telegram by a letter. In due course the postal card was returned by the Post Office Department for better directions. No response to its telegram was received by defendant until Sept. 4, 1924 when a telegram, sent the day before by complainant from St. Louis, instructed defendant to deliver the shipment to the Hughes Lumber & Wrecking Co., Detroit stated that complainant was mailing defendant a check for $234.60. and requested that if the amount was not correct complainant be notified. Check was received Sept. 5. The amount represented $220.30 freight charges, $6.60 reconsignment charges and $8 demurrage charges for the first four days ending Sept. 3, at $2 per day following the free time. Defendant declined to deliver the shipment as requested and on the same date, Sept. 5, telegraphed complainant that additional demurrage charges of $10 were due, that the car was being held, and to forward check for sufficient amount to cover any demurrage accruing between that date and the date check would be received by defendant. On Sept. 6, defendant received a telegram from complainant disputing the additional charges of $10. On the same date defendant telegraphed complainant to forward a check for $15 to cover additional demurrage. On Sept. 11, defendant telegraphed complainant car was still on hand and also the check for $234.60 that $30 additional charges for demurrage were due as of that date. The following day, Sept. 12, Hughes Lumber & Wrecking Co. paid defendant demurrage charges of $35 whereupon the car was released to that company on Sept. 13, 1924. HELD, shipment undercharged $5 which should be collected, complaint dismissed. Shipment in 17694 moved on May 22, 1923 from Sumrall, Miss., to Marine, Ill., consigned to complainant and reconsigned to itself at Detroit, arriving there June 19, 1923. Demurrage charges in amount of $73 were collected. The bill of lading showed the Wabash as the delivering line, but car arrived over D. T. & I. It does not appear that any different demurrage rules applied over the Wabash. The circumstances are somewhat similar to those set out above. HELD, correct demurrage $63, which overcharge should be refunded, complaint dismissed. Milne Lumber Co. v. D. T. & I. R. R., 120 I. C. C. 488.

§8. Pending Dispute or Demanding Charges.

See Infra §9.

(a) When the delivering carrier demands more than the legal rate, the consignee is released from the obligation to pay demurrage charges accruing during the pendency of the dispute as to the legal rate. If the delivering carrier had demanded only the legal rate, the refusal of the consignee to pay more than what he claimed to be the legal rate would have relieved the carrier of responsibility for detention of the car. Miller v. P. M. R. R., 115 I. C. C. 461, 463.

(b) When a delivering carrier demands more than legal rate, the consignee is released from obligation to pay demurrage charges accruing during pendency of dispute as to legal rate. See Conf. Ruling 32. Miller v. P. M. Ry., 115 I. C. C. 461, 463, 464.

§9. Prior to Actual Delivery.

See Supra §8; Infra §12.

(a) Shipment was routed for Erie delivery in New York City without any particular point being specified. Upon arrival at Croxton, N. J., the point at which such shipments destined to New York are held, consignee was notified and car ordered to Duane Street, New York. Due to congestion at that station carrier requested and consignee acquiesced in elimination of shipment from its order. Car remained on hand and subsequently an order for Duane Street delivery was received and executed. Demurrage and extra refrigeration charges for the hold period during which shipment awaited disposition orders found applicable under tariffs providing for their assessment under above circumstances. Northwestern Fruit Exchange v. E. R. R., 112 I. C. C. 29.

(b) Demurrage charges assessed for detention of various shipments at Maurer, N. J., found not unreasonable or otherwise unlawful. Shipments were constructively placed with shipper's acquiescence because of a strike at its plant and detention was due to inability to unload rather than to carrier's failure to place cars actually instead of constructively. Barber Asphalt Paving Co. v. L. V., 112 I. C. C. 41.

(c) Demurrage charges on sand and gravel held short of destination by carrier under claim of constructive placement, found inapplicable. Tariff provided that notice of arrival should be sent in writing or as otherwise agreed to in writing; and that cars consigned to other than a public delivery track which could not be received by consignee would be held at nearest hold point, that written notice should be sent to consignee that cars were being so held, and that this would constitute constructive placement. Here, carrier assigned a portion of its team track for complainant's exclusive use. When this track became full, cars were held elsewhere but no written notices were sent to consignee nor was agreement made in writing for verbal notice in lieu of written notice, and while consignee had actual notice that cars were being so held, rule requiring written notice was a part of the tariff and could not be waived. See 266 U. S. 92; 95 I. C. C. 603, and other cited cases. Cynthiana Construction Co. v. L. & N., 129 I. C. C. 122.

§10. Private and Trap Cars.

See Private Cars; Trap Cars.

(a) Shipper's loading and unloading track was occupied when empty private tank cars leased from a private car line arrived, resulting in their being held on carrier's tracks. Notice of arrival was given and as space on shipper's track became available cars were placed thereon for loading. Demurrage charges were collected for detention on carrier's tracks prior to loading, carrier contending that cars were constructively tendered when arrival notice was given. HELD: Fact that such notice was sent is immaterial since demurrage tariffs specifically provided that empty private cars stored on carrier's tracks would not be subject to demurrage if not placed or tendered for loading on orders of a shipper, and here shipper gave no orders for placement for loadings. Reparation awarded. Jones Bros. & Co. v. Director General, 104 I. C. C. 413.

(b) Privately owned cars are subject to demurrage for any unreasonable time they remain on the railroad track through the fault of the shipper or consignee thereof. Vanderbilt v. Planters' Oil Mill & Gin Co., (Miss., 1925) 106 So. 14.

§10½. Reasonableness and discrimination.

See Discrimination; Reasonableness of Rates.

(a) Additional demurrage charges on cars containing interstate shipments of lumber awaiting reconsignment, though imposed only on shippers of lumber, does not result in a denial of equal protection of the laws, there being no constitutional requirement that such charges or reconsignment privileges shall be the same for all commodities. Turner, Dennis & Lowry Lumber Co. v. Chicago, M. & St. Paul Ry. Co., 46 Sup. Ct. 530.

(b) Complainant alleged demurrage charges and rules applicable to shipments of cotton consigned to them are

unreasonable and unduly prejudicial. Complainant located at Galveston, Tex., preferenced point New Orleans, La. A large amount of cotton moves from points in Texas and other states to Galveston for reshipment chiefly by water in export and coastwise trade. Little if any cotton is consumed there. Some of the cotton moves on through export billing or local billing marked for export or outbound coastwise movement and is carried by the rail lines directly to the docks, where it is unloaded within reach of the ships tackle or stored in warehouses on the piers to await the arrival of vessels. Complainants warehouses are some distance away from the water front, and the cotton which they handle for reshipment by water must be drayed to the piers. The demurrage charges and rules complained of are those provided by the uniform demurrage code, applicable on domestic traffic throughout the United States. Shipments of cotton on through export bills of lading are given 10 days free time at Galveston. Complainants make no averment of undue prejudice based on the difference between the two sets of rules at Galveston. The record indicates that the heavy demurrage charges assessed against complainants in the past have been occasioned by a volume of business, perhaps abnormal, which was in excess of the capacity of their facilities, and that they may have been due in part to individual operating difficulties. The differences between demurrage rules on domestic and export traffic have long been recognized as proper, and the rules here complained of can not be condemned because different rules are in force at Galveston on traffic definitely destined for further water movement at the time of its arrival. HELD, demurrage charges and rules not unreasonable or otherwise unlawful, complaint dismissed. Merchants & Planters Co. v. G. H. & H. R. R. 129 I. C. C. 477.

(c) Demurrage rules and charges applicable to shipments of cotton to Galveston, Tex., assessed under uniform demurrage code, found not unreasonable or otherwise unlawful as compared with lower charges on certain cotton traffic to New Orleans, nor with lower charges on shipments to Galveston moving on local bills of lading marked for export or coastwise movement under special demurrage rules. None of carriers participating in New Orleans tariff are defendants herein, and since complainants are unable to comply with provisions of special demurrage tariff, rules complained of can not be condemned because different rules in force on traffic definitely destined for further water movement at time of arrival. Merchants & Planters Co. v. G., H. & H., 129 I. C. C. 477.

(d) Demurrage charges were assessed under uniform demurrage code on cotton moving on domestic bills of lading. Contemporaneously more free time and a lower demurrage charge applied to shipments on local bills of lading marked for export or coastwise movement, or provided consignee within 48 hours after arrival gave notice that traffic was intended for export or coastwise movement. Contention made that lower demurrage rates should have applied since water shipments were made known to carriers through their inspection bureau which secured this information from steamship offices for another purpose, but this fact found not sufficient to constitute a compliance with rules governing export or coastwise movement. Rates charged were therefore applicable. Merchants & Planters Co. v. G., H. & H., 129 I. C. C. 477, 478, 479.

(e) Differences between demurrage rules on domestic and export traffic have long been recognized as proper. Merchants & Planters Co. v. G., H. & H., 129 I. C. C. 477, 481.

§10⅝. Strikes.

See Strikes.

(a) Demurrage charges assessed for detention of various shipments at Maurer, N. J., found not unreasonable or otherwise unlawful. Shipments were constructively placed with shipper's acquiescence because of a strike at its plant and detention was due to inability to unload rather than to carrier's failure to place cars actually instead of constructively. Barber Asphalt Paving Co. v. L. V., 112 I. C. C. 41.

III. PUBLICATION AND TARIFFS.

See Storage §3; Tariffs.

§10¾. In General.

(a) Demurrage charges assessed under tariff provisions from end of free time until coal was ordered out by tidewater shipper HELD legal, though

certain substitutions of cars among members of coal exchange were made by authority of exchange agreement; no special service being given shippers into pool, nor any discrimination made against other shippers in violation of Interstate Commerce Act, § 6. James v. Norfolk & W. Ry. Co., (Va., 1925) 129 S. E. 321.

(b) An additional demurrage charge on cars containing interstate shipment awaiting reconsignment, being a tariff provision and not penal law, the duly filed tariff is sufficient notice to shipper, and exaction of charge so provided without further notice is not invalid as taking of property without due process. Turner, Dennis & Lowry Lumber Co. v. Chicago, M. & St. Paul Ry. Co., 46 Sup. Ct. 530.

IV. DEMURRAGE RULES.

See Freight Charges.

§12. Construction in General.

(a) Complainant sought refund of demurrage charges which accrued on a shipment held pending disposition orders, contending that order releasing the car had gone forward by mail, and under the demurrage tariff, whether or not it was actually received, car should be considered released as of date order should have been delivered. HELD: Record fails to substantiate contention that release order was mailed on date claimed, and fact that delivery was not made until subsequent to actual receipt of order was due to fact that consignee refused to accept shipment until demurrage charges had been paid. However, since there is no evidence that carrier failed to tender shipment for delivery promptly upon receipt of order, demurrage charges assessed were applicable. Milne Lbr. Co. v. D., T. & I., 123 I. C. C. 573.

(b) Complainant alleged that demurrage charges on numerous cars of coal shipped from West Virginia and Kentucky during Dec. 1923 and Jan. 1924 were illegal. Defendant maintains a yard at Cincinnati known as its Water St. yard, which contains nine tracks, designated respectively by numbers 1 to 9, all of which are used for public delivery or for various other carrier purposes. It also maintains a track leading from the yard to complainants plant which is situated several hundred feet west of the yard. This latter track connects with the yard tracks numbered 1 and 2, but in handling traffic between the yard and the plant it is necessary to use a portion of the Pennsylvania tracks over which defendant possesses trackage rights. It appears to have been the practice, prior to and during the period involved, in accordance with a mutually satisfactory understanding, for defendant to place complainants cars on any of the yard tracks and for complainant to accept delivery thereon and haul the cars with its own locomotive to its plant and return the empty cars to the yard. The record shows that complainant received oral as well as written notices of arrival, the latter generally bearing a notation to the effect that the cars were placed in the yard at a certain hour, but no separate notices of placement were given. The tracks in the yard were used by defendant for public delivery and for various other carrier purposes. There is no evidence of any lease or written agreement designating one or more of the tracks for the separate or joint use of complainant or any other shipper or receiver of freight, and the mere fact that it was a mutually satisfactory practice for defendant to place the cars, and for complainant to accept delivery, in the yard did not change the status of the tracks therein. Complainants position in the instant case was similar to that of a team track receiver, except that it did not take delivery from the side of the tracks, although such delivery might have been taken from some of the tracks, but it entered upon the tracks themselves and removed the cars. HELD, demurrage accrued on all cars herein concerned held after the expiration of free time, computed as provided by the team track demurrage rule, complaint dismissed. Union Gas & Electric Co. v. C. &. O. Ry., 126 I. C. C. 566.

(c) Tariff rules, authorizing substitution of cars in respect to members of coal exchange and demurrage charges thereon against owner, determinable on basis of delay in delivery, in absence of substitution agreement HELD reasonable. Emmons Coal Mining Co., v. Norfolk & W. Ry. Co., 47 Sup. Ct. 254.

(d) Refund of demurrage charges directed because of carrier's failure to make authorized deductions for intervening Sundays. Ash v. C., R. I. & P., 128 I. C. C. 734.

(e) Complainant alleged demurrage charges of $88 collected on one car of

pine lumber shipped on or about Nov. 14, 1925 from Spokane, Wash., to Aberdeen, S. D., and thence reconsigned to Sweet Springs, Mo., as illegal. The address of the consignee not appearing on the bill of lading, and being unkown to defendants agent at that point, notice of arrival was given by postal card deposited in the mail on Nov. 23, addressed to the complainant at that point. Notice was returned to defendants agent at Aberdeen on Nov. 27, stamped "undeliverable" and has been preserved on file. It is not claimed by complainant that the failure to enclose the notice of arrival in a stamped envelope bearing return address, in strict compliance with the tariff rule, in any way affected the detention for which the charges in issue were assessed. On the contrary the evidence clearly shows that complainant was unable to give disposition of the car until several days after its agent at Kansas City was notified by defendant on Dec. 11. Reparation is claimed based on the fact that notice of arrival was not enclosed in an envelope. The undelivered notice was returned by the postal authorities to the carrier and held in the latters file. All other tariff requirements were observed by defendant. No claim is made that the shipment was detained due to improper notice. HELD, charges assailed applicable, complaint dismissed. Turner Lumber & Investment Co. v. C. & N. W. Ry., 129 I. C. C. 84.

(f) Complainant alleged demurrage and storage charges assessed for detention of two cars of lumber at St. Louis, Mo., shipped on Dec. 31, 1921 from Bernice, La., were unlawful in violation of section 6. Shipments consigned by complainant to Powe Lumber Co., East St. Louis, Ill., arrived at St. Louis on Jan. 6 and 8, 1922 over the Frisco, where they were held until Jan. 30, 1922 for disposition orders from complainant. Complainants name and address were shown in the bills of lading and also in the freight bills for each shipment. Upon arrival at St. Louis the Frisco notified the consignee, which promptly refused the shipments and advised that disposition of the shipments should be taken up with complainant whose name and address were given. Tariff provided notice of refusal would be sent by wire to consignor. Defendant wired agent at point of origin who telephoned the consignor. From the facts disclosed the Commission concludes that telegraphic notice addressed to complainant was required by the rule, and compliance therewith was essential for the accrual of demurrage charges. HELD, charges assessed inapplicable, reparation awarded. Louisell Pine & Hardwood Co. v. C., R. I. & P. Ry., 132 I. C. C. 341.

(g) Commission has declined to order modifications of uniform demurrage rules solely because of desire of certain shippers and consignees to obtain such free time as they deem necessary to meet exigencies and demands of their businesses, and has held that existence of unique or exceptional transportation conditions in certain localities furnishes no ground for exceptions to uniform code in favor of such localities, unless it be made to appear clearly that unlawful discrimination would otherwise result. See 31 I. C. C. 329. Merchants & Planters Co. v. G., H. & H., 129 I. C. C. 477, 480.

(h) Where the consignee of an interstate shipment is prevented by civil war from unloading the car, he is not liable for demurrage. Chesapeake & O. Ry. Co. v. Board, (W. Va. 1925), 130 S. E. 524.

§12½. Act of God.

(a) The duty of a consignee to unload cars within the free time given by the tariffs of a carrier, and the obligation to pay demurrage for their detention, are classified with those imposed by law, and, where the failure of a consignee to unload within the free time is caused entirely by the intervention of a vis major, the consignee is not liable for demurrage. Chesapeake & O. Ry. Co. v. Board, (W. Va. 1925), 130 S. E. 524.

§14. Bunching.

(a) Upon contention that 30-day time limit within which claims may be presented to carriers for refund of demurrage charges collected on account of bunching of cars is unreasonable and violates section 16 of the act, HELD: Refund to which shippers are entitled upon compliance with provisions of bunching rule is in no sense an overcharge. The 30-day rule is a tariff provision which must be complied with as a condition precedent to refund on account of bunching, whereas section 16 referred to limits the time within which complaints may be filed with com-

mission for recovery of overcharges. The 30-day provision is national in scope, is satisfactory to practically all shippers, and there is nothing here to indicate that complainant is unable to prepare and file its claims within that period. Moreover, a similar rule containing but a 15-day time limit was found not unreasonable in 66 I. C. C. 553. Manassa Timber Co. v. L. & N., 115 I. C. C. 421, 423.

(b) Upon contention that demurrage accrued because carriers did not keep themselves sufficiently informed as to complainants' ability to receive cars before making constructive placements, as cars were so placed at times when warehouse tracks would have accommodated additional cars. FOUND: While in 69 I. C. C. 711, it was stated that duty of carrier is to see that no cars are constructively placed unless actual disability exists on part of consignee to receive them, in 95 I. C. C. 222, 226, "inability of consignee to receive" was construed to mean more than mere track capacity. Where carriers may reasonably assume that complainants' actual performance during demurrage period reflects its inability to unload and release cars, constructive placement is warranted. Merchants & Planters Co. v. G., H. & H., 129 I. C. C. 477, 481.

§14½. Congestion.

(a) In computing demurrage charges consignee should be allowed credit for time necessary to transport cars from point of constructive placement to point of final placement. See 69 I. C. C. 711; 74 I. C. C. 34. Merchants & Planters Co. v. G., H. & H., 129 I. C. C. 477, 482.

§15. Free Time.

(a) Complainant alleged demurrage charges collected for the detention of a car of lumber at Hope, Ark., were unreasonable and inapplicable. Car was forwarded on April 2, 1923 from Grant, La., over L. & A. and arrived at Hope on April 4, 1923. It remained at that point until reconsigned on May 5, 1923 to Shidler, Okla. Allegation of unreasonableness was barred. Postal card was mailed to complainant at Hope advising him of arrival April 4, 1923. The record shows that the defendant failed to make authorized deductions for intervening Sundays collecting demurrage based on 31 instead of 25 days for the time the car was at Hope. Overcharge $30 to be refunded. Complaint dismissed. Ash v. C., R. I. & P. Ry., 128 I. C. C. 734.

(b) The Commission has heretofore declined to order modification of the uniform demurrage rules solely because of the desire of certain shippers and consignees to obtain such free time as they deem necessary to meet the exigencies and demands of their respective businesses and have held that the existence of unique or exceptional transportation conditions in certain localities furnishes no ground for exceptions to the uniform code in favor of such localities, unless it be made to appear clearly that unlawful discrimination would otherwise result. Merchants & Traders Co. v. G. H. & H. R. R., 129 I. C. C. 477, 480.

(c) Consignee should be allowed credit for the time necessary to transport cars from the point of constructive placement to the point of final placement. Merchants & Traders Co. v. G. H. & H. R. R., 129 I. C. C. 477, 482.

(d) Demurrage charges were assessed under uniform demurrage code on cotton moving on domestic bills of lading. Contemporaneously more free time and a lower demurrage charge applied to shipments on local bills of lading marked for export or coastwise movement, or provided consignee within 48 hours after arrival gave notice that traffic was intended for export or coastwise movement. Contention made that lower demurrage rates should have applied since water shipments were made known to carriers through their inspection bureau which secured this information from steamship offices for another purpose, but this fact found not sufficient to constitute a compliance with rules governing export or coastwise movement. Rates charged were therefore applicable. Merchants and Planters Co. v. G., H. & H., 129 I. C. C. 477, 478, 479.

§15½. Legal Rates.

See Legal Rates.

(a) Complainant alleged that a portion of the demurrage charges assessed for the detention at Evansville, Ind., of a carload of lumber from West Green, Ga., were illegal. Shipment was consigned by complainant to itself at Evansville and moved Southern, arriving June 10, 1922. On June 24th complainant instructed Southern's agent at Evansville to deliver the shipment to the Luhring

Lumber Co. The car was placed on the private track of that company by C. & E. I., June 28. On July 3 the Luhring Co. paid to the Southern all freight and demurrage demanded. On July 17 shipment was refused by the Luhring Co. and on the following day complainant received a letter from the agent of the defendant notifying it thereof. The car was unloaded by the Luhring Co. on July 22 apparently through some agreement between the two lumber companies. Demurrage charges of $83 were collected from the Luhring Co. for that portion of the detention between June 28 and July 22, 1922. There is no contention that demurrage did not lawfully accrue after notice of refusal was given by defendant. The placement of the car on the industry track of the consignee constituted an actual delivery while the payment of the charges by the consignee was acceptance. Since there was a valid acceptance of the shipment it can not be said that it was unclaimed. There was no duty of defendant to notify complainant under the socalled unclaimed rule. HELD, demurrage charges applicable, complaint dismissed. Milne Lumber Co. v. S. Ry., 122 I. C. C. 113.

§16. Placement or Arrival Notices.

See Notice.

(a) Demurrage charges on import shipments held under constructive placement between docks and warehouse at Seattle, Wash., found legally assessed. Tariff provided that no demurrage would be assessed where delay is caused by United States Customs and that free time lost through such delay will be allowed. Complainant urges that detention while cars were under constructive placement was caused by the United States Customs ordering goods into cars while tracks at warehouse were congested. It admits, however, that by payment of import duty to collector of customs, these shipments could have been released at docks and demurrage avoided, and that this course was not taken because food administration desired goods to remain in bond so that upon submission to customs collector of a certificate of landing there would be no duty to pay. Western Import Co. v. Director General, 104 I. C. C. 396.

(b) Demurrage and penalty charges for detention of unclaimed shipments of lumber at Alliance, Nebr., found illegally assessed. Consignor was notified by telephone that shipments were unclaimed, whereas tariffs laid upon defendants duty of sending notice by wire either to consignor or agent at point of shipment, failing in which no demurrage accrued after lapse of five days from first 7 a. m. after day on which notice of arrival was sent or given consignee. See also 95 I. C. C. 603. Reparation awarded. Central West Coal & Lumber Co. v. C., B. & Q., 104 I. C. C. 452.

(c) Demurrage rules provided that if contents of car are transferred in transit, notice of arrival shall contain, among other things, initials and number of original car. Such notice on a shipment so transferred contained initials and number of car into which shipment was transferred but failed to show that contents of the car had been transferred or initials and number of original car. After correspondence concerning identity of shipment, carrier telegraphed complainant both old and new car numbers and initials, whereupon complainant directed delivery. FOUND: Although carrier's telegram showed incorrect initials of cars it sufficed to enable complainant to dispose of shipment. Demurrage accruing subsequent to date such telegram was sent complainant was lawfully assessed, but prior thereto illegal. Reparation awarded. Milne Lbr. Co. v. C. & N. W. Ry., 107 I. C. C. 653, 656, 657.

(d) Complainant attacked combination rate charged on a mixed car of sacked oats and corn chop shipped Feb. 8, 1922, from Superior, Neb., to Roswell, N. M., reconsigned to Carlsbad, N. M., as unreasonable and inapplicable. The car was consigned to shippers order, notify a consignee at Roswell, and upon arrival there was placed on the private track of the consignee. The shipment was eventually refused and without surrender of the bill of lading was reforwarded to Carlsbad at request of complainant. Charged combination to Roswell, plus local rate beyond. Complainant states that prior to arrival of the shipment at Roswell consignee telephoned defendants local office at Roswell that the car would not be accepted on arrival. Defendant does not deny the receipt of this notice but states that it has no record of its receipt nor can any of its employees recall its receipt. HELD, notice of refusal was given the defendant by consignee before arrival of the car at Roswell and that the placement of

the car on consignees private track was unauthorized. HELD, shipment overcharged to extent the charges collected exceeded those which would have accrued on basis of through rate from Superior to Carlsbad plus a reconsigning charge of $7 and demurrage charges which lawfully accrued at Roswell, and defendants should refund to that basis, complaint dismissed. Scoular Bishop Co. v. A. T. & S. F. Ry., 118 I. C. C. 501.

(e) It is immaterial whether complainant received notice otherwise that the shipment was unclaimed, for the tariff requirement that consignor be advised by wire could not be waived, such notice being a prerequisite to the accrual of demurrage after the expiration of the five days mentioned in rule 4 section E 1. Milne Lumber Co. v. M. C. R. R., 118 I. C. C. 580, 582.

(f) The absence of written notice, notwithstanding complainant had actual notice, rendered the demurrage charges assessed inapplicable. Western Bridge & Construction Co. v. St. L., S. F. Ry., 118 I. C. C. 607, 609.

(g) Upon arrival of shipments notices thereof were mailed consignee. Subsequently consignee was advised by telegram that cars were being held for disposition and demurrage was accruing, and upon request was furnished with a statement of amount of accrued charges. These were disputed, due to inclusion of alleged overcharges, but subsequently they were all paid and shipments delivered. The refund here claimed is based on a tariff rule which provides that no demurrage shall be collected when carrier demands payment of transportation charges in excess of tariff authority, but carriers argue that demurrage charges are not transportation charges and that the rule relied upon has no application, citing in support thereof 92 I. C. C. 450 and 171 Ill., App. 302, the latter affirmed in 235 U. S. 371. Complainant on other hand questions this interpretation of the term "transportation charges." HELD: That accrued charges assessed were applicable under the tariffs. Manassa Timber Co. v. L. & N., 115 I. C. C. 421.

(h) Complainant, whose offices were located at a point other than origin or destination, was advised by telegram of the arrival of one of its shipments, the notice being acknowledged on the day following its receipt. Upon contention that under the tariff rule which provides that arrival notice shall be sent or given consignee, or party entitled to receive same, in writing * * * notice should have been sent to consignee at destination, HELD: Rule relied upon does not provide that arrival notice must be sent to consignee at destination, and in view of the language of the rule and fact that the notice was duly received by complainant who was the consignee of the shipment, the carrier's action in notifying him constituted a compliance with the tariff rule. Manassa Timber Co. v. L. & N., 115 I. C. C. 421, 422.

(i) Notice of arrival of car was given to and acknowledged by consignee. Upon contention that demurrage charges accruing thereon were inapplicable, HELD: Shipment was subject to demurrage prior to date on which accuracy of freight charges was disputed for first time, but demurrage charges assessed on and after that date were illegal. Reparation awarded. Miller v. P. M. Ry., 115 I. C. C. 461, 463, 464.

(j) Shipment of lumber arriving at Detroit, Mich., was constructively placed for delivery to Greeley Coal & Lbr. Co. Demurrage accrued and subsequently, when that company refused shipment, it was ordered delivered to F. M. Pauli Co., who accepted it and paid all charges thereon, including demurrage. Upon contention that demurrage charges assessed were without tariff authority, inasmuch as notice by wire that car was unclaimed was not given consignor after expiration of five days, in accordance with provisions of governing tariff, HELD: That such tariff requirement was a prerequisite to accrual of demurrage, could not be waived by carrier, and fact that consignor received notice that shipment was unclaimed in another manner than by wire, was immaterial. See 266 U. S. 92; 95 I. C. C. 603. Refund of overcharges directed. Milne Lbr. Co. v. M. C., 118 I. C. C. 580.

(k) Upon arrival of shipment of lumber at Detroit, Mich., reconsigned from Marine, Ill., delivery was requested to the Greeley Coal & Lbr. Co., but no room being available on tracks of that company, shipment was constructively placed and due notice thereof furnished. Later shipment was refused and in accordance with instructions was delivered to F. M. Pauli Co., who accepted it and paid all charges thereon. Upon contention that reconsignment charge made for attempted movement to the Greeley Company was without tariff authority,

HELD: Such charge was applicable under governing reconsignment tariff which provided for its assessment where, as here, a single change is made in name of consignee subsequent to 24 hours after arrival of car at destination. Milne Lbr. Co. v. M. C., 118 I. C. C. 580.

(l) Upon arrival of shipment of lumber at Detroit, notice of arrival was mailed to complainant at address shown in bill of lading at that point and confirmed by telegraph to complainant's general office at another point. Mail was returned by post office for better directions, and no response to telegram was received until after demurrage accrued, when complainant telegraphed disposition order. Check forwarded by complainant to cover accrued charges was short two days' demurrage and delivery requested was refused pending payment of additional demurrage. HELD, Mailing of notice by carrier constituted compliance with applicable tariff rule in effect and it was no fault of carrier that such notice was not received. Refusal to execute disposition instructions was also warranted by a tariff rule under which carrier had the option of accepting complainant's guaranty of charges or requiring payment thereof and carrier elected to pursue the latter course. Under the circumstances charges assessed were applicable. Milne Lbr. Co. v. D., T. & I., 120 I. C. C. 488.

(m) Applicable tariff provided that "notice of arrival shall be sent or given consignee, or party entitled thereto, in writing * * *." Upon arrival of shipment of lumber at Detroit, no written notice was sent to complainant at that point. Carrier asserted that it telegraphed notice by private wire to complainant at another point but was unable to produce evidence that this notice was so transmitted. Subsequently a second telegram was dispatched stating that car was unclaimed and asking for disposition order which complainant furnished the following day. HELD, evidence not being clear that complainant had arrival notice prior to date on which second telegram was dispatched, demurrage should not have commenced until expiration of free time from that date. Milne Lbr. Co. v. D. T. & I., 120 I. C. C. 488.

(n) Complainant alleged demurrage charges on a car of yellow pine lumber shipped on March 7, 1923 from Calcasieu, La., to Marine, Ill., and thence reconsigned to Detroit, Mich., were unreasonable and inapplicable. Shipment was reconsigned to E. J. Kell, Detroit, routed I. C., L. E. & W. and D., T. & I. Arrived May 3, 1923. Defendant, knowing E. J. Kell to be an agent of complainant, located at its headquarters in St. Louis, notified complainant there by wire on May 3 of the arrival of the car and asked disposition. The evidence discloses that at the time of movement there was an embargo at Detroit against certain shippers, among which was complainant Therefore, in order to get its shipment through complainant consigned it to E. J. Kell, who was manager of its yellow pine department. Complainant on May 3 replied by wire to the notice of arrival asking date of arrival and charges. On May 5 defendants agent wired this information to complainant. On May 11 defendant again wired asking for disposition of the car. On May 15 defendant mailed a letter to complainant stating that it was holding the car in its yard at Detroit and requested disposition. On May 16 it again wired complainant. The car was finally released to the United Wrecking Co. on June 20. The evidence is conclusive that the shipment was reconsigned at Marine to the agent of complainant for the purpose of evading an embargo against its shipments to Detroit. In reality the Milne Lumber Co. was both consignor and consignee of this shipment. The fact that written notice was given to complainant instead of to its agent, whose address was the same as that of his principal, was a substantial compliance with the tariff provision respecting notice of arrival. Rule 4 did not require a carrier which has given notice of arrival to the consignee later to notify the same party as the consignor that it has not claimed its own shipment. The law does not require the performance of a vain act. HELD, demurrage charges collected applicable and not unreasonable, complaint dismissed. Milne Lumber Co. v. D. T. & I. R. R., 123 I. C. C. 573.

(o) Shipments were placed upon tracks used for public delivery and other carrier purposes and by mutual understanding were accepted by complainant and hauled with its own locomotive to its plant. Oral and written notices of arrival but no notice of placement were furnished. Upon contention that demurrage was illegally assessed due to noncompliance with a note which provided for computation of time from first 7:00

a. m. after notice of placement on interchange tracks, HELD: Complainant's position was similar to that of a team-track receiver. It was merely a user of the track the same as any other party taking delivery from public team tracks. Its election to receive shipments in above manner subjected them to provisions of a demurrage rule providing for computation of time from first 7:00 a. m. after placement on public delivery tracks and after day on which notice of arrival was sent. Union Gas & Electric Co. v. C. & O. Ry., 126 I. C. C. 566.

(p) Upon contention that demurrage charges on car of lumber held pending disposition orders were inapplicable in that postal-card notice of arrival did not adequately describe shipment nor comply with tariff rule providing that when address of consignee does not appear on billing and is not known, notice of arrival must be deposited in mail enclosed in stamped envelop, FOUND: As address of consignee was shown on waybill, provision requiring notice of arrival merely in writing applied and was complied with, and demurrage tariff provided that when such notice does not contain all information required consignee shall not have the right to call in question sufficiency thereof unless within prescribed free time written statement of omitted information shall be served upon carriers' agent. Complainant did not comply with this provision. Moreover, consignor was advised by telegram on date of arrival that shipment was unclaimed but as no diversion orders were received until demurrage accrued, charges assessed therefor were applicable. Ash v. C., R. I. & P., 128 I. C. C. 734.

(q) Complainant attacked demurrage charges collected on certain carloads of sand and gravel received at Independence, Ky., during May and June 1924 as unlawful. The cars on which demurrage charges were collected were loaded at Cleves, a station on the Big Four about 16 miles north of Cincinnati. Defendant assigned a portion of its team track at Independence for complainants exclusive use; and, when this portion of track was full, other cars consigned to complainant were held by defendant elsewhere under what it contends was constructive placement. This proceeding deals only with the legality of any charge for detention while the cars were so held elsewhere. It is conceded that the track assigned for complainants exclusive was "other than a public delivery track," and that delivery on that assigned track of the cars here considered could not be made on account of complainants inability to receive them. Not until June 13, 1924 was agreement in writing made by the parties for verbal notice of arrival in lieu of notice in writing. The record shows that complainant had actual notice of the holding of these cars under claim of constructive placement but the rule requiring written notice was part of the tariff and could not be waived. HELD, demurrage charges collected for the detention between May 23 and June 9, 1924 of 25 cars held elsewhere by defendant as being constructive placed were inapplicable and should be promptly refunded, complaint dismissed. Cynthiana Construction Co. v. L. & N. R. R., 129 I. C. C. 122.

(r) Complainant alleged demurrage charges assessed at Detroit, Mich., on six cars of lumber shipped from Mann Spur, Ga., Pickering, La., Sumrall and Holly Springs, Miss., and Elkhart, Tex., to Illinois and reconsigned to Detroit, Mich., were inapplicable. Complainant was consignor and consignee of all the shipments. A. C. L. 35067 arrived at Detriot Nov. 3, 1922 and on that date defendants telegraphed complainant at St. Louis of the arrival. The tariff provided that notice of arrival should be sent or given the consignee, or party entitled to receive the same, by the railroads agent in writing, or in lieu thereof as otherwise agreed to by the railroad and consignee, within 24 hours after arrival of car and billing at destination. Complainant contends with respect to this and all the other shipments that defendant should have mailed notices of arrival to it as consignee at Detroit, notwithstanding the fact that it admits it had no office there. But the rule referred to does not provide that arrival notice must be sent to the consignee at destination. In view of the language of the rule referred to and the fact shown of record that defendant knew that complainant did not have an office at Detroit, and was aware of complainants location at St. Louis, it seems clear that defendant's action in telegraphing notice of arrival to St. Louis constituted a compliance with the rule. As complainant was both consignor and consignee of the shipments, defendant did all that was required of it when it sent notices of arrival. The rule does not contemplate

sending an "unclaimed" notice to a party who is both the consignor and the consignee, since it is apparent that accrual of demurrage is attributable to such a party's neglect of its shipments. HELD, with exception of certain overcharges due to computation of time, charges assessed applicable, complaints dismissed. Milne Lumber Co. v. D. T. & I. R. R., 129 I. C. C. 324.

(s) Complainant alleged demurrage charges collected on 11 cars of hay shipped between Sept. 2 and 14, 1921 from Pleasant Hills, Ind., and Continental, O., to Townley, N. J., and reconsigned to Bushwick, Brooklyn, N. Y., were unreasonable and inapplicable. Townley is a local station on the L. V. Defendant L. V. did not comply with rule 4, section E2B of the demurrage tariff in respect of giving notice that shipments were unclaimed within five days from the first 7 a. m. after the date on which notice of arrival was sent to consignee. Demurrage properly accrued on the shipments in the order of their arrival at Townley after the first 48 hours free time allowed by rule 2, section A, of the applicable demurrage tariff, up to the time when unclaimed notice or notice of refusal should have been sent as provided for by paragraph 2b of section E of rule 4 of the tariff. The correspondence passing between Chas. Schafer & Sons and Kimmel is not indicative of a definite refusal of the shipments prior to the carriers notice of refusal, and defendants have not proved that the giving of notice in accordance with the provisions of their demurrage tariff would have been useless. Moreover, it is immaterial whether complainant received notice otherwise that the shipments had been refused, for the tariff requirement that the consignor be advised by telegram could not be waived, such notice being a prerequisite to the accrual of demurrage after the expiration of the five day period mentioned in the rule. HELD, charges assailed for detention of the shipments at Bushwick were applicable, but charges for detention at Townley between the dates on which notice that the shipments were unclaimed or were refused, as the case may be, should have been sent by telegram, were inapplicable, reparation awarded. Williams v. L. V. R. R., 132 I. C. C. 573.

(t) Demurrage charges on lumber at originally billed destination found applicable. Address of consignee not appearing on bill of lading, and being unknown to agent, notice of arrival was given by postal card addressed to complainant at that point, but was returned stamped "undeliverable." Complainant was duly located and notified, but was unable to give disposition of unclaimed car for several days. Complainant relied upon 266 U. S. 92; 95 I. C. C. 603, in its contention that no demurrage charges were applicable due to fact that notice of arrival was not inclosed in an envelope in compliance with tariff. All other tariff requirements were observed by carrier, and no claim was made that shipment was detained due to improper notice. Moreover, in 120 I. C. C. 488, the commission found that notice by postal card constituted a compliance with a tariff provision similar to rule here considered. Turner Lbr. & Investment Co. v. C. & N. W., 129 I. C. C. 84.

(u) Demurrage charges on sand and gravel held short of destination by carrier under claim of constructive placement, found inapplicable. Tariff provided that notice of arrival should be sent in writing or as otherwise agreed to in writing; and that cars consigned to other than a public delivery track which could not be received by consignee would be held at nearest hold point, that written notice should be sent to consignee that cars were being so held, and that this would constitute constructive placement. Here, carriers assigned a portion of its team track for complainant's exclusive use. When this track became full, cars were held elsewhere but no written notices were sent to consignee nor was agreement made in writing for verbal notice in lieu of written notice, and while consignee had actual notice that cars were being so held, rule requiring written notice was a part of the tariff and could not be waived. See 266 U. S. 92; 95 I. C. C. 603, and other cited cases. Cynthiana Construction Co. v. L. & N., 129 I. C. C. 122.

(v) Name of grower was erroneously substituted by carrier in waybill in lieu of consignee's name, thereby necessitating the obtaining of telegraphic advice from originating carrier as to correct consignee before placement of car could be made. Upon contention that

failure to follow shipping instructions violated section 15 of the act and resulted in delay and deterioration in transit, FOUND: Due to congestion at destination it is not shown that any undue delay was caused by holding car while awaiting proper shipping instructions. Evidence is therefore insufficient to show that failure to follow instructions was proximate cause of alleged damage. Pearce v. G. N., 129 I. C. C. 253.

(w) Upon arrival of car at Detroit, carrier telegraphed notice of arrival to complainant at St. Louis, who was both consignor and consignee of shipment. Upon complainant's contention that because carrier failed to mail written notice of arrival to it at Detroit as consignee, in accordance with tariff rule providing for written notice of arrival and further notice within five days thereafter that shipment was unclaimed, demurrage charges which accrued up until car was actually released were inapplicable. FOUND: Rule does not provide that arrival notice must be sent to consignee at destination. See 115 I. C. C. 421. Since carrier knew complainant did not have an office at Detroit but was aware of its location at St. Louis, telegraphic notification of arrival constituted compliance with the rule. Moreover, rule does not contemplate sending an "unclaimed" notice to a party who is both consignor and consignee, since it is apparent that accrual of demurrage is attributable to such party's neglect of its shipments. Milne Lbr. Co. v. D., T. & I., 129 I. C. C. 324.

(x) Upon contention that as no telegraphic notice of arrival was received, demurrage charges assessed were inapplicable. FOUND: Whether or not notice was received is not controlling as all that carrier was required to do was to send it. Milne Lbr. Co. v. D., T. & I., 129 I. C. C. 324, 325, 326.

(y) In absence of definite proof as to date notice of arrival was sent, demurrage charges will accrue from date such notice is received. Milne Lbr. Co. v. D., T. & I., 129 I. C. C. 324, 326.

(z) Upon contention that demurrage accrued because carriers did not keep themselves sufficiently informed as to complainants' ability to receive cars before making constructive placements, as cars were so placed at times when warehouse tracks would have accommodated additional cars. FOUND: While in 69 I. C. C. 711, it was stated that duty of carrier is to see that no cars are constructively placed unless actual disability exists on part of consignee to receive them, in 95 I. C. C. 222, 226, "inability of consignee to receive" was construed to mean more than mere track capacity. Where carriers may reasonably assume that complainants' actual performance during demurrage period reflects its inability to unload and release cars, constructive placement is warranted. Merchants & Planters Co. v. G., H. & H., 129 I. C. C. 477, 481.

(aa) Alleged failure of carrier to promptly notify complainant in accordance with demurrage rule that shipments of cabbage were held unclaimed at destination thereby resulting in loss said to be equal to invoice price of shipments, found not in violation of section 6 of the act. In 112 I. C. C. 567, similar complaint based upon same tariff rule was found to be a loss and damage claim not covered by provisions of the act but cognizable only in the courts. See also 91 I. C. C. 611. Independent Produce Shippers Inc. v. N. & W., 129 I. C. C. 747.

§16a. Notice to Shipper.

(a) Upon arrival of car at Detroit, carrier telegraphed notice of arrival to complainant at St. Louis, who was both consignor and consignee of shipment. Upon complainant's contention that because carrier failed to mail written notice of arrival to it at Detroit as consignee, in accordance with tariff rule providing for written notice of arrival and further notice within five days thereafter that shipment was unclaimed, demurrage charges which accrued up until car was actually released were inapplicable. FOUND: Rule does not provide that arrival notice must be sent to consignee at destination. See 115 I. C. C. 421. Since carrier knew complainant did not have an office at Detroit but was aware of its location at St. Louis, telegraphic notification of arrival constituted compliance with the rule. Moreover, rule does not contemplate sending an "unclaimed" notice to a party who is both consignor

and consignee, since it is apparent that accrual of demurrage is attributable to such party's neglect of its shipments. Milne Lbr. Co. v. D., T. & I., 129 I. C. C. 324.

(b) Alleged failure of carrier to promptly notify complainant in accordance with demurrage rule that shipments of cabbage were held unclaimed at destination, thereby resulting in loss said to be equal to invoice price of shipments, found not in violation of section 6 of the act. In 112 I. C. C. 567, similar complaint based upon same tariff rule was found to be a loss and damage claim not covered by provisions of the act but cognizable only in the courts. See also 91 I. C. C. 611. Independent Produce Shippers, Inc., v. N. & W., 129 I. C. C. 747.

(c) Provisions of railroad's demurrage tariff, requiring notice to consignor when carload freight is refused at destination and unclaimed perishable carload freight is not disposed of shortly after notice of arrival is given consignee, adopted as basis for charges against shippers for demurrage, does not impose liability on carrier, or definitely fix its duty to notify shipper for his benefit in case of consignee's failure to accept, but person familiar with tariff might have right to rely on such notice. Porter v. Pennsylvania R. Co., 215 N. Y. S. 727.

§17. Railroad Errors or Omissions.

(ab) Lumber from Aberdeen Miss., to Chicago was routed "% C. M. & St. P." Originating line, the M. & O., changed routing instruction to "Wabash-C. M. & St. P. Dely." The Milwaukee, receiving no road haul, refused to accord the Chicago rate and demanded its applicable switching charge. Consignee declined, demurrage accrued, and shipment was reconsigned. Shipment could have been routed by M. & O. over available routes consistent with routing instructions over which the Milwaukee would have received a line haul and desired delivery made at Chicago rate. While governing tariff erroneously showed that consignee was located on a private track connecting with the Milwaukee such error did not relieve the M. & O. of its responsibility to observe routing instructions. See 23 I. C. C. 84 and 83 I. C. C. 490. The M. & O.'s error prevented proper delivery and where a shipper is compelled to pay demurrage charges through fault of a carrier, such charges must be refunded. See 41 I. C. C. 723 and 46 I. C. C. 365. Hector Lbr. Co. v. C., M. & St. P., 112 I. C. C. 418.

(c) Where a shipper is compelled to pay demurrage charges through fault of carrier, such charges must be refunded. See 41 I. C. C. 723 and 46 I. C. C. 365. Hector Lbr. Co. v. C., M. & St. P., 112 I. C. C. 418, 419.

(d) Complainant attacked demurrage, switching and reconsignment charges collected at Detroit, Mich., on August 4, 1922, on a car of lumber originating at Linville, La., on June 10, 1922, as illegal. Shipment was billed to Marine, Ill., reconsigned to complainant at Detroit. Complainant was notified of arrival at Detroit June 27. On June 30 M. C. received orders from complainant for delivery to Greeley Coal & Lumber Co. on the G. T. tracks at Detroit and the car was transferred to that line on July 4. On July 5 the G. T. sent a notice of arrival to the Greeley Co. There was no room for placement on the private siding of that company, and a notice of constructive placement was sent on July 10. Shipment was refused July 17. On that date complainant ordered it delivered to the Pauli Co. at Detroit. Such delivery was effected by the G. T. on July 18. Latter company paid all charges, including reconsignment charge of $7 assessed by M. C. for attempted movement to the Greeley Co., demurrage of $18 assessed by G. T. for detention from July 11 to July 17, and a switching charge of $8.10 for movement to Pauli Co. Under rule 5, section A1 this car was not constructively placed until July 10 when notice of constructive placement was sent. Under rule 3 section D demurrage did not begin to run until 7 a.m. July 11. As the shipment was unclaimed, and it became the duty of the G. T. on July 12 to send the consignor notice by wire to that effect, as provided by rule 4 section E. Such notice was not sent. HELD, shipment overcharged $15.10 by G. T., which is to be refunded, complaint dismissed. Milne Lumber Co. v. M. C. R. R., 118 I. C. C. 580.

(e) Demurrage charges accruing on shipment held at originally billed destination due to failure of connecting line to transmit instructions that such shipment was to be reconsigned, found inap-

plicable and erring carrier found liable therefor. Stuckey-Odom Lbr. Co. v. L. & N., 115 I. C. C. 403.

(f) Coal moving during Federal control was assigned to a car pool and due arrival notices furnished. After expiration of free time shipments were held under constructive placement and demurrage accrued. Thereafter an embargo was placed against consignee and consignor ordered shipments reconsigned upon ascertaining that they were refused by consignee. Upon contention that failure of carrier to make delivery on or before effective date of the embargo, and acceptance by carrier of other shipments for transportation to consignee after that date without advising complainant of the embargo, constituted railroad error, HELD: Governing tariff made no provision for notice to consignor of refused or unclaimed shipments and no part of the demurrage accrued before complainant had knowledge of the situation. Its position was same as if there had been no embargo. It therefore follows that demurrage did not accrue because of observance of the embargo and thus because of railroad error. Superior Coal Co. v. Director General, 115 I. C. C. 710.

§20a. Waiver.

(a) Lumber from White Sulphur, W. Va., to Harrisburg, Pa., ordered reconsigned to Hershey, Pa., by letter addressed to agent of Norfolk & Western who referred it to agent of Western Maryland at Hagerstown Junction, Md., was held by latter carrier at Harrisburg beyond free time and demurrage and storage charges accrued. Upon contention that detention of car and handling of request amounted to negligence on part of Western Maryand, HELD: Carrier's reconsigning tariff provided that request for reconsignment must be made or confirmed in writing to its general freight agent at Baltimore, and under doctrine laid down in 266 U. S. 92, tariff regulations could not be waived by acceptance of reconsignment order by its agent at Hagerstown Junction. As request was not made in accordance with tariff provisions no duty was placed upon carrier to reconsign shipment and storage and demurrage charges assessed were therefore applicable. Shreiner Lbr. Co. v. Director General, 123 I. C. C. 551.

V. REPARATION.

See Reparation.

§21. In General.

(a) Shipment originating on nonfederally controlled line moved to a point on carrier under Federal control. Originating carrier billed illegal demurrage charges as advances and received settlement therefor in interline accounts, director general collecting such charges from shipper at destination. Complainant names as defendant only director general, who contends that because illegal charges were retained by originating carrier after interline settlement, at which time he was unaware of controversy regarding charges, there is no overcharge so far as he is concerned; that he can not be held liable for illegal charges accruing because of action of carrier not under Federal control; and, that proper party has not been named defendant. HELD: Shipper entitled to recover illegal charges from carrier who collects them, whose duty it is then to ascertain, and charge them back to, carrier responsible for their assessment. See also 17 I. C. C. 330. Yellow Pine Co. of Phila. v. Director General, 104 I. C. C. 371.

(b) Demurrage charges accruing on shipment held at originally billed destination due to failure of connecting line to transmit instructions that such shipment was to be reconsigned, found inapplicable and erring carrier found liable therefor. Stuckey-Odom Lbr. Co. v. L. & N., 115 I. C. C. 403.

(c) Demurrage paid on ocean-going vessels by shipper because of unreasonable delay of railroad in transporting grain for export is proper element of damages. Pennsylvania R. Co. v. Wm. H. Muller & Co., Inc., 15 Fed. (2d) 535.

§22. Actions at Law.

See Actions at Law.

(a) Evidence of a witness for the plaintiff, the railroad company, that the correct demurrage charges were certain specified amounts, where it appeared that his testimony was based solely upon a schedule of charges furnished by him by the plaintiff, which the witness stated contained correct charges for demurrage to be made upon freight cars covering the period during which demurrage charges had accrued against the car on which demurrage charges were claimed in this suit, was insufficient to establish the charges for demurrage authorized by the state Public Service Commission. Seaboard Air Line Ry. Co. v. Trask, (Ga., 1926) 136 S. E. 106.

(b) In a suit by a railway company against a shipper to recover demurrage charges arising out of an intrastate shipment, a written schedule of demurrage charges, identified by a witness as "furnished" by the plaintiff, which was not shown to be a schedule of demurrage charges authorized by the state Public Service Commission, but which contained on its face a statement that it was "national car demurrage rules and charges," was insufficient as proof of a schedule of demurrage charges authorized by the state Public Service Commission, and was properly rejected when offered in evidence. Seaboard Air Line Ry. Co. v. Trask, (Ga., 1926) 136 S. E. 106.

(c) National Car Demurrage Rules and Charges, effective December 1, 1919, HELD inadmissible because irrelevant and immaterial to issue involved in suit for recovery of September and October, 1919, demurrage charges. Davis, Director General, v. Martin, (Tex., 1926) 287 S. W. 113.

VI. LIABILITY TO PAY.

§23. In General.

(a) Coal exchange, voluntarily organized by tidewater shippers to keep records of cars to credit of various members in each pool, and give orders, through its general manager, to carrier, to dump equivalent of coal received by each into vessel berthed to receive and transport coal of such consignee, HELD not consignee liable for demurrage. James v. Norfolk & W. Ry. Co., (Va., 1925) 129 S. E. 321.

(b) As between the shipper and the consignee, the one liable for the payment of demurrage is the one through whose fault the demurrage was incurred. Vanderbilt v. Planters' Oil Mill & Gin Co., (Miss., 1925) 106 So. 14.

(c) Shipper of coal to coal exchange pool, under agreement to be responsible to railway for demurrage and to ship coal in its own name in care of exchange pool, HELD liable for demurrage charges, rather than exchange. Emmons Coal Mining Co. v. Norfolk & W. Ry. Co. 47 Sup. Ct. 254.

§24. Actions to recover.

(a) The lien of a carrier for demurrage cannot be sold or assigned, and is lost if the carrier surrenders possession of the property on which the lien is claimed. Vanderbilt v. Planters' Oil Mill & Gin Co., (Miss., 1925) 106 So. 14.

DETENTION CHARGES

See Demurrage.

DIFFERENTIALS

I. ESTABLISHMENT AND CONTROL.
§½. Jurisdiction of Commission.
§1. In general.
§2. Relation to classification.
II. APPLICATION.
§2½. In general.
§2½a. Between commodities.
§3. C. L. and L. C. L. shipments.
§4. Through shipments.
III. PURPOSE.
§5. To equalize conditions.
§6. To equalize consuming points.
§7. To equalize producing points.
IV. REASONABLENESS AND DISCRIMINATION.
§8. In general.
V. REPARATION.
§9. In general.
VI. PROCEDURE.
§10. In general.

CROSS REFERENCES

See Advanced Rates §5 (3), §10, §11½; Blanket Rates §8, §10, §12½ (i); Classification §17; Competition; Discrimination; Distance Rates; Equalization of Rates; Long and Short Hauls; Market Competition; Motor Truck Competition; Railroad Competition; Reasonableness of Rates §28; Relative Rates.

I. ESTABLISHMENT AND CONTROL

See Control and Regulation.

§1. In General.

(a) In equalizing rates a percentage difference in distance is preferable to a fixed mileage difference for all distances. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349, 388.

II. APPLICATION.

See Application of Rates; Classification §17.

§2½. In General.

(a) Differentials generally are made to fit particular situations, and circumstances and conditions may vary in different cases, but commission may not

disregard differentials prescribed in other cases or voluntarily established for comparable distances, especially those from same origin territory to other destinations. Lake Cargo Coal Rates, 1925, 126 I. C. C. 309, 343.

(b) Compliance with carriers' request that differentials should be applied only over the short-line routes would deprive shippers of the natural advantage of the lower-rate routes through central territory; would result in many rates as high as the full combination on the gateways and give rise to further long-and-short-haul departures and unwarranted increases in the rates prescribed. Southern Class Rate Investigation, 128 I. C. C. 567, 580.

§2½a. Between Commodities.

(a) Shipper requested that commission modify its conclusions in the Salt Cases of 1923, 92 I. C. C. 388, wherein it was held that all kinds of salt should be accorded a common rate and minimum weight, contending that lower rates on crude than on refined salt are justified. It was stated that crude salt is of low grade, is dirty and discolored, and about one-third or one-fourth the value of refined salt used for curing meats. Also that damage claims are practically unknown and that the two grades of salt do not compete. HELD: Finding in the general cases was based largely upon a practical unanimity of opinion between carriers and salt producers and commission is not prepared to depart from previous conclusion that refined and crude salt should take the same rate. Salt from Ludington Group, 112 I. C. C. 255, 258.

(b) Rate on shipments of paper boxes, k. d., in bundles, from Chicago to Salt Lake City found unreasonable to extent it exceeded by more than 10 per cent the rate contemporaneously in effect on newsprint paper from and to same points, established under readjustment prescribed in the Paper case, 66 I. C. C. 571, for application on boxes or cartons, k. d., binder board, wrapping paper, paper bags, etc. Reparation awarded. Chicago Carton Co. v. C., B. & Q., 115 I. C. C. 215.

(c) All-rail rates on newsprint paper from Berlin, N. H., to Birmingham, Ala., which exceeded or exceed by more than 1 cent per 100 pounds the all-rail rates contemporaneously maintained to Nashville, found unreasonable and to subject Birmingham to undue prejudice. Reparation awarded and undue prejudice ordered removed. Birmingham News Co. v. A., B. & A., 118 I. C. C. 205.

(d) Following 95 I. C. C. 181; 107 I. C. C. 182, rates on rig irons in straight carloads should be about 15 per cent lower than those on oil-well supplies. Consolidated Southwestern Cases, 123 I. C. C. 203, 331.

(e) Rate on unfinished broom handles from Pellston, Mich., to Wichita, Kans.; found unreasonable as compared with rates on sleigh wood, agricultural-implement wood, and vehicle wood, all in the rough, and various other lumber articles, and to extent it exceeded contemporaneous lumber rates by more than 1.5 cents. See 92 I. C. C. 574. Reasonable rate prescribed for future and reparation awarded. Wichita Chamber of Commerce v. A., T. & S. F., 123 I. C. C. 520.

(f) Rates on broom handles found unreasonable to extent they exceeded by 1.5 cents those contemporaneously maintained on lumber. Oklahoma Traffic Asso. v. A., T. & S. F., 129 I. C. C. 403.

III. PURPOSE.

§5. To Equalize Conditions.

See Equalization of Rates.

(a) The fundamental purpose of the act is "to compel the carrier as a public agent to give equal terms to all," "to cut up by the roots every form of discrimination, favoritism, and inequality," and to "place all shippers upon equal terms." See 200 U. S. 361, and other cited cases. Service on K., O. & G. Ry., 118 I. C. C. 412, 418.

(b) Interstate rates on cement from Cement City (Sugar Creek), Mo., and Bonner Springs and Sunflower, Kans., to destinations in the Kansas City, Mo.-Kans., switching district, to extent they are lower by more than 4.5 cents than interstate rate contemporaneously maintained on like traffic from points in the Kansas gas belt found unduly prejudicial to said Kansas gas-belt points and shippers therefrom and unduly preferential of Cement City (Sugar Creek), Bonner Springs, and Sunflower, and shippers therefrom. Iola Cement Mills Traffic Asso. v. A. T. & S. F., 122 I. C. C. 337.

(c) Fact that ex-lake differentials are constructed on quite a different basis from all-rail differentials negatives the

idea that there is any close competitive relation between the two. Maritime Asso., Boston Chamber of Commerce v. A. A. R. R. 126 I. C. C. 199, 208.

§6. To Equalize Consuming Points.

See Equalization of Rates §3.

(a) All-rail rates on newsprint paper from Berlin, N. H., to Birmingham, Ala., which exceeded or exceed by more than 1 cent per 100 pounds the all-rail rates contemporaneously maintained to Nashville, and rail-water-and-rail rates which exceeded or exceed similar rates contemporaneously maintained to Memphis and Nashville, found unreasonable and to subject Birmingham to undue prejudice. Reparation awarded and undue prejudice ordered removed. Birmingham News Co. v. A., B. & A., 118 I. C. C. 205.

§7. To Equalize Producing Points.

See Equalization of Rates.

(a) Rates on barytes from Cartersville, Ga., to various eastern destinations, found not unreasonable or otherwise unlawful as compared with lower rates from Sweetwater, Tenn., to same destinations. Present rates from Sweetwater were established to enable shippers at that point to compete with shippers at Cartersville; distances from Cartersville over short-line routes to eastern destinations are substantially greater than from Sweetwater; moreover, the commission has approved higher rates on this traffic from Cartersville than from Sweetwater in 43 I. C. C. 334, 50 I. C. C. 429, and 59 I. C. C. 173. Thompson, Weinman & Co. v. A. C. Ry., 118 I. C. C. 21.

(b) Rate on sand from Lawrence, Kans., to Kansas City, Mo.-Kans., found unreasonable and unduly prejudicial to extent it exceeds by more than 1 cent per 100 pounds the rate from points within Kansas City switching limits and Muncie and Grinter, Kans., to points in Kansas City switching district. Taking into consideration low grade of sand and keen competition in its sale, the difference in rate from Lawrence is too high as compared with those from Kansas City district points. Reasonable rate prescribed for future. Jackman & Jackman v. A., T. & S. F., 118 I. C. C. 560.

IV. REASONABLENESS AND DISCRIMINATION.

§8. In General.

See Advanced Rates §5 (½) (e); Classification §17; Discrimination; Ex-Lake Rates (c); Reasonableness of Rates.

(a) Rates on prepared roofing and asphalt shingles from Chicago, St. Louis, Cairo, Evansville, Louisville, and Cincinnati, to Florence, Sheffield, and Tuscumbia, Ala., found not unreasonable, but, in view of level of rates in Mississippi Valley territory and circumstances under which they were established in comparison with contemporaneous rates in Southeast at points adjacent to that territory, the spread between rates that have for many years prevailed at Corinth, Miss., and rates at Florence, Sheffield, and Tuscumbia found too great, subjecting jobbers at latter points to undue prejudice in competing with Corinth jobbers for trade in same common territory. Differentials prescribed for removal of undue prejudice. Florence Chamber of Commerce v. L. & N., 104 I. C. C. 459.

(b) Rates on crushed oyster shells and oyster-shell dust from Apalachicola, Fla., to Mississippi and Ohio River crossings, and points beyond, found not unreasonable, but unduly prejudicial to extent they exceed by a fixed differential rates contemporaneously maintained on like traffic from Pensacola, Fla., and Mobile, Ala., to same destinations. Nonprejudicial basis of rates prescribed and reparation denied. Gulf City Mfg. Co. v. A. N. R. R., 107 I. C. C. 29.

(c) Rates on grain and products from points in Washington and Oregon south of Snake River to Portland, Seattle, Tacoma, and other north Pacific ports, established as a result of commission's decision in Inland Empire Shippers League, 59 I. C. C. 321, found not unreasonable or unduly prejudicial. While competition from Puget Sound ports for purchase of wheat in the basin south of Snake River has been to a large extent destroyed, Portland enjoying a virtual monopoly of wheat from that territory, only by continuance of present differential in favor of Portland can that point be accorded benefits to which it is entitled by reason of its natural advantages. Walla Walla County Farm Bureau v. N. P., 107 I. C. C. 110.

(d) Rates on articles in uniform brick list from Danville, Ill., to points in Wisconsin, Michigan, Minnesota and North Dakota, found not unreasonable

but unduly prejudicial to Danville and unduly preferential of other competing Illinois origin points. Nonprejudicial differential relationship of rates prescribed for future and reparation denied. Western Brick Co. v. N. Y. C., 107 I. C. C. 245.

(e) Rates on coal from Ohio and Crescent districts to certain points in lower Peninsula of Michigan and to Elkhart, Ind., found not unreasonable or otherwise unlawful as compared with rates to Toledo, Detroit, and Jackson. Spreads between assailed and compared rates are not sufficiently out of line to warrant finding of undue prejudice and complainant's case, built entirely on distance, fails to take into consideration different conditions which render compared rates unacceptable as the foundation upon which to construct rates on a distance basis. Radical changes are sought in group adjustment which has existed for many years with commission's approval. However, evidence adduced deals with only a relatively small portion thereof and record fails to indicate how proposed changes will react on the group adjustment as a whole. Kalamazoo Chamber of Commerce v. C. & O., 107 I. C. C. 291.

(f) Rates on sugar from New Orleans, Gramercy, Reserve, and Three Oaks, La., to Texarkana, Ark.-Tex., Hope, Ashdown, and Nashville, Ark., found not unreasonable, but unduly prejudicial to such destination points and unduly preferential of Shreveport, La., to extent they exceed rates to Shreveport by fixed differentials. Four States Grocery Co. v. K. C. S. Ry., 107 I. C. C. 485.

(g) Rates on baled hay from Arizona points to Mississippi River crossings, Memphis and south thereof, found unduly prejudicial to extent they exceed contemporaneous rates from El Paso to same crossings by more than 6 cents from Thatcher group, 10 cents from Phoenix group, and 13 cents from Yuma group. Arizona Hay Traffic Asso. v. A. E., 107 I. C. C. 591, 599.

(h) Upon complaint seeking rates on lettuce, spinach, and asparagus from South Carolina producing districts to interstate destinations, made 18.5 cents over contemporaneous rates on potatoes. FOUND: Rates proposed are on a decidedly low basis and are conspicuously low as compared with contemporaneous rates from producing points in Virginia, North Carolina, and Florida, with which present rates compared favorably. South Carolina Produce Asso. v. A. & R., 107 I. C. C. 613, 618, 623.

(i) Interstate rates on drain tile from Rockford, Sheffield, and Hampton, Iowa, to destinations in Iowa, Nebraska, South Dakota, and Minnesota, found unreasonable to extent they exceeded by more than 1 cent per 100 pounds the rates contemporaneously maintained on brick and related articles. Mason City Brick & Tile Co. v. Director General, 107 I. C. C. 702, 718.

(j) Rates on vegetables from Jacksonville, Fla., to Wichita, Kans., except cabbage and potatoes, found unreasonable and unduly prejudicial to extent the factors, Jacksonville to Wichita, exceeded the factors, Jacksonville to Kansas City, by more than 10 per cent. Reasonable and nonprejudicial rates prescribed for future and reparation awarded. Wichita Chamber of Commerce v. A. & V., 109 I. C. C. 368.

(k) Rates on plumbago and graphite from New York Harbor, N. Y., free lighterage limits to Delano Junction, N. Y., destined to Ticonderoga, N. Y., over an interstate route, found unreasonable to extent they exceeded rate contemporaneously in effect from Jersey City, N. J., by more than 3 cents. Reparation awarded and reasonable rate prescribed for future. Dixon Crucible Co. v. D. & H., 109 I. C. C. 380.

(l) Class C rates on excelsior cushions, mats, or pads, from Oshkosh and Rice Lake, Wis., to Fort Smith, Ark., found unreasonable as compared with rates contemporaneously applicable to to Chicago, St. Louis, Kansas City, and other competing cities in western classification territory to which excelsior pads from Wisconsin move at commodity rates lower than class C, and to extent they exceeded rates constructed by application of the rates prescribed in 100 I. C. C. 274 for distance here involved, with the addition of an arbitrary, excelsior pads over excelsior, of 3.5 cents. Reasonable rates for the future prescribed and reparation awarded. Ballman-Cummings Furniture Co. v. C. & E. I. Ry., 109 I. C. C. 413.

(m) Rates on sand and gravel from La Fayette, Ind., to destinations in Illinois, found unduly prejudicial to extent

they exceed corresponding rates from Attica, Ind., by more than 10 cents per net ton. Findings in La Fayette Gravel Co., 62 I. C. C. 729, modified. Western Indiana Gravel Co. v. N. Y. C. & St. L., 109 I. C. C. 727.

(n) Upon complaint seeking differential on coal moving from Birmingham district to Memphis, under rates on like traffic moving from Kentucky and Illinois districts based on shorter haul from former. FOUND: Whatever equities of situation at Memphis may be, commission can not, under the law, make a finding of undue prejudice, since no one line serves Memphis at base rate from Alabama field on one hand and Kentucky and Illinois fields on other, independent carriers serving this common market. See 22 I. C. C. 115, and cases based thereon. Differential adjustment in favor of Birmingham district found not justified. Alabama Mining Institute v. I. C., 109 I. C. C. 740, 748.

(o) Rail-and-water rates on plain iron wire, c. l. and l. c. l., from Fostoria, Ohio, to Savannah, Ga., and Jacksonville, Fla., found unduly prejudicial to Fostoria and unduly preferential of Cleveland, Ohio, to extent they exceed by more than 2.5 cents the rail-and-water rates contemporaneously maintained on like shipments from Cleveland, Ohio, to same destinations. Seneca Wire & Mfg. Co. v. B. & O., 112 I. C. C. 95, 97.

(p) Rates on paper boxes from Chicago to Oklahoma City, Denver, Topeka, and Lincoln, found unreasonable to extent they exceeded 110 per cent of rates on newsprint paper subsequently established in conformity with those prescribed in 66 I. C. C. 571. Reparation awarded. Beatrice Creamery Co. v. A., T. & S. F., 112 I. C. C. 113.

(q) Joint rates on newsprint paper from Espanola, Ontario, Canada, to points in Wisconsin, Minnesota, Illinois, Missouri, and Iowa, and to Omaha, Nebr., in which carriers subject to the act participate, found, in so far as transportation takes place within the United States, to be unreasonable and unduly prejudicial to extent they exceed or may exceed by more than 4 cents per 100 pounds the rates contemporaneously applicable from Sault Ste. Marie, Ontario, Canada, to same destinations. Spanish River Pulp & Paper Mills v. A. & W., 113 I. C. C. 343.

(r) Following Washington Publishers' Asso., 98 I. C. C. 339, rates on printing and wrapping paper from points in New England to Baltimore, Md., found not unreasonable, but rates from same origin points to Washington, D. C., found unreasonable to extent they exceeded corresponding rates to Baltimore by more than 2 cents per 100 pounds. Measure of reasonable rates prescribed for future and reparation awarded. New England Paper & Pulp Traffic Asso. v. M. C., 113 I. C. C. 353.

(s) Certain so-called short or weak lines in southern territory accorded arbitraries or a percentage over rates prescribed for standard lines on fertilizer and fertilizer materials. Fertilizers between Southern Points, 113 I. C. C. 389.

(t) Rates on lumber, egg-case material, box lumber, and shooks, from Caruthersville, Mo., to points in Iowa, South Dakota, Minnesota, Wisconsin, and Illinois, found unreasonable and unduly prejudicial in comparison with rates contemporaneously maintained from Cairo to same destinations. Similar rates to Kansas and Nebraska destinations found not unreasonable or otherwise unlawful as compared with those from Memphis, average distances and rates from Caruthersville and Memphis appearing to be substantially the same. Reasonable and nonprejudicial rates, Caruthersville differentially over Cairo, prescribed and reparation awarded. Dillman Egg Case Co. v. A. T. & S. F., 113 I. C. C. 447.

(u) Rates on sugar from New Orleans, or points taking same rates, to Superior or Norfolk, Nebr., found unreasonable and unduly prejudicial to extent they exceed rates to Kansas City and St. Joseph, Mo., Omaha, Nebr., and Sioux City, Iowa, or to either of them as the through routes may run, by more than 8 cents to Superior, or by more than 15 cents to Norfolk. Nonprejudicial rates prescribed for future. Nebraska State Ry. Comm. v. A. & W., 113 I. C. C. 467.

(v) Rates on sugar from New Orleans, or points taking same rates, to Rapid City, Deadwood, or Lead, S. Dak., found not unreasonable but unduly prejudicial to extent they exceed the rates to Omaha, Nebr., and Sioux City, Iowa, or to either of them, by more than 31 cents to Rapid City or by more than 33 cents to Deadwood or Lead. Nebraska State Ry. Co. v. A. & W., 113 I. C. C. 467.

(w) Rates on sugar from New Orleans, or points taking same rates, to Hastings or Grand Island, Nebr., found unreasonable and unduly prejudicial to extent they exceed rates to Kansas City and St. Joseph, Mo., Omaha, Nebr., and Sioux City, Iowa, or to either of them as the through routes may run, by more than 10 cents to Hastings, or by more than 12 cents to Grand Island. Nonprejudicial rates prescribed for future. Nebraska State Ry. Comm. v. A. & W., 113 I. C. C. 467.

(x) Rates on sugar from New Orleans, or points taking same rates, to Hastings, Columbus, Kearney, Norfolk, North Platte, Scottsbluff, or Crawford, Nebr., found unreasonable and unduly prejudicial to extent they exceed rates to Kansas City and St. Joseph, Mo., Omaha, Nebr., and Sioux City, Iowa, or to either of them as the through routes may run, by more than 10 cents to Hastings, 13 cents to Columbus or Kearney, 15 cents to Norfolk, 17 cents to North Platte, 23 cents to Scottsbluff, or by more than 27 cents to Crawford. Nonprejudicial rates prescribed for future. Nebraska State Ry. Comm. v. A. & W., 113 I. C. C. 467.

(y) Rates on sugar from New Orleans, or points taking same rates, to Fairbury, Hastings, Grand Island, Columbus, or Kearney, Nebr., found unreasonable and unduly prejudicial to extent they exceed rates to Kansas City and St. Joseph, Mo., Omaha, Nebr., and Sioux City, Iowa, or to either of them as the through routes may run, by more than 8 cents to Fairbury, 10 cents to Hastings, 12 cents to Grand Island, and 13 cents to Columbus or Kearney. Nonprejudicial rates prescribed for future. Nebraska State Ry. Comm. v. A. & W., 113 I. C. C. 467.

(z) Upon further consideration former report, 102 I. C. C. 641, finding rates on iron and steel from Birmingham to Nashville unduly prejudicial to extent it exceeds 3 cents per 100 pounds more than contemporaneous rate on like traffic from Birmingham to Chattanooga, and 4 cents less than from Birmingham to Knoxville, modified to extent of permitting the establishment, under agreement by parties, of a rate from Birmingham to Nashville of 4 cents more than rate contemporaneously in effect from Birmingham to Chattanooga. Nashville Traffic Bureau v. L. & N., 113 I. C. C. 673.

(aa) In 92 I. C. C. 699, division 3 found rates on lumber, in carloads, from Flinn, Va., to certain destinations in central, trunk line and New England territories, not unreasonable, but were since June 29, 1922, unduly prejudicial and unduly preferential of its competitors at Marlinton, W. Va., and other points on the Greenbrier division of the C. & O., to the extent of their excess over rates from Marlinton. In complying with the order defendant established the same rates from the Greenbrier division and the Warm Springs Valley branch, thus placing the two branches on a parity. This was accomplished by reducing a few of the rates from the Warm Springs Valley branch and increasing many of the rates from the Greenbrier division. The rates now proposed are accepted by all interested parties as satisfactory for application in the future. They are in many instances lower than the rates now in effect from points on the N. & W., for comparable distances. HELD, rates attacked not unreasonable but unduly preferential of Marlinton to extent they exceed: on eastbound traffic rates 2c lower than rates from Marlinton; and on westbound traffic rates 2c higher than like rates from Marlinton, reparation denied. Freehold Lumber Co. v. C. & O. Ry., 118 I. C. C. 463.

(bb) The measure of the differential determines the relationship of rates from the various origins and is obviously of prime importance to the producers. Chicago Gravel Co. v. A. T. & S. F. Ry., 118 I. C. C. 633, 644.

(cc) Rates on spelter by-products from points in c. f. a. territory, and from western termini points, not including Pittsburgh, to Trenton, N. J., found not unreasonable or otherwise unlawful. Trenton takes rates 2 cents higher than to Philadelphia, Palmerton, and Phillipsburg, this basis being in accordance with the general group adjustment between c. f. a. and eastern trunk-line territories which has obtained for many years. In the adjustment of class and commodity rates from Pittsburgh and points west thereof, Philadelphia, Palmerton, and Phillipsburg are located in Philadelphia group, to which rates are generally based on a differential of 2 cents under New York group, in which Trenton is located, and commission has hitherto refused to disturb this adjustment. See 23 I. C. C. 195, 198; 23 I. C. C. 684, 686. Lissberger & Co. v. P. R. R., 115 I. C. C. 521.

(dd) Rate on crushed slate from Whiteford, Md., and Slate Hill, Pa., to New Orleans, La., and Mobile, Ala., found not unreasonable but unduly prejudicial to extent they exceeded contemporaneous rate from Esmont, Va., a competing point, by more than $1.50 per net ton. Reparation denied. Staso Milling Co. v. M. & P., 115 I. C. C. 605.

(ee) Rates on coal from Clinchfield and Dante, Va., to Toledo and Toledo Dock, Ohio, for transshipment by vessel, found unduly prejudicial to extent they exceed rate from Clinchco, Va., by more than a 15-cent differential. Clinchfield Coal Corp. v. C. C. & O., 118 I. C. C. 79.

(ff) Prior to the 1920 increases, rate on bulk corn from Blue Island and Chicago, Ill., and Hammond, Ind., to various points contiguous to Portland, Me., carried a 2-cent differential over rate to New York. In applying horizontal increases the 2-cent differential was continued to Portland and other points in this territory, whereas to destinations here involved, a 40 per cent increase was applied, disrupting the rate parity. Subsequently the equalization was restored. Upon complaint seeking damages on shipments moving during the interim, HELD: The general increases resulted in disturbances to rate relationships and differentials in various instances, but neither that fact nor showing here made establishes unreasonableness of rate charged. Nor did complainant establish damages by reason of discrimination or prejudice which was removed by voluntary reduction. Paris Flouring Co. v. N. Y., C. & St. L., 118 I. C. C. 291.

(gg) Rates on lumber from Flinn, Va., on Warm Springs Valley branch of the C. & O. Ry. Co., to destinations in c. f. a.. trunk-line, and New England territories, found not unreasonable but unduly prejudicial to extent they exceed on eastbound traffic rates 2 cents lower, and on westbound traffic rates 2 cents higher, than like rates contemporaneously maintained from Marlinton and other points on Greenbrier division of C. & O. Original report, 92 I. C. C. 699, modified. Freehold Lbr. Co. v. C. & O., 118 I. C. C. 463.

(hh) Following 96 I C. C. 136, rates on gasoline and naptha from Beckett, Wilson, Bristow, Okmulgee, and Tulsa, Okla., to Blue Creek, W. Va., found unreasonable in their relation to rates to Charleston, W. Va.. no warrant being found for the spread in the rates maintained between these two destinations. Reasonable rate prescribed for future and reparation awarded. Transcontinental Oil Co. v. B. & O., 118 I. C. C. 518.

(ii) Rates on sand from Lawrence, Kans., to destinations within a radius of 150 miles east of Kansas City, Mo.. found unreasonable and unduly prejudicial to extent they exceed by more than 20 cents per ton rates from Turner, Muncie, Grinter, Sirridge, and Armourdale, Kans., competing points accorded Kansas City basis of rates. Reasonable and nonprejudicial rates prescribed for future. Jackman & Jackman v. A., T. & S. F., 118 I. C. C. 547.

(jj) Rate on sand from Lawrence, Kans., to Kansas City, Mo.-Kans., found unreasonable and unduly prejudicial to extent it exceeded by more than 1 cent per 100 pounds the rate from points within Kansas City switching limits and Muncie and Grinter, Kans., to points in Kansas City switching district. Taking into consideration low grade of sand and keen competition in its sale, the difference in rate from Lawrence is too high as compared with those from Kansas City district points. Reasonable rate prescribed for future. Jackman & Jackman v. A. T. & S. F., 118 I. C. C. 547, 560.

(kk) An adjustment under which arbitraries confine shipments largely to single-line deliveries has been condemned by commission. See 26 I. C. C. 192; 62 I. C. C. 731. Chicago Gravel Co. v. A., T. & S. F., 118 I. C. C. 633, 647

(ll) Complainant attacked class and combination rates charged on sulphate of alumina, carloads, from Kokomo, Ind., to Wisconsin as unreasonable, unduly prejudicial as compared with rates from Joliet and Chicago Heights, Ill., to the same destinations. The rates from Kokomo are either 90% of sixth class or combinations of the rate to Milwaukee, which is upon that basis, and proportional commodity rates beyond. Chicago Heights and Joliet take the same rates as Chicago. A rate of 18.5c is applicable from these points to a large number of destinations in Wisconsin for distances ranging from 149 to 400 miles. To the same destinations generally a proportional rate of 8.5c is in effect from Milwaukee, and this, added to the rate from Kokomo to Milwaukee results in a combination rate of 26.5c. The rates from Kokomo are in no instance shown to be less than 5.5c higher than the rates from the Chicago group, which is the difference in the rates to Milwaukee. The record does not show that increases in

the rates from Chicago Heights and Joliet are justified. HELD, attacked rates from Kokomo to Wisconsin unreasonable to extent they exceed the aggregate of intermediate rates, and unduly prejudicial to extent they exceed the rates on like traffic from Chicago Heights and Joliet by more than 5.5c. Como Chemical Co. v. A. T. & S. F. Ry., 120 I. C. C. 517.

(mm) Class rates between Kansas City, Mo., Omaha, Nebr., and St. Paul and Minneapolis, Minn., on one hand, and Fulton and Mayfield, Ky., on other, found unreasonable and unduly prejudicial in favor of Ohio River crossings to extent they exceeded corresponding rates contemporaneously maintained from or to Cairo or Metropolis, by more than specified amounts herein prescribed. Reasonable maximum rates and nonprejudicial basis of rates prescribed for future and reparation denied. Mayfield Chamber of Commerce v. A. & W., 120 I. C. C. 137, 144.

(nn) Class rates between official classification territory, on one hand, and Fulton and Mayfield, Ky., on other, found unduly prejudicial in favor of Ohio River crossings to extent they exceed corresponding rates contemporaneously maintained from or to Cairo or Metropolis, via whichever crossing the traffic moves from and to Fulton and Mayfield, by more than 24 cents on first class, and on the other classes by amounts bearing same percentage relationships to 25 cents as contemporaneous rates on the corresponding classes bear to first-class rates from or to Cairo or Metropolis, as the case may be, on the one hand, and points in official classification territory, on the other, resulting rates to be governed by official classification. Mayfield Chamber of Commerce v. A. & W., 120 I. C. C. 137, 144.

(oo) Rates on potatoes and vegetables from Colorado, Idaho, Montana, Nebraska, Wyoming, and Utah, to points in southern Arkansas, and Louisiana, found unduly prejudicial to such destination points and shippers there located and unduly preferential of Little Rock, Pine Bluff, and Helena, points in northern Arkansas, and Memphis, Tenn., and shippers there located, to extent they exceed contemporaneous rates to latter points by more than 8 cents from points in Colorado, Nebraska, and Wyoming, and 7 cents from points in Utah, Idaho, and Montana. Arkansas Jobbers & Mfrs. Asso. v. C., R. I. & P., 120 I. C. C. 245.

(pp) Finding in prior report, 113 I. C. C. 343, that joint rates on newsprint paper from Espanola, Ontario, Canada, to destinations in Wisconsin, Minnesota, Illinois, Missouri, Iowa, and Nebraska, are and for future will be, in so far as transportation takes place within United States, unreasonable and unduly prejudicial to extent they exceed or may exceed by more than 4 cents per 100 pounds the rates contemporaneously applicable from Sault Ste. Marie, Ontario, to same destinations, affirmed on reconsideration. Spanish River Pulp & Paper Mills v. A. & W., 120 I. C. C. 251.

(qq) Carrier in defending reasonableness of petroleum rates to destinations on the Missouri & North Arkansas Ry., stressed the poor financial condition of above-named road. HELD, that rate herein found reasonable as maximum includes the usual arbitrary for that carrier because of its poor financial status. Bear State Oil Co. v. A., T. & S. F., 120 I. C. C. 301, 303, 304.

(rr) In 85 I. C. C. 270, commission prescribed specific rates on lumber and forest products from points in southeastern and Carolina territories and Virginia cities to various New Jersey points. Upon complaint contending that rates prescribed do not reflect proper spreads under the New York rates and seeking establishment of rates to Trenton, N. J., on same basis as those to Philadelphia, with relatively higher rates to Jersey City. HELD, it is not unusual for a general rate adjustment such as that resulting from above-cited case to include increases as well as reductions, and fact that spread in rates to Jersey City and Trenton under New York is less than that formerly existing, does not demonstrate that rates assailed are unreasonable. Moreover, rates assailed compare favorably with those on lumber from Georgia and Alabama points to c. f. a. territory. New Jersey Lumbermen's Committee v. A. C. L., 120 I. C. C. 329.

(ss) Joint rates on scrap car wheels from Windsor, Ontario, Canada, to Michigan City, Ind., and Pullman, Ill., found unreasonable and unduly prejudicial, in so far as the transportation takes place within United States, to extent they exceeded or may exceed 72 and 55 cents, respectively, higher than corresponding rates from Detroit, Mich. Reparation awarded. Hyman-Michaels Co. v. B. & O., 120 I. C. C. 417.

(tt) Rates on sugar from New Orleans and points taking same rates to Marshall and Jefferson, Tex., found unreasonable in past to extent they exceeded present rates. Present rates found just and reasonable maximum rates for future but unduly prejudicial to extent they exceed those contemporaneously in effect to Shreveport by more than 3 cents from Marshall and 4 cents from Jefferson. Marshall and Jefferson v. T. & P., 120 I. C. C. 455.

(uu) Rates on sulphate of alumina from Kokomo, Ind., to Wisconsin destinations, found unreasonable to extent they exceed aggregate of the intermediate rates contemporaneously in effect, and unduly prejudicial to extent they exceed the contemporaneous rates on like traffic from Chicago Heights and Joliet, Ill., by more than 5.5 cents. Reasonable and nonprejudicial rates prescribed for future. Como Chemical Co. v. A., T. & S. F., 120 I. C. C. 517.

(vv) Upon reargument, statement in original report, 104 I. C. C. 104, that fresh-meats rate from St. Louis to New York is a marked exception to the adjustment prevalent and that 117 per cent is the standard relationship on almost every other commodity, found to be in error. Finding that local and proportional rates on fresh meats from St. Louis and other Mississippi River crossings to destinations in trunk-line and New England territories should be based upon 117 per cent of the Chicago-New York rate, withdrawn, and rates based upon specific differentials over Chicago prescribed for future. Morrell & Co. v. N. Y. C., 120 I. C. C. 537.

(ww) Upon reargument, differentials which may be added to rates on salt under scale prescribed in original report, 102 I. C. C. 540, from Louisiana mines to local points on certain Mississippi short-line carriers, increased from 50 to 60 cents per net ton, and equidistant clause of fourth section of the act not required to be observed by these short lines in meeting more distant junction-point rates. Mississippi R. R. Comm. v. A. & V., 120 I. C. C. 569.

(xx) Complainant attacked commodity rates on cement interstate of 11c from Kansas gas belt to points within the Kansas City, Mo., switching district as unreasonable and as compared with the carload rates on cement from Cement City (Sugar Creek), Mo., Sunflower and Bonner Springs, Kas., to points within the Kansas City switching district unduly prejudicial. The Santa Fe serves all of the cement producing points in the Kansas gas belt except Mildred. M. P. serves Independence, Fredonia and Iola. M. K. T. serves Dewey, Mildred, Chanute, Humboldt, and Iola and Frisco serves Fredonia. The Santa Fe also serves Bonner Springs through a switching arrangement with the K. C. K. V. & W., Cement City and Sugar Creek. Bonner Springs is also served by the U. P., and Sunflower by the Kaw Valley. Except from Dewey to points in Kansas intermediate to Kansas City, Mo., the interstate rates on cement from the Kansas gas belt and from other cement producing points through western trunk line territory from Buffington, Ind., on the east, to and including Colorado on the west, are on the basis prescribed in 48 I. C. C. 201, and in the supplemental reports therein, 52 I. C. C. 225 and 69 I. C. C. 644. The original decision divided western trunk line territory into four rate territories with different mileage scales of interstate rates for application in each. Scale II rates were prescribed for that portion of Missouri generally north of the M. P. from St. Louis to Kansas City and in Iowa, southern and eastern Minnesota and portions of Wisconsin and Michigan. Scale III rates, somewhat higher than scale II, were prescribed for that part of Missouri generally south of the M. P. and north of the Frisco from St. Louis to Joplin, Mo., eastern Kansas, Nebraska, and South Dakota and portions of Minnesota not included in scale II territory. Sugar Creek, Bonner Springs, and Sunflower are on the boundary between scale II and scale III territories and the Kansas gas belt is in scale III territory. In arriving at the rates on cement as prescribed, and the related rates in the various other cases, the Commission has not been controlled by the general level of rates on other commodities, whether switching or line haul, but the rates prescribed have been made with special regard to the conditions surrounding the transportation and marketing of that particular commodity with the view to establishing, and securing the maintenance of, general levels of rates in and between the several scale territories not only reasonable per se as applied to that commodity but under which the rates from competing cement producing points are related to each other with close re-

gard to distance. This record discloses no sound transportation reason which would justify any substantially lower cement rate for the average haul of 15 miles from Sugar Creek, Bonner Springs and Sunflower to destinations in the Kansas City switching district than would result under the scale prescribed for interstate application to hauls of similar length in scale II territory, which scale forms the basis for the present key point rate of 11c from the Kansas gas belt. Kansas City is one of complainants largest markets for cement and they actively compete at that point with cement from Sugar Creek, Bonner Springs and Sunflower. The rates to Kansas from these competing mills should be on substantially the same basis, distance considered, and no other basis will remove the cause of these complaints. HELD, interstate rates on cement, in carloads, from Cement City (Sugar Creek), Bonner Springs and Sunflower to points within the Kansas City switching district that are lower by more than 4.5c, the rates from the Kansas gas belt points will result in undue prejudice, 11c to remain in effect from Kansas gas belt points and 6.5c from Sunflower, Bonner Springs and Sugar Creek. Iola Cement Mills Traffic Asso. v. A. T. & S. F. Ry., 122 I. C. C. 337.

(yy) Complainant alleged commodity rates on pig iron, carloads, from Alabama, Kentucky and Tennessee to Ansonia, Conn., as unreasonable and unjustly discriminatory, in that they exceeded the rates to Derby and Shelton, Conn. Rates on pig iron from southern territory to New York and destinations in New England are made with relation to the rates from Birmingham, Ala., being differentials over or under Birmingham rates. Ansonia is not on navigable water, but is within the switching district of Derby and Shelton, and rather than have delivery taken at Derby the carriers established the rate of $8.77 to Ansonia. The lower rates to Derby were originally predicated upon the rates published by the northern lines in 1904 from Norfolk to points on Long Island sound to meet water competition. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Farrell Foundry & Machine Co. v. A. B. & A. Ry., 123 I. C. C. 127.

(zz) Rates on window glass from Fort Smith, Ark., and Okmulgee, Okla., and on rough-rolled glass from Okmulgee to destinations in Texas, found not unreasonable, discriminatory, or unduly prejudicial as compared with those contemporaneously in effect from Shreveport, La., a competing point, to same destinations; except that such rates are unduly prejudicial to Fort Smith and Okmulgee and unduly preferential of Shreveport, to extent that rates from Fort Smith and Okmulgee to Gainesville exceed 6 cents less than the contemporaneous rates from Shreveport, and to extent that rates from Fort Smith and Okmulgee to Sweetwater and San Antonio exceed 4 and 5 cents, respectively, higher than the contemporaneous rates from Shreveport. Nonprejudicial bases of rates prescribed. Harding Glass Co. v. A., T. & S. F., 122 I. C. C. 217.

(3a) Intrastate rates on cement from Cement City (Sugar Creek), Mo., and Bonner Springs and Sunflower, Kans., to destinations in the Kansas City, Mo.-Kans., switching district, to extent they are lower by more than 4.5 cents than interstate rates contemporaneously maintained on like traffic from points in the Kansas gas belt, found unduly prejudicial to the Kansas gas-belt points and shippers therefrom, unduly preferential of Cement City (Sugar Creek), Bonner Springs, and Sunflower, and shippers therefrom, and unjustly discriminatory against interstate commerce. Iola Cement Mills Traffic Asso. v. A., T. & S. F., 122 I. C. C. 337.

(3b) Rates on grain and products from Ohio and Mississippi River crossings and Mount Vernon, Ind., to Florence, Sheffield, and Tuscumbia, Ala., found unreasonable to extent they exceed rates found reasonable in 118 I. C. C. 732 and other cited cases, and unduly prejudicial to extent they exceed by more than 2 cents per 100 pounds the rates contemporaneously applied on like traffic to Corinth. Reasonable and nonprejudicial rates prescribed for future and reparation denied. Florence Chamber of Commerce v. I. C., 122 I. C. C. 653.

(3c) Rates on grain and products from points of origin in Utah, and on the Oregon Short Line and Utah Idaho Central railroads in Idaho and Oregon to points in Nebraska, Kansas, Oklahoma, Texas, Minnesota, Iowa, Missouri, Arkansas, Louisiana, Wisconsin, Illinois, Indiana, Kentucky, Tennessee, Mississippi, and Alabama, found unduly pre-

judicial in favor of Colorado common points to extent they exceed contemporaneous rates from Denver to same destinations by more than reasonable differentials. Ogden Grain Exchange v. A. & S., 122 I. C. C. 691, 718.

(3d) Rates on crude sulphur from Sulphur Mine, La., Hoskins and Bryanmound, Tex., to Mooar, found not unreasonable but unduly prejudicial to extent they exceeded rates contemporaneously in effect to Chicago; and subsequent to reduction of rates assailed, rates from Hoskins and Bryanmound to Mooar, found unduly prejudicial to extent they exceeded those contemporaneously in effect to Chicago by more than 4.5 cents. Earnings under rates attacked compare favorably with those yielded by rates prescribed or found not unreasonable in previous cases, and fact that rates were subsequently reduced affords no gauge for determination of reasonable maximum rates to Mooar, earnings under such rates indicating that they are on a low basis. Nonprejudicial rates from Bryanmound and Hoskins prescribed for future. Du Pont de Nemours & Co. v. H. & B. V., 122 I. C. C. 729.

(3e) Rates on coal from Thompson, Utah, to destinations in Utah, Nevada, and California west of Castle Gate, Utah, during Federal control, found not unreasonable as compared with those from Castle Gate, and Rock Springs, Wyo., to same destinations, and from Montana points for comparable distances, except to destinations on Nevada Northern, Western Pacific, and Los Angeles & Salt Lake. The more favorable transportation conditions from Rock Springs was recognized in 89 I. C. C. 666, which tends to offset somewhat longer average distances from Castle Gate or Thompson; a differential of 10 cents in favor of Castle Gate can not be considered an unreasonable charge for the 94-mile haul from Thompson, and Montana coal rates are on a somewhat lower level than those in other western States. American Fuel Co. v. A., T. & S. F., 123 I. C. C. 101.

(3f) Findings in previous report on reargument, 89 I. C. C. 137, that interstate rates on anthracite and bituminous coal from various producing regions to Chicago switching district, higher to some delivery points therein than to Chicago proper, were not unreasonable but were unduly prejudicial to extent that rates to higher-rated points exceeded the flat Chicago rates, modified so as to provide that rates will not be unduly prejudicial to such points except to extent they exceed nonprejudicial basis of differentials prescribed. Original report 73 I. C. C. 161. Chicago Coal Merchants Asso. v. Director General, 123 I. C. C. 169.

(3g) Upon further consideration, authority to charge for transportation of fertilizers and materials, an arbitrary of 50 cents per net ton in addition to standard-line rates between points on certain additional so-called short or weak lines in the Southeast not considered in original report 113 I. C. C. 389, and between points on those lines and points on standard lines, such arbitraries to accrue solely to weak lines, found justified. Fertilizers Between Southern Points, 123 I. C. C. 193.

(3h) Rates on flaxseed from points in South Dakota to Fredonia, Kans., constructed by adding proportionals to local rates to Missouri River, found unreasonable and unduly prejudicial as compared with rates contemporaneously in effect to Minneapolis, Des Moines, Chicago, and St. Louis, competing points, and to extent they exceeded corresponding rates to Omaha, Nebr., by more than 16 cents. Reparation awarded. Fredonia Linseed Oil Works Co. v. A., T. & S. F., 123 I. C. C. 525.

(3i) Respondents proposed increased and reduced joint rates on fruits, melons and vegetables, in carloads and less carloads, from points on the L&N in Alabama, Florida, Louisiana and Mississippi to Memphis, Tenn. Points of origin are on both main and branch lines of the L&N south of Montgomery, Ala. Present and proposed rates apply over the L&N to Birmingham, Ala., and thence I. C. or Frisco. L&N reaches Memphis but by a route so circuitous that it is not practicable for this traffic. Respondents present rates from this Gulf coast territory are generally lower than those from intermediate points north thereof and south of Montgomery. They are also lower than the rates from the same points of origin to Nashville, Tenn., for single line hauls considerably shorter than those to Memphis. The publication of those rates was due in large part to a clerical error. Only from the Mobile districts were reduced rates contemplated when the rates were established in 1925. The proposal here made is for the purpose of correcting

the error, removing the departures from the long and short haul clause, and putting the rates on a consistent and logical basis. The readjustment would bring about increases from the Gulf Coast territory and reductions from points farther north. In many instances the proposed rates from the Gulf Coast territory would exceed the class rates considerably, but those from the other points would be lower than the present class basis. The movement at the rates proposed to be canceled, except possibly those on potatoes, from the points here considered to Memphis would be negligible. Memphis is ordinarily supplied from other sources. No good reason appears for requiring respondents to meet the rates of their short line competitors. HELD, schedules not justified, without prejudice to filing of schedules of rates which shall not exceed those to Nashville by more than 5%. This is not to be construed as approval of establishment of less carload commodity rates. Fruits and Vegetables to Memphis, 126 I. C. C. 226.

(3j) Complainant attacked commodity rates charged on cottonseed, in carloads, from points in Louisiana on the V. S. & P., L. & A. and M. P, and from Arkansas on the M. P. to Jackson and Newton, Miss., unreasonable to extent they exceed by more than 3.5c and 5c the rates in effect to Vicksburg, Miss. Because of the difference in the general level of cottonseed rates in the southwest and southeast, the scale of rates prescribed in Oklahoma case, 98 I. C. C. 183, should not be extended without modification east of the Mississippi river. No system of basing point arbitraries will do substantial justice to all. HELD, rates attacked unreasonable to extent they exceeded specific rates required to be published, reparation awarded. Tallulah Cotton Oil Co. v. A. & V. Ry., 126 I. C. C. 723.

(3k) It is not sound to test reasonableness of a differential by consideration of the ton-mile earnings produced by it for the difference in distance, independent of measure of the entire rate. Lake Cargo Coal Rates, 1925, 126 I. C. C. 309, 342.

(3l) Rate on newsprint paper from New Orleans, La., to El Dorado, Ark., FOUND not unreasonable, but unduly prejudicial as compared with lower rates from New Orleans to other destinations in Arkansas, Oklahoma, and Louisiana for comparable distances, and to extent it exceeded rate to Shreveport, La., appliable on interstate or foreign commerce, by more than 7 cents per 100 pounds. Nonprejudicial basis of rates prescribed. El Dorado Chamber of Commerce v. C., R. I. & P. Ry., 126 I. C. C. 443.

(3m) Rates on sand and gravel from Muscatine, Iowa, to destinations in central Illinois found unreasonable and unduly prejudicial as compared with rates on crushed stone under distance scale prescribed in 49 I. C. C. 681, from Birdsboro and Devault, Pa., and Port Deposit, Md., to various eastern destinations; with rates on chert, clay, sand and gravel prescribed in 122 I. C. C. 133, for application in the Southeast; and to extent they exceeded by more than 10 cents per ton rates contemporaneously maintained on crushed stone, prescribed in 89 I. C. C. 110, from Buffalo and Linwood, competing Iowa points with which Muscatine is grouped, to same destinations. Reasonable and nonprejudicial rates required for future. Automatic Gravel Products Co. v. C., R. I. & P. 126 I. C. C. 487.

(3n) Rates on zinc concentrates from points in the Joplin, Mo.-Miami, Okla., ore field to Terre Haute, Ind., found unduly prejudicial in favor of Danville, Hillsboro, and East St. Louis, Ill., to extent they exceeded rates contemporaneously maintained to Danville, or rates contemporaneously maintained to East St. Louis and Hillsboro more than 3.5 cents per 100 pounds. Nonprejudicial basis of rates prescribed and reparation denied. United Zinc Smelting Corp. v. B. & O. 126 I. C. C. 677, 696.

(3o) Rates on broom handles in the white, turned to shape with a hole bored through one end, found unreasonable to extent they exceeded by more than 3 cents the contemporaneous rates on lumber. Reasonable rates prescribed for future and reparation awarded. Nat'l. Broom Co. v. A., T. & S. F., 128 I. C. C. 98.

(3p) Rates on coal from mines in the Birmingham district of Alabama, on the one hand, and western Kentucky and southern Illinois districts, on the other, to destinations in the Mississippi Valley, found unduly prejudicial to Alabama mine operators and unduly preferential of mine operators in western Kentucky and southern Illinois districts to extent that rates from the latter exceed those from the former by less amounts in cents per net ton than those prescribed in zone

adjustment described in the report. Previous report 109 I. C. C. 740. Coal from Illinois, Kentucky, and Alabama, 128 I. C. C. 113.

(3q) Proposal to add a differential to the intrastate rate at Mobile, Ala., in order to place that port on a parity with Gulfport, Miss., and New Orleans, found justified. Similar differential was adopted at Gulfport in favor of Alabama, the same as prescribed at New Orleans, in order to preserve this rate parity on coal from Illinois-Kentucky mines, and on this long-haul traffic for substantially equal distances, it is believed the parity of these ports should be maintained. Coal from Illinois, Kentucky and Alabama, 128 I. C. C. 113, 120.

(3r) Proposed increased rates on grain and products from Montana points on Great Northern Ry. to destinations on the Goldendale branch of Spokane, Portland & Seattle Ry., found not justified. The Goldendale branch points are part of a large destinations group. Respondents propose to cancel blanket rate to Goldendale branch points and to establish rates made by addition of arbitraries to the junction-point rate. No arbitraries now apply on traffic from Montana to this branch and in 66 I. C. C. 330, 336, it was stated that when blanket rates apply over an extensive area, fact that branch-line points lie within that blanket does not argue as strongly that there should be a branch-line differential as when rates are applied upon a graded basis, for in an extensive blanket a branch-line haul loses its significance unless it is much more expensive than main-line operations. Here, although operating conditions are more difficult and expensive than on main line, the markedly shorter total haul required with higher earnings, and fact that rates to other more distant branch lines will continue to be accorded the group basis, greatly offsets this showing. Grain from Montana, 128 I. C. C. 123.

(3s) Rates on bituminous coal from mines in Illinois and Indiana to points in Illinois, Indiana, Michigan, Wisconsin, Minnesota, North Dakota, South Dakota, Nebraska, and Iowa found not unreasonable but relationship between rates from said mines in Illinois and Indiana, on the one hand, and mines in western Kentucky, on the other, found unduly prejudicial to Illinois and Indiana mines due to maintenance of unreasonably low rates from western Kentucky mines. Prejudice should be removed by increasing rates from latter mines in amount of 10 cents per net ton to all destinations in States named to which existing differential of the western Kentucky over the southern Illinois group is 25 cents per net ton. See 89 I. C. C. 170; 263 U. S. 515. Illinois-Indiana Coal Cases, 128 I. C. C. 265.

(3t) All-rail rates on refined sugar from New Orleans and other Louisiana refining points to points in Arkansas, found unreasonable as compared with lower rates contemporaneously in effect to numerous points in southern territory; to various points on the Mississippi and Ohio Rivers for comparable distances; and to extent they exceed rates that will result from application of distance rates prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203. Although evidence is inadequate to determine maximum reasonable river-and-rail rates, unless there are circumstances and conditions not revealed by the record, river-and-rail rates related differentially to all-rail rates on usual basis should be established. Sugar Between Louisiana and Texas Points, 128 I. C. C. 309.

(3u) Upon contention that since differentials of New Orleans and other Gulf ports and south Atlantic ports under New York and other north Atlantic ports are now in effect on all European and African import traffic destined to points north of Ohio River, in order to allow Gulf ports to compete on a fair basis because of superior steamship service at north Atlantic ports, differentials at Texas ports under New Orleans are justified for same reason, FOUND: While such commercial advantages can not be determinative of rate relationships and ordinarily can not be taken into consideration when passing upon question of undue prejudice, they serve to show that advantages of New Orleans are superior to those of Texas ports and that differentials mentioned would not likely cause serious injury to New Orleans. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349, 368.

(3v) Contention that establishment of differentials against New Orleans and in favor of Texas ports would violate both the letter and spirit of the Constitutional prohibition against preference by any regulation of commerce to the ports of one State over another not sustained, following 209 U. S. 56 and 95 I. C. C.

539. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349, 378.

(3w) Original report 126 I. C. C. 255, prescribing same rates and bases on flour as on wheat from points in Idaho, Montana, Oregon, Utah, Wyoming, and Colorado to destinations in California and Arizona, modified so as to provide that rates on flour shall not exceed the contemporaneous rates on wheat by more than 5 cents per 100 pounds to California destinations and by more than 7 cents per 100 pounds to destinations in Imperial Valley of California and Arizona. Complainant and carriers contended that establishment of rates prescribed in original report would break down the differential relationship between flour and wheat between many if not most points between which assailed rates were found not unreasonable. As differentials are generally in effect on flour over wheat between points involved, no valid objection appears to modify original report in conformity therewith. Ogden Grain Exchange v. A. E. R. R., 128 I. C. C. 490.

(3x) Compliance with carriers' request that differentials should be applied only over the short-line routes would deprive shippers of the natural advantage of the lower-rate routes through central territory; would result in many rates as high as the full combinations of the gateways and give rise to further long-and-short-haul departures and unwarranted increases in the rates prescribed. Southern Class Rate Investigation, 128 I. C. C. 567, 580.

(3y) Commission is not convinced that there is any greater necessity for uniform differentials, New York over Baltimore to all southern groups, for example, than for uniform differentials as between any other competitive points in official territory, such, for example, as Chicago over Cincinnati, or Pittsburgh over Baltimore. Southern Class Rate Investigation, 128 I. C. C. 567, 592.

(3z) Complainant alleged that commodity rates on millet seed, carloads, from Colorado, Kansas, Nebraska, North Dakota and South Dakota to Minneapolis, Minn., were and are unjust, unreasonable and discriminatory. Millet seed is given the flaxseed rate. At the time of hearing rates on flaxseed were higher than wheat rates, but bore no fixed relationship thereto. From a traffic standpoint millet seed resembles flaxseed in many respects and is of less value. In the past the two seeds have been maintained on the same rate basis and for convenience this relationship should be preserved. Certainly rates on millet seed should not be higher. HELD, assailed rates unreasonable to extent they exceed 112% of the wheat rates, reparation awarded. Northrup King & Co. v. A. T. & S. F. Ry., 129 I. C. C. 125.

(4a) Complainant alleged that the rates on strawboard, in carloads, from Cincinnati territory, Chicago territory, Dayton South Bend territory, Detroit Cleveland territory, Louisville territory and Omaha Davenport territory to Texas common point territory are unjust, unreasonable and unduly prejudicial. The present rates from the origin territories concerned to Texas common points are based on differentials over the rate of 66c from St. Louis, Mo. While there is no complaint against the rate from St. Louis and complainants specifically stated at the hearing that they found no fault with the present differentials, if the rates sought by them were established and the present differentials maintained, the resulting rate from St. Louis would be 48c minimum 60,000 pounds and 60c minimum 40,000 pounds. Strawboard is rated fourth class when corrugated and fifth class when plain. HELD, assailed rates were not and present rates are not unreasonable or unduly prejudicial, complaints dismissed. United Paperboard Co. v. A. & R. R. R., 129 I. C. C. 131.

(4b) Complainant alleged that the rates on lumber and other forest products, in carloads from several points in the Puget Sound district of Washington to points on the O. S. L. in southern Idaho and Northwestern Utah are unreasonable, unjustly discriminatory and unduly prejudicial compared with those on the socalled coast group basis from Portland, Ore., to the same destinations. The origin points are Seattle, Tacoma, and certain other points on the lines of the C. M. St. P., G. N., N. P., and/or O. W. R. R. & N. The destinations are all on the O. S. L. those in Idaho being between Caldwell and McCammon and on the branch extending north from Pocatello, and those in Utah being Ogden and a few points north thereof. Taking Tacoma as a typical origin point, the rates to main lines destinations are generally 45 or 47.5c, depending largely on the distance, but to branch line destinations they range as high as 58c. From Bellingham and a few other extreme northwestern Wash-

ington points, the rates are generally somewhat higher than those from Tacoma. The distances range from about 600 to 1,350 miles. HELD, rates assailed not unreasonable or unjustly discriminatory but are and will be unduly prejudicial to extent they exceed from Tacoma, Seattle, Everett, Fairfax, Frederickson, Selleck and Union Mills, Wash., the rates from Portland to the same destinations by more than 5c to points taking rates of less than 45c on fir lumber from Portland, by more than 2.5c to points taking a rate of 45c from Portland, by any amount to points taking rates of more than 45c from Portland; and to extent the rates from Bellingham and National, Wash., exceed the rates from Portland to the same destinations by more than the amounts above described plus 2.5c from Bellingham and 1.5c from National to points taking rates of less than 51c from Portland and Portland rates to other destinations covered by the complaint. Buflein Lumber & Mfg. Co. v. O. W. R. R. & N. Co. 129 I. C. C. 336.

(4c) Upon contention that carriers were never authorized to increase the differential existing on coal from anthracite fields in Pennsylvania to destinations in the metropolitan district of Boston over those to latter point. FOUND: In dealing with similar situation in 113 I. C. C. 161, it was stated that previous approval of a differential is no indication that change in conditions which brought about general increases and reductions, did not warrant a subsequent change in the differential. Chadwick Coal Yard Co. v. N. Y., N. H. & H., 129 I. C. C. 165, 168.

(4d) Upon further hearing, finding in 96 I. C. C. 208, that commodity rates on canned goods from Middleton, Wis., to lower Mississippi Valley destinations were unreasonable to extent they exceeded the contemporaneous rates from Madison, Wis., by more than 2 cents, affirmed. Commodity rates from Richland Center, Chilton, Berlin, Sparta, Neillsville, and any other Wisconsin points no farther from Madison or Milwaukee, whichever is nearer, are and for future will be unreasonable to extent they exceed the contemporaneous rates from Madison and Milwaukee to same destinations by more than 8 cents per 100 pounds. Rates throughout balance of territory under consideration found not unreasonable or otherwise unlawful. Reasonable basis of rates prescribed for future. National Canners Asso. v. B. & O., 129 I. C. C. 269.

(4e) Fact that spread between rates to more distant destinations increases instead of decreases in accordance with the general principle may be offset by fact that a higher level of rates is justified in a territory of relatively low traffic density. National Canners Asso. v. B. & O., 129 I. C. C. 269, 278.

(4f) All-rail and water-and-rail rates on canned goods from San Francisco, and points taking same rates to Missoula, Mont., found not unreasonable as compared with rates contemporaneously maintained to various other Montana, Idaho, and Utah points for comparable distances, but unduly prejudicial to extent they exceed those contemporaneously in effect to Spokane, Wash., by more than 20 cents per 100 pounds. McClintock-Trunkey Co. v. McCormick S. S. Co., 129 I. C. C. 591.

(4g) Divisions of joint rates on anthracite coal from Pennsylvania points to destinations in Illinois beyond Chicago switching district, found unreasonable, inequitable, and unduly prejudicial to extent they exceed applicable arbitraries over Chicago, plus 20 cents per ton, subject to defendant's local rates as maxima, to accrue to defendants, with balance of through rates to accrue to complainants. In 73 I. C. C. 161, arbitraries over Chicago were prescribed to remove undue prejudice which arbitraries carriers established by reducing through rates so as to maintain the arbitraries. Here, divisions claimed by complainants would stand no portion of a similiar reduction; those claimed by defendants only a portion of it; and no consideration would be given to divisions accruing to connecting lines. Erie Railroad Co. v. C. & N. W., 129 I. C. C. 743.

V. REPARATION.

See Reparation.

§9. In General.

(a) In original report, 104 I. C. C. 183, rates on broom handles (wooden) in the white, turned to shape, were found unreasonable and rates 1.5 cents over contemporaneous lumber rates prescribed, reparation being awarded to that basis. Upon further hearing, carriers

pointed out that tariffs naming rates on articles taking arbitraries over lumber rates provided rates equal to 1.5 cents over lumber rates when higher than 31.5 cents prior to July 1, 1922, and higher than 28.5 cents thereafter and rates equal to 2 cents over lumber rates when such rates are 31.5 cents or less prior to July 1, 1922, and 28.5 cents thereafter, original finding modified, reasonable rates prescribed, and reparation awarded accordingly. Deshler Broom Factory v. A., T. & S. F., 115 I. C. C. 437.

DISCRIMINATION

I. CONTROL AND REGULATION.
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V. PROCEDURE AND EVIDENCE.
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CROSS REFERENCES

See Absorption of Charges II; Advanced Rates V; Allowances III, IV; Any Quantity Rates; Blanket Rates §8, §12, IV, V; Branch Lines I; Bridges and Tolls II, V; Cars and Car Supply III, §27 (c), §33; Class Rates II; Classification V, §17, §20; Commodity Rates III; Credit Account; Crimes I, II; Demurrage §3; Differentials II; Divisions V; Equalization of Rates; Evidence §13 (6); Export Rates and Facilities III; Express Companies III; Facilities and Privileges IV, §15; Import Traffic II; Local Rates and Combinations; Long and Short Hauls §6⅞; Minimums; Passenger Fares and Facilities II, III, §10, §12; Percentage Rates; Proportional Rates II, IV; Rail and Water Rates; Reasonableness of Rates §28; Reconsignment II; Reduced Rates §4½; Special Contracts §5; Special Rates and Services (c); Storage §2; Switch Tracks and Switching III; Tap Lines §7; Telephone and Telegraph Companies I; Terminal Facilities §10; Through Routes and Joint Rates II, IV, §13; Track Storage; Water Carriers II; Weights and Weighing III.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Construction of the Act.

See Act to Regulate Commerce II.

(a) Maintenance of different rates by two different groups of competing carriers over their respective routes be-

tween same points does not constitute unjust discrimination within meaning of the act. Liquid Carbonic Co. v. C. & E. R. R., 104 I. C. C. 446, 447.

(b) The language of section 3 of the act is broad enough to cover any kind of discrimination. See 17 I. C. C. 361, 370 and other cited cases. York Mfrs. Asso. v. P. R. R., 107 I. C. C. 219, 229.

(c) The inhibition of section 3 of the act against undue prejudice applies to localities as well as to shippers at those localities. Sioux Falls Live Stock Exchange v. A., T. & S. F., 109 I. C. C. 501, 512.

(de) No matter how numerous the territories are to which complainant has access from its mines, it is entitled to ship its coal to any market at nonprejudicial rates. Clinchfield Coal Corp. v. C. C. & O. Ry., 118 I. C. C. 79, 81.

(fg) The act forbids the existence of undue prejudice regardless of the degree thereof. Phosphate Rock from Florida, 115 I. C. C. 299, 235.

(h) The fundamental purpose of the act is "to compel the carrier as a public agent to give equal terms to all," "to cut up by the roots every form of discrimination, favoritism, and inequality," and to "place all shippers upon equal terms." See 200 U. S. 361, and other cited cases. Service on K., O. & G. Ry., 118 I. C. C. 412, 418.

(i) Common law did not prohibit mere unjust discrimination between localities, through prohibiting such discrimination between individual shippers. McGrew Coal Co., v. Mellon, Federal Agent, (Mo. 1926) 287 S. W. 450.

(j) The fact that the law declares unlawful only discrimination that is unjust and only prejudice that is undue indicates that it was the intent to give the carriers some latitude in fixing rates, and that distance or cost of service need not be the sole criterion by which rates shall be measured. But there are limits beyond which a carrier may not go, even in meeting competition. Galveston Commercial Asso. v. G. H. & S. A. Ry., 128 I. C. C. 349, 379.

(k) A mere difference in rates does not constitute undue prejudice. Beatrice Creamery Co. v. C. M. & St. P. Ry., 129 I. C. C. 375, 381.

(l) The Commission has repeatedly recognized that mere differences in rates do not necessarily result in prejudice which is undue, and complainants evidence is of the most general character. West Texas Chamber of Commerce v. H. & T. C. Ry., 129 I. C. C. 546, 555.

(m) Disparity of rates, however, does not necessarily result in undue prejudice and complainant offered no other evidence on that issue. National Tube Co. v. A. T. & S. F. Ry., 129 I. C. C. 692, 695.

(n) The Act does not prohibit every preference and prejudice but only those that are undue or unreasonable. Preference or prejudice under section 3, to be undue or unreasonable must ordinarily be such that the difference in rates is in itself a source of advantage to the party alleged to be favored and a disadvantage to the other party. Lynchburg Chamber of Commerce v. Pennsylvania R. R., 132 I. C. C. 708, 710.

(o) The Interstate Commerce Act should be reasonably interpreted to accomplish purpose intended, to wit, reasonable charges without unjust discrimination or preference. Berwind-White Coal Mining Co. v. United States, (Pa., 1925) 9 Fed. (2d.) 429, 430.

(p) The Interstate Commerce Act, §3, does not require that all shippers shall be treated alike under any and all circumstances, and every discrimination is not illegal, but only that which is unjust and unreasonable. Berwind-White Coal Mining Co. v. United States, (Pa., 1925) 9 Fed. (2d.) 429, 430.

§2. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) While ordinarily, in undue prejudice or discrimination cases, commission enters an alternative order leaving carrier an option as to how such discrimination shall be removed, section 15 (1) of the act authorizes and empowers commission to prescribe the rate, charge, regulation, or practice to be thereafter followed. This provision of the act applies with respect to control of practices of carriers that result in undue prejudice or other violations of the act, in that the commission is empowered thereunder to determine "what * * * regulation or practice is or will be just, fair, and reasonable, to be thereafter followed." York

Mfrs. Asso. v. P. R. R., 107 I. C. C. 219, 231.

(b) The commission can not make a finding of undue prejudice against one producing district in favor of another, both serving a common market, where lines serving such common markets are independent carriers, no one of which serves both producing districts. See 22 I. C. C. 115 and cases basing thereon. Alabama Mining Institute v. I. C. C. 109 I. C. C. 740, 748.

(cde) Under transportation act, 1920, the commission has power where warranted by record to prescribe specific rates to remove undue prejudice. See 59 I. C. C. 662; 107 I. C. C. 219; 113 I. C. C. 629. Chicago Gravel Co. v. A., T. & S. F., 118 I. C. C. 633, 647.

(f) It is commission's duty to prescribe maximum reasonable rates and to remove any existing undue prejudice and preference of which complaint is made. Consolidated Southwestern Cases, 123 I. C. C. 203, 374.

(g) Where unjust discrimination by railroad exists, order to remove it may issue, and extend to every carrier participating, regardless of whether by its own act it can remove the inequality. Chicago, I. & L. Ry. Co., v. United States, 46 Sup. Ct. 226.

(h) Order of Interstate Commerce Commission, directing railroad to remove discrimination, which was rescinded by an order dismissing the proceeding in which it was entered, HELD not restored by subsequent order reopening such proceedings, notwithstanding Commission's authority, under Interstate Commerce Act. § 16, par. 6, as amended to modify its orders. Minneapolis & St. L. R. Co. v. Peoria & P. U. Ry. Co., 46 Sup. Ct. 402.

(i) Order of Interstate Commerce Commission to remove discrimination by its terms and under Interstate Commerce Act, § 15, par. 2, as amended to remain in force until further order of Commission, HELD rescinded by a later order of the Commission, dismissing the proceeding in which it was entered, such proceeding having been reopened after entry of the order for further consideration, in connection with other proceedings to investigate tariff established to remove discrimination in compliance with such order. Minneapolis & St. L. R. Co. v. Peoria & P. U. Ry Co., 46 Sup. Ct. 402.

(j) Order of Interstate Commerce Commission, directing railroad to remove discrimination, which was in fact rescinded by action of Commission, HELD not restored by telegram from chairman of division of Commission, stating order "still stands unrescinded." Minneapolis & St. L. R. Co. v. Peoria & P. U. Ry. Co., 46 Sup. Ct. 402.

§2½. State and Interstate Rates.

See Infra §4¾; State Rates and Regulation.

(a) Shipper contends that rates maintained over a short intrastate route control and uphold to an unreasonable level rates via interstate routes, thereby imposing an unjust burden upon interstate commerce, and seeks as a remedy to have commission reduce the intrastate rate, on theory that, this being the basing rate, such action will result in establishment of reasonable and nondiscriminatory interstate rates. HELD: Since no showing made that intrastate commerce is favored or interstate commerce prejudiced by the rate adjustment, and no claim made that intrastate rate fails to produce its just share of revenue as compared with level of interstate rates, no situation is presented which would bring intrastate rates under the commission's jurisdiction. In such case commission can merely determine whether interstate rates are unreasonable or otherwise in violation of the act. Hammond Iron Works v. P. R. R., 107 I. C. C. 473, 475.

(b) Contention that commission has no jurisdiction to require carriers to increase intrastate rates in order to remove alleged undue prejudice where complainants do not specifically allege a violation of section 13 of the act, not sustained where complaints sufficiently set forth facts putting both defendant carriers and State authorites, as required by the act, upon notice that maintenance of lower intrastate rate as compared with interstate rate is challenged, and where State authorities are also notified of hearings. Four States Grocery Co. v. K. C. S. Ry., 107 I. C. C. 485, 489.

(c) The coexisting federal power over the relationship of interstate and intrastate rates may be exercised in direct operation upon intrastate rates only to the extent necessary for effective regulation of interstate or foreign commerce. Mutual Creamery Co. v. American Ry. Express Co., 132 I. C. C. 207, 211.

(d) The authority of the Commission to deal directly with intrastate rates and fares in order to remove undue prejudice to or unjust discrimination against interstate commerce has been upheld by the Supreme Court. Mutual Creamery Co. v. American Ry. Express Co., 132 I. C. C. 207, 211.

II. DETERMINATION OF DISCRIMINATION.

§3. In General.

See Allowances §7.

(a) Interstate rates on lumber and products from Westwood, Calif., Portland, Grants Pass, Medford, and Klamath Falls, Oreg., and points taking same rates to Sacramento and other California points, found not unreasonably low, or to result in discrimination or undue prejudice to San Pedro. While some of these rates are on a low basis they are not unjustifiably low, as they yield to carriers something in excess of out-of-pocket cost, in addition to making possible a profitable traffic in transcontinental lumber and inbound supplies. Lumber industries of Oregan and California are dependent upon maintenance of existing adjustment, which has developed in view of many competitive forces. Moreover, present rate basis is satisfactory to all producing sections except San Pedro, from which intrastate rates are properly related to similar rates from other California producing sections. Los Angeles Lbr. Products Co. v. S. P. Co., 104 I. C. C. 297.

(b) Maintenance of different rates by two different groups of competing carriers over their respective routes between same points does not constitute unjust discrimination within meaning of the act. Liquid Carbonic Co. v. C. & E. R. R., 104 I. C. C. 446, 447.

(c) Alabama points: Rates on prepared roofing and asphalt shingles from Chicago, St. Louis, Cairo, Evansville, Louisville, and Cincinnati, to Florence, Sheffield, and Tuscumbia, Ala., found not unreasonable, but, in view of level of rates in Mississippi Valley territory and circumstances under which they were established in comparison with contemporaneous rates in Southeast at points adjacent to that territory, the spread between rates that have for many years prevailed at Corinth, Miss., and rates at Florence, Sheffield, and Tuscumbia found too great, subjecting jobbers at latter points to undue prejudice in competing with Corinth jobbers for trade in same common territory. Differentials prescribed for removal of undue prejudice. Florence Chamber of Commerce v. L. & N., 104 I. C. C. 459.

(d) Marinette, Wis.: Rate on coal from docks in Menominee, Mich., to complainant's paper mill in Marinette found not unreasonable or unduly prejudicial. The service is regarded as a line-haul movement, rather than a switching service, and rate applicable compares favorably with intrastate rates on like traffic in various States for corresponding distances. Marinette & Menominee Paper Co. v. C. & N. W., 107 I. C. C. 21, 26, 28.

(e) A case of undue prejudice is not made out by mere showing of lower rates on a competitive commodity. American Clay Products Co. v. P. R. R., 107 I. C. C. 153, 154.

(f) Cincinnati, Ohio: Through charges on blackstrap molasses from New Orleans and points taking same rates to, there converted into denatured alcohol, and reshipped as such to interstate destinations, found not unduly prejudicial or otherwise unlawful as compared with through rates contemporaneously maintained from same points to and from Pekin, Ill. Transit arrangements are maintained at Pekin but not at Cincinnati, and since carrier which serves Pekin does not serve Cincinnati it is powerless to remove alleged undue prejudice by establishment of a similar arrangement at latter point. Federal Products Co. v. I. C. R. R., 107 I. C. C. 271.

(g) Rates on grain and products from Iowa producing points to Chicago found not unreasonable, but unduly prejudicial to Chicago and preferential of St. Louis and Kansas City. Chicago Board of Trade v. A., T. & S. F., 107 I. C. C. 319.

(h) Rates on sewer pipe and wall coping from Brazil and Mecca, Ind., to destinations in Wisconsin not included in the Illinois classification territory and to destinations in Minnesota, except St. Paul and Duluth found unreasonable and unduly prejudicial to extent that rates therefrom to Duluth group exceeded contemporaneously applicable rates from St. Louis to that group; that rates therefrom to points in St. Paul group exceed by more than 1 cent contemporaneously applicable rates to same group from St.

Louis; and that rates therefrom to remaining territory exceed contemporaneously applicable rates thereto from St. Louis. Reasonable and nonprejudicial rates prescribed and reparation denied. Chicago Fire Brick Co. v. A. & W., 107 I. C. C. 399, 406.

(i) Arizona points: Rates on baled hay from Arizona points to Mississippi River crossings, Memphis and south thereof, found unduly prejudicial to extent they exceed contemporaneous rates from El Paso to same crossings by more than 6 cents from Thatcher group, 10 cents from Phoenix group, and 13 cents from Yuma group. Arizona Hay Traffic Asso. v. A. E., 107 I. C. C. 591, 599.

(j) Memphis, Tenn.: Upon complaint alleging that brick rates to, from points in Texas, Oklahoma, and Arkansas are unduly prejudicial and unduly preferential of shippers in States east of the Mississippi River. FOUND: that carriers serving the southwestern producing points do not serve points east of the river and do not control rates from those points to river crossings. Undue prejudice or preference may not be said to exist as between shippers or communities unless same carrier serves them or participates in their traffic and transportation conditions are shown to be substantially similar. See 41 I. C. C. 181, 190. Southwestern Brick Cases, 107 I. C. C. 681, 694, 695.

(k) Rate on lumber from Nashville, Mich., to Toledo, Ohio, found not unreasonable but unduly prejudicial to extent it exceeds lower contemporaneous rate from Saginaw, Mich., to Toledo. Nonprejudicial basis of rate prescribed for future. Liberty Cooperage & Lbr. Co. v. M. C., 109 I. C. C. 1.

(l) It is proper to find a violation of the second or third section of the act where trunk lines unlawfully discriminate in their practices toward different industries, but an adverse finding under section 1 should not rest upon an artificial ground. Pressed Steel Car Co. v. Director General, 109 I. C. C. 75, 78.

(m) Undue prejudice to one locality connotes undue preference of another. Galveston Commercial Asso. v. A. & S., 109 I. C. C. 114, 122.

(n) Undue prejudice can hardly be predicated upon observance of a properly graded distance scale of rates. Galveston Commercial Asso. v. A. & S., 109 I. C. C. 114, 124.

(o) Preference and prejudice may be found even though there is no movement to prejudiced point, since it must be assumed that complainant would not have undergone expense of litigation unless prepared to make use of the rates sought, if established. See also 21 I. C. C. 558 and other cited cases. Southern Agricultural Chem. Corp. v. C., C. C. & St. L., 109 I. C. C. 227, 229.

(p) Keokuk, Iowa: Rates on molding sand from Ottawa and Utica, Ill., to, found improperly related to rates to Burlington, Iowa, Quincy, Ill., and other Mississippi River crossings, resulting in undue prejudice to Keokuk in favor of such other crossings. Relationship of rates prescribed for future and reparation denied. Keokuk Shippers' Asso. v. B. & O., 109 I. C. C. 346.

(q) A mere showing of difference in ratings between different commodities is not sufficient to establish discrimination, nor does it of itself prove that higher ratings are unreasonable. Union Metal Mfg. Co. v. A., C. & Y., 109 I. C. C. 490, 491.

(r) The inhibition of section 3 of the act against undue prejudice applies to localities as well as to shippers at those localities. Sioux Falls Live Stock Exchange v. A., T. & S. F., 109 I. C. C. 501, 512.

(s) Ashland, Wis.: Rates on lumber from Ashland, Wis., located in Duluth, group to points in Illinois, c. f. a., and trunk-line territories, found not unreasonable, discriminatory, or unduly prejudicial as compared with rates from Wisconsin points located in adjacent Hurley group. Schroeder Lbr. Co. v. A., C. & Y., 109 I. C. C. 553.

(t) Mere showing of differences in inbound rates to competing jobbing points does not establish existence of undue prejudice. Burlington Shippers' Asso. v. A., T. & S. F., 109 I. C. C. 694, 699.

(u) Rates on meat animals from points in Alabama to Moultrie, Ga., found not unreasonable, but the relationships of rates on hogs from southeastern Alabama to Moultrie on the one hand, and Montgomery and Birmingham, Ala., on the other, found unduly prejudicial and preferential and unjustly discriminatory against interstate commerce. Nonprejudicial relationship prescribed for future. Swift & Co. v. G. N., 109 I. C. C. 733.

(v) Comparisons based merely upon differences in distance do not constitute sufficient justification for a finding either of unreasonableness or of undue prejudice. Bos Sand Co. v. A., T. & S. F., 112 I. C. C. 121, 123.

(w) A mere reference to lower rates to common points of destination is not sufficient to establish undue preference and prejudice. South Carolina Penitentiary v. A. & R. R. R., 113 I. C. C. 584, 586.

(x) Disparity of rates does not necessarily result in undue prejudice. Nashville Machine & Supply Co. v. L. & N. R. R., 118 I. C. C. 577, 579.

(y) A showing of a disparity of rates between different points does not necessarily make out a case of, or result in, undue prejudice, but it must also appear that shipments are made or prevented because of the rate relationship. Nashville Machine & Supply Co. v. L. & N., 118 I. C. C. 577, 578, 579.

(z) Unjust discrimination under section 3 of the act ordinarily requires that the prejudice suffered by one person shall be a source of positive advantage to another and that a competitive relation shall exist between the persons, localities, or commodities concerned. Duluth Chamber of Commerce v. C. St. P. M. & O. Ry., 122 I. C. C. 739, 742.

(aa) Fact that rates are relatively low does not alone justify existence of an unduly prejudicial situation. See 263 U. S. 515. Clinchfield Coal Corp. v. C., C. & O., 122 I. C. C. 37, 41, 42.

(bb) No carrier has the right to so adjust rates on its own lines as unduly to prejudice shippers on other lines, or to deprive such shippers of reasonable and just rates, merely through a desire to serve shippers on its own lines. See 51 I. C. C. 250. White Eagle Oil & Refining Co. v. A., T. & S. F., 122 I. C. C. 223, 224.

(cc) Twenty cents per ton lower rate from Hermiston, Ore., to Portland, than from Touchet, Wash., to Portland, HELD not to create unlawful discrimination against interstate commerce, considering difference in length of two hauls. Oregon-Washington R. & Nav. Co. v. Corey, (Ore., 1927) 252 Pac. 955, 956.

(dd) While each community is entitled to benefits arising from its natural advantages, a carrier may meet competition so long as it is not guilty of undue prejudice, does not charge rates which are so low as to burden other traffic, and does not contravene the declared policy of Congress to foster and preserve in full vigor both rail and water transportation. Fact that the law declares unlawful only discrimination that is unjust and only prejudice that is undue indicates that it was the intent to give carriers some latitude in fixing rates, and that distance or cost of service need not be the sole criterion by which rates shall be measured. However, there are limits beyond which a carrier may not go, even in meeting competition. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349, 379.

(ee) To be undue the prejudice suffered by one person must ordinarily be such that it shall be a source of positive advantage to another. Indianapolis Board of Trade v. B. & O. R. R., 129 I. C. C. 675, 679.

(ff) To be undue in violation of section 3 of the act, preference and prejudice must result in injury to the prejudiced party. Bunker Hill & Sullivan M. & C. Co. v. N. P., 129 I. C. C. 242, 246.

(gg) Mere difference in rates does not constitute undue prejudice. Beatrice Creamery Co. v. C., M. & St. P., 129 I. C. C. 375, 381.

(hh) Order of Interstate Commerce Commission, based on discrimination by carrier, must be restricted in its scope to discrimination actually shown. Berwind-White Coal-Mining Co. v. United States, (Pa., 1925) 9 Fed. (2d.) 429, 430.

§3½. Previous Decision of Commission.

See Previous Decision of Commission.

(a) In 62 I. C. C. 194, commission found rates on iron ore from Ironwood, Mich., and Baraboo, Wis., to Granite City, Ill., unreasonable and awarded reparation. Upon complaint alleging discrimination as to like traffic from same points to Carondelet, Mo., on ground that Granite City and Carondelet have long been accorded same rates from and to points 100 miles distant, which can only be corrected by an award of reparation to complainant. HELD: In cited case delivery in northern East St. Louis switching district was involved, whereas here a greater haul, crossing the Mississippi River, and transportation through congested St. Louis district are

involved. These facts can not be considered as transportation "under substantially similar circumstances and conditions" as contemplated by section 2 of the act. Mississippi Valley Iron Co. v. C. & N. W., 104 I. C. C. 243, 245, 246.

(b) Following 22 I. C. C. 155 and other cited cases no undue prejudice found to exist due to maintenance of different rates from competing points of origin to competing destinations served by different lines of railroad. Union Bag & Paper Corp. v. B. & M., 104 I. C. C. 327, 329.

(c) North Pacific Coast ports: Rates on grain and products from points in Washington and Oregon south of Snake River to Portland, Seattle, Tacoma, and other north Pacific ports, established as a result of commission's decision in Inland Empire Shippers League, 59 I. C. C. 321, found not unreasonable or unduly prejudicial. While competition from Puget Sound ports for purchase of wheat in the basin south of the Snake River has been to a large extent destroyed, Portland enjoying a virtual monopoly of wheat from that territory, only by continuance of present differential in favor of Portland can that point be accorded benefits to which it is entitled by reason of its natural advantages. Walla Walla County Farm Bureau v. N. P., 107 I. C. C. 110.

(d) Carrier presented in evidence a prior report of commission for purpose of establishing that certain rates were not unduly prejudicial. HELD: Present case must be disposed of upon conditions shown to have existed during the period covered by complaint, and since former case related to a different period it was not given consideration. Northern W. Va. Coal Asso. v. P. R. R., 109 I. C. C. 604, 608.

(e) Rates on potatoes from Wisconsin, Minnesota, and North Dakota, to points in c. f. a. and trunk-line territories, found unreasonable to extent they exceeded those prescribed in 74 I. C. C. 448, for removal of undue prejudice. While no order was entered with respect to findings in that case, carriers were advised that they would be expected to file rates in conformity therewith. The specific manner provided for constructing prescribed rates was tantamount to stating a reasonable basis on and after date of finding and rates charged in excess of those prescribed on shipments moving after that date were therefore unreasonable. Beggs & Co. v. B. & O., 120 I. C. C. 115.

(f) Rates on green salted hides from El Paso, Tex., to Los Angeles and San Francisco, and points taking same rates, higher than rates from Utah points to same destinations and to points generally in the west for similar and greater distances, found not unduly prejudicial to El Paso. The rates from Utah points represent considerable reductions made during pendency of 101 I. C. C. 258, in which rates in effect prior to the reductions were found not unreasonable. Moreover, comparisons based on distance alone are of little probative value. See also 87 I. C. C. 319. Peyton Packing Co. v. A. & S., 122 I. C. C. 3.

(g) Rates on furniture from Fort Smith, Ark., to Florence, Sheffield, and Tuscumbia, Ala., found not unreasonable or discriminatory as compared with lower rates to Birmingham, Ala., from Florence to Fort Smith, or from Fort Smith to eastern seaboard cities, but unduly prejudicial to extent that rate to Florence exceeds that contemporaneously maintained to Birmingham. Rates assailed compare favorably with those prescribed in 100 I. C. C. 127 and 112 I. C. C. 302, for comparable distances, and considering fact that a portion of the haul from compared points is through territory taking a lower level of rates, comparisons indicate that rates assailed are not unduly high. Undue prejudice ordered removed and reparation denied. Florence Chamber of Commerce v. L. & N., 122 I. C. C. 367.

(h) Rates on prepared sizes of anthracite coal from Wyoming, Lehigh, and Schuylkill mines in Pennsylvania, to points in Albany-Utica-Syracuse group and other points taking same rates over one or more routes considered as a whole, found unjust, unreasonable, and unduly prejudicial and preferential in relation of such rates to each other. Rates to Rochester, N. Y., found unreasonable to extent they exceed those contemporaneously in effect via other routes for comparable distances, and rates to Carthage and Clayton, N. Y., found unreasonable to extent they exceed rates contemporaneously maintained to Buffalo and Watertown, N. Y. Just and reasonable rates prescribed for future and findings in 104 I. C. C. 514, reversed in so far as inconsistent with

findings herein. Anthracite Coal Investigation, 122 I. C. C. 527.

(i) Upon reconsideration, former report 115 I. C. C. 667, modified so as to provide that rates on rosin and turpentine, and articles taking same rates from producing points in southwestern group to Kansas City, Mo., are and will be unreasonable to extent rates on rosin and turpentine exceed those approved in 87 I. C. C. 740; 89 I. C. C. 634; and to destinations in c. f. a. territory unreasonable and unduly prejudicial to extent they exceed maximum reasonable and nonprejudicial rates prescribed in original report. Turpentine & Rosin Producers Asso. v. A. & V., 122 I. C. C. 549.

(j) Rates on grain and products from Ohio and Mississippi River crossings and Mount Vernon, Ind., to Alabama points found unreasonable to extent they exceeded rates found reasonable in 118 I. C. C. 732 and other cited cases, and unduly prejudicial to extent they exceeded by more than 2 cents per 100 pounds the rates contemporaneously applied on like traffic to Corinth. Reasonable and non-prejudicial rates prescribed for future and reparation denied. Florence Chamber of Commerce v. I. C., 122 I. C. C. 653.

(k) Citing 36 I. C. C. 259, 261; 181 Fed. 403, 411, carriers contended that to sustain a finding of undue preference and prejudice under section 3, a competitive relation must exist between persons, companies, or localities concerned, and this competition must be in the same market. HELD: While it is "ordinarily" true that a competitive relation must exist as a prerequisite to such a finding and that injury can more readily be shown where preference or advantage relates to the "same market," it does not follow that it can only be shown under such conditions. Duluth Chamber of Commerce v. C., St. P., M. & O., 122 I. C. C. 739, 742, 743.

(l) Rates on metal beds from New Orleans, La., to destinations in western Louisiana, Arkansas, Oklahoma, and Texas, found not unreasonable or unduly prejudicial as compared with rates contemporaneously in effect from St. Louis, Atlanta, Chicago, Kenosha, and New York, to same destinations, except to extent that rates to Oklahoma exceed rates based on distance scale prescribed herein; that rates to Texas common points exceed Table 14 rate prescribed in 77 I. C. C. 473; and that rates to Texas differential territory exceed rates constructed in accordance with method prescribed, all subject to a minimum of 30,000 pounds. Reasonable rates prescribed for future. Crescent Bed Co. v. C., R. I. & P., 123 I. C. C. 41.

(m) Rate on lumber from Nashville, Tenn., to Toronto, Ontario, found not unreasonable, but unduly prejudicial to extent it exceeded those contemporaneously maintained from Chattanooga. Rate assailed is as low or lower than those from other lumber producing points to Toronto, from points in the Southeast to c. f. a., trunk-line, and New England destinations, and as low or lower than those prescribed in 85 I. C. C. 270 and 102 I. C. C. 611, for comparable distances. However, rates from Nashville and Chattanooga to Buffalo, N. Y., Hamilton, Ontario, and various other points are the same and no reason appears for a difference in rates to Toronto. Farris Harwood Lbr. Co. v. L. & N., 123 I. C. C. 587.

§3½a. Relation of Rates.

See Relative Rates.

(a) Maintenance of different rates by two different groups of competing carriers over their respective routes between same points does not constitute unjust discrimination within meaning of the act. Liquid Carbonic Co. v. C. & E. R. R., 104 I. C. C. 446, 447.

(b) Rate of coal from docks in Menominee, Mich., to complainant's paper mill in Marinette, Wis., found not unreasonable or unduly prejudicial. The service is regarded as a line-haul movement, rather than a switching service; and rate applicable compares favorably with intrastate rates on like traffic in various States for corresponding distances. Marinette & Menominee Paper Co. v. C. & N. W., 107 I. C. C. 21, 26, 28.

(c) Apalachicola, Fla.: Rates on crushed oyster shells and oyster-shell dust from, to Mississippi and Ohio River crossings, and points beyond, found not unreasonable, but unduly prejudicial to extent they exceed by a fixed differential rates contemporaneously maintained on like traffic from Pensacola, Fla., and Mobile, Ala., to same destinations. Gulf City Mfg. Co. v. A. N. R. R., 107 I. C. C. 29.

(d) Rates on flaxseed from South Dakota points to Minneapolis, Duluth,

Chicago, Milwaukee, Des Moines, Omaha, and Kansas City, found unduly prejudicial and preferential. Nonprejudicial basis of rates bearing a uniform percentage relationship to corresponding wheat rates prescribed. South Dakota R. R. Commrs. v. C. & N. W., 107 I. C. C. 35.

(e) Atlanta & St. Andrews Bay Ry. points: Rates on lumber and forest products taking same rates, prescribed in original report, 85 I. C. C. 270, from points on the Atlanta & St. Andrews Bay Ry., a short-line carrier in southern territory, to destinations in trunk-line and New England territories, found unduly prejudicial to extent they exceed rates contemporaneously applied from Dothan by more than 3 cents from points north of Cottondale and 4 cents from Cottondale and points south thereof. Nonprejudical basis of rates prescribed. North Carolina Pine Asso. v. A. C. L., 107 I. C. C. 190.

(f) Rates on lumber and related commodities from Washington, Oregon, Idaho, Montana, and California, to destinations in Iowa, found unreasonable and unduly prejudicial as compared with rates to Missouri River cities, the Twin Cities, and Chicago, Ill. Burlington Shippers' Asso. v. A., T. & S. F., 107 I. C. C. 198.

(g) Rates on sewer pipe and wall coping from Brazil and Mecca, Ind., to points in Illinois classification territory found unreasonable and unduly prejudicial to extent they exceeded contemporaneously applicable rates for like distances from St. Louis to same destinations. Reasonable and nonprejudicial rate for future prescribed and reparation denied. Chicago Fire Brick Co. v. A. & W., 107 I. C. C. 399, 406.

(h) Rates on sewer pipe and wall coping from Brazil and Mecca, Ind., to destinations in Wisconsin not included in the Illinois classification territory and to destinations in Minnesota, except St. Paul and Duluth, found unreasonable and unduly prejudicial to extent that rates therefrom to Duluth group exceeded contemporaneously applicable rates from St. Louis to that group; that rates therefrom to points in St. Paul group exceed by more than 1 cent contemporaneously-applicable rates to same group from St. Louis; and that rates therefrom to remaining territory exceed contemporaneously-applicable rates thereto from St. Louis. Reasonable and nonprejudicial rates prescribed and reparation denied. Chicago Fire Brick Co. v. A. & W., 107 I. C. C. 399, 406.

(i) Arkansas points: Rates on sugar from New Orleans, Gramercy, Reserve, and Three Oaks, La., to Texarkana, Ark.-Tex., Hope, Ashdown, and Nashville, Ark., found not unreasonable, but unduly prejudicial to such destination points and unduly preferential of Shreveport, La., to extent they exceed rates to Shreveport by fixed differentials. Four States Grocery Co. v. K. C. S. Ry., 107 I. C. C. 485.

(j) Bainbridge and Brunswick, Ga.: Rates on crate and box material from, to destinations in Florida on Florida East Coast Ry., found unduly prejudicial to complainants and unduly preferential to their competitors shipping intrastate in Florida to extent that the factors from Jacksonville exceed rates contemporaneously maintained on like traffic for equal distances moving intrastate from points in Florida to same destinations. Elberta Crate Co. v. A. C. L., 107 I. C. C. 499.

(k) Rates on bar iron, including angle and channel bar, from Nashville, Tenn., to destinations on L. & N. in Kentucky and Tennessee, and to Ohio and Mississippi River crossings, and points in c. f. a. territory, found not unreasonable, discriminatory, or unduly prejudicial in their relation, distance considered, with rates from Pittsburgh and other points in c. f. a. territory. Knoxville Iron Co. v. L. & N., 107 I. C. C. 627.

(l) Columbus, Miss.: Rates on cabbage from San Benito and Donna, Tex., to, found not unreasonable or discriminatory, but unduly prejudicial to extent they exceeded contemporaneous rates on like traffic from same points of origin to Artesia, West Point, Corinth, Tupelo, and Okolona, Miss. Nonprejudicial basis of rates prescribed for future and reparation denied. Northeast Miss. Traffic Bureau v. N. O., T. & M., 107 I. C. C. 673.

(m) West-bank Mississippi River points: Relation of rates on canned goods from Illinois freight association territory to certain west-bank Mississippi River points in that territory on the one hand, and from Illinois territory to Chicago, Peoria, and St. Louis, on the other, found not unduly prejudicial to river cities. While general level of rates to alleged preferred points is lower, mere showing of differences in inbound rates to competing jobbing points does not establish undue prejudice. No definite

showing is here made with respect to character or intensity of competition encountered, the specific effect of rate relationship upon competition, or extent to which conditions affecting transportation to the respective jobbing points are properly comparable. Burlington Shippers' Asso. v. A., T. & S. F., 109 I. C. C. 694.

(n) Rates on fish scrap from Port St. Joe, to destinations in southern c. f. a., and trunk-line territories, found not discriminatory or unduly prejudicial as compared with rates on the same commodity from Fernandina, Fla., St. Marys, Ga., and Wilmington, N. C., to same destinations, or with rates on fertilizer and fertilizer materials from New Orleans, La., and Bayou La Batre, Ala., to Ohio and upper Mississippi River crossings and points in c. f. a. territory. Rate comparisons submitted do not show any undue advantage to Fernandina and St. Marys to disadvantage of St. Joe, and fertilizer rates instanced are shown to be on a very low basis. Southern Menhaden Corp. v. A. N., 112 I. C. C. 108.

(o) Rate on burlap bags, in bales, l. c. l., from New Orleans, to Tuscaloosa, Ala., found not unreasonable, but unduly prejudicial to Tuscaloosa and unduly preferential of Birmingham to extent it exceeds lower contemporaneous rate on like traffic from New Orleans to the latter named point. Nonprejudicial rate prescribed. Dixie Peanut Mills v. A. G. S., 112 I. C. C. 167.

(p) Relationship of fuel-oil rates from southern California to Arizona with those from the mid-continent field to the same destinations found not unduly prejudicial, with exception of rates from Galveston and other Texas points to Douglas and Bisbee, Ariz. If rates from California and mid-continent fields into Arizona were constructed strictly according to relative distances, as California would have them, the only logical result would be to deprive mid-continent producers from competing in this territory, provided the price of fuel oil in the two fields is anywhere near same. Associated Oil Co. v. A. E. R. R., 112 I. C. C. 350.

(q) Rates on cast-iron pipe and fittings from points in Alabama, Georgia, Tennessee, and North Carolina to Wichita, Kans., found not unreasonable but unduly prejudicial to Wichita and unduly preferential to Oklahoma points and Kansas City to extent they exceed contemporaneous rate to Enid. Nonprejudicial basis of rates prescribed and reparation denied. Wichita Chamber of Commerce v. A. & V., 112 I. C. C. 569.

(r) Rates on prepared roofing, asphalt shingles, roofing and building paper, and certain other related articles, from various producing points in c. f. a., Buffalo-Pittsburgh, and trunk-line territories to southern territory, and from points in trunk-line territory to Virginia and West Virginia, found unreasonable and unduly prejudicial to extent they exceed rates determined on basis of those prescribed in Southern Class Rate Investigation, 109 I. C. C. 300. Reasonable and nonprejudicial rates prescribed for the future. Standard Paint Co. v. Director General, 112 I. C. C. 589.

(s) Rates on coal from mines in Kansas, Missouri, Arkansas, and Oklahoma to Lincoln and Havelock, Nebr., found unreasonable and unduly prejudicial to extent they exceed contemporaneous rates to Omaha. Reasonable and nonprejudicial bases of rates prescribed and findings in 89 I. C. C. 73 affirmed, and those in 101 I. C. C. 759 reversed in part. Lincoln Chamber of Commerce v. A. C. R. R., 113 I. C. C. 161.

(t) Rates on fresh meat and packinghouse products, c. l. and l. c. l., from Pueblo, Colo., to points in New Mexico, found unreasonable and unduly prejudicial as compared with rates on like traffic from El Paso and Fort Worth, Tex., Oklahoma City, Okla., Witchita, Kans., and Cactus, Ariz., to same destinations. Reasonable scale of distance rates based on the so-called Cactus-El Paso scale laid down in 81 I. C. C. 115 and 100 I. C. C. 4, for application in same general territory for like distances prescribed and reparation awarded. Nuckolls Packing Co. v. A., T. & S. F., 113 I. C. C. 229.

(u) Rates on newsprint paper from Merrill, Wis., and other producing points in Wisconsin and from points of production in Minnesota to Keokuk, Iowa, found not unreasonable but found unduly prejudicial to extent they exceeded or exceed the rates contemporaneously in effect to Fort Madison, Iowa, a competing point. Keokuk Shippers' Asso. v. B. Ry. Co. of Chicago, 113 I. C. C. 286.

(v) Rates on grain from points in northern Illinois and southern Wisconsin on certain lines of the Illinois Central and C., B. & Q. railroads to Chicago,

Ill., district, and on feed in the reverse direction, found not unreasonable or unduly prejudicial as compared with rates on those commodities from same origin points to other Illinois, Missouri, Indiana, Kentucky, and Ohio destinations. Disadvantage of Chicago district is primarily one of location, shippers there located seeking to market feed against the flow of the ingredients, in competition with manufacturers shipping with it. Moreover, rates assailed are for most part local rates, and under circumstances of this case their reasonableness may not be tested by comparisons with proportional rates, and fact that local rates on feed lower than on grain are maintained to a few points is not convincing that same basis should be extended to all points. Chicago Board of Trade v. C., B. & Q., 113 I. C. C. 295.

(w) Rates on lumber, egg-case material, box lumber and shooks, from Caruthersville, Mo., to points in Iowa, South Dakota, Minnesota, Wisconsin, and Illinois, found unreasonable and unduly prejudicial in comparison with rates contemporaneously maintained from Cairo to same destinations. Similar rates to Kansas and Nebraska destinations found as compared with those from Memphis, not unreasonable or otherwise unlawful average distances and rates from Caruthersville and Memphis appearing to be substantially the same. Reasonable and nonprejudicial rates, Caruthersville differentially over Cairo, prescribed and reparation awarded. Dillman Egg Case Co. v. A., T. & S. F., 113 I. C. C. 447.

(x) Rates on sugar from California points to Rapid City, Deadwood, or Lead, S. Dak., found not unreasonable but unduly prejudicial to extent they exceed rates contemporaneously applicable from same origin points to Omaha, Nebr., and Sioux City, Iowa, or to either of them. Nonprejudicial rates for future prescribed. Nebraska State Ry. Co. v. A. & W., 113 I. C. C. 467.

(y) Rates on eggs from points in Oklahoma, Kansas, Missouri, and Nebraska, to Laredo, Tex., located in Texas differential territory, found not unreasonable, discriminatory, or unduly prejudicial as compared with rates contemporaneously maintained to Houston, San Antonio, Corpus Christi, and other destinations in Texas common-point territory. Present rates to Laredo were established as part of a general adjustment voluntarily made to meet rates to Brownsville and other points in the Rio Grande Valley and were found to be just and reasonable as maxima in 81 I. C. C. 703. Moreover, voluntary reduction of a rate is not of itself evidence of the unreasonableness of the rate so reduced, nor does record support a finding that Laredo is entitled to a rate adjustment different from that now accorded other points in differential territory. Sames, Moore & Co. v. A., T. & S. F., 113 I. C. C. 501.

(z) Rates on cement from Harrys and Eagle Ford, Tex., moving interstate to certain destinations in Texas and to destinations in Oklahoma, found unduly prejudicial as compared with rates from Ada, Okla., to destinations in Texas for like distances. Nonprejudicial rates prescribed. Texas Portland Cement Co. v. A. W. Ry., 113 I. C. C. 536.

(aa) Rates on pulpboard, not corrugated or indented, from Hartsville, S. C., and Canton N. C., to eastern destinations, found unduly prejudicial to manufacturers at those points and unduly preferential of competing manufacturers at Gordon, Ga., and Roanoke Rapids, N. C. Sonoco Products Co. v. A. C. L. R. R., 113 I. C. C. 553.

(bb) Rates on coke from Appalachia, Stonega, and other producing points in Virginia and from Birmingham, Ala., to destinations in California found not unreasonable or unduly prejudicial as compared with rates from Chattanooga. Similar rates from Chattanooga found not unreasonable or discriminatory but following 104 I. C. C. 483, were unduly prejudicial to extent they exceed the rates from the Birmingham district to the same destinations. Romann & Bush Pig Iron & Coke Co. v. I. R. R., 113 I. C. C. 622.

(cc) Upon further hearing, original report, 88 I. C. C. 273, affirmed and rates on pickles from Colorado producing points to Oklahoma destinations found unduly prejudicial and unduly preferential of Kansas points to extent that they yield earnings per ton-mile higher than those yielded by rates contemporaneously maintained to Kansas destinations computed upon average distances. Ridenour-Baker Mercantile Co. v. A., T. & S. F., 113 I. C. C. 629.

(dd) Rates on evaporated milk from Pecatonica, Ill., to points in trunk-line

territory, found not unreasonable, discriminatory, or unduly prejudicial as compared with lower rates from Wisconsin points to same destinations. Points in Wisconsin enjoying rates lower than Pecatonica, are located near Lake Michigan; such rates are influenced by carferry routes, and compare favorably with rates assailed. Milk Producers Cooperative Co. v. B. & O., 113 I. C. C. 721.

(ee) Rates on paper, not printed, and on waxed wrapping paper, printed and not printed, l. c. l., from Cincinnati, Ohio, to Lynchburg, Va., found not unreasonable or unduly prejudicial as compared with rates to South Boston and Danville, Va., and other points. Rate on printed paper found unreasonable to extent it exceeded third class, the basis found reasonable in official classification territory in 96 I. C. C. 280. Reasonable rate prescribed for future and reparation awarded. Lynchburg Chamber of Commerce v. N. & W., 115 I. C. C. 27.

(ff) Rates on corrugated strawboard boxes, k. d., from Baltimore, Ohio, to Durham, Winston-Salem, and Reidsville, N. C., found not unduly prejudicial as compared with rates from Louisville, Ky., to same destinations. The general basis of making rates from points in c. f. a. territory to Carolina destinations is by combination on Ohio River crossings or the Virginia cities. Baltimore, however, takes the Columbus rate, which is not made by usual method, but is on a differential basis over Ohio River rate, having been established in order to secure traffic in competition with Cincinnati. Moreover, the line which serves Baltimore meets the Columbus rate at Columbus, and applies it to intermediate points, and none of these lines serve Louisville. Fairfield Paper Co. v. A. C. L., 115 I. C. C. 43.

(gg) Combination rate on lime from Woodville, Ohio, to Fulton Station, Baltimore, Md., on the Western Maryland Ry., found unreasonable and unduly prejudicial for the future to extent it exceeded lower rate contemporaneously in effect from same point of origin to deliveries in Baltimore on the Pennyslvania R. R., and from other Ohio points to Fulton Station. Woodville Lime Products Co. v. P. R. R., 115 I. C. C. 131.

(hh) Rates on cotton-factory sweepings from Mobile, Ala., to Columbus, Ga., found not unduly prejudicial merely because lower rates were in effect from Mobile to Athens, Atlanta, Augusta, and Macon over considerably longer routes. No competition with dealers in alleged preferred cities being shown, clearly there is no undue prejudice within meaning of the act. See 29 I. C. C. 438, 443. Julius Friedlander Co. v. S. Ry., 115 I. C. C. 589.

(ii) Rates plus reconsignment or switching charges applicable on lime from Woodville, Ohio, to stations on Western Maryland in Baltimore, Md., east of Walbrook station, found unreasonable and unduly prejudicial to extent they exceeded rates without the addition of such charges contemporaneously maintained to Walbrook and other destinations in Baltimore. Reparation awarded. Washington Bldg. Lime Co. v. P. R. R., 115 I. C. C. 618.

(jj) Rates on potatoes from points in the Carolinas on Atlantic Coast Line R. R. to Kalamazoo, Jackson, Battle Creek, and Sturgis, Mich., found unreasonable and unduly prejudicial to extent they exceed corresponding rates contemporaneously in effect to Grand Rapids, Mich. Distance scale of rates prescribed for future and reparation denied on past shipments because the evidence on which the adjustment prescribed is based is general in character and savors of a general readjustment. Taylor Produce Co. v. A. C. L., 115 I. C. C. 633.

(kk) Rates on agricultural limestone from Buffalo, N. Y., to Troy and Canton, Pa., found not unreasonable or otherwise unlawful. Rates assailed compare favorably with those on same and related commodities for similar distances on carrier's lines. Fact that lower rates are maintained from Buffalo to competitive destinations by nonparticipating carriers not serving Troy or Canton does not establish discrimination or prejudice, as undue prejudice or preference does not exist as between shippers or communities unless same carriers serve them or participate in their traffic. Moreover, carrier showed that to meet rates applicable over competing lines would create prejudice against lime-producing districts served by it; also that rates assailed compare favorably with those prescribed in 85 I. C. C. 341. Case & Sons v. P. R. R., 115 I. C. C. 694.

(ll) Rates on small-arms ammunition l. c. l. from New York and Baltimore to Lynchburg, Va., found not unreasonable or unduly prejudicial as compared with lower rates contemporaneously maintained to farther distant points immediately east and west of Lynchburg. Rates

to Lynchburg on this commodity are governed by the southern classification, whereas rates to the alleged preferred points are governed by the official classification and although lower rates would apply if the official classification governed on this traffic moving to Lynchburg, the record shows that on other commodities lower rates would apply if governed by the southern classification. The fourth-section departures instanced are protected by appropriate applications, and in view of a general investigation covering class rates within and between southern and eastern territories, no attempt will be made here to adjust the disparity brought about by the application of rates governed by the different classifications as above described. Lynchburg Chamber of Commerce v. B. & O., 115 I. C. C. 721.

(mm) Rates on brick machinery from Lancaster, Pa., to Deacon, Va., found not unreasonable or unduly prejudicial as compared with lower rates contemporaneously in effect to Lynchburg, Va., a farther distant point. Rates to Deacon are governed by the official classification, whereas those to Lynchburg are governed by the southern classification. The fourth-section departure is protected by an appropriate application, and in view of a pending general investigation covering class rates within and between southern and eastern territories no attempt will be made here to adjust the disparity brought about by the application of rates governed by the different classifications as above described. Lynchburg Chamber of Commerce v. B. & O., 115 I. C. C. 721.

(nn) Rates on brick and hollow building tile from Vale, Mo., a point outside Kansas City switching district, to Kansas City, Mo.-Kans., found not unreasonable or unduly prejudicial as compared with other rates on same and related products for comparable distances to same destination from points both within and without the district, or as compared with distance rates for similar hauls in effect on intrastate and interstate traffic in Kansas, Nebraska, Missouri, Texas, Arkansas, Illinois, and Iowa. Kansas City Brick Co. v. C., R. I. & P., 115 I. C. C. 750.

(oo) Rates on coal from Clinchfield, Dante, and Clinchco, Va., to Toledo and Toledo Dock, Ohio, for transshipment by vessel, found unduly prejudicial to extent rate from Clinchco exceeds rate contemporaneously maintained on lake-cargo coal from Big Sandy district to same destinations, and those from Dante and Clinchfield exceed a differential of 15 cents over the Clinchco rate. Nonprejudicial rate relationship prescribed for future. Clinchfield Coal Corp. v. C., C. & O., 118 I. C. C. 79.

(pp) Relationship between interstate rates on hay from points in Texas differential territory and New Mexico, to points in southern Arkansas and northern Louisiana, and intrastate rates applying from Texas differential points to Texarkana, Tex., found unduly prejudicial to interstate shippers, unduly preferential of shippers at Texarkana, and unjustly discriminatory against interstate commerce. Arkansas Jobbers & Mfrs. Asso. v. A., T. & S. F., 118 I. C. C. 238.

(qq) Rates on hay from points in Texas differential territory and New Mexico to destinations in southern Arkansas and northern Louisiana, found unduly prejudicial to extent that differences between such rates and corresponding rates to Monroe, La., are more favorable to last-named point than would result by application of distance scale of rates prescribed in 101 I. C. C. 116, extended beyond 800 miles at same rate of progression as for the last 300 miles in that scale, plus differentials for hauls in differential territory and New Mexico. Nonprejudicial basis of rates prescribed for future. Arkansas Jobbers & Mfrs. Asso. v. A., T. & S. F., 118 I. C. C. 238.

(rr) Allegation of undue prejudice between rates on wrought-iron pipe from Bowling Green, Ky., to Florence, Ala., and rates contemporaneously in effect between other points for comparable distances, not sustained. Disparity of rates does not necessarily result in undue prejudice. It must also appear that shipments are made or prevented because of the rate relationships. Nashville Machine & Supply Co. v. L. & N., 118 I. C. C. 577, 578, 579.

(ss) A showing of a disparity of rates between different points does not necessarily make out a case of or result in undue prejudice, but it must also appear that shipments are made or prevented because of the rate relationship. Nashville Machine & Supply Co. v. L. & N., 118 I. C. C. 577, 578, 579.

(tt) Rates on grain and products from points in Missouri, Kansas, Nebraska, the Dakotas, Minnesota, Iowa, Wisconsin, Illinois, and Indiana to Montgomery, Ala., found unreasonable and unduly prejudi-

cial as compared with rates contemporaneously maintained to Meridian, Miss., Mobile, Ala., and Pensacola, Fla., Mississippi Valley points. Reasonable and nonprejudicial rates prescribed for future and reparation denied. Capital Grain & Feed Co. v. I. C., 118 I. C. C. 732.

(uu) Complainant attacked commodity rates applicable on agricultural limestone from West Stockbridge, Mass., to points in New York, New Jersey and Pennsylvania as unreasonable and unduly prejudicial. West Stockbridge is on the New Haven 2.5 miles south of State Line, Mass., an interchange point with the N. Y. C. Limestone is not subject to damage in transit, except when shipped in paper bags, and then only to the extent that the bags may be damaged by water admitted by leaky roof cars. Claims are small. In 1922 the 40% increase of Aug. 26, 1920 was removed from this commodity from all producing points in New York state, by all lines, except the Pennsylvania, for single line hauls. Later the reduced rates were extended to two line hauls in connection with the N. Y. O. & W., D. & H. and Erie. The reductions left the rates from West Stockbridge to the destinations concerned considerably higher than those from Buffalo, notwithstanding the lesser distance from West Stockbridge. HELD, rates unduly prejudicial to extent they exceed the rates from Buffalo, that rates for future be unreasonable to extent they exceed certain specific rate named to typical points of destination, reparation denied. Grangers Mfg. Co. v. N. Y. C. R. R., 120 I. C. C. 648.

(vv) Following 96 I. C. C. 682, fifth-class rates on steel castings from Attica, Ind., to St. Louis, Mo., Chicago, Peoria, Streator, and Mount Vernon, Ill., found unreasonable and unduly prejudicial as compared with rates from various competing points in Illinois, Indiana, and Missouri. Distance scale of rates prescribed for future and reparation awarded. Nat'l Car Coupler Co. v. A., T. & S. F., 120 I. C. C. 37.

(ww) Class rates between official classification territory, on one hand, and Fulton and Mayfield, Ky., on other, found unduly prejudicial in favor of Ohio River crossings to extent they exceed corresponding rates contemporaneously maintained from or to Cairo or Metropolis, via whichever crossing the traffic moves from and to Fulton and Mayfield, by more than 24 cents on first class, and on the other classes by amounts bearing the percentage relationships to 25 cents as contemporaneous rates on the corresponding classes bear to first-class rates from or to Cairo or Metropolis, as the case may be, on the one hand, and points in official classification territory, on the other, resulting rates to be governed by official classification. Mayfield Chamber of Commerce v. A. & W., 120 I. C. C. 137, 144.

(xx) Complainant attacked as unreasonable, unjustly discriminatory and unduly prejudicial rates on green salted hides from El Paso, Tex., to Chicago, Ill., St. Louis, Mo., East St. Louis, Ill., Kansas City, Mo., and points basing thereon; also Los Angeles, San Diego and San Francisco, Calif.; glue stock to Chicago, Ill., St. Louis, Mo., also New Orleans, La., and Kansas City, Mo.; tankage and dried blood to Los Angeles and San Diego, Calif.; soap stock, inedible tallow and edible tallow to Los Angeles, San Diego, San Francisco, Calif., and tin cans to El Paso from St. Louis, Mo., and points basing thereon. GREEN SALTED HIDES. Carload shipments of green salted hides are made in ordinary box cars. El Paso is located in the western portion of Texas in Texas differential territory. This is recognized as territory of comparatively light traffic density in which the carriers require higher level of rates than in Texas common point territory to the east thereof. The disparities between the basis of rates from El Paso and Fort Worth on traffic to the north, and from El Paso and Utah on traffic to the west, are considerable. The mere showing of such disparities, however, does not establish the existence of undue prejudice. The more favorable transportation conditions in the territory in which Forth Worth is located than in the territory in which El Paso is located are well recognized. HELD, hide rates attacked not unduly prejudicial. GLUE STOCK. Glue stock is a low grade by-product of the packing house business, is usually marketed at Chicago, moves in bulk, in ordinary box cars and loads heavily. HELD, rates on glue stock from El Paso are unreasonable to extent they exceed 67.5c to Chicago and 59.5c to St. Louis, and that those rates will not result in undue prejudice to El Paso. The record is insufficient to warrant findings with respect to the rates to points other than St. Louis and Chicago. TANKAGE AND DRIED BLOOD.

Tankage and dried blood, also low grade by-products, are used in the manufacture of fertilizer, are generally shipped together, and are worth about $22 to $40 per ton, delivered at Los Angeles. HELD, rates not shown to have been or to be unreasonable or unduly prejudicial. SOAP STOCK AND INEDIBLE TALLOW. Soap stock and inedible tallow have been shipped by complainant to Chicago and eastern points and occasionally to Los Angeles. HELD, rate on soap stock to San Francisco not unreasonable, but to Los Angeles unreasonable to extent it exceeds 65c and on inedible tallow unreasonable to extent they exceed 80c to San Francisco and 65c to Los Angeles. EDIBLE TALLOW. Edible tallow is used in the manufacture of certain food products and is from 25 to 40% higher in value than inedible tallow. It is usually included in the list of commodities taking rates on packing house products. HELD, rate to Los Angeles unreasonable to extent it exceeded $1.15. TIN CANS. Purchases have been made principally at Kansas City. Rates of $1.64 from Kansas City for 947 miles, $1.765 from St. Louis for 1,226 miles, and $1.63 from New Orleans for 1,212 miles are illustrative. HELD, rates attacked not unreasonable or unduly prejudicial. Peyton Packing Co. v. A. & S. Ry., 122 I. C. C. 3.

(yy) Rates on green salted hides, from El Paso, Tex., to St. Louis, Kansas City, and Chicago, and points basing thereon, higher than rates from Fort Worth, Tex., to same destinations, found not unduly prejudicial to El Paso or unduly preferential of Fort Worth. The more favorable transportation conditions in Fort Worth territory than in El Paso territory are well recognized and mere showing that rate disparities obtain does not establish existence of undue prejudice. Peyton Packing Co. v. A. & S., 122 I. C. C. 3.

(zz) Fact that rates are relatively low does not alone justify existence of an unduly prejudicial situation. See 263 U. S. 515. Clinchfield Coal Corp. v. C. C. & O. 122 I. C. C. 37, 41, 42.

(3a) Rates on gravel from Montgomery, Ala., and Chattanooga, Tenn., to destinations in Georgia and Mississippi found unduly prejudicial to extent they exceed, distance considered, the rates contemporaneously maintained on slag from Birmingham and certain other Alabama points to same destinations. Rates on Chert, Clay, Sand, and Gravel, 122 I. C. C. 133, 166.

(3b) Class rates on wrapping paper and paper articles from Cincinnati, Ohio to destinations in Missouri, Kansas, Iowa, Nebraska, and Colorado, found unreasonable and unduly prejudicial as compared with lower commodity rates contemporaneously in effect from Fox River group prescribed in 66 I. C. C. 571, to same destinations. However, as practice of basing interritorial rates on a combination of factors to and from the Mississippi River has been in effect for many years and rates assailed, judged as combination rates, do not produce excessive earnings, they were not unreasonable in the past and no damage has been shown as a result of undue prejudice which may have existed. Reasonable and nonprejudicial rates prescribed for future. Fox Paper Co. v. A., T. & S. F., 122 I. C. C. 399.

(3c) Rates on grain and products from points of origin in Utah, and on the Oregon Short Line and Utah Idaho Central railroads in Idaho and Oregon to points in Nebraska, Kansas, Oklahoma, Texas, Minnesota, Iowa, Missouri, Arkansas, Louisiana, Wisconsin, Illinois, Indiana, Kentucky, Tennessee, Mississippi, and Alabama, found unduly prejudicial in favor of Colorado common points to extent they exceed contemporaneous rates from Denver to same destinations by more than the respective differentials herein prescribed. Ogden Grain Exchange v. A. & S., 122 I. C. C. 691, 718.

(3d) Rates on pig iron from points in Alabama, Kentucky, and Tennessee to, Ansonia, Conn., found not unreasonable or otherwise unlawful as compared with lower rates to Derby and Shelton, Conn., and to other nearby destinations in Connecticut, New York, and Rhode Island. No evidence was introduced showing competition between these points in marketing of southern pig iron. Carriers showed that lower rates were predicated upon rates established by northern lines to meet water competition and while admitting that there never was water competition on traffic from and to this origin and destination territory, urged that the normal rate is a higher rate blanketed over New England. Moreover, in 87 I. C. C. 102, the commission found not unreasonable a higher rate on pig iron from Birmingham to Weehawken, N. J., involving a

shorter distance than from and to points here involved. Farrell Foundry & Machine Co. v. A., B. & A., 123 I. C. C. 127.

(3e) All-rail class and commodity rates on various articles from Mississippi River gateways, Missouri River cities, Kansas-Missouri territory, and defined territories to Texas, Oklahoma, Arkansas, and western Louisiana found to result in undue prejudice to northeast Texas cities and in undue preference of points in Oklahoma, Arkansas, and western Louisiana. Consolidated Southwestern Cases, 123 I. C. C. 203, 342.

(3f) Class and commodity rates on various articles between Oklahoma and designated portions of Kansas and Missouri, in their relations to relatively lower intrastate rates within those portions of Kansas and Missouri, found to result in undue prejudice and preference and in unjust discrimination against interstate commerce. Consolidated Southwestern Cases, 123 I. C. C. 203, 350, 351.

(3g) Class and commodity rates on various articles between Oklahoma and Texas, and from Little Rock, Ark., to Texas, in their relations to relatively lower rates between Shreveport, La., and Texas, and from Shreveport to Texas, respectively, found to result in undue prejudice and preference. Consolidated Southwestern Cases, 123 I. C. C. 203, 354.

(3h) Class and commodity rates on various articles between Oklahoma and northeast Texas cities, in their relations to relatively lower intrastate rates in Oklahoma, and between Oklahoma and points in Texas commonpoint territory, in their relations to relatively lower intrastate rates within latter territory, found to result in undue prejudice and preference and in unjust discrimination against interstate commerce. Consolidated Southwestern Cases, 123 I C. C. 203, 355.

(3i) Class and commodity rates on various articles (a) between northeast Texas cities and points in western Louisiana other than New Orleans and Shreveport, in their relations to relatively lower rates between western Louisiana, on the one hand, and Memphis, Tenn., and St. Louis and Kansas City, Mo., on the other, and (b) between such northeast Texas cities and Arkansas in their relations to relatively lower rates between Arkansas, on the one hand, and Memphis, Kansas City, St. Louis, and New Orleans, on the other, found to result in undue preference and prejudice. Consolidated Southwestern Cases, 123 I. C. C. 203, 359, 360.

(3j) Class and commodity rates on various articles (a) between Oklahoma and Arkansas, in their relations to relatively lower rates between Arkansas, on the one hand, and St. Louis, Mo., Memphis, Tenn., and New Orleans, La., on the other; (b) between Oklahoma and western Louisiana, on the one hand, and St. Louis and Kansas City, Mo., and Memphis, on the other; and (c) between Oklahoma and Texas, in their relations to relatively lower rates between Texas, on the one hand, and St. Louis and Memphis, on the other, found to result in undue prejudice and preference. Consolidated Southwestern Cases, 123 I. C. C. 203, 359, 360.

(3k) Fifth-class rates on paper tablets and papeteries from East Hartford, Conn., to Baltimore, Md., and Washington, D. C., found not unreasonable but unduly prejudicial to extent they exceeded lower commodity rates contemporaneously in effect from Holyoke, Mass., a farther distant point. Carriers showed that New England points of origin are grouped with respect to class rates to Baltimore and Washington and that distance is, therefore, not a controlling factor. Commodities involved move generally from this territory under fifth-class rates and since class rates from Holyoke and East Hartford are the same, it is carrier's intention to place rates from Holyoke on the class basis. Taylor-Atkins Paper Co. v. N. Y., N. H. & H., 123 I. C. C. 583.

(3l) Rates on pig iron from Buffalo, N. Y., and Punxsutawney and Du Bois, Pa., to destinations in New England, found unduly prejudicial to Buffalo or unduly preferential of Punxsutawney and Du Bois. While complainants contend that their business has decreased because their competitors, situated a greater average distance from same general market, pay the same rates, records indicate that complainant's shipments have increased for several years. While Buffalo has a longer haul at same rate on traffic to New York, Du Bois, and Punxsutawney have a longer haul at same rate on traffic to New England. Moreover, three points named are and always have been grouped as to pig-iron rates to New England destinations

and New York rate points and no reason appears for disturbing this adjustment. Hanna Furnace Co. v. N. Y. C., 123 I. C. C. 627.

(3m) Fifth-class rates on manufactured iron and steel articles from Youngstown, Newton Falls, and Niles, and points grouped therewith, to Buffalo and other western New York and northwestern Pennsylvania points, found unreasonable as compared with lower rates contemporaneously in effect between points in c. f. a. territory; from Pittsburgh district to St. Louis under distance scale prescribed in 96 I. C. C. 682; from Buffalo to destinations in Youngstown district; with aggregate of intermediate rates; and to extent they exceeded distance rates prescribed, and unduly prejudicial to extent they exceed the contemporaneous rates from Buffalo to same destinations. Reasonable and nonprejudicial distance rates prescribed for future and reparation awarded. Concrete Steel Co. v. B. & O., 123 I. C. C. 677.

(3n) Proposed increased interstate rates on milk and cream between New England points and from New York points to points in New England, in passenger and freight-train service, found not justified, except that rates for distances up to, but not including, 100 miles, should be increased as proposed, but for distances 100 miles and over, rates equal to those now in effect under distance scale to New York City and Philadelphia prescribed in 45 I. C. C. 371 and 45 I. C. C. 412, respectively, should be established, with continued maintenance of rates on milk in freight cars moving in freight trains at not to exceed 75 per cent of corresponding rates when moving in passenger-train service. Milk and Cream Between New England Points 126 I. C. C. 38.

(3o) Rates on lumber and products from points in Pennsylvania on the Indian Creek Valley Ry., to destinations in trunk-line and c. f. a. territories, found unreasonable and unduly prejudicial as compared with those contemporaneously in effect from Baltimore to various New York destinations for comparable distances, and to extent they exceeded those contemporaneously maintained from Group 3 points to same destinations. Latter rates are not depressed since they compare favorably with those from adjacent groups, and nothing of record warrants a differential from points on the Indian Creek Valley Ry. over Group 3 rates. Reasonable and nonprejudicial rates prescribed for future and reparation awarded. Indian Creek Valley Lbr. Co. v. B. & O., 126 I. C. C. 161.

(3p) Contention that rates on grain and products from origin points on specified lines in Idaho, Montana, Oregon, Utah, Wyoming, and Colorado, to destinations, in California and the Pacific Northwest, higher than contemporaneous rates for like distances from Montana points of origin to same destinations result in undue prejudice and preference, not sustained. Record is not convincing that transportation conditions are as favorable from origin territory here involved to the north Pacific coast as from the lower rated Montana points. Moreover, low rates from Montana points were established to meet competition with Canadian lines and record does not warrant a finding that competition at north Pacific coast markets between shippers in origin territory involved and Montana shippers is as severe as that at same markets between Montana and Canadian shippers. Ogden Grain Exchange v. A. E. R. R. Co., 126 I. C. C. 255, 270, 271, 281.

(3q) Rates on scrap copper and brass from New York, N. Y., to New England destinations found not to have been unreasonable, discriminatory, or unduly prejudicial in the past, but for the future found unreasonable to extent they exceed the contemporaneous sixth-class rates from and to same points, and unduly prejudicial to extent they exceed rates contemporaneously maintained from Pittsburgh and Cleveland group points to same destinations. Sixth-class basis will provide uniformity in rating of scrap copper and brass, and earnings thereunder appear adequate even for the generally higher rated New England territory. Reasonable and nonprejudicial rates prescribed for the future. Federated Metals Corp. v. N. Y., N. H. & H. 126 I. C. C. 439.

(3r) Rate on newsprint paper from New Orleans, La., to El Dorado, Ark., found not unreasonable, but unduly prejudicial as compared with lower rates from New Orleans to other destinations in Arkansas, Oklahoma, and Louisiana for comparable distances, and to extent it exceeded rate to Shreveport, La., applicable on interstate or foreign commerce, by more than 7 cents per 100 pounds. Nonprejudicial basis of rates prescribed.

El Dorado Chamber of Commerce v. C., R. I. & P. 126 I. C. C. 443.

(3s) Rates on furniture from St. Louis to Paris, Texas found unduly prejudicial to Paris and unduly preferential of Texarkana, Tex., to extent they exceeded or may exceed, the maximum reasonable rates or bases of rates prescribed in 123 I. C. C. 203, for application on furniture from St. Louis to the Southwest. No damage shown to have resulted from existing rate situation and reparation denied. Rodgers-Wade Furniture Co. v. A. C. & Y., 126 I. C. C. 460.

(3t) Combination rates on lumber and products from points in Puget Sound district of State of Washington to Montana, North Dakota, South Dakota, and Minnesota destinations, found not unreasonable or unjustly discriminatory but unduly prejudicial to extent they exceed joint rates contemporaneously maintained from Tacoma, Wash., and other points in the coast group. Since absorption by complainants of differentials over coast-group rates is generally difficult or impracticable, resulting rates are prohibitive and buyers tend to deal with complainant's competitors in the coast group who can ship at lower rates. Nonprejudicial rates required for future. Pacific States Lbr. Co. v. G. N. Ry, 126 I. C. C. 471.

(3u) Combination rates on lumber and products from Elk River, Idaho to Montana, North Dakota, South Dakota, and Minnesota destinations, found not unreasonable, discriminatory, or unduly prejudicial except that rates to points east of the Montana-Dakota State line are unduly prejudicial as compared with joint rates contemporaneously in effect from Spokane, a competing point; with rates prescribed in 50 I. C. C. 591, and 77 I. C. C. 156, from Winchester, Idaho, a point south of Elk River, and points southeast of Spokane, respectively, to same destinations; and to extent indicated in report. Nonprejudicial rates required for future. Pacific States Lbr. Co. v. G. N. Ry. 126 I. C. C. 471, 473, 474.

(3v) Rate on crude phosphate rock, from Tilphosco and Brewster, Fla., to Meridian, Miss., found not unduly prejudicial as compared with lower rate to New Orleans, La., and Gulf ports, for greater distances. Carriers show that rate to the Gulf ports is depressed by reason of water competition, much phosphate rock being transported in tramp steamers which maintain no regular rates. Moreover, in 101 I. C. C. 165, the influence of water competition over these rates was recognized by commission and record in instant case substantiates the view there expressed. Meridian Fertilizer Factory v. A. C. L., 126 I. C. C. 478.

(3w) Rates on sand and gravel from Muscatine, Iowa to destinations in central Illinois, found unreasonable and unduly prejudicial as compared with rates on crushed stone under distance scale prescribed in 49 I. C. C. 681, from Birdsboro and Devault, Pa., and Port Deposit, Md., to various eastern destinations; with rates on chert, clay, sand, and gravel prescribed in 122 I. C. C. 133 for application in the Southeast; and to extent they exceed by more than 10 cents per ton rates contemporaneously maintained on crushed stone, prescribed in 89 I. C. C. 110, from Buffalo, and Linwood, competing Iowa points with which Muscatine is grouped, to same destinations. Reasonable and nonprejudicial rates required for future. Automatic Gravel Products Co. v. C., R. I. & P. 126 I. C. C. 487.

(3x) Rate on pig iron from Birmingham, Ala., and points taking same rate to Nashville, Tenn., found not unduly prejudicial as compared with lower rates contemporaneously in effect to Chattanooga, Tenn., and other destinations in Tennessee, Alabama, and Georgia, with which Nashville comes into competition. Since carriers which control rates to competitive destinations named do not control rate to Nashville, it is clear that there is no basis for a finding of undue prejudice. See 22 I. C. C. 115. Reparation awarded. Allen Mfg. Co. v. A. G. S., 126 I. C. C. 515.

(3y) Proposed rates on hay between points in Texas and between those points and points in the Shreveport, La., group, based on a composite scale observing as minima the rates prescribed in 48 I. C. C. 312 or those under distance scale prescribed in 101 I. C. C. 116, whichever are higher, plus differentials when through Texas differential territory, using as maximum a rate now applicable as a maximum blanket rate between points in Texas common-point territory, found not justified. In 101 I. C. C. 116, commission stated that whatever rates would be ultimately prescribed between Texas points should be applied between Texas points and Shreveport, but because of loss involved respondents have been unwilling

to extend this intrastate adjustment beyond 350 miles. The proposed rates are in nature of a compromise, are apparently satisfactory to no one, and to extent they exceed those constructed in accordance with distance scale prescribed in last cited case, would be unreasonable and many of them unduly prejudicial. Hay Between Points in Tex., La., and Ark., 126 I. C. C. 524.

(3z) Rate on newsprint paper from Carthage, N. Y. to Newark, N. J., via National Junction, N. J., found not unreasonable, discriminatory, or unduly prejudicial as compared with lower rate contemporaneously in effect to New York, or from Glens Falls, N. Y., to New York, over another route also applicable to Newark, and subsequently established via route of movement. Rate from Glens Falls was established to avoid fourth-section departures because of fact that Newark is intermediate to New York. However, rate to Newark, except on traffic via National Junction, is the same as rate assailed in connection with all other delivering carriers, and mere fact that carriers voluntarily reduced the latter rate does not establish unreasonableness of the rate so reduced. Newark Call Printing & Publishing Co. v. C. R. R. of N. J., 126 I. C. C. 569.

(4a) Rates on zinc concentrates from points in the Joplin, Mo-Miami, Okla., ore field to De Pue, La Salle, and Peru, Ill., found unduly prejudicial to extent they exceeded rates contemporaneously maintained to Danville, Ill. Nonprejudicial basis of rates prescribed and reparation denied. United Zinc Smelting Corp. v. B. & O., 126 I. C. C. 677, 696.

(4b) Rates on zinc concentrates from points in the Joplin, Mo.-Miami, Okla., ore field to Terre Haute, Ind., found unduly prejudicial in favor of Danville, Hillsboro, and East St. Louis, Ill., to extent they exceeded rates contemporaneously maintained to Danville, or rates contemporaneously maintained to East St. Louis and Hillsboro by more than 3.5 cents per 100 pounds. Nonprejudicial basis of rates prescribed and reparation denied. United Zinc Smelting Corp. v. B. & O., 126 I. C. C. 677, 696.

(4c) Rates on zinc concentrates from points in the Joplin, Mo.-Miami, Okla., ore field to Grasselli, Ind., found unduly prejudicial to extent they exceeded rates contemporaneously maintained to Danville, Ill., by more than 3 cents per 100 pounds. Nonprejudicial basis of rates prescribed and reparation denied. United Zinc Smelting Corp. v. B. & O., 126 I. C. C. 677, 696.

(4d) Rates on solder and certain other alloys of lead, including terne metal, found not unreasonable but unduly prejudicial to extent they exceeded lower rates contemporaneously maintained on tin. Undue prejudice ordered removed and reparation denied. Former decisions in 92 I. C. C. 319 and 113 I. C. C. 487, modified. Federated Metals Corp. v. C. R. R. Co. of N. J., 126 I. C. C. 703.

(4e) Rates on refined petroleum from Hearne, located on extreme southern rim of north-central Texas group, to Baytown, Tex., for export and for coastwise movement to points in the United States, found not unreasonable or unduly prejudicial as compared with rates from Shreveport, La. Carriers participating in rates from Shreveport do not participate in rates from Hearne, therefore the record does not sustain a finding of undue prejudice. Moreover, construction of the refinery at Hearne was a mistake of judgment resulting in financial loss for which complainant seeks reimbursement at carriers' expense. It can not be successfully argued that complainant did not know the group adjustment in the territory in which it operated and fact that it requested establishment of a rate from Hearne the same as applied from north-central Texas group, is prima facie evidence that it considered that point as being located in that group. Humble Oil & Rfg. Co. v. B. S. L. & W., 126 I. C. C. 717.

(4f) A manufacturer may be unduly prejudiced and a competitor unduly preferred by an improper relationship of inbound rates on the raw or unfinished material which they both use. Kawneer Co. v. C. & N. W. Ry., 132 I. C. C. 643, 645.

(4g) Rates on newsprint and wrapping paper from Camas, Wash., and West Linn and Lebanon, Oreg., to Oregon, California, Nevada, Montana, Wyoming, Colorado, Arizona, and Texas found not unreasonable or unduly prejudicial as compared with rates contemporaneously in effect from competitive producing points in Fox River territory in Wisconsin and Atlantic Seaboard territory. While complainants base their claim upon disruption of rate relationships which they allege formerly existed between Fox

River and Pacific Northwest territories, examination of rates indicates no definite or constant rate relationship over a period of years and carriers show that transportation conditions are not similar. Moreover, disregarding all elements but distance, rate to Texas common points from Camas and West Linn is only 13.5 per cent greater than from Stevens Point, Wis., for a 100 per cent longer haul. Crown Willamette Paper Co. v. W. T. Co., 129 I. C. C. 79.

(4h) Rates on anthracite coal from anthracite region of Pennsylvania to destination within the district of metropolitan Boston, but outside Boston switching district, found not unreasonable as compared with lower rates to Boston and destinations within or just outside the switching district, but unduly prejudicial to extent they exceeded the contemporaneous rates to adjacent points in metropolitan Boston outside the switching limits but not on tidewater, where distances are not greater than those to complainants' plants. Fourth-section situation is protected by an order. Undue prejudice ordered removed and reparation denied. Chadwick Coal Yard Co. v. N. Y., N. H. & H., 129 I. C. C. 165.

(4i) Rates on bed springs or spring beds, compressed, from Carthage, Mo., to points in Oklahoma and Texas, found unreasonable and unduly prejudicial as compared with lower rates contemporaneously in effect from Chicago, Kansas City, St. Louis, and various other points and to extent they exceeded 55 and 41 per cent of first-class rates to Oklahoma and Texas, respectively, prescribed in 123 I. C. C. 203, between same points. Reasonable maximum basis of rates prescribed for future and reparation awarded. Leggett & Platt Mfg. Co. v. A., T. & S. F., 129 I. C. C. 219.

(4j) Rate on paving brick from Buffalo, Kans., to Dodge Street (Irvington), Nebr., found not unreasonable but unduly prejudicial to extent it exceeded lower rate contemporaneously in effect from Galesburg, Ill., a competitive producing point, and subsequently established over route of movement. Complainant showed that Galesburg has set price on Nebraska brick for years and that selling price of brick shipped was based on rate from Galesburg, difference being absorbed by complainant, and cited 61 I. C. C. 185 and other cases in which reparation was awarded under similar circumstances. Reparation awarded. Buffalo Brick Co. v. C. & N. W., 129 I. C. C. 294.

(4k) Local rates from Dawkins, Ky., a point on the C. & O. Ry., to points in central and eastern trunk-line territories on lumber originating at Royalton, Ky., a branch-line point, found not unreasonable but unduly prejudicial to shippers at Royalton and unduly preferential of competing shippers located on the Sewell Valley R. R., which connects with C. & O. at Meadow Creek, W. Va., to extent they exceeded rates made the same differential under contemporaneous local rates from Dawkins as proportional rates to same destinations from Meadow Creek are made under contemporaneous local rates from latter point. Undue prejudice ordered removed. Dawkins Lbr. Co. v. C. & O., 129 I. C. C. 415.

§4. Similar Conditions.

See Equalization of Rates §3; Evidence §56; Through Routes and Joint Rates §8.

(a) In adjustment of rates it is well settled that unless conditions of transportation are substantially similar at two points no unlawful discrimination may properly be predicated upon different rates and practices. See 37 I. C. C. 225. The very terms of the statute that discrimination must not be unjust, and that preference or advantage to any particular person, firm, corporation, or locality must not be undue or unreasonable, necessarily imply that strict uniformity is not always to be enforced; but that all circumstances and conditions which reasonable men would regard as materially affecting welfare of shippers and carriers should be considered. See 162 U. S. 197. Ayrshire Coal Co. v. S. Ry., 118 I. C. C. 531, 536.

(b) Complainant attacked the commodity rate of 23c on linseed oil, carloads, from Fredonia, Kas., to Kansas City, Mo., as unreasonable and unduly prejudicial. Fredonia is about 30 miles north of the Kansas-Oklahoma state line, and is served by the Santa Fe, M. P., and Frisco. Shipments moved via M. P. 155 miles, distance via Santa Fe 153 miles. Linseed and cottonseed oils

are rated fifth class in carloads in western classification. Their transportation characteristics are similar. The rate under the scale in 98 I. C. C. 183 would be 22c. HELD, rate not unduly prejudicial but unreasonable to extent it exceeded 22c, reparation awarded. Fredonia Linseed Oil Works Co. v. A. T. & S. F. Ry., 122 I. C. C. 291.

(c) Rates on grain from points in Indiana on the Chicago, Indianapolis & Louisville Ry. to Chicago, when reshipped over lake or lake-and-rail lines, found not unreasonable or otherwise unlawful because lower than rates on similar traffic from same origin points to Indianapolis, Ind. Complainant contended that assailed rates are unduly low as a result of which traffic is diverted by way of Chicago instead of moving by way of Indianapolis. However, local rates to Chicago are upon a much higher level than rates assailed and evidence of shippers is to effect that the bulk of their grain moves to interior destinations and Ohio River markets and that greater quantities of grain are shipped to Indianapolis than to Chicago, the latter market being desirable principally for off-grade grain. Indianapolis Board of Trade v. C., I. & L., 122 I. C. C. 289.

(d) On further hearing, original report 98 I. C. C. 352, prescribing reasonable and nonprejudicial rates for interstate transportation of fresh meats and packing-house products, from Duluth to St. Paul, Minn., affirmed. Transportation conditions being substantially same in both directions, there is a clear discrimination in charging lower rates from St. Paul to Duluth than from Duluth to St. Paul, and under circumstances, it is impossible to conclude that Duluth packing plant suffers no injury because of this discriminatory freight-rate situation, or that its competitive position would not be improved if such discrimination were removed. It is an unfair situation for which no justification has been offered and should be corrected. Duluth Chamber of Commerce v. C., St. P., M. & O., 122 I. C. C. 739.

(e) Rates on anthracite coal from Lehigh, Schuylkill, and Wyoming regions in Pennsylvania to complainant's siding within corporate limits of Providence, R. I., found not unreasonable but unduly prejudicial to extent they exceeded rates contemporaneously maintained to Providence and Olneyville, R. I., farther distant points. Carriers showed that rates to latter points were depressed and that rates assailed were subsequently reduced because fourth-section relief was denied in 49 I. C. C. 744. However, complainant was at a disadvantage in competing with other dealers located within the corporate limits of Providence because of higher rates assessed on its shipments, but no damage was shown to have resulted therefrom. Undue prejudice ordered removed and reparation denied. City Coal Co. v. N. Y., N. H. & H., 123 I. C. C. 309.

(f) Rate assessed, and present rate, on lumber from, Angora, Minn., to Chicago Heights, Ill., found not unreasonable or unduly prejudicial as compared with rates contemporaneously in effect for comparable distances from Wisconsin and Minnesota points to destinations in c. f. a. territory; from Arkansas points to St. Louis and Chicago; and from Kansas City, Mo., to Chicago; or unduly prejudicial as compared with those from Tower, Minn., to Chicago. Carriers showed that rate assessed was based on the water-compelled rate from Duluth and compares favorably with those from various northern Minnesota points made on same basis. Moreover rate subsequently established places Angora on same basis as Tower. Chicago Heights Mfrs. Asso. v. B. & O. C. T. 123 I. C. C. 638.

(g) Rates on wooden box shooks from, Baltimore, Md., to Jersey City, N. J., found unreasonable and unduly prejudicial as compared with rates contemporaneously in effect from Norfolk and other competing points in Virginia and North Carolina. While rates from latter points are depressed due to water competition, it was not shown that they are less than reasonable. Moreover narrow spread in rates as compared with great difference in length of haul under substantially the same transportation conditions, can not be ignored. Reparation awarded. Canton Box Co. v. P. R. R., 123 I. C. C. 663.

(h) Complainant attacked commodity rates on crushed stone, in carloads, from Thornton, Ill., to destinations in northern Indiana southwestern Michigan as unreasonable and unduly prejudicial to complainant, and unduly preferential of Monroe, Mich., and Middlepoint, O. HELD, rates attacked un-

reasonable to extent they exceed 120c to Kalamazoo, 125c to Ft. Wayne and Battle Creek, 135c to Grand Rapids, 140c to Lansing and Muskegon and 145c to Pentwater. Brownell Improvement Co. v. B. & O. C. T. R. R., 126 I. C. C. 414.

(i) Rates on coal from mines in the Birmingham district of Alabama, on the one hand, and western Kentucky and southern Illinois districts, on the other, to destinations in the Mississippi Valley, found unduly prejudicial to Alabama mine operators and unduly preferential of mine operators in western Kentucky and southern Illinois districts to extent that rates from the latter exceed those from the former by less amounts in cents per net ton than those prescribed in zone adjustment described in the report. Previous report 109 I. C. C. 740. Coal from Illinois, Kentucky, and Alabama, 128 I. C. C. 113.

(j) Rates on blank wall paper from Thomson, N. Y., to destinations in c. f. a. territory, found not unreasonable or unduly prejudicial as compared with those contemporaneously in effect from Watertown, N. Y., in the Ogdensburg, N. Y., group; Brunswick, Me., in the Boston group; and Appleton, Wis., in the Fox River, Wis., group; but rates on newsprint paper between same points found unreasonable to extent they exceed rates contemporaneously maintained on blank wall paper. Earnings under rates on wall paper to Chicago and Joliet, Ill., destinations in which complainant is particularly interested, do not appear excessive. However, rates on newsprint paper and blank wall paper from Glens Falls and Warrensburg, N. Y., are the same, and in 38 I. C. C. 120, it was stated that rates on blank wall paper should be no lower than rates on newsprint paper. Reasonable rates prescribed for future. Iroquois Pulp & Paper Co. v. A. A. R. R., 128 I. C. C. 187.

(k) Fifth-class rates on window glass from Hartford City, Ind., to destinations in western trunk-line territory found not unreasonable or unduly prejudicial as compared with rates from southwestern points to destinations in western trunk-line and c. f. a. territories, or from Hartford City to c. f. a. southwestern and southern territories. The compared rates were generally upon the fifth-class basis. Carriers urge that rates from the southwest are unduly low and that observance of those rates as a basis for adjustment of rates from Hartford City would result in a general disruption of the basis in effect from points in c. f. a. territory. The disturbance of the class-rate adjustment applicable to the numerous destinations involved is not warranted upon the present record, nor is it shown to what extent, if any, carriers handling complainant's traffic control rates from the southwest. American Window Glass Co. v. A., T. & S. F., 128 I. C. C. 222.

(l) Rates on cabbage and potatoes from lower Rio Grande Valley of Texas to Cincinnati, Ohio, found unreasonable and unduly prejudicial as compared with rates from same points of origin to certain destinations in Illinois, Wisconsin, and Indiana, from various other points to Cincinnati for comparable distances, and to extent they exceeded lower rates contemporaneously in effect to Chicago. Reasonable rates prescribed for future and reparation awarded. Leonard, Crosset & Riley v. A., T. & S. F., 128 I. C. C. 225.

(m) Complainant attacked rates on cabbage and potatoes, in carloads, from the lower Rio Grande valley of Texas to Cincinnati, O., as unreasonable and unduly prejudicial as compared with the rates maintained from the same points of origin to Illinois, Wisconsin and Indiana and in violation of section four. Rates attacked are joint commodity rates of $1.12 on cabbage and $1.05 on potatoes. HELD, rate attacked unreasonable and unduy prejudicial to extent they exceed 95c on cabbage and 87c on potatoes, reparation awarded. Leonard Crosset & Riley v. A. T. & S. F. Ry., 128 I. C. C. 225.

(n) Rates on lumber from southern points of origin to Reading, Ohio, a point within Cincinnati switching limits, higher than rates to Cincinnati and other points within switching limits taking same rates found not unreasonable but unduly prejudicial to extent rates to Reading exceeded those contemporaneously maintained to Cincinnati. Switching charges are assessed on shipments to Reading, whereas to points more distant such charges even though higher are absorbed on all carload traffic. Reading is practically the only point within switching district to which Cincinnati rates on lumber do not apply, or where a distinction is made between lumber and other traffic. Moreover, in 85 I. C. C. 197, rates to Madisonville, Ohio, which bore same relationship to

Cincinnati as those here assailed were found unduly prejudicial. Nonprejudicial basis of rates prescribed for future. Nivison-Weiskopf Co. v. A. & V., 128 I. C. C. 233.

(o) Compainant assailed commodity rates on brick and articles taking brick rates, in carloads, from Wooster, O., to New England and eastern states, as unreasonable and unduly prejudicial. Canton and Massillon, O., are also located on the Pennsylvania and B. & O. Wooster is 34 miles west of Canton and 26 miles west of Massillon over the Pennsylvania. The rates to Emporium, Pa., Rochester and Utica, N. Y., and points similarly located are 1.5c higher from Wooster than from Canton. To Virginia cities and also to points in eastern Canada the same rates are applicable from both points; and to other eastern points the rates are generally 0.5c higher from Wooster than from Canton. With respect to rates on eastbound traffic Canton is in a 71% group adjoining 60 and 66% groups. Wooster is the principal point in a small group known as the 73% group, surrounded by and lying approximately in the center of the 71% and 76% groups, which are substantially larger. HELD, rates attacked are not unreasonable but are unduly prejudicial to extent they exceed the rates from Canton and Massillon. Medal Brick & Tile Co. v. B. & O. R. R., 128 I. C. C. 241.

(p) Rates on furniture from Memphis, Tenn., to points in c. f. a., Buffalo-Pittsburgh, and southern territories found unduly prejudicial to extent that rates from Memphis to competing points in said territories exceed rates contemporaneously maintained in the reverse direction; and unduly preferential of competing points in southern territory to extent that relations of rates to common destinations in said territories are less favorable to Memphis than those which would result from establishment of rates from Memphis and Southern territory competing points made on bases of rates herein found reasonable. Nonprejudicial bases of rates prescribed for future. Memphis Freight Bureau v. A. G. S., 128 I. C. C. 445.

(q) Rates on furniture from Memphis, Tenn., to points in c. f. a. and Buffalo-Pittsburgh territories found unduly prejudicial to Memphis and unduly preferential of Little Rock, Pine Bluff, and Fort Smith, Ark., to extent that a rate relation substantially less favorable to Memphis exists than would result from establishment Memphis of rates on furniture herein found reasonable and from Arkansas points to points involved rates made on basis found reasonable as a maximum in Consolidated Southwest Cases, 123 I. C. C. 203. Memphis Freight Bureau v. A. G. S., 128 I. C. C. 445.

(r) Rates on furniture from Memphis, Tenn., to Ohio River crossings and St. Louis, Mo., found unduly prejudicial to Memphis and unduly preferential of Chicago to extent that a rate relation substantially less favorable to Memphis exists than would result from establishment of rates therefrom herein found reasonable and establishment from Chicago to destinations involved of class rates applicable on furniture under official classification. Nonprejudicial basis of rates prescribed for future. Memphis Freight Bureau v. A. G. S., 128 I. C. C. 445.

(s) Rates on furniture from Memphis, Tenn., to Birmingham, Ala., found not unduly prejudicial as compared with those from Little Rock, Ark. While complainants contend that undue prejudice results from fact that ton-mile earnings to Birmingham from Memphis are higher than from Little Rock notwithstanding that the haul therefrom is through higher-rated territory, this does not take into consideration an appropriate regression in ton-mile earnings because of the longer haul from Little Rock, nor fact that rates from Memphis are lower in amount than from Little Rock. Memphis Freight Bureau v. A. G. S., 128 I. C. C. 445, 461.

(t) Rates on anthracite and bituminous coal from points in Illinois, Indiana, Pennsylvania, and West Virginia, to complainant's siding between Mayfair and Peterson Avenues in the Chicago switching district applicable to Peterson Avenue but in excess of the flat Chicago rate applicable to Mayfair, found not unreasonable, but maintenance of rates applicable to Peterson Avenue higher than rates to destinations here in question found unduly prejudicial to extent they exceeded the flat Chicago rate. See 73 I. C. C. 161; 89 I. C. C. 137. Reparation denied, there being no satisfactory proof of damage. Chicago Coal Merchants Asso v. C. & N. W., 128 I. C. C. 519.

(u) Rates on creosote oil from Indianapolis, Ind., to Louisville, Ky., Cincin-

nati, Ohio, St. Louis, Mo., East St. Louis, Granite City, Madison and Chicago, Ill., and points in Chicago switching district found unreasonable but not unduly prejudicial as compared with lower rates contemporaneously in effect from Birmingham, St. Louis and Chicago switching districts, competitive producing points, to same destinations. Movement from Birmingham to Cincinnati, Louisville, and St. Louis, is, for most part, in southern territory, and while rates in southern and Illinois territories are lower percentages of class rates than those in c. f. a. territory, from which complainant's shipments move, since transportation conditions throughout that territory are substantially similar to those in Illinois territory, and conditions in southern territory are such as to warrant a higher level of rates, no reason appears for the wide differences in existing percentages between the various territories. Reasonable rates prescribed for future. Republic Creosoting Co. v. A. G. S., 128 I. C. C. 547.

(v) Rates on pine lumber from points in Oregon, Idaho, and Montana to Bayport, Minn., found not unreasonable or unduly prejudicial as compared with lower rates contemporaneously in effect to St. Paul. Outside of irregularities in the construction and filing of tariffs, complainant showed that rates to Bayport exceeded those to St. Paul; that it sold frames made from lumber from same origin points in competition with dealers at that point and Minneapolis; and that carriers conceded error in publishing rates assailed and sought authority to make reparation. However, consent of carriers to an award of reparation is not proof of unreasonableness of rates charged; mere fact that rates assailed exceeded those to St. Paul has little probative force as evidence of unreasonableness; nor is competition with dealers in St. Paul and Minneapolis, standing alone, proof of undue prejudice. Moreover, a subsequent increase in rates to St. Paul would seem to indicate that those rates were out of line. Andersen Lbr. Co. v. N. P., 128 I. C. C. 633.

(w) First-class rates on black powder, moving interstate from Oriental siding, Fairchance, Pa., to destinations on the Western Maryland Railway, found not unreasonable or discriminatory but unduly prejudicial as compared with lower second-class rates contemporaneously maintained from Youngstown, Ohio. Circumstances and conditions surrounding transportation from Youngstown and Fairchance to trunk-line destinations are similar and no justification appears for maintaining a higher classification rating from Fairchance than from Youngstown. Undue prejudice ordered removed. Du Pont De Nemours & Co. v. B. & O., 128 I. C. C. 705.

(x) Rate on bituminous coal from mines in Clearfield, Meyersdale, and Cumberland-Piedmont districts of Pennsylvania, Maryland, and West Virginia, to Black Tom Pier, Jersey City, N. J., found not unreasonable but unduly prejudicial, except as maintained by the Pennsylvania, to extent it exceeded lower transshipment rates contemporaneously in effect to its competitors operating from piers on both sides of complainant. While latter is clearly at a rate disadvantage it does not follow that transshipment rate is reasonable maximum or that rate assailed is more than reasonable maximum. However, same rate to complainant applicable under substantially similar transportation circumstances and conditions can not be withheld merely because volume of business handled does not overtax piers on which its competitors operate, for complainant is entitled to share in the business on an equal basis. Undue prejudice ordered removed. Harbor Coaling Corp. v. B. & O., 128 I. C. C. 747.

(y) Complainant attacked commodity rates on anthracite coal, in carloads, from Pennsylvania to destinations in the metropolitan district of Boston, Mass., as unreasonable unduly prejudicial as compared with the rates from the same producing region to Boston and destinations within or just outside of the Boston switching limits which take the Boston rate. Destinations are local points upon the New Haven, B. & A. and B. & M. A joint rate of $4.54 applies to each of the destinations. The rate to Boston over the same routes is $4.16. Complainants points are intermediate to Boston and the fourth section situation is protected as to Boston and points within the Boston switching limits by fourth section order 9320 and as to points outside of these limits is under consideration in proceedings pending before the Commission. It is admitted that the movement of coal to Boston is normally by water and more than one witness for complainants stated on cross examination that his real com-

petition was not from his nearest competitor but from the large Boston dealers at Tidewater. The receivers of coal by the rail and water route fix the selling price of anthracite at Boston and the determinative factor in that selling price is the rail and water rate. The record leaves no room for doubt that the principal cause for the alleged prejudice to which complainants may be subjected by reason of their present rates is the existence of the rates on water borne coal and not the all rail rate to Boston. HELD, rates not unreasonable but unduly prejudicial to extent they exceed the rates to adjacent points in metropolitan Boston and not on tidewater, where the distances are no greater than those to complainants plant, reparation denied. Chadwick Coal Yard Co. v. N. Y. N. H. & H. R. R., 129 I. C. C. 165.

(z) Complainant assailed rates maintained on grain and grain products, carloads, originating at points on the I. C. in Iowa, Illinois, Minnesota and Wisconsin and moving to Memphis, there elevated, milled or mixed, and thence shipped to points on lines of defendants in Arkansas and Texas south of Brinkley, Ark., are unreasonable and unduly prejudicial as compared with the rates maintained on like traffic to and from the same points via East St. Louis and Gale, Ill., under which transit is accorded at East St. Louis and Cairo, Ill. The Commission is asked to prescribe joint rates via Memphis with transit thereat, the same as those applying through East St. Louis and Cairo. Defendants publish joint rates from the points of origin via East St. Louis or Gale to the destinations concerned. Through Memphis the applicable rates are made by combination of the rates to Memphis and the proportional rates beyond. The distances via the three markets are substantially the same. HELD, rates assailed unduly prejudicial. American Grain & Hay Co. v. I. C. R. R., 129 I. C. C. 225.

(aa) Complainant alleged that commodity rates charged on wine grapes, carloads, from Madison, Calif., to Portland and East Portland, Ore. between July 10 and Dec. 4, 1925, was unreasonable, unjustly discriminatory and unduly prejudicial. Complainants base their case solely upon the ground that the rate in effect subsequent to July 10, 1925 was in violation of New Italian Importing Co. v. S. P. Co., 95 I. C. C. 611. A rate of 94.5c became effective Dec. 4, 1925 from all of the points of origin considered to Portland and East Portland. HELD, rates assailed not unreasonable or unjustly discriminatory but unduly prejudicial to extent it exceeded rates on like traffic from South Vallejo, Napa, and points on defendants San Ramon and Walnut Grove branches, reparation denied, complaint dismissed. Italian Fruit & Produce Co. v. Southern Pacific Co., 132 I. C. C. 27.

(bb) Complainants alleged that the rates from Omaha, Chicago, Libertyville, Joliet, Milwaukee, Cleveland and Battle Creek to destinations throughout the United States were and are unreasonable and unduly prejudicial. Original report covering rates to the southwest, 81 I. C. C. 108. Macaroni products include macaroni, spaghetti, vermicelli and noodles. They are made from semolina, a flour milled from durum wheat, which is a particularly hard wheat, rich in gluten and protein, and unsuitable for the manufacture of bread flour. Macaroni products are packed for shipment in fiberboard or wooden boxes or cases. The movement of macaroni products can be loaded to 40,000 pounds or more in ordinary equipment. The low average loading is due to the practice of jobbers of requesting a minimum carload. The movement of macaroni products is principally in less than carload lots, as the orders do not usually call for carload quantities and the saving affected by shipping in carloads is not sufficient to offset the carrying and storage charges which would accrue on portions of carload shipments not covered by specific orders. On carload shipments, the amount of claims on account of loss or damage is small. Macaroni products are rated fifth class, in carloads, minimum weight 30,000 pounds, and fourth class in less than carloads. Complainants contended that their product is an uncooked grain product or a cereal food preparation and should be accorded the basis applicable on an extensive list of cereal food preparations, which take the grain products basis in the east and west, and sixth class in the south. HELD, upon the consolidated records the Commission is unable to find that the rates assailed, by reason of the lower rates on grain products and cereal preparations, by reason of the other matters complained of, result in undue prejudice to complainants or their traffic, nor is it persuaded that the rates on grain products and cereal

food preparations, when viewed in the light of their history and development, should be accepted as the reasonable measure of the rates on macaroni products. HELD, rates assailed not unduly prejudicial, but since Oct. 10, 1923 those to points in Oklahoma, Arkansas, Louisiana and Texas, unreasonable to extent they exceeded fifth class rates prescribed in Consolidated Southwestern cases, 123 I. C. C. 203. The rates assailed to other destinations, including those in official and southern territories, are with few exceptions on the fifth class basis. HELD, rates assailed, other than those specifically dealt with, not unreasonable. Reparation awarded. Skinner Mfg. Co. v. Director General, 132 I. C. C. 159.

(cc) Investigation upon motion of the Commission of the interstate rates on sugar, carloads, from New Orleans and other producing points in Louisiana and from Savannah, Ga., Boston, Mass., New York, N. Y., Philadelphia, Pa., Baltimore, Md., and other producing and distributing points on the Atlantic Seaboard to destinations in Kentucky, Tennessee, Mississippi, Alabama, Georgia, Florida, North Carolina, South Carolina, Louisiana east of the Mississippi river, including points on the west bank thereof, and points on the north bank of the Ohio river, with a view to determining whether such rates are unreasonable or unduly prejudicial and preferential. In southern classification territory sugar is rated fifth class in any quantity, but practically all traffic carloads and a substantial amount of the less carload traffic move on commodity rates materially lower than the class rates. There are sugar refineries at the four principal north Atlantic ports, at Savannah, at New Orleans, and at several other points in southern Louisiana. While there are no refineries at Norfolk, Va., Charleston, S. C., and Jacksonville and Tampa, Fla., sugar brought to those ports by water moves therefrom to some extent in carloads. The record suggests that a similar movement from Mobile, Ala., is likely to develop in the near future. The "basing point" system of making rates, which largely dominated the sugar adjustment throughout southern territory prior to 1915, is too well known to require specific description. Under this system socalled depressed rates applied to points on the coast or inland navigable waters and to certain other important competitive points in the interior, whereas to intermediate destinations much higher rates were maintained which were often combinations of the rates to and back from the basing points. The ultimate duty of the Commission is to determine, not necessarily the level of readjusted sugar rates which will neither increase nor decrease materially the aggregate revenues from this traffic, but rather a level of rates under which sugar will contribute its proper proportion of the revenues of the carriers, taking into consideration all pertinent factors including the value of the service. A fair distribution of the transportation burden, such as is contemplated by the Hoch Smith resolution, may at times involve requiring shippers to pay on certain commodities rates materially higher than the carriers are willing to charge, but before such a requirement is made the shippers are at least entitled to more notice and opportunity for opposition than they have had in this proceeding. The conclusion of the Commission is that for the future rates should be prescribed on the basis of 27.5 per cent of the new first class rates. Its best judgment is that such rates will average a little, but not a great deal, higher than the carriers proposed rates, taking into consideration the average haul, and that they will add somewhat to the carriers aggregate revenues, particularly if less than carload sugar traffic is placed on the classification basis. Certainly less than carload traffic, in view of the light loading the expense of both loading and unloading, and the character of trains in which it is apt to be handled, is on the whole much more expensive than carload traffic. The Commission is not prepared to find upon any evidence before it that a spread of 63.6% is too great. Reparation should not be awarded down to the basis of the rates prescribed for the future, but, on the other hand, to the extent that the rates attacked have in the past exceeded allowing for past general rate changes, the new class 8 rates which will shortly become effective, they have been "intrinsically unreasonable under any adjustment" and reparation should be awarded. Inasmuch as the readjustment which is here prescribed is based upon the new class rate structure, it is clear that whatever fourth section relief has been or is hereafter granted in connection with the class rates should also be granted in connection with these sugar rates. Relief corresponding to that which has been

accorded in connection with the class rates will now be granted, and if further relief proves necessary appropriate applications may be filed. Southeastern Sugar Investigation, 132 I. C. C. 477.

(dd) Complainants alleged rates on moss, in machine pressed bales, in carloads, from Louisiana to various destinations were unreasonable and unduly prejudicial. Prior order 98 I. C. C. 501. HELD, the prior finding that the indicated rates affirmed from Rosedale and other west side points to those destinations in the destination territories within the complaint which are intermediate to Albany, Rochester, Syracuse, and Utica, N. Y., over the lines of the designated carriers, in so far as those rates were higher than the indicated rates from Baton Rouge and Rosedale to the four points next above named, and were made subject to a rule 77 provision from and to intermediate points, were unreasonable prior to August 1, 1924 to the extent that they exceeded the rates to the four more distant points, reparation awarded. Except as next above indicated rates assailed and increased present rates were not and are not unreasonable. HELD, further, rates from the west side producing points and from New Orleans to destinations in Chicago, Cincinnati, Dayton, South Bend, Detroit, Cleveland, Pittsburgh, Memphis, St. Louis, Louisville and Nashville territories, to the extent that one or more defendants participate in both the rates from the west side points and in the rates from New Orleans were, are, and for the future will be unduly prejudicial to the west side points and to the traffic therefrom, to the undue preference of New Orleans and of the traffic therefrom, to the extent that the rates from the west side points have exceeded or may exceed those contemporaneously applied by or participated in by one or more of the same defendants for transportation of the same commodity from New Orleans to the same destinations, respectively by percentages greater than those by which the maximum first class rates prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203, for application from the west side producing points to the respective destinations exceed the maximum first class rates prescribed in Southern Class Rate Investigation, 100 I. C. C. 513, 109 I. C. C. 300, 113 I. C. C. 200, 128 I. C. C. 567, for application from New Orleans to the same points of destination, and that the undue prejudice and preference should be removed. The respective rates to Kansas City, Fox River and Omaha Davenport territories appear not to be unfavorable to the west side producing points, reparation denied. National Asso. of Furniture Mfrs. v. A. A. R. R. Co., 132 I. C. C. 546.

(ee) Rates on wall plaster from Hanover, Mont., to western and central portions of North Dakota and South Dakota, found unreasonable as compared with rates contemporaneously in effect from competing points in Loveland, Colo., Laramie, Wyo., and St. Paul, Minn., and from South Dakota points to destinations in North Dakota, for comparable distances; and unreasonable and unduly prejudicial as compared with intrastate rates from Piedmont and Black Hawk, S. Dak., to various South Dakota destinations. While distance rates herein prescribed will not completely remove existing undue prejudice and preference between intrastate and interstate rates in South Dakota, no order will at present be entered with respect thereto but carriers and State authorities will be given opportunity to adjust their rates so as to remove balance thereof. Reasonable and nonprejudicial basis of rates prescribed for future. Three Forks Portland Cement Co. v. C., B. & Q., 129 I. C. C. 107.

(ff) Rates on limestone containing 2.5 per cent or more of asphalt, broken, crushed, or ground, from Margerum and Colrock, Ala., to destinations in southern territory, except Florida, found unreasonable and unduly prejudicial as compared with rates on similar asphalt rock from Oklahoma and Texas to Mississippi River points and west thereof and with those on sandstone asphaltic rock produced at Kyrock, Ky., competitive products; with rates prescribed in 96 I. C. C. 319 on crushed asphalt rock from Dougherty, Okla., to Kansas City, Mo.-Kans.; and to extent they exceeded distance rates herein prescribed. Reasonable maximum rates prescribed for future and reparation denied. Colbert Limerock Asphalt Co. v. A. C., 129 I. C. C. 177.

(gg) Rate on paving brick from Buffalo, Kans., to Dodge Street (Irvington),

Nebr., found not unreasonable but unduly prejudicial to extent it exceeded lower rate contemporaneously in effect from Galesburg, Ill.; a competitive producing point, and subsequently established over route of movement. Complainant showed that Galesburg has set price on Nebraska brick for years and that selling price of brick shipped was based on rate from Galesburg, difference being absorbed by complainant, and cited 61 I. C. C. 185 and other cases in which reparation was awarded under similar circumstances. Reparation awarded. Buffalo Brick Co. v. C. & N. W., 129 I. C. C. 294.

§4½. Section 2 and Comparable Commodities.

See Absorption of Charges §5½ (a); Classification §17; Evidence §12.

(a) Rates on cured meats, packed, and green salted hides from Chicago and other c. f. a. packing points, including Mississippi River Points, St. Louis to Dubuque, to destinations in trunk-line and New England territories, found not unreasonable or unduly prejudicial in relation to contemporaneous rates on hogs and sheep in double-deck cars or on cattle from and to same points. Morrell & Co. v. N. Y. C., 104 I. C. C. 104, 135.

(b) In 62 I. C. C. 194 commission found rates on iron ore from Ironwood, Mich., and Baraboo, Wis., to Granite City, Ill., unreasonable and awarded reparation. Upon complaint alleging discrimination as to like traffic from same points to Carondelet, Mo., on ground that Granite City and Carondelet have long been accorded same rates from and to points 100 miles distant, which can only be corrected by an award of reparation to complainant; HELD: In cited case delivery in northern East St. Louis switching district was involved, whereas here a greater haul, crossing of Mississippi River, and transportation through congested St. Louis district are involved. These facts can not be considered as transportation "under substantially simliar circumstances and conditions" as contemplated by section 2 of the act. Mississippi Valley Iron Co. v. C. & N. W., 104 I. C. C. 243, 245, 246.

(c) No damage shown due to undue prejudice in the past because of existence of rate on steel tanks, k. d., fabricated in transit at Iola, Kans., which were higher than rates between same origin and destination points with fabrication in transit at Kansas City. All fabricators at time of movement paid Pittsburgh price plus freight rate from that point to their plants for raw materials regardless of its origin and complainant here failed to show that any preferred fabricators bid upon traffic here in controversy, set sale price which complainant was compelled to meet, or that complainaint's sale price was based on rates paid by any such competitors. United Iron Works v. Director General, 104 I. C. C. 449, 451.

(d) Grape juice, in bulk: Rates on unfermented grape juice, in bulk, in barrels, found unreasonable and unduly prejudicial to extent they exceed rates contemporaneously in effect on same commodity, in glass, in boxes. Joseph v. O.-W. R. R. & N. Co., 104 I. C. C. 477.

(e) Sand and gravel: Rates on sand and gravel from points in western Pennsylvania to destinations in Ohio, West Virginia, and New York, found unreasonable and unduly prejudicial to extent they exceed rates contemporaneously maintained on slag and crushed stone. Penn. Sand & Gravel Prod. Asso. v. B. & O., 104 I. C. C. 717.

(f) Apples: Following 96 I. C. C. 437, apples in bulk or in lug boxes without tops, found unreasonable and unduly prejudicial to extent they exceeded lower rates on same commodity in boxes and crates. Lane v. S. P., 107 I. C. C. 253.

(g) A mere showing of difference in ratings between different commodities is not sufficient to establish discrimination, nor does it of itself prove that higher ratings are unreasonable. Union Metal Mfg. Co. v. A., C. & Y., 109 I. C. C. 490, 491.

(h) Fact that lower rates apply on spices than on pyrethrum flowers can not be considered a violation of either section 2 or 3 of the act. These commodities are not like kinds of traffic and there is no competition between them. Nor does it follow that a violation of either of these sections exists because rate adjustment permits eastern grinders to secure pyrethrum flowers from the Orient at lower delivered prices via Atlantic ports than those paid by grinders in the mid-west on shipments through Pacific coast ports. Winona Asso. of Commerce v. C., R. I. & P., 109 I. C. C. 648, 649.

(i) Rates on compo-board, found not unreasonable but unduly prejudicial to

extent they exceeded rates contemporaneously maintained on wall board. Reparation denied for lack of proof of damage such as is required to support an award of reparation under a finding of undue prejudice. Wright Lumber Co. v. A. A., 112 I. C. C. 337.

(j) Rates on worn-out autotruck rims with solid rubber tires attached found unreasonable and unduly prejudicial to extent they exceed rates on scrap iron. Reasonable and nonprejudicial rates prescribed for the future. Ames & Co. v. N. Y., N. H. & H., 112 I. C. C. 624.

(k) Competition between carriers does not constitute such a dissimilarity of circumstances and conditions as will excuse what would otherwise be an unjust discrimination under section 2 of the act. See 167 U. S. 512, 254 U. S. 57. Drayage Absorptions by S. W. M., 113 I. C. C. 179, 185.

(l) A competitive relationship among shippers is not essential to a finding of unjust discrimination, and competition between carriers does not justify an otherwise unlawful discrimination under section 2 of the act. Transit on iron and steel, 115 I. C. C. 381, 385.

(m) The phrase "under substantially similar circumstances and conditions," as found in section 2 of the act, refers to the matter of carriage and does not include competition. See 44 I. C. C. 455 and cases there cited. Winding Gulf Colliery Co. v. C. & O., 115 I. C. C. 113, 119.

(n) Staves and lumber do not constitute such "like traffic" that a different charge for their contemporaneous transportation establishes unjust discrimination under section 2 of the act. Chess-Wymond Co. v. A. & V., 115 I. C. C. 703.

(o) Rates on oak staves and oak heading from Mississippi and Louisiana to California destinations found not unreasonable or otherwise unlawful as compared with contemporaneous rates on rough and dressed lumber. Staves and lumber do not constitute such "like traffic" that a different charge for their contemporaneous transportation is violative of section 2 of the act. See 50 I. C. C. 229. While equal rates are maintained on these commodities to various destinations a history of cooperage stock and lumber rates shows that no rigid relationship has been maintained between them. Therefore lumber rates are not determinative of reasonableness of rates on cooperage stock. Moreover, assailed rates compare favorably with those found reasonable by commission on various commodities for comparable transcontinental hauls. Chess-Wymond Co. v. A. & V., 115 I. C. C. 703.

(p) Rates on brick and hollow building tile from Vale, Mo., a point outside Kansas City switching district, to Kansas City, Mo.-Kans., found not unreasonable or unduly prejudicial as compared with other rates on same and related products for comparable distances to same destination from points both within and without the district, or as compared with distance rates for similar hauls in effect on intrastate and interstate traffic in Kansas, Nebraska, Missouri, Texas, Arkansas, Illinois, and Iowa. Kansas City Brick Co. v. C., R. I. & P. 115 I. C. C. 750.

(q) Rates on stone, rough or sawed, not further finished from Bedford district in southern Indiana to Wichita, Kans., found not unreasonable or unduly prejudicial as compared with rates on dressed and other kinds of stone, brick or cement. Cuthbert Cut Stone Co. v. St. L.-S. F. 118 I. C. C. 69.

(r) Upon further hearing, former report 98 I. C. C. 331 modified in part and ratings and rates on coconut stearine in boxes or barrels found unreasonable to extent they exceeded third class l. c. l. and fifth class c. l., minimum 30,000 pounds, and unduly prejudicial to extent they exceed ratings and rates contemporaneously applicable on palm-kernel, palm, and mixed stearines in bags, boxes, or barrels. Reasonable ratings and rates prescribed for future and reparation denied. Best Foods v. C. R. R. Co. of N. J., 120 I. C. C. 169.

(s) First-class l. c. l. rate on fresh beef hams, salted, from Chicago to Philadelphia, Pa., and Phillipsburg, N. J., found unreasonable to extent it exceeded rate one class lower than l. c. l. rate on fresh meats. See 85 I. C. C. 725. Application of a rate reasonable for fresh meats to meats partially cured by salting is unreasonable in view of protection against deterioration afforded by the salting process. Guggenheim Bros. v. B. & O., 120 I. C. C. 340.

(t) Rate on cotton-lined burlap bags, and cotton bags, in straight or mixed carloads, found unreasonable to extent it exceeded lower rate contemporane-

ously maintained on burlap bagging. Reasonable rate prescribed for future and reparation awarded. Biegel Sack Co. v. C. R. R. Co. of N. J., 122 I. C. C. 78.

(u) Eastbound rates on flour, minimum 40,000 pounds, from points in Colorado, Utah, Idaho, Montana, Oregon, and Wyoming found unreasonable and unduly prejudicial in favor of dealers located at points in Montana and Colorado, to extent they exceed corresponding rates on wheat. Ogden Grain Exchange v. A. & S., 122 I. C. C. 691, 718.

(v) Upon contention that assessment of equal rates on rough and dressed granite is unreasonable, discriminatory, unduly prejudicial to complainant, and unduly preferential of competitive shippers of dressed granite, since latter is of greater value than rough granite, HELD: Rate assailed is subject to declaration of value by shippers and complainant's competitors can not lawfully apply that rate on dressed granite if its value exceeds the value fixed by the tariff. Bourgoin & Co. v. M. & W. R., 123 I. C. C. 545.

(w) Complainant alleged that charges collected on numerous carload shipments of iron and steel tank material from Meadville, Greenville, Fallston, Pittsburgh and Franklin, Pa., Gary, Indiana Harbor and East Chicago, Ind., Washington Heights and South Chicago, Ill., Steubenville and Cleveland, O., and Kansas City, Kas., to Humboldt, Kas., Healdton, Cushing, Shidler, Manion, Hominy, and Pauls Switch, Okla., and Holden, Mexia and Navarro, Tex., between Dec. 31, 1921 and Nov. 22, 1923 and present rates are unreasonable. At the time of movement the same rate applied to all of the destination points in Oklahoma with the exception of Healdton and Pauls Switch. Healdton is on the O. N. M. & P. about 31 miles west of Ardmore, Okla., rate charged exceeded Ardmore rate by 7.5c. Since the hearing the rate to Healdton has been made the same as to Ardmore. Pauls Switch is on the O. S., 5 miles south of Bristow, Okla. Complainants contend that the rates charged were unreasonable to the extent they exceeded the rates on iron or steel pipe. Claims for damage are negligible. The value of pipe is in excess of that of tank material and so far as the transportation characteristics of the two commodities are concerned, no persuasive reason appears why tank material should take a higher rate than pipe. HELD, rates attacked unreasonable to extend they exceed the rates and minima applicable on iron or steel pipe, reparation awarded. Sinclair Crude Oil Purchasing Co., v. A. T. & S. F. Ry., 126 I. C. C. 73.

(x) Fifth-class rates on tin oxide, found not unreasonable or otherwise unlawful as compared with lower commodity rates contemporaneously in effect on pig tin. Pig tin is an imported commodity and low basis of rates was undoubtedly established to assist industries, where as, record does not show competitive or other influences which would necessitate or justify establishment of lower commodity rates on tin oxide. Federated Metals Corp. v. P. R. R. Co., 126 I. C. C. 144.

(y) Fact that two articles may resemble each other in respect of material, appearance, process of manufacture, value, and other characteristics, their only difference being the uses to which they are put, while not sufficient to make them the same, may afford a basis for a finding of undue prejudice. Chicago Carton Co. v. N. Y. C., 126 I. C. C. 457, 458.

(z) Rates on rods, steel, in straight lengths, found discriminatory and unduly prejudicial to extent they exceeded the contemporaneous rates on same articles when shipped in coils. Since cost of both articles and transportation conditions are the same, no valid reason appears why rates on the two shapes of same material should be different. Standard Nut & Bolt Co. v. N. Y., N. H. & H., 126 I. C. C. 731.

(aa) Unjust discrimination prohibited by section 2 is in movements over the same road or roads, and not over different roads or partly over the same road and partly over different roads. Bunker Hill & Sullivan M. & C. Co. v. N. P. Ry., 129 I. C. C. 242, 246.

(bb) In Ogden Grain Exchange v. A. & E. R. R., 126 I. C. C. 255, the Commission found that certain rates on grain and grain products, in carloads, from Idaho, Montana, Oregon, Utah, Wyoming and Colorado to north Pacific coast and California terminals were not unreasonable, with certain exceptions. The same rates and bases were required on flour as on wheat and somewhat lower rates, generally 5c per 100 pounds, and bases

on coarse grains. Defendants by petition now ask for a further modification of the original findings herein so as to permit continued maintenance of rates on coarse grains no higher than on wheat. HELD, petition granted. Ogden Grain Exchange v. A. E. R. R., 132 I. C. C. 46.

(cc) Shipments billed as cottonseed-hull fiber or shavings, or descriptions of similar import, were inspected in transit, description changed to "cotton linters," and rates collected accordingly. Upon contention that rates assessed were inapplicable and unduly prejudicial to extent they exceeded rate on shavings. FOUND: While various methods for determining difference between commodities were presented they were not published as tariffs nor on file with commission and are not controlling. Neither were commodities defined in governing tariffs or classification. In 107 I. C. C. 161, shipments claimed by carriers to be linters were found to be entitled to rates on shavings by a showing that they were sold at prices lower than market price of average linters. However, a like showing has not been made here, and since no burden rests upon carrier for determination of question involved and complainant has not sustained its burden of proof, rates charged were applicable and not unduly prejudicial. Glarner & Co. v. S. Ry., 129 I. C. C. 75.

(dd) Class rates on rough quarried granite, c. l.; from East Weymouth, Mass., to local points on the N. Y., N. H. & H., found unreasonable and unduly prejudicial as compared with lower commodity rates contemporaneously applicable on common brick and on stone and granite paving and curbing; and to extent they exceeded, exceed, or may exceed, rates based on distance scale herein prescribed, minimum 48,000 pounds. Reparation awarded. Plymouth Quarries v. N. Y., N. H. & H., 129 I. C. C. 621.

(ee) Rates on schoolbooks from Chicago to Oklahoma City, Okla., and Dallas, Tex., found not unreasonable, discriminatory unduly prejudicial or otherwise unlawful as compared with lower rates on paper articles, including school blanks or forms and school copy books. Complainant contends that as schoolbooks are approved by State educational authorities, and follow a prescribed form they should take lower rates applicable on school blanks or forms. However, schoolbooks in question can not be termed forms. Moreover, rates assailed are lower than third-class rates on books n. o. i. b. n., between same points. Wheeler Publishing Co. v. A., T. & S. F., 129 I. C. C. 672.

§4¾. State Rates.

See Supra §2½; State Rates and Regulation.

(a) Intrastate rates on flaxseed from Minnesota points to Minneapolis and Duluth found unduly preferential and prejudicial and unjustly discriminatory against interstate commerce. Nonprejudicial basis of rates prescribed. South Dakota R. R. Commrs. v. C. & N. W., 107 I. C. C. 35.

(b) Interstate rates should not be made too high on assumption that intrastate rates may be too low. Southern Class Rate Investigation, 109 I. C. C. 300, 304.

(c) Application of ratings provided by southern classification and notes A and 4 of exceptions thereto in connection with rates on classes 1 to D, both inclusive, from Augusta, Ga., to South Carolina points for distances of 100 miles, found not unreasonable but unduly prejudicial to Augusta and shippers located there, unduly preferential of South Carolina points, and unjustly discriminatory against interstate commerce, as compared with lower ratings provided in note 53 exceptions governing rates on intrastate traffic in South Carolina for comparable distances. City of Augusta v. A. C. L., 113 I. C. C. 303.

(d) While exact harmony between intrastate and interstate rates may not in all cases be required by law, nevertheless when there is a preponderance of intrastate traffic, the conclusion is inevitable that application of rates thereon substantially lower than interstate rates contemporaneously applied under similar conditions must bring about, in some degree at least, the unjust discrimination against interstate commerce as well as the undue prejudice to persons or localities in interstate commerce which are declared by the act to be unlawful. Fertilizers between Southern Points, 113 I. C. C. 389, 432.

(e) Maintenance of intrastate rates in Alabama on fertilizers and fertilizer materials lower than corresponding interstate rates found reasonable by commission for future application found to result in undue prejudice to persons and localities engaged in interstate commerce, in undue preference of persons engaged in intrastate commerce, and in unjust discrimination against interstate commerce. Effective intrastate rates in Georgia and South Carolina found not unlawful for future, except in individual instances. Fertilizers between Southern Points, 113 I. C. C. 389, 435.

(f) Upon further hearing, original report, 60 I. C. C. 337, modified so as to except from its provisions intrastate rates on sand and gravel from Ginger Hill, Ind., to Granger and Wyatt, Ind., such rates not being shown to have caused any undue or unreasonable advantage, preference, or prejudice as between persons and localities in intrastate commerce, on one hand, and interstate or foreign commerce, on other hand, or any undue, unreasonable, or unjust discrimination against interstate commerce. Indiana Rates, Fares, and Charges, 113 I. C. C. 531.

(g) Complainant attacked commodity rates charged on meat animals, carloads, from Alabama to Moultrie, Ga., as unreasonable compared with intrastate rates in Alabama for similar distances; that by reason of the disparity between the rates within Alabama and from Alabama to Moultrie complainant was subjected to undue prejudice. Original report by division 2, 109 I. C. C. 733. In the original report division 2 restricted its finding of undue prejudice to rates on hogs and limited the scope of its order so as to apply only to points of origin in southeastern Alabama. HELD, attacked rates not unreasonable; there are no conditions affecting the transportation of this traffic which justify a lower level of intrastate rates to Montgomery and Birmingham than the interstate rates to Moultrie; that the relationship of defendants rates on hogs, in carloads, from points on their lines in southeastern Alabama on and east of the L & N., from Montgomery to Pensacola, Fla., and on and south of the C. of Ga., from Montgomery to Eufaula, Ala., for interstate hauls to Moultrie and intrastate hauls to Montgomery and Birmingham unduly prejudicial, which should be removed by increasing the intrastate rates to the interstate basis. Swift & Co. v. Georgia Northern Ry., 115 I. C. C. 661.

(h) Refusal of carriers to accept and transport intrastate shipments tendered for transportation via a duly published unrestricted interstate route and compelling shipper to change routing in bills of lading to a higher intrastate route found to violate section 15 (8) of the act. Reparation awarded. Standard Oil Co. v. A. C. L. R. R., 115 I. C. C. 239.

(i) Upon reargument, original report, 109 I. C. C. 733, affirmed, and rates on meat animals from points in Alabama to Moultrie, Ga., found not unreasonable; but relationship of rates on hogs from southeastern Alabama to Moultrie, on the other hand, and Montgomery and Birmingham, Ala., on the other, found unduly prejudicial to Moultrie, unduly preferential of Montgomery and Birmingham, and unjustly discriminatory against interstate commerce. Removal of such prejudice, preference, and discrimination by establishment of intrastate rates upon basis of compromise scale set forth in Appendix A in 74 I. C. C. 419, prescribed. Swift & Co. v. G. N., 115 I. C. C. 661.

(j) Tariff rule published in compliance with a legislative enactment of the State of Missouri under which c. l. shipments of grain and products moving intrastate from Kansas City and St. Joseph, Mo., to other points in Missouri are permitted to be stopped in transit for purpose of partly unloading found reasonable for interstate application on shipments from Kansas City, Kans., to points in Missouri, and failure of carriers to apply said tariff rule to such interstate shipments found unduly prejudicial. Removal of undue prejudice ordered. Southwestern Milling Co. v. A., T. & S. F., 118 I. C. C. 61.

(k) Rates on salt from Kansas mines to points in Texas found unduly prejudicial to Kansas shippers, unduly preferential of Texas shippers, and unjustly discriminatory against interstate commerce. Removal of unjust discrimination left to Texas Railroad Commission. Salt Between Western and Southwestern Points, 120 I. C. C. 91, 109.

(l) Intrastate rates on sand and gravel between points in Mississippi found not unreasonable or to result in undue prejudice to shippers at Montgomery and Chattanooga, shipping to same Mississippi destinations. Rates on Chert, Clay, Sand, and Gravel, 122 I. C. C. 133, 170, 172.

(m) Circumstances and conditions surrounding the interstate transportation of cement from points in the Kansas gas belt, on the one hand, and interstate and intrastate transportation of like traffic from Cement City (Sugar Creek), Mo., and Bonner Springs and Sunflower, Kans., on the other hand, to destinations in the Kansas City, Mo.-Kans., switching district, found to be substantially similar, and interstate rate from points in the Kansas gas belt, including Chanute, Fredonia, Mildred, Humboldt, Independence and Iola, Kans., and Dewey, Okla., to said destinations found not unreasonable. Iola Cement Mills Traffic Asso. v. A., T. & S. F., 122 I. C. C. 337.

(n) Intrastate rates on cement from Cement City (Sugar Creek), Mo., and Bonner Springs and Sunflower, Kans., to destination in the Kansas City, Mo.-Kans., switching district, to extent they are lower by more than 4.5 cents than interstate rates contemporaneously maintained on like traffic from points in the Kansas gas belt, found unduly prejudicial to the Kansas gas-belt points and shippers therefrom, unduly preferential of Cement City (Sugar Creek), Bonner Springs and Sunflower, and shippers therefrom, and unjustly discriminatory against interstate commerce. Iola Cement Mills Traffic Asso. v. A. T. & S. F., 122 I. C. C. 337.

(o) Intrastate rates neither prescribed nor approved by the commission, but maintained under State authority, can not be regarded as controlling in determining the measure of interstate rates or the relationship of interstate and intrastate rates. Iola Cement Mills Traffic Asso. v. A. T. & S. F., 122 I. C. C. 337, 345.

(p) Rates prescribed by Railroad Commission of Texas, for application between Fort Bliss, Tex., military reservation and other points in Texas found not to be such as would result in undue prejudice to interstate shippers and undue preference of intrastate shippers. Nor are cost studies submitted by carriers convincing that under such rates intrastate traffic would be transported at charges so low as to produce substantial disparity which would operate as a real discrimination against and obstruction to interstate commerce. See 257 U. S. 563. Rates Between Points in Texas, 122 I. C. C. 373.

(q) Class and commodity rates on various articles between Mississippi River gateways, Missouri River cities, and defined territories, on the one hand, and points in Oklahoma and in Texas, Arkansas, Kansas, a portion of Missouri, and western Louisiana, on the other, found to result in undue prejudice to Oklahoma and in undue preference of the other named States or parts of States. Consolidated Southwestern Cases, 123 I. C. C. 203, 347, 348.

(r) Class and commodity rates on various articles between Oklahoma and designated portions of Kansas and Missouri, in their relations to relatively lower intrastate rates within those portions of Kansas and Missouri, found to result in undue prejudice and preference and in unjust discrimination against interstate commerce. Consolidated Southwestern Cases, 123 I. C. C. 203, 350, 351.

(s) Class and commodity rates on various articles between Oklahoma and Texas, and from Little Rock to Texas, in their relations to relatively lower rates between Shreveport, La., and Texas, and from Shreveport to Texas, respectively, found to result in undue prejudice and preference. Consolidated Southwestern Cases, 123 I. C. C. 203, 354.

(t) Class and commodity rates on various articles between Oklahoma and northeast Texas cities, in their relations to relatively lower intrastate rates in Oklahoma, and between Oklahoma and points in Texas commonpoint territory, in their relations to relatively lower intrastate rates within the latter territory, found to result in undue prejudice and preference and in unjust discrimination against interstate commerce. Consolidated Southwestern Cases, 123 I. C. C. 203, 355.

(u) Class and commodity rates on various articles between Oklahoma and points in Texas differential territory, in their relations to relatively lower intrastate rates within differential territory and between that territory and Texas common-point territory, found to result in undue prejudice and preference and in unjust discrimination against interstate commerce. Consolidated Southwestern Cases, 123 I. C. C. 203, 356, 357.

(v) As a whole, intrastate class and commodity rates in Texas, in their relations to corresponding rates between St.

Louis, Mo., and Texas, not shown to result in undue prejudice or preference, but in some instances, such as rates between Houston-Galveston-Beaumont and northern and northeastern Texas, intrastate rates result in undue preference, to the undue prejudice of shippers and receivers in St. Louis territory. Consolidated Southwestern Cases, 123 I. C. C. 203, 357, 358.

(w) Class and commodity rates on various articles between Arkansas and Oklahoma, and between Arkansas and northeast Texas cities, in their relations to relatively lower intrastate rates within Arkansas, found to result in undue prejudice to interstate shippers in favor of intrastate shippers and in unjust discrimination against interstate commerce. Consolidated Southwestern Cases, 123 I. C. C. 203, 361, 362.

(x) Class and commodity rates on various articles between Oklahoma and western Louisiana, and between western Louisiana and northeast Texas cities, in their relations to relatively lower intrastate rates in western Louisiana, found to result in undue prejudice to interstate shippers in favor of intrastate shippers, and in unjust discrimination against interstate commerce. Consolidated Southwestern Cases, 123 I. C. C. 203, 363, 364.

(y) After the Interstate Commerce Commission established maximum reasonable interstate freight rates, effective in districts which include a portion of the state of Minnesota, the carriers advanced their rates to the maximum allowed by the Commission. These rates are higher than the interstate rates established by the Railroad and Warehouse Commission. The disparity in the rates has produced unjust discriminations against certain cities in Minnesota. The Railroad and Warehouse Commission brought suit to compel the carriers to remove such discriminations and to observe the statutory requirements as respects intrastate rates. HELD, that the varying rates in effect in different portions of the state were legally established under either federal or state authority, and, since the discriminations complained of can be avoided only by the modification of one or both of the legally established rates, and ratemaking is a legislative and not a judicial function, the trial court correctly ruled that the suit could not be maintained. State Railroad and Warehouse Commission v. Northern Pac. Ry. Co., (Minn., 1926) 210 N. W. 399, 400.

(z) Fixing of intrastate rate, which compels interstate carrier to make like deduction of same arbitrary charge to obtain its share of traffic, is not unlawful discrimination against interstate commerce as matter of law, where rate fixed is reasonable for services rendered. Oregon-Washington R. & Nav. Co. v. Corey, (Ore., 1927) 252 Pac. 955, 956.

(aa) Rates on cement from Ada, Okla., and points in the Kansas gas belt to Texas destinations in Scale III and Scale IV territories, and from Portland and Concrete, Colo., to said Scale IV territory, found unreasonable, and rates from Kansas gas-belt points found unduly prejudicial as compared with those from Ada, Bonner Springs, Kans., Sugar Creek, Mo., and Portland and Concrete, Colo. Reasonable and nonprejudicial distance rates prescribed for interstate application, which will remove the undue prejudice in relationship of interstate and intrastate rates within Texas. Adjustment of intrastate rates left to State authorities and carriers. Oklahoma Portland Cement Co. v. D. & R. G. W., 128 I. C. C. 63.

(bb) Rates required by Public Utilities Commission of Ohio for intrastate application on bulk salt from Akron and points grouped therewith to Cincinnati, not shown to subject interstate traffic or shippers or localities outside of the state to undue prejudice or disadvantage nor to constitute an unjust discrimination against interstate commerce as contemplated by decision in 257 U. S. 563. Rate assailed is not unreasonably low nor a burden on interstate commerce, but compares favorably with rates between Akron and various destinations in Indiana, Illinois, and New York; between various points in c. f. a. territory for comparable distances; and with many rates approved in Salt Cases of 1923, 92 I. C. C. 388. Rates and Minimum Weights on Salt, 128 I. C. C. 499.

§5. Test of Discrimination.

(a) Both commission and the courts have held that proof of damage in undue-prejudice cases must be by such evidentiary facts as would be required to sustain such a recovery before a court of law. A complainant must show how discrimination found to exist affected him to his damage. In other words, he must show fact of his damage as well

as amount claimed. See 230 U. S. 134. Wright Lumber Co. v. A. A. R. R., 112 I. C. C. 337, 339.

(b) Complainant attacked rate on cotton factory sweepings from Mobile, Ala., to Columbus, Ga., as unduly prejudicial. The complaint is based upon the fact that lower rates on cotton factory sweepings are in effect from Mobile to Athens, Atlanta, Augusta, and Macon, Ga., over routes that are considerably longer. No competition with dealers in the four cities named, nor any advantage to any person in those cities or in Mobile by reason of the rates in effect to those cities is shown. Clearly there is no undue prejudice within the meaning of the act. HELD, rates attacked not unduly prejudicial, complaint dismissed. Friedlander Co. v. Southern Ry., 115 I. C. C. 589.

(c) Coal producers are entitled to nonprejudicial rates from their mines to any and all markets. See also 96 I. C. C. 359. Clinchfield Coal Corp. v. C., C. & O., 122 I. C. C. 37, 39.

(d) Preference and prejudice under section 3 of the act, to be undue and unlawful, must be such that it is a source of advantage to the party alleged to be favored and a disadvantage to the other party, and a competitive relation between the parties must ordinarily exist. Kansas Flour Mills Co. v. A., T. & S. F., 123 I. C. C. 19, 20.

(e) Undue prejudice or preference may not be found to exist as between shippers or communities unless the same carriers serve them or participate in their traffic. See 81 I. C. C. 352; 88 I. C. C. 152, Washington Coal Producers Asso. v. U. P., 129 I. C. C. 499, 501.

(f) Mere differences in rates do not necessarily result in undue prejudice. West Texas Chamber of Commerce v. H. & T. C., 129 I. C. C. 546, 555.

(g) To be undue, prejudice suffered by one person must ordinarily be such that it shall be a source of positive advantage to another. Indianapolis Board of Trade v. B. & O., 129 I. C. C. 675, 679.

(h) Disparity of rates does not necessarily result in undue prejudice. National Tube Co. v. B. &. O., 129 I. C. C. 693, 695.

III. JUSTIFICATION.

§5½. In General.

(a) No matter how numerous the territories are to which shippers have access, they are entitled to ship their products to any market at nonprejudicial rates. See 98 I. C. C. 488. Clinchfield Coal Corp. v. C., C. & O., 118 I. C. C. 79, 81

(b) No carrier has the right to so adjust rates on its own lines as unduly to prejudice shippers on other lines, or to deprive such shippers of reasonable and just rates, merely through a desire to serve shippers on its own lines. See 51 I. C. C. 250. White Eagle Oil & Refining Co. v. A., T. & S. F., 122 I. C. C. 223, 224.

§7. Carrier Not Serving Prejudiced Point.

See Evidence §23.

(ab) Undue prejudice or preference does not exist as between shippers or communities unless same carrier or carriers serve them or participate in their traffic. Case & Sons v. P. R. R., 115 I. C. C. 694, 695.

(c) Undue prejudice can not be said to exist where defendants are unable to remove it. The withdrawal by them from participation in the rates from the competitive points would afford no relief to complainant, as those rates would still be available over other lines. Fredonia Linseed Oil Works v. A. T. & S. F. Ry., 122 I. C. C. 291, 293.

(d) Complainant alleged undue prejudice resulting from lower rates from competitive points. Some of alleged preferred points were not served by carriers parties to the complaint, while other points were served both by defendant carriers and other lines. HELD: Undue prejudice can not be said to exist where carriers are unable to remove it, as withdrawal by them from participation in rates from competitive points would afford no relief to complainant, as those rates would still be available over other lines. See 22 I. C. C. 115; 100 I. C. C. 363. Fredonia Linseed Oil Works Co. v. A., T. & S. F., 122 I. C. C. 291. 293.

(ef) Not only may undue prejudice be found against a carrier participating in rates to alleged preferred points and to points suffering undue prejudice, but also against a carrier participating only in prejudicial rate. See 263 U. S. 515. Memphis Freight Bureau v. A. G. S. R. R., 126 I. C. C. 87, 91.

(g) One test of the presence of undue prejudice is: Can one of the carriers participating in through rates from two points of origin to the same group or destinations put an end to it by its own act? See 73 I. C. C. 311; 44 I. C. C. 455. Humble Oil & Rfg. Co. v. B., S. L. & W., 126 I. C. C. 717, 721.

(h) Railroad may in law be guilty of unjust discrimination against another road, though it has no direct physical connection. Chicago, I. & L. Ry. Co. v. United States, 46 Sup. Ct. 226.

(i) Carriers which serve Indiana and Illinois fields or act as intermediate or delivering carriers on traffic from those fields also participate in rates and traffic with all three of the originating lines named. Under circumstances indicated a basis exists for finding of undue prejudice. See Lake Dock Coal Cases 89 I. C. C. 170; also United States v. Illinois Cent. R. R. 263 U. S. 515. Illinois-Indiana Coal Cases, 128 I. C. C. 265, 284.

(j) In attempting to rebut allegation of undue prejudice the Texas & Pacific cited 115 U. S. 587 and contended that while the Missouri Pacific has majority control of its stock, that carrier has undertaken no active participation in its management and operation, does not in any legal sense control it, and has no responsibility for its rates. FOUND: As courts have consistently distinguished between stock ownership by one corporation in another for purpose of participating in latter's affairs in normal manner, and stock ownership for purpose of controlling a subsidiary company, and as in former circumstances finding in cited case in controlling, T. & P. is therefore an independently operated carrier, is not to be regarded as part of M. P. system, and since it does not serve any Texas port and has no controlling voice in fixing level of assailed rates to those ports published by M. P., it can not be held guilty of undue prejudice. See also 247 U. S. 490, 500. Galveston Commercial Asso. v. G. H. & S. A., 128 I. C. C. 349, 380, 381.

(k) Present rate in effect between Chicago and St. Louis would remain in effect over the short line between those points even though participation in rates should be canceled by Pennsylvania and Big Four, lines reaching those points, alleged to be preferred, and also Indianapolis, the complaining point. See 22 I. C. C. 115. Republic Creosoting Co. v. A. G. S., 128 I. C. C. 547, 550.

(l) In justifying its rates carrier contended that in order to reach its own pier it must use tracks of another line and in return for that user is required to maintain transshipment rates to piers on that line not accorded to piers on another line. FOUND: While this explains, it does not excuse, difference in treatment, because preference and prejudice as between deliveries to piers on both lines under like and similar circumstances of transportation are not rendered the less "undue" in so far as a complainant's right to equality of treatment is concerned, by proof of fact that with one of those lines there exists a contractual relation or condition of barter and trade which is absent as to the other. See 272 U. S. 658, 664, 665. Harbor Coaling Corp. v. B. & O., 128 I. C. C. 747, 750, 751.

(m) Complainant alleged that the rates on pig lead, lead oxide, red lead, and litharge, carloads, from Joplin, Mo., to Oklahoma City, Okla., were and are unreasonable and unduly prejudicial of Kansas City and St. Louis, Mo. Joplin is in southwestern Missouri and is served by the Frisco and M. K. T. Oklahoma City is in central Oklahoma and is also served by these carriers, which likewise serve Kansas City and St. Louis. None of the defendants serve East St. Louis, Ill. These articles are rated fifth class, rate applicable fifth class of 62.5c, for short line distance of 237 miles. Testing undue prejudice by the ability of the lines parties to this proceeding to put an end to the preference and prejudice, it is clear that neither the withdrawal by such lines from participation in this traffic to Kansas City nor an increase in their rate to that point would result in any benefit to complainants as the lower rate would still be available over the other lines. There is therefore insufficient basis for a finding of undue prejudice. HELD, rate attacked not unduly prejudicial but for future will be unreasonable to extent it exceeds 36c on pig lead and 45c on red lead and litharge, reparation awarded. Oklahoma Traffic Asso. v. St. L. S. F. Ry., 129 I. C. C. 461.

(n) It is a well established principle that undue prejudice or preference may not be found to exist as between shippers or communities unless the same carriers serve them or participate in their traffic. Washington Coal Producers

Asso. v. U. P. R. R., 129 I. C. C. 499, 501.

(o) Unjust discrimination prohibited by section 2 of the act is in movements over the same road or roads, and not over different roads or partly over same road and partly over different roads. See 69 I. C. C. 422. Bunker Hill & Sullivan M. & C. Co. v. N. P., 129 I. C. C. 242, 246.

(p) Finding of undue preference and prejudice not sustained upon showing that neither withdrawal by carriers parties to the complaint from participation in the traffic, nor an increase in their rate to point alleged to be prejudiced would put an end to the prejudice since lower rate would still be available over other lines. See 22 I. C. C. 115; 100 I. C. C. 363. Oklahoma Traffic Asso. v. St. L.-S. F., 129 I. C. C. 461, 465, 466.

§7½. Use of Commodity.

See Classification §10.

(a) Rates predicated upon use to be made of a commodity are unlawful because of resulting discrimination, nevertheless, such rates, while in effect, are the legally applicable rates on the particular commodity when conditions of tariffs publishing them have been fully complied with. Harlem & Morrisiana Transp. Line v. N. Y., N. H. & H., 123 I. C. C. 480, 484.

§8. Competition.

(1) In General.

See Competition.

(a) Competition between carriers does not constitute such a dissimilarity of circumstances and conditions as will excuse what would otherwise be an unjust discrimination under section 2. Drayage absorptions of S. W. M. R. R. 113 I. C. C. 179, 184.

(b) Where a carrier elects to meet commercial or carrier competition, in doing so it must not cause undue prejudice. See 43 I. C. C. 458, 465. Minnesota-Dakota Transit Millers v. A. A. R. R., 118 I. C. C. 585, 592.

(c) Preference or prejudice under section 3 of the act, to be undue and unlawful, must be such that it is a source of advantage to the party alleged to be favored and a disadvantage to the other party, and a competitive relation between the parties must ordinarily exist. Kansas Flour Mills Co. v. A. T. & S. F. Ry., 123 I. C. C. 19.

(d) Local rate on redwood lumber from Pittsburg, Calif., to Hayden, Ariz., originally moving from Casper, Calif., to Pittsburg by water, found not unreasonable, discriminatory, or unduly prejudicial, as compared with lower ex-water proportional rate from Pittsburgh to Pheonix and other points more distant than Hayden, or with lower rate established to Hayden subsequent to movement. Such lower rates are on a low basis, having been established because of market and carrier competition, which is not reflected at Hayden, and subsequent reduction is not conclusive of unreasonableness of the higher rate. Redwood Mfg. Co. v. S. P. Co., 123 I. C. C. 30, 32.

(e) While each community is entitled to benefits arising from its natural advantages, a carrier may meet competition so long as it is not guilty of undue prejudice, does not charge rates which are so low as to burden other traffic, and does not contravene the declared policy of Congress to foster and preserve in full vigor both rail and water transportation. Fact that the law declares unlawful only discrimination that is unjust and only prejudice that is undue indicates that it was the intent to give carriers some latitude in fixing rates, and that distance or cost of service need not be the sole criterion by which rates shall be measured. However, there are limits beyond which a carrier may not go, even in meeting competition. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349, 379.

§8. (3). Railroads in General.

See Railroad Competition.

(a) Competition between carriers does not constitute such a dissimilarity of circumstances and conditions as will excuse what would otherwise be an unjust discrimination under section 2 of the act. See 167 U. S. 512; 254 U. S. 57. Drayage Absorption by S. W. M. R. R., 113 I. C. C. 179, 185.

§8. (5). Water Carriers.

See Water Carriers.

(a) Rate on newsprint paper from Millinocket, Me., to Lynchburg, Va., found not unreasonable, discriminatory, or unduly prejudicial as compared with rates to Atlanta, Ga., Memphis and Chat-

tanooga, Tenn., and New Orleans, La. Rates to alleged preferred points are shown to be depressed, having been established to meet water competition, and are therefore not a fair measure of reasonableness of the rates to Lynchburg. Moreover, the Lynchburg rate compares favorably, distance considered, with rates from other paper producing points to destination in the same general territory. Lynchburg Chamber of Commerce v. B. & A. R. R., 115 I. C. C. 715.

(b) Rates on wooden box shooks from Baltimore, Md., to Jersey City, N. J., found unreasonable and unduly prejudicial as compared with rates contemporaneously in effect from Norfolk, Va., and other competing points in Virginia and North Carolina. While rates from latter points are depressed due to water competition, it was not shown that they are less than reasonable. Moreover, narrow spread in rates as compared with great difference in length of haul under substantially the same transportation conditions, can not be ignored. Reasonable and nonprejudicial rates prescribed for future and reparation awarded. Canton Box Co. v. P. R. R., 123 I. C. C. 663.

(c) Rate on crude phosphate rock, from Tilphosco and Brewster, Fla., to Meridian, Miss., found not unduly prejudicial as compared with lower rate to New Orleans, La., and Gulf ports, for greater distances. Carriers show that rate to the Gulf ports is depressed by reason of water competition, much phosphate rock being transported in tramp steamers which maintain no regular rates. Moreover, in 101 I. C. C. 165, the influence of water competition over these rates was recognized by commission and record in instant case substantiates the view there expressed. Meridian Fertilizer Factory v. A. C. L., 126 I. C. C. 478.

§8. (7). Market Competition.

See Market Competition.

(a) Rates on fiber furniture, l. c. l., from Columbia, S. C., to points in southern classification territory, found not unjustly discriminatory or unduly prejudicial. Other than general statement to effect that complainants meet competition in the sale of their product with manufacturers at Winston-Salem and Siler City, N. C., there was no showing as to the extent of competition met from those points. Mere reference to lower rates to common points of destination is not sufficient to establish undue preference and prejudice. South Carolina Penitentiary v. A. & R. R. R., 113 I. C. C. 584.

(b) Rates on cement from Kosmosdale, Ky., to destinations in c. f. a. territory, found unduly prejudicial to Kosmosdale and unduly preferential to Marquette, St. Louis, and Hannibal, Mo., Mitchell, Speeds, and Buffington, Ind., and other producing points with which Kosmosdale comes into active competition, to extent that rates from Kosmosdale exceed those contemporaneously maintained from the competing points for like distances under the Atlas scale prescribed in 81 I. C. C. 1. Kosmosdale Portland Cement Co. v. I. C., 115 I. C. C. 561.

(c) Rate on crushed slate from Whiteford, Md., and Slate Hill, Pa., to New Orleans, La., and Mobile Ala., found not unreasonable but unduly prejudicial to extent they exceeded contemporaneous rate from Esmont, Va., a competing point, by more than $1.50 per net ton. Reparation denied. Staso Milling Co. v. M. & P., 115 I. C. C. 605.

(d) Rates on naval store (rosin and turpentine) from Louisiana and Texas points to destinations in c. f. a. territory found unreasonable and unduly prejudicial; and to points in western trunk-line territory found unreasonable; as compared with rates contemporaneously maintained from competing producing points in southeastern and Mississippi Valley territories. Reasonable and nonprejudicial basis of rates prescribed and reparation denied. Turpentine & Rosin Producers Asso. v. A. & V., 115 I. C. C. 667.

(e) In 98 I. C. C. 352, division 4 found that the rates for the interstate transportation of fresh meats and packing house products, in carloads, from Duluth to St. Paul, Minn., were unreasonable to the extent they exceeded 28c on fresh meats and 23c on packing house products, and unduly prejudicial to the extent they exceeded the rates on like traffic from St. Paul to Duluth. The C. St. P. M. & O., G. N. and Soo Line operate over interstate routes between St. Paul and Duluth and these carriers have complied with the order by establishing rates of 28c on fresh meats and 23c on packing house products in both directions. The N. P. and C. M. & St. P. maintain intrastate routes and

in order to adjust their rates it was necessary for them to petition the Minnesota Commission for authority to make the revision. It was deemed advisable to reopen the case for further hearing with the Minnesota Commission. There is here a clear discrimination in the rates charged for the movement of the same kind of traffic under similar transportation conditions. But to prove this discrimination results in a violation of section 3 it must be shown that complainant suffers injury by reason of the discrimination, and that this injury will cease if the discrimination is removed, regardless of the manner of its removal. It is true that "ordinarily" a competitive relation must exist as a prerequisite to such injury, and it is also true that injury can more readily be shown where the preference or advantage relates to the "same market," but it does not follow that it can only be shown under such conditions. It is wholly impossible upon this record to reach the conclusion that the Duluth packing plant suffers no measure of injury because of this discriminatory rate situation, or that its competitive position would not be improved if the discrimination were removed. Manifestly it is an unfair situation for which no justification has been offered and which should be corrected. HELD, original finding affirmed. Duluth Chamber of Commerce v. C. St. P. M. & O. Ry., 122 I. C. C. 739.

(f) Coal producers are entitled to nonprejudicial rates from their mines to any and all markets. See also 96 I. C. C. 359. Clinchfield Coal Corp. v. C., C. & O., 122 I. C. C. 37, 39.

(g) Carrier published rates on their own line for single-line haul, lower than rate for similar joint-line hauls from points on other carriers to destinations on their own lines, contending that the rate for single-line haul was established for competitive reasons and that while earnings thereunder were low they were more satisfactory than would have been the case if the same rate were applied for joint-line hauls where it would receive but a part of the haul and a division of the rate. HELD: Similar situation was considered in 98 I. C. C. 488, in which commission stated that such rates resulted in a denial to shippers of ability to choose their market, and concluded that prejudice against such shippers was undue within meaning of the act. See also 58 I. C. C. 261. White Eagle Oil & Refining Co. v. A., T. & S. F., 122 I. C. C. 223, 225.

(h) Fact that complainants' competitors were placed in a more favorable position does not of itself establish damage to complainants as a result of such undue prejudice. Whittemore's Sons v. N. Y., N. H. & H., 122 I. C. C. 451, 457.

(i) Citing 36 I. C. C. 259, 261; 181 Fed. 403, 411, carriers contended that to sustain a finding of undue preference and prejudice under section 3 a competitive relation must exist between persons, companies, or localities concerned, and this competition must be in the same market. HELD: While it is "ordinarily" true that a competitive relation must exist as a prerequisite to such a finding and that injury can more readily be shown where preference or advantage relates to the "same market," it does not follow that it can only be shown under such conditions. Duluth Chamber of Commerce v. C., St. P., M. & O., 122 I. C. C. 739, 742, 743.

(j) Preference and prejudice under section 3 of the act, to be undue and unlawful, must be such that it is a source of advantage to the party alleged to be favored and a disadvantage to the other party, and a competitive relation between the parties must ordinarily exist. Kansas Flour Mills Co. v. A., T. & S. F., 123 I. C. C. 19, 20.

(k) Local rate on redwood lumber from Pittsburg, Calif., to Hayden, Ariz., originally moving from Casper, Calif., to Pittsburg by water, found not unreasonable, discriminatory, or unduly prejudicial, as compared with lower ex-water proportional rate from Pittsburg to Pheonix and other points more distant than Hayden, or with lower rate established to Hayden subsequent to movement. Such lower rates are on a low basis, having been established because of market and carrier competition, which is not reflected at Hayden, and subsequent reduction is not conclusive of unreasonableness of the higher rate. Redwood Mfg. Co. v. S. P. Co., 123 I. C. C. 30, 32.

(l) It is the common practice of jobbers and manufacturers to make allowances in prices, and thus reduce their profits, where necessary to meet prices of competitors enjoying freight rates on lower bases. A shipper's enforced absorption of an unjustified difference in

freight rates in the sale of his products results in undue prejudice to him, which is more pronounced when a rate maladjustment precludes him from doing business in which he might engage if rates were equitably related. Consolidated Southwestern Cases, 123 I. C. C. 203, 211.

§10. Encouragement of own territory.

See Evidence §40½; Through Routes and Joint Rates §9.

(a) That preference resulting to part only of coal mines on particular railroad was merely incidental to a legitimate effort to develop that railroad's traffic in a particular direction HELD without legal significance on question of whether undue prejudice resulted. Virginian Ry. Co. v. United States. United States v. Virginian Ry. Co., 47 Sup. Ct. 222.

IV. REMOVAL OF DISCRIMINATION.

§11½. In General.

(a) Unless commission otherwise directs upon a proper showing, carriers have an alternative in removing undue prejudice. York Mfr. Asso. v. P. R. R., 107 I. C. C. 219, 229.

(b) The commission has frequently found and ordered the removal of undue prejudice where originating carriers are different but delivering carriers are the same. Seneca Wire & Mfg. Co. v. B. & O., 112 I. C. C. 95, 97.

(c) Manner of removing undue prejudice and preference as between persons or localities and unjust discrimination against interstate commerce found to exist in the rate structure in the Southwest, prescribed. Consolidated Southwestern Cases, 123 I. C. C. 203, 405.

§13. Disturbance of Settled Adjustment.

See Evidence §66; Relative Rates.

(a) Rates on bituminous coal from mining district in Ohio and from the so-called Inner Crescent regions, to all points in Indiana found not unreasonable or unduly prejudicial as compared with rates from same origin points to destinations in western Ohio, the southern peninsula of Michigan, and in Illinois; nor does grouping of Indiana destinations result in undue prejudice to certain localities and undue preference of others. The history and propriety of general adjustment of coal rates from the Inner and Outer Crescents and in Ohio were exhaustively considered in various cases and were found not unreasonable or otherwise unlawful. Moreover, the groups have been long maintained and evidence of record does not warrant a disturbance of the present adjustment. Indiana State Chamber of Commerce v. A. A. R. R., 115 I. C. C. 650.

V. PROCEDURE AND EVIDENCE.

§13½. In General.

See Evidence; Procedure Before Commission.

(a) Upon objection of carriers to a petition of intervention in a proceeding involving undue prejudice by a shipper located at a point not named in complaint, upon ground that it unduly broadens the issue, HELD: To some points same rates now prevail from the two points involved and to deny petition and at same time permit a reduction in rates from the point named in complaint would have effect of sanctioning an unwarranted rate situation as between competing manufacturers. Accordingly, petition in intervention allowed. Sonoco Products Co. v. A. C. L., 113 I. C. C. 553, 554.

(b) Comparisons of inbound and outbound rates are not very helpful in establishing unreasonableness or undue prejudice where only the inbound or outbound rates are in issue. Anthony Produce Co. v. B. & A., 120 I. C. C. 224, 227.

(c) In attempting to rebut allegation of undue prejudice the Texas & Pacific cited 115 U. S. 587, and contended that while the Missouri Pacific has majority control of its stock, that carrier has undertaken no active participation in its management and operation, does not in any legal sense control it, and has no responsibility for its rates. FOUND: As courts have consistently distinguished between stock ownership by one corporation in another for purpose of participating in latter's affairs in normal manner, and stock ownership for purpose of controlling a subsidiary company, and as in former circumstances finding in cited case is controlling, T. & P. is therefore an independently operator carrier, is not to be regarded as part of M. P. system, and since it does not serve any Texas port and has no controlling voice in fixing level of assailed rates to those ports published by M. P., it can not be held guilty of undue prejudice. See also

247 U. S. 490, 500. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349, 380, 381.

§14. Burden of Proof.

Burden of Proof; Evidence I.

(a) A case of undue prejudice is not made out by mere showing of lower rates on a competitive commodity. American Clay Products Co. v. P. R. R., 107 I. C. C. 153, 154.

(b) Burden of proof to establish fact and amount of damage due to unjust discrimination or undue prejudice as the proximate cause, is upon complainants. See 230 U. S. 184. Whittemore's Sons v. N. Y., N. H. & H., 122 I. C. C. 451, 457.

(c) Rates on linseed oil from, Portland, Oreg. to Spokane, Tacoma, and Seattle, Wash., and to San Francisco, Paraffin, Berkley, and Los Angeles, Calif., found not unreasonable or otherwise unlawful as compared with rates on creosote oil, coconut oil, cottonseed oil, cooking oils, and various other commodities, from Chicago, Milwaukee, and Minneapolis, to the same west-coast destinations. While the compared rates are lower than those on linseed oil, no showing was made as to competition or any movement from and to points specified. Moreover, rates assailed compare favorably with those approved by commission in 21 I. C. C. 640 and other cited cases. Portland Linseed Oil Works v. G. N., 122 I. C. C. 484.

(d) To prove that discrimination results in a violation of section 3 of the act, it must be shown that complainant suffers injury by reason of discrimination, and that this injury will cease if discrimination is removed, regardless of the manner of its removal. Duluth Chamber of Commerce v. C., St. P., M. & O., 122 I. C. C. 739, 742.

(e) Where undue prejudice has been established and reparation is prayed, not only injury but the fact and amount of resulting damage must be proved. City Coal Co. v. N. Y., N. H. & H., 123 I. C. C. 609, 611.

§15. Showing of Damage.

See Discrimination §4½ (c); Loss and Damage.

(a) No damage shown due to undue prejudice in the past because of existence of rates on steel tanks, k. d. fabricated in transit at Iola, Kans., which were higher than rates between same origin and destination points with fabrication in transit at Kansas City. All fabricators at time of movement paid Pittsburgh price plus freight rate from that point to their plants for raw materials regardless of its origin and complainant here failed to show that any preferred fabricators bid upon traffic here in controversy, set sale price which complainant was compelled to meet, or that complainant's sale price was based on rates paid by any such competitors. United Iron Works v. Director General, 104 I. C. C. 449, 451.

(b) Evidence introduced by complainant in support of allegation of discrimination and undue prejudice consisted of general statements to effect that it was in competition with an industry at alleged preferred point, and because rates from that point were lower and commodity was sold on a delivered basis "a discrimination" existed in favor of competing point. HELD: This evidence falls far short of that certainty of proof required by law to entitle complainant to damages for an alleged violation of section 2 or 3 of the act, and is further nullified by evidence of carriers, who showed that past shipments from competing point were few as compared with those from alleged prejudiced point. South River Lbr. Co. v. N. & W., 109 I. C. C. 173, 175.

(c) Both commission and the courts have held that proof of damage in undue-prejudice cases must be by such evidentiary facts as would be required to sustain such a recovery before a court of law. A complainant must show how discrimination found to exist affected him to his damage. In other words, he must show fact of his damage as well as amount claimed. See 230 U. S. 134. Wright Lumber Co. v. A. A., 112 I. C. C. 337, 339.

(d) Paper was sold f. o. b. mill at a price reflecting actual freight charges paid instead of applicable rate, deduction of such charges as such not being shown on face of invoice. Such freight charges were paid and borne by consignee who passed them on to its customers. Upon contention of consignee that in selling it has to meet prices of competing jobbers, and that if forced to pay outstanding undercharges, the paper having been resold, it will sustain a loss in the amount of undercharges collected, HELD: Under-

charges and consequent loss would have occurred even if rate assessed had not been unduly prejudicial, and since shippers as well as carriers are charged with a knowledge of the legally applicable tariff charges, the fact that there are outstanding undercharges is insufficient to sustain an award of damages under a finding of undue prejudice. Clements Paper Co. v. T. C., 112 I. C. C. 411, 416, 417.

(e) Reparation awarded for undue prejudice where it was shown that complainant was compelled to shrink its profits in meeting competition of competitors located at the preferred points. Foster Lbr. Co. v. V. & S., 112 I. C. C. 651, 654.

(f) Upon complaint of a shipper alleging undue prejudice reparation was sought based solely upon a showing of a disparity in rates, HELD: That in the case of that violation of the law a mere difference in rates does not alone necessarily measure the amount, or prove the fact. of such shipper's damage. See 230 U. S. 184; 62 I. C. C. 296. Fertilizers between Southern Points, 113 I. C. C. 389, 435.

(g) Fact that complainants' competitors were placed in a more favorable position does not of itself establish damage to complainants as a result of such undue prejudice. Whittemore's Sons v. N. Y., N. H. & H., 122 I. C. C. 451, 457.

(h) To prove that discrimination results in a violation of section 3 of the act, it must be shown that complainant suffers injury by reason of discrimination, and that this injury will cease if discrimination is removed, regardless of the manner of its removal. Duluth Chamber of Commerce v. C., St. P., M. & O., 122 I. C. C. 739, 742.

(i) Preference and prejudice under section 3 of the act, to be undue and unlawful, must be such that it is a source of advantage to the party alleged to be favored and a disadvantage to the other party, and a competitive relation between the parties must ordinarily exist. Kansas Flour Mills Co. v. A. T. & S. F., 123 I. C. C. 19, 20.

(j) Where undue prejudice has been established and reparation is prayed, not only injury but the fact and amount of resulting damage must be proved. City Coal Co. v. N. Y., N. H. & H., 123 I. C. C. 609, 611.

(k) Proof of damage in undue-prejudice cases must be of such evidentiary facts as would be required to sustain such a recovery before a court of law. Knoxville Iron Co. v. L. & N., 128 I. C. C. 513, 514.

(l) Reparation awarded on basis of undue prejudice upon showing that complainant was forced to absorb difference in rates in order to compete with preferred points. Buffalo Brick Co. v. C. & N. W., 129 I. C. C. 294

§17. **Reparation.**

See Supra §15; Refrigeration IV; Reparation.

(a) Paper was sold f. o. b. mill at a price reflecting actual freight charges paid instead of applicable rate, deduction of such charges as such not being shown on face of invoice. Such freight charges were paid and borne by consignee who passed them on to its customers. Upon contention of consignee that in selling it has to meet prices of competing jobbers, and that if forced to pay outstanding undercharges, the paper having been resold, it will sustain a loss in the amount of undercharges collected. HELD: Undercharges and consequent loss would have occurred even if rate assessed had not been unduly prejudicial and since shippers as well as carriers are charged with a knowledge of legally applicable tariff charges, the fact that there are outstanding undercharges is insufficient to sustain an award of damages under a finding of undue prejudice. Clements Paper Co. v. T. C., 112 I. C. C. 411, 416, 417.

(b) Reparation will not ordinarily be awarded where rates have been prescribed primarily to remove undue prejudice. Beatty Coal Co. v. A. V. I., 115 I. C. C. 8, 14.

(c) On further hearing, reparation denied on stave shipments from Crowder, Miss., to interstate points, on account of alleged damage due to undue prejudice in favor of Batesville and Charleston, Miss., competing points shipping to same destinations. Complainant contended that because of lower rates from Charleston it was compelled to absorb excess freight charges to meet Charleston prices. However, it was not shown with reasonable certainty that complain-

ant's sole competition was with Charleston, particularly on shipments to manufacturers using barrels for commodities not known to complainant; that profits were reduced because of lower Charleston rates; or that such rates were the only or proximate cause of injury alleged. Hollingshead Co. v. Director General, 120 I. C. C. 55.

(d) Damages for undue prejudice, measured by difference in freight rates, awarded where complainants showed that their products are sold in same general competitive markets as are like products manufactured and sold by their competitors located at preferred point; that in sale of their products they were forced to meet their competitor's prices; that they were compelled to forego certain profits solely because freight rates from the prejudiced point exceeded rates contemporaneously available to such competitors; and that as a result of the additional transportation charges paid they have suffered pecuniary loss. Gannaway & Rice v. I. C., 120 I. C. C. 400, 404.

(e) The commission does not award damages following a finding of undue prejudice where evidence with respect to damage is uncertain and speculative. Grangers Mfg. Co. v. N. Y. C., 120 I. C. C. 648.

(f) Where undue prejudice has been established and reparation is prayed, not only injury but the fact and amount of resulting damage must be proved. City Coal Co. v. N. Y., N. H. & H., 123 I. C. C. 609, 611.

§18. Complaint.

See Procedure before Commission.

(a) Carrier filed motion to dismiss complaint alleging undue prejudice upon ground that it failed to show when shipments moved, points of origin, routes, rates applied, or wherein provisions of the act were violated. HELD: Commission has repeatedly said that technical pleading is not necessary in complaints filed with it and the courts have sustained this position. Statements "that these rates were when exacted and still are unduly preferential or prejudicial in violation of section 3," and "that they are unreasonable in and of themselves, unduly prejudicial to complainant, and unduly preferential of shippers at other points," are sufficient to place carriers upon notice to defend their rates. Motion is therefore denied. Rodgers-Wade Furniture Co. v. A., C. & Y., 126 I. C. C. 460, 461.

DISINFECTING CHARGES

See Facilities and Privileges §5½.

DISTANCE RATES

I. ESTABLISHMENT.
§1. In general.
§2. Effect.
II. REASONABLENESS OR DISCRIMINATION.
§3. In general.

CROSS REFERENCES

See Advanced Rates §15 (d); Blanket Rates §12½ (i) (j); Differentials; Discrimination; Evidence §20, §58, §64⅞a; Long and Short Hauls §4¾; Percentage Rates; Reasonableness of Rates §10.

I. ESTABLISHMENT.

§1. In General.

(a) Present rates on sand from Lipe, Tenn., to Sheffield, Florence, and Tuscumbia, Ala., which conform with rates for similar distances under scales approved by commission in various cases, found not unreasonable. Florence Chamber of Commerce v. N. C. & St. L., 104 I .C. C. 393.

(b) Interstate rates on pulp wood from points in Maryland, the Virginias, and District of Columbia to various points in West Virginia, Maryland, Delaware and Pennsylvania, and from Ravensford, N. C., to Parsons, W. Va., found unreasonable. Distance scale of rates prescribed for future. West Virginia Pulp & Paper Co. v. B. & O., 104 I. C. C. 495.

(c) Rates on sand and gravel from points in western Pennsylvania to destinations in Ohio, West Virginia, and New York, found unreasonable and unduly prejudicial to extent they exceed rate contemporaneously maintained on slag and crushed stone. Reasonable and nonprejudicial scale of distance rates prescribed for future. Penn. Sand & Gravel Prod. Asso. v. B. & O., 104 I. C. C. 717.

(d) In cases where commission prescribes distance scales, carriers are not

required to establish over circuitous routes rates found reasonable for application over rate-making routes. They may do so if long-and-short-haul provision of section 4 of the act is observed or if relief therefrom is granted. Grain and Products to Mississippi Valley, 107 I. C. C. 167, 169.

(e) Class rates and commodity rates bearing a direct relation thereto from points in c. f. a. and border territories to Williamson, W. Va., found unreasonable as compared with rates from same territories of origin to Charleston, Gauley, Kenova, Huntington, and other West Virginia destinations, and to extent they exceed, for future, rates constructed on distance scale of class rates applicable in c. f. a. territory for short-line distance to Williamson, plus specific arbitraries for the six classes respectively. Williamson Chamber of Commerce v. A., C. & Y., 107 I. C. C. 639.

(f) Interstate rates on brick and related articles carried in uniform brick list prescribed in General Brick case, 68 I. C. C. 213, from points in Texas, Arkansas, Oklahoma, and Kansas, to points in those States and in Louisiana and to Memphis, Tenn., and from Texas, Arkansas, and Oklahoma, to points in southern Missouri, found unreasonable and unduly prejudicial. Reasonable distance scale of rates prescribed and reparation denied. Southwestern Brick Cases., 107 I. C. C. 681.

(g) Interstate rates on brick and related articles taking same rates, from specified points in Iowa to destinations in Iowa, Nebraska, South Dakota, and Minnesota, found unreasonable and unduly prejudicial. Reasonable maximum distance scale of rates and nonprejudicial relationships prescribed for future and reparation denied. Mason City Brick & Tile Co. v. Director General, 107 I. C. C. 702.

(h) Upon further hearing, order in Southern Brick Case, 88 I. C. C. 543, vacated in so far as it requires establishment of distance scales of rates from Johnson City, Kingsport, and Chattanooga, Tenn., to points on Norfolk & Western south of Ohio River. The southern brick scale is higher than present rates, and establishment of that scale from points named would accentuate existing ground for complaint on part of manufacturers and inevitably result in demands for same scale from other producing points. Brick and Clay Products in the South, 109 I. C. C. 161.

(i) Proposed revision of rates on bananas from Gulf ports to southeastern and Carolina territory found justified, except as to increased c. l. rates. A careful consideration of the record convinces commission that banana rates from such ports to the Ohio River, in so far as they apply over lines proposing increases, are upon less than a maximum reasonable basis. Rates proposed, however, are subject to criticism for the elimination of which a distance scale of rates is herein suggested. Bananas from Gulf Ports, 109 I. C. C. 211.

(j) Upon oral argument, former report 95 I. C. C. 430, wherein rates on animal manure from Perth and Lovelock, Nev., to eastbound transcontinental Groups B to J, inclusive, and M, were found unreasonable and reasonable rates, based on the Calivada scale prescribed in 73 I. C. C. 496, and 91 I. C. C. 228, were prescribed for future to Groups F to J, inclusive, and M, affirmed. The Calivada scale rates are not on a depressed scale as compared with distance rates prescribed on fertilizer in the Southwest in Memphis-Southwestern Investigation, 77 I. C. C. 473. Minimum distance, scale of progression, minimum weights, and other considerations applicable to the the two scales are different, much of the haul at rates herein prescribed is performed under transportation conditions at least no less favorable than those obtaining in the Southwest, and ton-mile earnings under rates prescribed decrease as distance increases. Pacific Manure & Fertilizer Co. v. A. & R. R. R., 109 I. C. C. 615.

(k) Interstate rate on fire brick from Joliet, Ill., to Gary and Indiana Harbor, Ind., and South Chicago, Ill., found unreasonable as compared with lower rates on silica blocks and numerous other commodities, and to extent it exceeded a rate based on maximum scale for like distances prescribed in General Brick case, 68 I. C. C. 213. Reasonable maximum rate for future prescribed. General Refractories Co. v. E. J. & E., 109 I. C. C. 635.

(l) In 107 I. C. C. 681 commission prescribed a distance scale of rates for application on brick and clay products in certain territory in the southwest. HELD, under the heading "computing distances" in the original report, change

to read: In computing distances in connection with the scale herein prescribed the following formula shall be used: Distances to be used shall be the distances over direct routes embracing as a maximum the lines or parts of lines of no more than three carriers via existing connections for the interchange of carload traffic, except that where shorter routes are now in use which embrace the lines of more than three carriers such shorter routes shall be used. Southwestern Brick Cases, 113 I. C. C. 169.

(m) In 88 I. C. C. 543, the commission prescribed a distance scale of carload rates for application to brick and related articles as defined therein from, to, and between points in southern territory. At the present time the tariffs name specific rates based upon the scale prescribed, but no routing is shown. Hence the rates apply over routes more circuitous than those authorized by the order. A rule such as the following should be published: The rates named in this tariff between any two points apply via all routes composed of lines parties to the tariff over which the distances do not exceed those shown in column 2 below opposite the corresponding rates shown in column 1: Col. 1 4 c, col. 2 distance 17 miles; 4.5 c, 34 miles, etc. The use of such a rule would permit somewhat greater circuity in some instances than is authorized under the strict terms of the order, for the reason that the distances shown in column 2 are computed on the basis of the percentage of circuity permitted by the order as applied to the maximum distance in the block for which each scale rate applies. Brick and Clay Products in the South, 113 I. C. C. 380.

(n) In view of particular circumstances and conditions surrounding transportation and marketing of cement, the commission is becoming more and more persuaded that there is substantial merit in the destination-scale principle for more general application to cement rates in western territory. Iola Cement Mills Traffic Asso. v. A. V. I., 115 I. C. C. 49, 63.

(o) Proposal to restrict application of distance rates between Missouri B territory and points in Arkansas, Louisiana, Oklahoma, and Texas so as to exclude therefrom points on the St. L.-S. F. Ry. between St. Louis and Pacific, Mo., inclusive, which would result in increased rates on glass sand and other commodities moving from such points, found not justified. The proposed description of Missouri B territory is at variance with that stated by commission in 77 I. C. C. 473, wherein it was also said that rates prescribed therein would be reasonable maximum rates for interstate application between points within the territory described. Nothing in present record indicates that transportation conditions have changed so as to warrant an increase in rates prescribed in cited case. Description of Missouri Group B Territory, 118 I. C. C. 119.

(p) Rates on hay from points in Texas differential territory and New Mexico, to destinations in southern Arkansas and northern Louisiana, found unreasonable to extent they exceeded distance-scale rates prescribed in 101 I. C. C. 116, extended beyond 800 miles at same rate of progression as for last 300 miles in that scale, plus differentials for hauls in differential territory and New Mexico. Reasonable rates prescribed for future. Arkansas Jobbers & Mfrs. Asso. v. A., T. & S. F., 118 I. C. C. 238.

(q) Prior report 98 I. C. C. 183, modified so as to provide for application of single-line distance-scale rates therein prescribed, in lieu of joint-line rates on cottonseed and related articles between points west of Mississippi River on the St. L., S. W. Ry., and Memphis, Tenn., when handled by that carrier over the C. R. I. & P. Ry., between Memphis and Brinkley, Ark., under a trackage arrangement. Oklahoma Corp. Commission v. A. & S., 118 I. C. C. 439.

(r) Findings in original report 100 I. C. C. 4, prescribing rates on cottonseed cake, meal, hulls and oil from Calexico and El Centro, Calif., to El Paso, Tex., modified, rates being established in accordance with distances agreed upon by parties thereto, using scale prescribed in 98 I. C. C. 183. Peyton Packing Co. v. A. E. R. R., 118 I. C. C. 452.

(s) I. & S. 2414 carriers proposed to increase rates on salt, carloads from Kansas mines to Lincoln, Omaha and other points in Nebraska and to Fort Worth, Dallas and other Texas common points. In I. & S. 2450 respondents sought to cancel the rates on salt, carloads, over certain routes from Shreveport, La., to Texas. In 16834 complainant attacked rates on salt, from Kansas producing points to Sioux Falls, S. D.,

as unreasonable. In 17011 complainant attacked rates on salt from Hutchinson, Kanopolis, and Lyons, Kas., to Arkansas, Louisiana, southern Missouri, Oklahoma and Texas as unreasonable and unduly prejudicial. In 17070 complainant attacked rates on salt from Kansas to Sioux City, Ia., Denver, Colo., Oklahoma City, Okla., and North Ft. Worth, Tex., as unreasonable. In 17218 complainant attacked carload rates and minima on salt from Kansas and Louisiana to Oklahoma City as unreasonable and unduly prejudicial. In 17347 complainant attacked rates on salt, carloads, from Kansas to Tulsa, Okla., as unreasonable. In 17428 complainant attacked rates on salt, carloads, from Kansas to Oklahoma as unreasonable. Kansas producing points are Hutchinson, Anthony, Little River, Sterling, Kanopolis and Lyons. Louisiana producing points are Anse La Butte, Avery, Bob Acres, Jefferson Island, Lafayette, Salt Mine, Weeks and Weeks Island. Texas producing points are Grand Saline, Salt City, Alba and Palestine. Bulk salt is not susceptible to loss and damage in transit, does not require first class equipment, and receives no special transportation service. The evidence in these cases relates principally to bulk salt. It is obvious that the table variety of salt, in packages, would be much more susceptible to loss and damage in transit and would require a better class of equipment than low grades of salt shipped in bulk. The commission does not believe that justice demands distinctions between bulk and other grades of salt, either in rates or in minima. RATES TO OMAHA AND LINCOLN. Present rate from Kansas to Omaha and Lincoln is 18.5 cents. Respondents proposed 20.5 cents. Average short line distance from the six producing points to Lincoln, using not more than three lines, is 268 miles, and the rate for this distance is 17.5 cents. Average short line distance Kansas to Omaha using not more than three lines is 327 miles, and rate for that distance is 20 cents. HELD, rate of 17.5 cents to Lincoln and 20 cents to Omaha justified for future. RATES TO SIOUX CITY. Present rate from Kansas mines is 23 cents based on average distance of 457 miles. Average short line distance using not more than three lines is 440 miles or 22.5 cents under the scale. HELD, rate attacked unreasonable to extent it exceeded 22.5 cents subsequent to May 23, 1925. RATES TO SIOUX FALLS. On May 23, 1925, rate was 27 cents. Short route from each of the Kansas points to Sioux Falls is through Sioux City. Beyond the latter point the short line distance is 91 miles, making a through distance of 531 miles, or 25 cents. HELD, rate attacked prior to May 23, 1925, not unreasonable but unreasonable subsequent thereto to extent it exceeded 25 cents. RATE TO DENVER. Present rate from Kansas mines is 32.5 cents average distance 471 miles. HELD, rate attacked subsequent to May 23, 1925, unreasonable to extent it exceeded 26.5 cents. RATES TO THE SOUTHWEST. By I. & S. 2414 respondents now propose to apply the 9702 scale from Kansas producing points to Dallas, Fort Worth and other Texas common points, using the distance from Lyons as representative. S. P. and G. C. L., serving the Louisiana mines did not propose any increase in their rates to points in Texas except to points on the T. & B. V., but proposed to republish the existing rates using the uniform description and minimum prescribed in Salt Cases of 1923. Present rate from Kansas to Fort Worth on bulk salt is 26 cents on package salt 42 cents. Proposed rate is 35 cents on all salt. This is the rate under the 9702 scale using the distance from Lyons. Present rate from Louisiana mines to Fort Worth is 24.5 cents on crushed salt. From Grand Saline rate is 12 cents on bulk salt and 17 cents on package salt. Many of the rates from Louisiana are lower, distance considered, than from Kansas mines, but for equal distances they are higher than the maximum of 27.5 cents from Texas mines. The evidence leaves no doubt that many of the rates to Texas from Louisiana mines are on a lower level, distance considered, than the rates from the Kansas mines, and that such mines are in competition. The withdrawal of the S. P. and G. C. L., from the rates from Kansas mines, or the withdrawal of the Kansas mines from participation in the rates from Louisiana would have no appreciable bearing upon the rate relationship. There is no adequate basis for a finding of undue prejudice. Average distance from Kansas to Oklahoma City was found to be 256 miles. Average distance is now shown to be 232 miles. Present rate of 227 cents is 1 cent higher than to Fort Worth in violation of the fourth section. Louisiana producing points to Oklahoma City

present rate is 42 cents, distance 666 miles. The 9702 scale for both single line and joint line hauls is about 50% higher than the western trunk line scale. Salt can be produced only from geological deposits of that mineral. The Kansas mines have a decided advantage in rates over all other salt producing points to a large number of the packing plants at points on the Missouri River and elsewhere in western trunk line territory. The Louisiana mines have no large consuming territory to which they have a corresponding advantage. Although the rates to Fort Worth and Dallas are less from Louisiana than from Kansas, the record shows that practically all of the movement of salt to packing plants at Fort Worth is from Kansas. HELD, rates proposed not justified from Kansas but justified from Louisiana. HELD, attacked rates from Kansas to southwest not unduly prejudicial but unreasonable for future to extent they exceed distance rates ranging from 8 cents for 10 miles to 33 cents for 800 miles. Reparation awarded. Salt between Western and Southwestern Points, 120 I. C. C. 91.

(t) In 102 I. C. C. 419, the commission found rates on metal beds and other kindred articles taking the same rates, in carloads, unreasonable and prescribed for the future two distance scales, based on carload minima of 12,000 and 30,000 pounds. HELD, on consideration rates prescribed should be modified to basis of fourth class as prescribed in the Southern case and sixth class minimum 30,000 pounds, minimum on fourth class 12,000 pounds. Crescent Bed Co. v. A. & V. Ry., 120 I. C. C. 151.

(u) Complainant attacked sixth class rates charged on fertilizer, carloads, from trunk line and central territories to destinations in central territory as unjust, unreasonable, unjustly discriminatory and unduly prejudicial in that they are substantially higher than commodity rates on the same traffic in western and southern territories. Rates from trunk line to central territory were withdrawn. Shipments are made in burlap bags of gross weights, ranging from 125 to 200 pounds. Water tight box cars are required. Loss and damage claims are said to be negligible. It is a well known fact that rates lower than sixth class rates apply on many commodities in central territory. Fertilizer is a low grade traffic, subject to no great risk in transit and requiring no special service for its transportation in the sense that special service is generally understood. Its free movement and use is an auxiliary tending to produce and furnish a larger volume of traffic and thus promote the prosperity of carriers and their patrons, so that considering both commercial and transportation conditions, it is entitled to comparatively low rates. The volume of movement is substantial and increasing. The high importance of continued and augmented use of fertilizers to successful farming in central territory is clear from the record. HELD, distance rates prescribed ranging from 6 cents for 5 miles to 33.5 cents for 800 miles. Ohio Farm Bureau Federation v. A. & W. Ry., 120 I. C. C. 361.

(v) L. & N., respondent, proposed to increase and reduce rates on manure, carloads, and to increase the minimum weight thereon from New Orleans, La., to Alabama and Mississippi on its New Orleans Mobile division. The destinations are stations between Baldwin Lodge, Miss., and Mobile, Ala., 38 and 140 miles from New Orleans. Reductions are proposed to those over 90 miles from New Orleans and increases to those 84 miles or less from that point. Increases alone were suspended. The basis for the proposed rates is a distance scale the same as that applicable on agricultural limestone. HELD, proposed schedules justified. Manure from New Orleans, 120 I. C. C. 525.

(w) Upon further hearing, FOUND, that in applying distance scale of rates prescribed in 112 I. C. C. 7, on lime from Ohio points to destinations in c. f. a. territory, the so-called Woodville, Sandusky, and Carey groups should be considered as a single group. This finding expresses unanimous desire of Ohio lime producers, and commission is unable to find that use of a single group would unduly prejudice other shippers, or be inconsistent with application of distance scale prescribed in original report. Washington Building Lime Co. v. A. & B. B., 122 I. C. C. 105.

(x) Rates on linseed oil from Fredonia, Kans., to points in Missouri, Illinois, Michigan, Indiana, Kentucky, Ohio, Pennsylvania, and New York, found unreasonable as compared with rates from Minneapolis, Des Moines, St. Louis, and Chicago, to same destinations. Reasonable rates based upon dis-

tance scale approved in 98 I. C. C. 183, prescribed for future and reparation awarded. Fredonia Linseed Oil Works Co. v. A. T. & S. F., 123 I. C. C. 153.

(y) Proposed revision of rates on bananas from Gulf ports to southeastern, Carolina, and Mississippi Valley territories, Ohio River crossings, and other southern points, in purported compliance with commission's findings in the banana case, 109 I. C. C. 211, found not justified. The suspended rates, in so far as their application to southeastern and Carolina territories are concerned, are not in accordance with commission's report in cited case. Moreover, the further revision contemplated by carriers to and from points not involved in that proceeding, if permitted to become effective, would create preferences and inequalities which commission cannot sanction. Proper revision of rates upon basis of a mileage scale suggested. Bananas from Gulf Ports, 123 I. C. C. 181.

(z) Class and commodity rates applying to, from, or between points in the Southwest and Kansas-Missouri territory found to be in generally chaotic condition, and tariffs there applying complicated and unsatisfactory. Comprehensive system of rates based on distance, and embodying uniform class percentage so adjusted as to permit greater car-load movement on class rates needed to correct the situation. Consolidated Southwestern Cases, 123 I. C. C. 203, 217, 235.

(aa) Complainant attacked commodity rates on cement, carloads, from Ada, Okla., Portland, and Concrete, Colo., and from Kansas producing points to Texas as unreasonable and unduly prejudicial. Ada is in south central Oklahoma on the Frisco about 80 miles from the Texas Oklahoma border. Portland and Concrete are on the D. & R. G. W. about 26 miles west of Pueblo, Colo. Kansas gas belt is in southeastern Kansas and northeastern Oklahoma. Complainants contend that rates to destinations in eastern Texas should not exceed western cement scale III rates, and from Colorado should not exceed scale IV rates. In the judgment of the Commission there is here sufficient reason for departing from the principle of averaging scales between territories and for applying scale IV rates from points in scale III territory to destinations in scale IV territory. Scale IV rates should also apply from scale IV territory to scale III territory. HELD, scale IV rates should apply between points in scale III and scale IV territory, or rates ranging from 7.5c for 5 miles in scale III territory to 20c for 380 miles, and 9c and 24c, respectively in scale IV territory. Oklahoma Portland Cement Co. v. D. & R. G. W. Ry., 128 I. C. C. 63.

(bb) Competition between cement manufacturers is exceeding acute throughout the country and any basis of rates from one producing point that is relatively lower than from another in territory where transportation conditions justify the same scale, unduly prefers one to the undue prejudice of the other. Experience has demonstrated that the most equitable and satisfactory method of removing preference and prejudice ordinarily present in rate adjustments on cement created through rivalry of producing points and carriers, is establishment of distance scales, thereby according each point of production the advantage of its location. Oklahoma Portland Cement Co. v. D. & R. G. W., 128 I. C. C. 63, 81, 82.

§2. **Effect.**

See Differentials.

(a) In computing distances under scale of rates herein prescribed on sugar from Louisiana points east of Mississippi River to Oklahoma, the shortest routes via existing connections for interchange of c. l. traffic required to be used, embracing as a maximum not more than three line-haul carriers for distances not exceeding 500 miles; four line-haul carriers for distances not over 800 miles; and five line-haul carriers for distances exceeding 800 miles, lines under common ownership or control to be considered as a single line, and where same line is used twice, it to be counted as a separate line each time. Oklahoma Traffic Asso. v. A. G. S., 113 I. C. C. 635, 648, 649.

(b) Distances computed over shortest routes over which carload traffic can be moved without transfer of lading required to be used in computing rates under distance scales prescribed or approved for application in the Southwest. Consolidated Southwestern Cases, 123 I. C. C. 203, 384.

(c) All-rail class and commodity rates on various articles should be on same level throughout the Southwest and designated portions of Kansas-Mis-

souri territory; and on standard rail lines a single scale of first-class distance rates should be used as basis for maximum reasonable interstate rates within those areas. Consolidated Southwestern Cases, 123 I. C. C. 203, 382, 385, 386.

(d) Following 92 I. C. C. 453, and other cited cases, rates on wrought-iron pipe, well-drilling rigs, oil-well supplies and outfits, and steel tanks between points in Louisiana and Arkansas, found unreasonable to extent they exceeded those which would apply based on scale of rates and minimum weights prescribed in 77 I. C. C. 473. Reparation awarded. Standard Oil Co. v. C., R. I. & P., 123 I. C. C. 669.

(e) Rate on sand from Pacific, Mo., to Fort Smith, Ark., found inapplicable on shipments moving over St. Louis-San Francisco, but applicable on those moving over Missouri Pacific. Tariff carried a c. l. rate applicable over either route and also published a single-line distance rate applicable between points in Missouri B territory, use of either rate, whichever made lower, being authorized. During a certain period Pacific on the Frisco was included with Missouri B territory and as distance rate over that line made the lower rate, shipments assessed c. l. rate were overcharged. However, as haul over Missouri Pacific was considerably greater than over the Frisco and rate under distance scale exceeded the c. l. rate, it is immaterial whether or not Pacific over that route was in Missouri B territory inasmuch as the c. l. rate being lower was applicable in either event. Reparation awarded. Harding Glass Co. v. M. P., 128 I. C. C. 754.

(f) Complainants alleged that the rates on apples, in carloads, from St. Joseph, Mo., and nearby points to Nebraska, Iowa, Minnesota, North Dakota, and South Dakota are unreasonable, unjustly discriminatory, and unduly prejudicial as compared with rates from eastern Missouri and western Illinois, St. Louis and Hannibal, Mo., and Alton and Quincy, Ill., are representative of the points alleged to be preferred. Although there are some commodity rates from both the complaining and preferred points, the rates are generally on the fifth class basis. To Iowa and Minnesota, the St. Joseph rates apply from all the complaining points in Missouri and, in general, from those in Kansas. To Nebraska, South Dakota and North Dakota, the Kansas points generally pay combination rates based on St. Joseph although it appears that commodity rates are published direct from these points to some important Nebraska destinations. It has not been shown of record that there is any marked difference in the transportation conditions surrounding the movement of apples from the complaining and the preferred districts to the destinations in question. Whatever may be the situation so far as class rates generally are concerned, this is not an adequate justification of an adjustment of rates on apples from competing producing district which is clearly prejudicial to one of these districts and preferential of the others. In Consolidated Southwestern Cases 123 I. C. C. 203 the Commission prescribed a distance scale of rates on apples between eastern Kansas and southwestern Missouri. Certainly the rates under attack should not exceed that scale, except, perhaps, to the western portions of Nebraska, South Dakota and North Dakota. HELD, rates assailed unreasonable to extent they exceed column 35 rates in Consolidated Southwestern Cases, supra. Hunt Bros. Fruit Co. v. A. & W. Ry., 129 I. C. C. 579.

(g) Complainant alleged that the rates on tomatoes, in carloads, from Fruitland, Gibson and Humboldt, Tenn., to Hutchinson, Kas., since June 21, 1922 as unreasonable, unduly prejudicial and unjustly discriminatory. Original decision Grovier Starr Produce Co. v. C., R. I. & P. Ry., 104 I. C. C. 745. Hutchinson is on the main line of the Santa Fe and Rock Island 219 and 155 miles west of Kansas City and Topeka, Kas. It is also served by the M. P. Fruitland is a local station on the M. & O. 5 miles north of Humboldt, which is also on the L. & N. Gibson is a local station on the latter line 6 miles east of Humboldt. In Consolidated Southwestern Cases 123 I. C. C. 203, the Commission prescribed reasonable rates to apply from and to the points involved for the future. HELD, rates assailed not unreasonable for the past but for future will be unreasonable and unduly prejudicial to extent they exceed the rates prescribed in Consolidated Southwestern Cases. Grovier Starr Produce Co. v. C., R. I. & P. Ry., 129 I. C. C. 711.

(h) In computing distances for application of distance rates prescribed, the shortest routes over which carload traf-

fic can be moved without transfer of lading shall be used. Colbert Limerock Asphalt Co. v. A. C., 129 I. C. C. 177, 185.

II. REASONABLENESS OR DISCRIMINATION.

See Branch Lines §2 (i); Discrimination; Reasonableness of Rates.

§3. In General.

(a) Complainant attacked sixth class rate of 19c charged on two cars of logs shipped May 29 and 31, 1922, from Cottage Grove, Ind., to Hicksville, O., as unreasonable, unjustly discriminatory and unduly prejudicial. Shipments moved C. I. & W. to Hamilton, O., and B. & O. beyond, charged sixth class of 19c, reparation desired on basis of 12.5c or 65% of sixth class. A rate of 11c was published April 20, 1924, in compliance with 85 I. C. C. 533, in which the rates on logs between points in central territory were found unreasonable to extent they exceeded 65% of sixth class rates. The report indicates that the c. f. a. log mileage scale prior to general reductions of 1922 provided a rate of 17c for the distance the shipments here moved, which is 89% of sixth class. HELD, rate attacked unreasonable to extend it exceeded 17c, reparation awarded. Crook Son & Co. v. C. I. & W. Ry., 112 I. C. C. 399.

(b) Complainant attacked commodity rate charged on crude mine run fire clay, carloads, shipped between July 1, 1922, and Nov. 27, 1923, from St. Louis and Clayton, Mo., to South Fort Smith and Van Buren, Ark., as unjust and unreasonable. Clay is usually shipped in box cars, but it is not susceptive of damage if transported in open cars and it has moved in the latter. South Fort Smith is 421 miles from St. Louis over Frisco to Fort Smith and M. P. beyond. Van Buren 10 miles from South Fort Smith is less distant from St. Louis. These are the short line distances. To South Fort Smith the distances are 510 miles over M. P., 614 miles over M. K. T. in connection with M. V., and 639 miles over M. K. T. and Ft. S. & W. A rate of 17c applied over most of the routes. In 77 I. C. C. 473 the commission prescribed for these distances 12c for single line and 12.5c for join line hauls on this commodity. HELD: Rate attacked unreasonable for joint hauls and 14c for single line hauls, reparation awarded. Athletic Mining & Smelting Co. v. Ft. S. & W. Ry., 112 I. C. C. 497.

(c) Complainant attacked rates on prepared roofing, asphalt shingles, and related commodities from all important producing points north and east, respectively, of the Ohio and Mississippi rivers to territory south and east, respectively, of the same rivers. The complainants also attack as unreasonable and unduly prejudicial the rates from trunk line territory, other than the Buffalo-Pittsburgh zone to Virginia, West Virginia and North Carolina not dealt with in Southern class rate investigation 100 I. C. C. 513. Rates to West Virginia and Virginia points in official territory are generally on the official territory basis of 90% of sixth class, although there are some commodity rates. The rates from New York and Spa Spring are generally on a substantially higher level, distance considered, than the rates from Niagara Falls and Erie to the same destinations. The record leaves no doubt that many of the rates which complainants at points in trunk line territory are paying are unlawful and can be corrected in this proceeding. HELD, rates attacked to all points in southern territory except Virginia and North Carolina, and from central territory and Buffalo and Pittsburgh territory to all Virginia and North Carolina points in southern territory are unreasonable to extent they exceed 95% of ninth class rates prescribed in 109 I. C. C. 300 from and to the same points. Complainants also attacked rates on prepared roofing from Cincinnati and St. Louis and other producing points north of the Ohio river as unreasonable and in violation of section four. Rates for future are already disposed of. Reparation denied, complaints dismissed. Standard Paint Co. v. Director General, 112 I. C. C. 589.

(d) Complainant attacked commodity rate charged on five cars of face brick shipped between Aug. 2 and Sept. 5, 1923, from Wichita Heights, Kans., to Wellington, Tex., as unjust, unreasonable, unduly prejudicial and in excess of rate applicable. Wichita Heights is on the Frisco a few miles west of Wichita, Kans., and Wellington is the western terminus of the M. K. T. connecting at Altus, Okla., with another line of that carrier. Shipment moved as routed by shipper over Frisco to Wichita, K. C. M. & O. to Altus, M. K. T. through Hollis, Okla., to Wellington, 321 miles, charged

29.5c. The rate sought is the same as the joint line rate on face and other kinds of brick for 321 miles under the socalled 9702 scale prescribed in 1923. HELD, rate attacked unreasonable to extent it exceeded 17c, reparation awarded. Reliance Brick Co. v. St. L. S. F. Ry., 112 I. C. C. 619.

(e) Respondents proposed to publish specific rates on cotton seed from 15 points in southeastern Missouri on the Frisco and St. L. S. W. to Cairo, Ill. In 98 I. C. C. 183 the commission prescribed a distance scale of rates for application on cottonseed, carloads, to Cairo from points in Missouri on and south of the Frisco from St. Louis, Mo., to Seneca, Mo. The tariff published in compliance with the order in that case contained the prescribed scales of rates and made reference to the carriers distance tariffs. It did not contain point to point rates or show via just what junction points the shortest routes were made. Respondents admit that the distances and rates shown in the suspended schedules to Cairo from Benton, Cape Girardeau, Commerce, McBride, Menfro, Neeleys, Seventy Six, and Wittenburg are incorrect. Respondents are justified in computing distances over the shortest route via existing connections maintained for the interchange of carload traffic. The fact that by means of switch it is possible to so handle a car at a place not a point of interchange as to reduce the distance between points of origin and destination by the fraction of a mile or a few miles does not bring such a place within the meaning of the phrase "existing connections for the interchange of carload traffic." HELD, schedules not justified, schedules to be filed consistent with the findings therein. Cottonseed to Cairo, 112 I. C. C. 709.

(f) Complainant attacked class rates charged on sulphuric acid, in tank cars, from Tiltonville, O., to points in the Wheeling, W. Va., Youngstown, O., and Pittsburgh, Pa., districts as unreasonable, unjustly discriminatory, unduly prejudicial in violation of section 13. Complainant's plant at Tiltonville which is on the Ohio river near Wheeling, is served by the Pennsylvania and W. & L. E. It also has facilities for shipping by barge. The competing producing points are Newell, Pangeloth, Natrona, Beaver Falls and New Castle, Pa., Niles, O., and Moundsville, W. Va. Sulphuric acid is rated fifth class, but by exceptions is sixth class or 90% of fifth class. The movement on class rates appears to be restricted to long hauls and is relatively small. HELD, rates attacked unreasonable to extent they exceed rates ranging from 5c for 5 miles and under to 16c for 150 miles, undue prejudice to be removed by placing all competing points on the scale. Bertha Mineral Co. v. B. & O. R. R., 112 I. C. C. 754.

(g) Respondents proposed to increase the carload rates on scrap or waste paper, alkali, alum, papermakers' clay, lime (in mixed carloads only), precipitated lime (whiting substitute), rosin, soda ash, crude, unground, ore, unrefined sulphur, talc, and whiting, known as paper manufacturers' supplies, from and to certain points in New England. Present and proposed rates are distance commodity rates. The record shows that there is no interstate movement of these commodities, except scrap or waste paper, for these distances over respondents' lines, and that, with the exception of papermakers' clay and scrap or waste paper, these commodities are not imported or exported. Principal interstate movement of scrap or waste paper is from Boston as a part of through transportation by water from the Pacific coast. The record indicates that there is little, if any interstate movement of this commodity locally between points on respondents' lines for these distances. Papermakers' clay and scrap or waste paper are rated sixth class in official classification. HELD, proposed rates on scrap or waste paper from Boston to points on respondents' lines, shipped by water to Boston from the Pacific coast have not been justified, but that the proposed increased rates for the interstate transportation of this commodity originating at and destined to points on respondents' lines have been justified. Various commodities between New England points. 113 I. C. C. 44.

(h) Complainant attacked the class rates between points in Arizona, on the one hand, and points in California, New Mexico and Texas, on the other hand, as unreasonable, unjustly discriminatory. The allegations in respect to points in Texas was restricted to El Paso, Tex. Principal carriers serving Arizona are the Santa Fe, which crosses the northern part of the state and extends as far south as Phoenix, and the Southern Pacific, which traverses the more populous southern part of the state and connects with the Santa Fe through the Arizona

Eastern at Phoenix. The principal industries of Arizona are copper mining, livestock and agriculture. The traffic moving under class rates is much heavier into than out of the state. There are many more commodity rates from the eastern transcontinental groups than from points in the adjoining states into Arizona. There are practically no commodity rates on less than carload traffic between points in these states. There is some carload movement on the class rates, but the less than carload movement on such rates appears to be much greater. As there are few commodity rates on less than carload traffic, and there is a large movement of such traffic into Arizona, the class rates under consideration are of considerable importance. The evidence is insufficient to warrant any finding concerning the rates to and from points on the independent short lines in Arizona, except that such rates should reflect the changes herein required in the junction points. The present record does not warrant a finding that the public interest requires the establishment of through routes and joint class rates via Phoenix, but defendants should give consideration to the establishment of such routes and rates between points where there is a substantial movement of traffic and the use of the Phoenix gateway would effect a considerable saving in the transportation service. HELD, rates attacked are shown to be generally excessive not only by complainant's comparisons but also by those of the defendants, especially for the longer distances. The findings herein are to be understood as only a temporary measure to accord the Pacific southwest substantially the same scale of rates as now applies in the Pacific northwest. They are subject to reconsideration in the event the class rates throughout the mountain-Pacific group should be brought in issue in a general investigation or otherwise. HELD, local and joint class rates of the Santa Fe, including its subsidiary lines, and the S. P. system, including the E. P. & S. W., and A. E., between points in Arizona, on the one hand, and points in California and New Mexico and El Paso, Tex., on the other hand, are unreasonable to extent they exceed rates ranging first class for 10 miles to 25.5c for 800 miles. For joint hauls over the S. P., or its subsidiaries, and the Santa Fe and its subsidaries, where the total distance does not exceed 500 miles, there may be added to the rates shown in the above scale arbitrary of 10c first class. Distances should be computed over shortest possible routes formed by the above mentioned lines via existing connections for the interchange of carload traffic, and the rates shall be based on the distances over the single or joint line route that makes the lowest rates, taking into consideration the arbitraries for joint line hauls. The rates to and from points on branch lines in Arizona should be based on a constructive mileage of 150% of the actual mileage on the branch except Clarkdale and points which have been customarily accorded the main line basis of rates. If the rates from Los Angeles to points such as Phoenix and Tucson are kept on a parity they may be based on the average distance to such points computed as above directed, provided a similar adjustment is made from El Paso. Arizona Corp. Com. v. A. E. R. R., 113 I. C. C. 52.

(i) Following Oklahoma case, 98 I. C. C. 183, rate assessed on cottonseed from points in Texas to Memphis found unreasonable to extent it exceeded distance rates prescribed therein. Reparation awarded. Dixie Cotton Oil Co. v. F. W. & D. C., 112 I. C. C. 1.

(j) Rates on lime from producing points in Maryland, Pennsylvania, the Virginias, and Ohio to c. f. a. territory found unreasonable. Reasonable maximum rates and distance scale prescribed and findings in 85 I. C. C. 341 and 93 I. C. C. 617, modified in part. Eastern Line Mfrs. Traffic Bureau v. A. & B. B., 112 I. C. C. 7.

(k) Rates on mine timbers from points in Missouri to destinations in Illinois found unreasonable to extent they exceeded distance scale prescribed in the Palmer case, 87 I. C. C. 622 from and to same points. Egyptian Tie & Timber v. M. P., 112 I. C. C. 101.

(l) Rate on face brick from Wichita Heights, Kans., to Wellington, Tex., found unreasonable to extent it exceeded joint-line rate on face and other kinds of brick for like distances under the so-called 9702 distance scale prescribed for application throughout southwestern territory, as subsequently extended. The lower rate sought compares favorably with rates for equal distances from Kansas to Oklahoma and Texas, with rates from various points in Texas to Wellington, and with joint-line rates under

intrastate distance scales applying in Kansas, Oklahoma, Arkansas, and Missouri. Reparation awarded. Reliance Brick Co. v. St. L.-S. F., 112 I. C. C. 619.

(m) Proposed joint distance commodity rates on cottonseed from certain Missouri points to Cairo, Ill., established by carriers in purported compliance with commission's findings in Oklahoma Corporation Commission, 98 I. C. C. 183, found justified in instances where carriers computed distances over shortest route via existing connections maintained for interchange of carload traffic and not justified as to points where distances were not so computed. Cottonseed to Cairo, 112 I. C. C. 709.

(n) Fact that by means of a switch it is possible to so handle a car at a place not a point of interchange as to reduce distance between points of origin and destination by the fraction of a mile or a few miles does not bring such a place within the meaning of the phrase "existing connections for the interchange of carload traffic" as used in a finding of commission prescribing distance rates and which provided for computation of distances by the use of "the shortest routes via existing connections for the interchange of carload traffic * * *." Cottonseed to Cairo, 112 I. C. C. 709, 711.

(o) Proposed increased distance commodity rates on interstate shipments of scrap and waste paper from Pacific coast points to Boston by water, thence by rail to points in New England, for distances of 50 miles and under, found not justified. Proposed rates exceed those maintained by respondents for same distances on a number of comparable commodities and rates maintained on same commodities for similar distances between points on lines of other carriers. Similar increases on shipments originating on and destined to points on respondents' lines found justified. Various Commodities between New England Points, 113 I. C. C. 44.

(p) Local and joint class rates between points in Arizona, on the one hand, and points in California, New Mexico, and El Paso, Tex., on the other hand, found unreasonable. Rates assailed are materially higher than those prescribed in 21 I. C. C. 640, and 74 I. C. C. 207, for application in the Pacific Northwest and at present in effect throughout the northern half of the Mountain-Pacific group. Operating and transportation conditions in territory here under consideration compare favorably with those in much of the territory in which the lower rates apply. Temporary scale of distance rates prescribed which will accord the Pacific Southwest substantially same scale of rates as now applies in the Pacific Northwest. Arizona Corp. Commission v. A. E., 113 I. C. C. 52.

(q) Upon reconsideration, original report, 107 I. C. C. 681, modified with respect to method of computing distances under scales therein prescribed; distances to be used to be those over direct routes embracing as a maximum the lines or parts of lines of no more than three carriers via existing connections for interchange of c. l. traffic, except that where shorter routes are now in use which embrace the lines of more than three carriers such shorter routes should be used. Southwestern Brick Cases, 113 I. C. C. 169.

(r) Upon reconsideration, finding in 109 I. C. C. 300, 312, modified to provide that in computing distances under the scale of rates prescribed for application in southern territory, for use of the shortest routes over which c. l. traffic can be moved without transfer of lading. Accordingly the distance scale of rates originally prescribed slightly increased to compensate carriers for the change in computing distances. Southern Class Rate Investigation, 113 I. C. C. 200.

(s) One level of class rates should prevail in southern territory and no sound reason exists for departing from this principle by making distinctions in computation of distances, of necessity largely arbitrary, between single-line and joint-line routes. Not only will resulting rate structure be simpler without such distinctions, but it will also be more generally satisfactory to shippers served. Nor will carriers have any just cause of complaint if distance scale is made high enough to compensate fairly for its general application to routes of varying efficiency and for the measurement of distances in all cases by short-line routes. Southern Class Rates Investigation, 113 I. C. C. 200, 205.

(t) Rates on fresh meats and packing-house products, c. l. and l. c. l., from Pueblo, Colo., to points in New Mexico, found unreasonable and unduly prejudicial as compared with rates on like traffic from El Paso and Fort Worth, Tex., Oklahoma City, Okla., Wichita, Kans., and

Cactus, Ariz., to same destinations. Reasonable scale of distance rates based on the so-called Cactus-El Paso scale laid down in 81 I. C. C. 115 and 100 I. C. C. 4, for application in same general territory for like distances, prescribed and reparation awarded. Nuckolls Packing Co. v. A. T. & S. F., 113 I. C. C. 229.

(u) In original report, 88 I. C. C. 543, commission granted fourth-section relief under the distance scale there prescribed on brick and related articles between points in southern territory by authorizing indirect lines to meet direct lines' rates at competitive points and maintain higher rates at intermediate points. Upon a showing by carriers that publication of all routes over which rates apply would impose upon them tremendous labor and expense and result in such an increase in the bulk of tariffs as to render them cumbersome and difficult to use, original findings modified and in the interest of tariff simplicity carriers authorized, in lieu of publication of specific routing between points of origin and destination, to publish a general rule showing rates and maximum distances for routing. Brick and Clay Products in the South, 113 I. C. C. 380.

(v) Dissatisfaction on the part of shippers and users as well as of carriers with the rates on commercial fertilizer and fertilizer materials in southern territory has for some time been increasingly evident. Interstate rates vary greatly for substantially similar hauls; many indefensible fourth section departures exist; and the intrastate rates which have been forced by some of the states are attacked by the carriers as unreasonably low, and it is alleged they adversely affect manufacturers and dealers shipping into those states over interstate routes. The purpose of this proceeding, therefore, is to determine upon a basis of interstate rates for the movement of fertilizer and fertilizer materials throughout southern territory which will be reasonable and free from undue prejudice and preference, and which will conform, as nearly as may be, to the provisions of the fourth section. Fertilizer tonnage is of relatively greater importance to the southern carriers than to the lines in other sections. It is beyond debate that agriculture in the south can not be conducted successfully without the use of fertilizer, and agriculture has been and probably still is the basic industry of that section. The record indicates that in official territory fertilizer moves to quite an extent on specific commodity rates, and many of these, as well as the class rates, are blanketed over rather extensive groups. The doctrine that the burden of rail transportation should be distributed among the various kinds of freight with some regard for the economic needs of the country has always had recognition in one way or another, in the rate structure. The principle which has been quite generally recognized in public regulation, that the value as well as the cost of service is a factor entering into the determination of just and reasonable rates, has had a similar result. In another form the same thought seems to be predominant in the Hoch-Smith resolution. But the inevitable result of such a distribution of the transportation burden must be that some kinds of freight traffic, under just and reasonable rates, will earn materially less for the carriers than others. There are manifest limitations to the doctrine. It may be conceded that the Commission has no power to fix rates upon any kind of freight which will fail to produce some margin over operating cost. Moreover the fact that certain carriers are largely dependent upon a particular form of traffic and have little opportunity to recoup a deficiency in profit upon such traffic by recourse to higher rates upon other kinds must be taken into consideration. But here the Commission is without evidence as to the cost of service, and it is not understood that the carriers contend that even the shippers scale would result in operating loss. Nor does it appear that fertilizer traffic is the main reliance of any of the respondent carriers. So far as the record discloses the traffic of all is reasonably well diversified. HELD, rates applicable to interstate transportation in carloads of mixed fertilizers and of the fertilizer materials over standard lines in south for future unreasonable to extent they exceed rates ranging from per ton $1.00 for 10 miles and under to $7.25 per ton for 1000 miles. Fertilizers between southern points, 113 I. C. C. 389.

(w) Upon investigation by commission on its own motion into and concerning the general basis of rates on fertilizer and fertilizer materials in southern territory, FOUND: That in view of characteristics of this traffic it is reasonably entitled to a relatively low basis of rates. Maximum reasonable rates based

on a distance scale prescribed for uniform application over standard lines, and certain so-called short or weak lines accorded arbitraries or a percentage over such prescribed standard line rates. Fertilizers between Southern Points, 113 I. C. C. 389.

(x) Upon further consideration, former report, 101 I. C. C. 196, finding rates on bananas and coconuts, in straight and mixed carloads, from New Orleans and subports taking same rates, and Gulfport, Miss., to various destinations in Oklahoma and to Arkansas City, Kans., and from New Orleans and subports taking same rates to certain Texas points, unreasonable and prescribing a scale of distance rates to Oklahoma and Arkansas City and a single rate to Texas destinations in order to conform to the Texas common-point method of rate making, affirmed. Dawson Produce Co. v. A. & V., 113 I. C. C. 454.

(y) Upon further consideration, former report, 101 I. C. C. 196, finding rates on bananas and coconuts, in straight and mixed carloads, from New Orleans and subports taking same rates, and Gulfport, Miss., to various destinations in Oklahoma and to Arkansas City, Kans., unreasonable and prescribing a scale of distance rates, affirmed. Dawson Produce Co. v. A. & V., 113 I. C. C. 454.

(z) Rates on cream from certain points on the Minneapolis & St. Louis R. R. west of Winthrop, to Sioux City, Iowa, via Hanley Falls, Minn., found not unduly prejudicial but unreasonable. Reasonable maximum distance scale of rates prescribed for future and reparation awarded. Hanford Produce Co. v. Am. Ry. Exp. Co., 113 I. C. C. 523.

(aa) Complainant attacked commodity rates on cement, in carloads, from Harrys, Tex., to all destinations in Oklahoma and moving interstate to destinations in Texas on the Wellington branch of the M. K. T. and on the Spearman branch of the P. & S. F., as unreasonable, unjustly discriminatory and unduly prejudicial. Harrys is a local point on the T. P., 3.8 miles west of Dallas, Tex. Eagle Ford is 2 miles west of Harrys. The rates from both points are on the same basis. Complainant is in active competition with the intervener at Ada, Okla., who ships cement from that point to destinations in Oklahoma and Texas. The rates on cement from Ada to destinations in central and northern Texas were considered in 27 I. C. C. 101 and the Commission found the rates from Ada to Texas should not be higher than the rates from Harrys and Eagle Ford to Oklahoma. Mile for mile, the rates from Harrys into Oklahoma and interstate to Texas are higher than those from Ada into Texas and the same carriers, participate in both the northbound and southbound rates. HELD, rates attacked unduly prejudicial to extent they exceed rates from Ada for like distances to Texas. Texas Portland Cement Co. v. A. W. Ry., 113 I. C. C. 536.

(bb) Distance is not the only factor to be considered either in making of a rate by a carrier or in commission's determination of what would be a reasonable basis. Benson Produce Co. v. G. N., 113 I. C. C. 541, 546, 547.

(cc) Following 101 I. C. C. 34, rates on salt from Burmester, Utah, to destinations in Montana and Washington, found unreasonable to extent they exceeded rates for similar distances under distance scale of rates prescribed in Inland Crystal Salt Co., 78 I. C. C. 659. Reparation awarded. Morton Salt Co. v. B., A. & P. Ry., 113 I. C. C. 548.

(dd) Rates on linseed oil from Minneapolis, Minn., to Dallas, Tex., found unreasonable to extent they exceeded rates based on distance scale prescribed in 98 I. C. C. 183 for application on cottonseed oil. Reasonable rates prescribed for future and reparation awarded. Deforest Co. v. A. T. & S. F., 113 I. C. C. 591.

(ee) Rate on sand from Sandusky, Ohio, to Pittsburgh, Pa., found not unseasonable as applied to past shipments, but unreasonable for future to extent it exceeded rate for like distances under the distance scale prescribed in 104 I. C. C. 717 for application from points in western Pennsylvania to points in Ohio. Rates prescribed in cited case forming basis of a general readjustment, a finding that rates applicable prior thereto were unreasonable to extent they exceeded the rates under new basis, and that damages were accordingly sustained, is not warranted. Moreover, reparation will not ordinarily be awarded to basis of a finding resulting in a widespread readjustment of rates. Accordingly, reparation denied in instant case, but reasonable rate prescribed for future. Booth & Flinn v. P. R. R., 113 I. C. C. 613.

(ff) Complainant attacked commod-

ity rates on sugar, carloads from New Orleans, La., and points in Louisiana taking the same rates or rates basing thereon, from Sugarland, Tex., and from various producing points in Kansas, Colorado, Nebraska, Idaho and Utah, to 78 named destinations in Oklahoma, as unreasonable, and in violation of section four. Sugarland is 27 miles west of Houston, Tex. The rates asked by complainants from all points of origin are based on the scale of rates on sugar prescribed in 77 I. C. C. 473, with 20 miles added to the actual distances for the river crossings. RATES FROM LOUISIANA AND TEXAS. The Louisiana producing territory extends west and northwest of New Orleans. It is about 180 miles from New Orleans to the most distant producing point. Blanket rates on sugar have applied for many years from these points to Oklahoma and various other destinations. On Nov. 27, 1923 the Memphis scale was established from New Orleans to Arkansas and eastern Oklahoma. The rates from New Orleans to Texas points were reduced 22c on Oct. 25, 1921 and rates from Sugarland to Texas common points were increased only 25% on June 25, 1918 and a reduction of 6c was made on April 5, 1922. The through rates from New Orleans and Sugarland to numerous points in Oklahoma have been and are in excess of combinations of commodity rates to various points in Texas and Arkansas and fifth class rates beyond. RATES FROM WESTERN POINTS. The territory is divided into four rate groups. Group 1 includes a few points in Nebraska and points of production in Colorado except Delta and Grand Junction. The latter points are in the extreme western portion of the state and are embraced in group 3. Group 2 includes only Garden City, Kas., and Group 4 includes all producing points in Utah and Idaho. The important groups are 1 and 4. Garden City usually takes Group 1 rates to all points east, but to Oklahoma points on the Santa Fe and some of that carriers short line connections somewhat lower rates are maintained. From Groups 3 and 4 the rates are based differentially over group 1. At least since 1912 the established basis from group 1 to Oklahoma City has been the contemporaneous rate from New Orleans. However, while the present rate from group 1 to Oklahoma City is 72c, or the same as the rate with the higher minimum from New Orleans, alternative rates are not provided from these western origin groups. Since Nov. 15, 1920 all sugar rates to Oklahoma from these groups have been subject to a minimum of 60,000 pounds. The minimum prior to that date was 33,000 pounds. No reduction was made in the rate when the minimum was increased. HELD, rates from New Orleans and points taking same rates and from Sugarland and Texas City, Tex., to Oklahoma unreasonable to extent they exceed rates ranging from 10c single line 12c joint line for 5 miles to 73c single and joint for 1,000 miles minimum 60,000. In constructing rates from Louisiana east of the Mississippi river to Oklahoma a ferry toll for the river transfer service not exceeding 2.5c per 100 pounds may be added to the rates based upon the distances to and from the river under the scale herein prescribed. Rates attacked from Kansas, Colorado, Nebraska, Idaho, Utah to Oklahoma destinations unreasonable to extent they are in excess of 7.5c less than present rates. Oklahoma Traffic Asso. v. A. G. S. R. R., 113 I. C. C. 635.

(gg) Rates on sugar from New Orleans and Louisiana points taking same rates, and from Sugarland and Texas City, Tex., to points in Oklahoma, found unreasonable. Reasonable distance scale of rates prescribed, subject to a minimum of 60,000 pounds, actual weight to apply when the car is loaded to full visible capacity. Oklahoma Traffic Asso. v. A. G. S., 113 I. C. C. 635.

(hh) In constructing distance rates herein prescribed on sugar from points in Louisiana east of Mississippi River to Oklahoma, a ferry toll for the river transfer service not in excess of 2.5 cents per 100 pounds authorized to be added to rates based upon distances to and from the river. Oklahoma Traffic Asso. v. A. G. S., 113 I. C. C. 635, 648.

(ii) In computing distances under scale of rates herein prescribed on sugar from Louisiana points east of Mississippi River to Oklahoma, the shortest routes via existing connections for interchange of c. l. traffic required to be used, embracing as a maximum not more than three line-haul carriers for distances not exceeding 500 miles; four line-haul carriers for distances not over 800 miles; and five line-haul carriers for distances exceeding 800 miles, lines under common ownership or control to be considered as

single line, and where same line is used twice, it to be counted as a separate line each time. Oklahoma Traffic Asso. v. A. G. S. R. R. Co., 113 I. C. C. 635, 648, 649.

(jj) Complainant attacked rates on cement, carloads, from the Kansas gas belt to destinations in western Kansas, in Nebraska and South Dakota, eastern Colorado and on the Burlington and as unreasonable and as compared with rates on cement from Missouri and Iowa to the same destinations. Also rates on cement from Portland and Concrete, Colo., Superior, Neb., and Ada, Okla., as unreasonable and unduly prejudicial. The rates under consideration were established following 48 I. C. C. 201, 48 I. C. C. 402, and 52 I. C. C. 225 and 69 I. C. C. 644. The destination scale principle is now applied throughout western cement scale territories except from points in scale II and III territories to points in scale IV territory and from scale IV territory to points in the lower rated territories east thereof. Little, if any, cement moves, however, from producing points in scale IV territory to points in scale II or scale III territories. In view of the particular circumstances and conditions surrounding the transportation and marketing of cement the Commission is becoming more and more persuaded that there is substantial merit in the destination scale principle for more general application to cement rates in this territory. Such a basis would put all producing points in a given territory of destination on the same distance basis, and, thereby, remove much complaint that is based on the different rate scales in this western territory. HELD, rates attacked from Portland and Concrete, Colo., not unreasonable or unduly prejudicial, complaint dismissed. HELD, rates from Ada and Superior not unreasonable or unduly prejudicial except that rates from Ada to points in scale III territory in Missouri and from Ada and Superior to points in scale II territory in Missouri, Iowa and Minnesota are unreasonable to extent they exceed scale III rates from Ada to points in scale III territory in Missouri and scale II rates from Ada and Superior to points in scale II territory in Missouri, Iowa and Minnesota subject to the limitations of paragraph 4 following and that the rates from Superior and to Sioux Falls, S. D., and Sioux City, Ia., and from Superior and Ada to Kansas City unreasonable to extent they exceed rates based on scale II subject to limitations of paragraph 4 following. Rates attacked from Kansas gas belt and Bonner Springs to scale IV territory are neither unreasonable nor unduly prejudicial except that rates to points in Nebraska, South Dakota, Colorado, Montana and Wyoming that are in excess of rates based on the average of scales II, III and IV calculated on the distances through scales II, III and IV territories, under the formula used in checking in rates in cement cases, 87 I. C. C. 451, and unreasonable to extent they exceed rates based on average of scales II, III and IV calculated on the distances through scale II territory, the rates from Bonner Springs to be based on the distances from Kansas City. That no fourth section relief will be granted over reasonably direct routes, and in order to comply with the requirements of the long and short haul provision of that section on traffic from a higher rated to a lower rated scale territory, defendants will be permitted to hold the border point rates as maxima at more distant points in the lower rated territory. Reparation awarded. Iola Cement Mills Traffic Asso. v. A. V. I. Ry., 115 I. C. C. 49.

(kk) Complainant attacked commodity rates on cement, in carloads, from Kosmosdale, Ky., to destinations in Illinois, Indiana, Ohio, Michigan, Pennsylvania, and West Virginia as unduly prejudicial to extent it exceeded rates from Hannibal, St. Louis and Cape Girardeau, Mo., and various places in central territory. Kosmosdale is 18 miles southwest of Louisville, Ky., on the Ohio river and is served by the I. C. Rates on cement from Kosmosdale to central territory have been before the Commission in other cases. Rates from Kosmosdale to central territory are now generally 2.5c higher than those from New Albany or Jeffersonville, Ind., except that to Illinois they are on a somewhat lower level. In 81 I. C. C. 1, the Commission prescribed a distance scale of rates on cement from Hannibal, St. Louis and Buffington to Illinois and Indiana. The carriers voluntarily extended the application of that scale from all producing points in central territory, including Hannibal and St. Louis, to all of central territory. Complainant seeks the establishment of that scale from Kosmosdale. The fact that a relatively higher basis of rates, distance considered, applies from Kosmosdale, which for all practical purposes is

situated on the border of central territory, than that from competing points in the same territory indicates a maladjustment which should be corrected, provided thansportation conditions are fairly comparable. HELD, rates attacked unduly prejudicial to extent they exceeded the rates from other producing points such as St. Louis to the same territory. Kosmos Portland Cement Co. v. I. C. R. R., 115 I. C. C. 561.

(ll) Respondents proposed to restrict the application of distance rates between Missouri B territory and points in Arkansas, Louisiana, Oklahoma and Texas so as to exclude from that territory all stations on the Frisco from St. Louis, Mo., to Pacific, Mo. The effect of the proposed change would be to move that part of the northern boundary line of Missouri B territory between St. Louis and Pacific from south of the M. P. to south of the Frisco. From Pacific west to Kansas City no change is contemplated. Under the proposed change the St. Louis territorial or group rates would be applicable from points on the Frisco between St. Louis and Pacific instead of the distance scales now applicable. HELD, schedules not justified. Description of Missouri group B territory, 118 I. C. C. 119.

(mm) Complainant attacked as unreasonable and unduly prejudicial, rates on hay from South Dakota to Minnesota, Iowa, Wisconsin, Illinois, Nebraska, and Wyoming. Shipping points in Minnesota, North Dakota, Iowa and Nebraska are alleged to be unduly preferred. There are joint rates to the livestock markets from South Dakota and adjoining states. To other destinations in Wisconsin, Iowa, and Illinois, located off the originating line the usual basis of rates is the combination of locals from South Dakota and joint rates from adjoining states. To points in Iowa and Illinois directly intermediate to Chicago, Ill., the Chicago basis is blanketed back over a considerable distance. In addition to lower rates to markets and other points complainant seeks joint rates to points on connecting lines in Wisconsin, Iowa, and Illinois, comparable with those from adjacent states, and rates lower than the Chicago basis to points in Iowa and Illinois directly intermediate to Chicago. Hay is rated class C in the western classification, but it generally moves from South Dakota and other northwestern states on commodity rates lower than class C, minimum 20,000 pounds. The record in this case, although less comprehensive than might be desirable, is sufficient to show that the rates on hay from South Dakota to the destinations here considered, aside from their inherent reasonableness are in such a state of confusion as to require revision. The rates from South Dakota certainly should not be higher than from Oklahoma to Arkansas and from Oklahoma to Texas. For the longer distances they should be lower than that scale, owing to the greater density of tonnage as the Chicago and Milwaukee districts are approached. HELD, rates attacked unreasonable to extent they exceed distance rates ranging from 8c single line, 10c joint line for 10 miles to 47c for 1,200 miles. Rates from points west of the Missouri river in South Dakota unreasonable to extent they exceed rates prescribed plus differentials ranging from 1.5c for 25 miles or less to 6c for 300 miles. It seems obvious that this adjustment is unduly prejudicial to shippers from South Dakota and unduly preferential of their Nebraska competitors. The record does not contain evidence sufficient for the Commission to determine the precise extent of this undue prejudice, or to fix reasonable maximum rates, and no definite finding will be made. Defendants should study the situation with a view of establishing these rates on a nonprejudicial basis. South Dakota R. R. Commissioners v. C. & N. W. Ry., 118 I. C. C. 139.

(nn) Complainant attacked commodity rates on hay, in carloads, from El Paso and other points in Texas differential territory and from points in New Mexico on the Santa Fe to destinations in southern Arkansas and northern Louisiana as unreasonable and unduly preferential of Texarkana. Tex., and Monroe, La., and unjustly discriminatory and in violation of the fourth section. The rates on hay, in carloads, from El Paso, a point in Texas differential territory to points in Arkansas and Louisiana are either the Texarkana, Monroe, Gibbsland or Orange combinations of locals, or are joint through rates. Most of the destination points are within a radius of 100 miles of either Texarkana or Monroe. The record shows that, due to lower rates, distance considered, dealers in alfalfa hay at Texarkana and Monroe have a distinct advantage over their competitors located at points of destination to which the as-

sailed rates apply. Transportation conditions to all of these destinations are substantially similar. HELD, rates attacked are unreasonable to extent they exceed rates set forth in section A of the appendix in Ark. Jobbers Assn. v. A. T. & S. F. Ry., 80 I. C. C. 607, plus the differentials set forth in section B of the same appendix for the hauls in Texas differential territory and New Mexico. Arkansas Jobbers & Mfrs. Asso. v. A. T. & S. F. Ry., 118 I. C. C. 238.

(oo) In 98 I. C. C. 183, the Commission prescribed single line and somewhat higher joint line scales for application to cottonseed and related commodities in the territory embraced in this case. Among other things, it provided that rates between points west of the Mississippi river, on the one hand, and Memphis and other east bank crossings south thereof, on the other, should be constructed by application of the scales to the distances or from west bank points plus bridge or ferry tolls not exceeding 2c per 100 pounds for the river crossings. The St. L. S. W. operates its own trains between points on its own lines and Memphis. Part of this operation, namely, between Brinkley and Briark, the latter 0.6 miles west of Bridge Jct., all in Arkansas, is over a line of the Rock Island under a trackage arrangement with the latter, and over the line and bridge of a terminal company between Briark and Memphis. The joint line scales were intended for application only to joint line movements in fact, with the usual incidents thereof. The traffic in this instance is not in fact shipped to or from Bridge Jct., but to or from Memphis. The reasons for the application of joint line scales are not present. HELD, single line rates should apply plus bridge toll of 2c. Oklahoma Corporation Commission v. A. & S. Ry., 118 I. C. C. 439.

(pp) Rates on cement from Superior, Nebr., to points in Scale II territory and Kansas City, Mo., Sioux City, Iowa, and Sioux Falls, S. Dak., and from Ada, Okla., to Kansas City, to points in Scale II territory, and to points in Scale III territory in Missouri found unreasonable. Reasonable rates and bases of rates prescribed for future. Iola Cement Mills Traffic Asso. v. A. V. I., 115 I. C. C. 49.

(qq) Rates on cement from points in the Kansas gas belt, Bonner Springs, Kans., Ada, Okla., Superior, Nebr., and Portland and Concrete, Colo., to points in western cement Scale III and IV territories found not unreasonable or unjustly discriminatory except where lower rates from the Kansas gas belt can be arrived at by use of the average of rates under Scales II, III, and IV, based on distances over routes through Scale II territory. Iola Cement Mills Traffic Asso. v. A. V. I., 115 I. C. C. 49.

(rr) Proposed increased distance rates on cream, and on milk, cream, and buttermilk, transported by railroads on passenger trains in the territory embracing points in Montana, North Dakota, Minnesota and other northwestern States, found not justified. Such increases are designed as a revenue measure, in interest of uniformity, and to remove any existing discrimination between interstate and intrastate traffic. Competition in territory involved is keen between butter manufacturers who draw their cream mainly from distant points and local creamers who receive their cream from near-by points. Any substantial rate increase, if borne by the butter manufacturers, would be detrimental to them and indirectly to farmers producing the cream. Moreover, under the Hoch-Smith resolution the commission is required to give particular consideration to establishment of a rate structure under which agricultural products shall freely move. Milk and Cream in Northwest, 115 I. C. C. 77.

(ss) Rates on cottonseed from Memphis, Tenn., to Eagle Pass, Tex., found unreasonable prior to August 15, 1923, to extent they exceeded for like distance the rate contemporaneously applied on cottonseed between Shreveport and points in Texas under the Shreveport scale, and thereafter to extent they exceeded for like distance the rate prescribed in Oklahoma Corp. Comm., 98 I. C. C. 183. Reparation awarded. Russell-Heckle Seed Co. v. M. P. R. R., 115 I. C. C. 253.

(tt) Rates on cement from Kosmosdale, Ky., to destinations in c. f. a. territory, found unduly prejudicial to Kosmosdale and unduly preferential of Marquette, St. Louis, and Hannibal, Mo., Mitchell, Speeds, and Buffington, Ind., and other producing points with which Kosmosdale comes into active competition, to extent that rates from Kosmosdale exceed those contemporaneously maintained from the competing points for like distances under the Atlas scale

prescribed in 81 I. C. C. 1. Kosmos Portland Cement Co. v. I. C., 115 I. C. C. 561.

(uu) Distance rates on sand and gravel from Portsmouth, Ohio, to Williamson, W. Va., based on distance via a circuitous route, found unreasonable to extent they exceeded rates based on actual distance via a shorter and more desirable route. Shorter route is free from heavy grades and curves such as are encountered on circuitous route and no good reason appears why rates constructed on lower basis should not have been applied on shipments moving via shorter line. Reasonable rate prescribed and reparation awarded. Good Construction Co. v. N. & W., 115 I. C. C. 629.

(vv) Rates on potatoes from points in the Carolinas on Atlantic Coast Line R. R., to Kalamazoo, Jackson, Battle Creek, and Sturgis, Mich., found unreasonable and unduly prejudicial to extent they exceed corresponding rates contemporaneously in effect to Grand Rapids, Mich. Distance scale of rates prescribed for future and reparation denied on past shipments because the evidence on which the adjustment prescribed is based is general in character and savors of a general readjustment. Taylor Produce Co. v. A. C. L., 115 I. C. C. 633.

(ww) An isolated shipment of limestone rock from Margerum, Ala., to Dallas, Tex., to be used for street paving, moved to Memphis, Tenn., at commodity rate applicable on broken stone, and at commodity rate applicable on paving stone, rough quarried beyond. Upon contention that broken or crushed stone rate should have applied over entire route, using scale prescribed in 77 I. C. C. 473, HELD: Scale basis sought was not prescribed to apply to Texas common points and its extension to that territory from New Orleans, on paving and roofing materials was denied in 102 I. C. C. 31, being found too low for application between those points. Moreover, as class rates are ordinarily assessed on sporadic movements, charges collected under commodity rates in instant case were not unreasonable. Florence Chamber of Commerce v. S. Ry., 118 I. C. C. 7.

(xx) Rates on hay from points in South Dakota to destinations in Iowa, Nebraska, Illinois, Wisconsin, and Minnesota, found unreasonable in their relation to rates on various other commodities and with rates on hay from producing points in States located in same general territory to same destinations. Reasonable distance basis of rates prescribed for the future. South Dakota R. R. Commrs. v. C. & N. W., 118 I. C. C. 139.

(yy) Rates on hay from points in Texas differential territory and New Mexico to destinations in southern Arkansas and northern Louisiana, found unduly prejudicial to extent that differences between such rates and corresponding rates to Monroe, La., are more favorable to last-named point than would result by application of distance scale of rates prescribed in 101 I. C. C. 116, extended beyond 800 miles at same rate of progression as for the last 300 miles in that scale, plus differentials for hauls in differential territory and New Mexico. Nonprejudicial basis of rates prescribed for future. Arkansas Jobbers & Mfrs. Asso. v. A., T. & S. F., 118 I. C. C. 238.

(zz) Sixth-class rates on logs from Adrian, Grosvenor, and Pittsford, Mich., to Hicksville, Ohio, found unreasonable to extent they exceeded rates based on the c. f. a. log scale prescribed in 85 I. C. C. 533 for similar distances. See also 107 I. C. C. 379 and 112 I. C. C. 399 wherein sixth-class rates on this commodity from various Indiana and Michigan points to Hicksville were found unreasonable. Reparation awarded. Crook Son & Co. v. N. Y. C., 118 I. C. C. 512.

(3a) Joint rates on pipe from Youngstown, Ohio, to Tioga and other Louisiana points found unreasonable as compared with lower rates contemporaneously in effect between various points in same general territory for comparable distances and to extent they exceeded lower distance rate approved in 77 I. C. C. 473 for general application in this territory, which rate was subsequently established to the more distant point of Alexandria. Reparation awarded. Hope Engineering & Supply Co. v. M. P., 118 I. C. C. 598.

(3b) Combination rates based on Ohio and Mississippi River crossings on cattle and hogs from Chicago, East St. Louis, St. Louis, Kansas City, St. Joseph, Omaha, Fort Worth, and Oklahoma City to Atlanta and Moultrie, Ga., and from Chicago to Birmingham, Jacksonville, Chattanooga, Knoxville, and Nashville,

found not unreasonable in the past but for future found unreasonable and reasonable scale of distance rates, based upon scale approved in 81 I. C. C. 33, prescribed. The practice of basing the interterritorial rates on a combination of factors to and from the river crossings has been in effect for many years, and rates assailed, when judged as combination rates, do not produce excessive earnings. Under the circumstances they were not unreasonable in the past. However, no sound reason exists why interterritorial shipments that cross the rivers should pay materially higher rates than intraterritorial shipments within the Southeast, Southwest, and c. f. a. territories for comparable distances where shipments do not cross the river boundaries. White Provision Co. v. A., B. & A., 118 I. C. C. 601.

(3c) Fifth-class rates on iron and steel pipe from Louisiana points to destinations in El Dorado and Smackover districts of Arkansas, found unreasonable to extent they exceeded those for like distances under scale prescribed in 77 I. C. C. 473. See also 95 I. C. C. 709, and other cited cases. Reparation awarded. Standard Oil Co. v. T. & P., 118 I. C. C. 627.

(3d) Rate on iron and steel pipe from Ranger, Tex., to Ada, Bristow, Byng, Paden, and Seminole, Okla., and from Jefferson, Okla., to Ranger, Tex., found unreasonable to extent it exceeded rates for like distances computed under scale prescribed on iron and steel pipe in 77 I. C. C. 473. Reasonable rates prescribed for future and reparation awarded. Texas Pacific Coal & Oil Co. v. A., T. & S. F., 118 I. C. C. 719.

(3e) No question of short hauling is involved inasmuch as the method of computing distances for the purpose of applying a distance scale does not determine the route of movement. Salt between Western and Southwestern Points, 120 I. C. C. 91, 97.

(3f) Complainant attacked commodity rates on logs, except walnut, cherry and cedar, carloads, from south of Charleston, S. C., to Savannah, Ga., as unreasonable. Lumber rates applied. Effective August 15, 1925, a distance scale was established which made a material reduction. The same scale was and is generally applicable on interstate traffic between points in South, North Carolina and Virginia. HELD, rates attacked unreasonable to extent they exceeded 3.5 cents for 30 miles to 6.5 cents for 120 miles. Southern Cotton Oil Co. v. A. C. L. R. R., 120 I. C. C. 190.

(3g) Complainant attacked through commodity rate charged on 29 cars of rough and clean rice shipped between Sept 1, 1923, and July 8, 1925, from Louisiana and Texas to Galveston, there accorded transit, and clean rice reshipped to Oklahoma as unreasonable. Charged 67 cents, rates sought range from 53 to 61.5 cents. Complainant relies on 95 I. C. C. 645 and 98 I. C. C. 581, wherein the rates on clean rice, carloads, from Memphis, Tenn., and Arkansas, Louisiana and Texas to Oklahoma were found unreasonable to extent they exceeded a distance scale prescribed therein. Defendants introduced no evidence. HELD, rates attacked unreasonable to extent they exceeded those prescribed in 95 I. C. C. 645 and 98 I. C. C. 581, reparation awarded. Seaboard Rice Milling Co. v. A., T. & S. F. Ry., 120 I. C. C. 263.

(3h) Following 96 I. C. C. 682, fifth-class rates on steel castings from Attica, Ind., to St. Louis, Mo., Chicago, Peoria, Streator, and Mount Vernon, Ill., found unreasonable and unduly prejudicial as compared with rates from various competing points in Illinois, Indiana, and Missouri. Distance scale of rates prescribed for future and reparation awarded. Nat'l Car Coupler Co. v. A., T. & S. F., 120 I. C. C. 37.

(3i) Upon further consideration, the original report 102 I. C. C. 419 modified, and distance rates on metal beds and related articles taking same rates from New Orleans to points in southern territory, found unreasonable to extent they exceed fourth-class rates minimum 12,000 pounds, and sixth-class rates minimum 30,000 pounds, prescribed in Southern Class Rate Investigation, 109 I. C. C. 300; 113 I. C. C. 200. Crescent Bed Co. v. A. & V., 120 I. C. C. 151.

(3j) Proposed distance rates on cement between Oklahoma and Texas points and between points in Texas over interstate routes, and cancellation of routes through Texas on shipments from Oklahoma to destinations in Arkansas, Louisiana, and Mississippi, designed for purpose of complying with commission's order for removal of undue prejudice in 113 I. C. C. 536, found not justified. Car-

riers compared proposed rates with similar rates applicable on other commodities, without a showing as to similarity in transportation characteristics or relationship between rates applicable thereon and rates on cement, nor was any evidence offered showing rates on cement in comparable territory. Moreover, rates proposed compare unfavorably with those prescribed in 87 I. C. C. 451, for application from Ada, Okla., to Kansas points. Cement Between Oklahoma and Texas, 120 I. C. C. 177.

(3k) Rates on logs, except walnut, cherry, and cedar, from points on Atlantic Coast Line in South Carolina south of Charleston, to Savannah, Ga., found unreasonable as compared with lower rates under distance scales in effect in same general territory, and to extent they exceed rates prescribed by the State public service commission for intrastate application in Alabama. Reasonable maximum scale of rates prescribed for future. Southern Cotton Oil Co. v. A. C. L., 120 I. C. C. 190.

(3l) Following 95 I. C. C. 645; 98 I. C. C. 581, rates on rice from Louisiana and Texas points to Oklahoma destinations, with transit at Galveston, Tex., found unreasonable to extent they exceeded rates constructed in accordance with distance scale prescribed in abovecited cases. Reparation awarded. Seaboard Rice Milling Co. v. A., T. & S. F., 120 I. C. C. 263.

(3m) Sixth-class rates on commercial fertilizer between points in c. f. a. territory found not unreasonable or otherwise unlawful in the past as compared with rates in the South and West, but for future found unreasonable to extent they exceed distance rates herein prescribed. As volume of movement is substantial and increasing use of fertilizers is an adjunct to successful farming, rates thereon should be more on a parity with those prescribed in 113 I. C. C. 389 in southern territory. However, on evidence presented the commission is not convinced that sixth-class rate produces rates which might be condemned as exceeding the limits of maximum reasonableness if evidence covering conditions in c. f. a. territory in general was fully presented, and scale prescribed therefor is without prejudice to any future findings which may be made on a more comprehensive record. Ohio Farm Bureau Federation v. A. & W., 120 I. C. C. 361.

(3n) Proposed revision, including increases and reductions, in rates between points in southern Missouri, eastern Oklahoma, Arkansas, and Louisiana, and from points in this territory to Mississippi River crossings and Memphis, in purported conformity with distance scale of rates prescribed in Memphis Southwestern Investigation, 77 I. C. C. 473, and 98 I. C. C. 654, found not justified. While rates prescribed in above case were fixed as reasonable maxima, present lower adjustment on fruits and vegetables was not disapproved therein. Moreover, schedules as proposed would result in undue prejudice to Memphis in favor of St. Louis, in addition to creating fourth-section violations. Fruits and Vegetables, 120 I. C. C. 395.

(3o) Upon reargument, findings in original report, 102 I. C. C. 540, prescribing a distance scale of reasonable maximum rates on salt from Louisiana mines to Mississippi destinations, and awarding reparation on shipments moving in the past, affirmed, except that McLain, Miss., is eliminated as a destination to which the scale shall apply as maxima. Differences in distance considered, the scale prescribed is in harmony with southwestern scale prescribed in 120 I. C. C. 91 and with rates from Kansas mines to western trunk-line territory prescribed in 92 I. C. C. 388. Mississippi R. R. Comm. v. A. & V., 120 I. C. C. 569.

(3p) Upon reargument, differentials which may be added to rates on salt under scale prescribed in original report, 102 I. C. C. 540, from Louisiana mines to local points on certain Mississippi short-line carriers, increased from 50 to 60 cents per net ton, and equidistant clause of fourth section of the act not required to be observed by these short lines in meeting more distant junction point rates. Misisssippi R. R. Comm. v. A. & V., 120 I. C. C. 569.

(3q) Authority granted carriers to apply under distance rates herein prescribed on salt from Louisiana mines to Mississippi destinations over all routes, the lowest rate available over any route from and to said points, and to maintain higher rates from and to intermediate points; provided that rates from and to the intermediate points shall in no case exceed the lowest combination, and that the relief granted shall not include routes more than 50 per cent longer than the

direct route from and to the competitive points. Mississippi R. R. Comm. v. A. & V., 120 I. C. C. 569.

(3r) Rates on butter, eggs, and dressed poultry, c. l. and l. c. l. from points in the Dakotas, Nebraska, and Minnesota to Duluth, Minn., found unreasonable, unduly prejudicial to Duluth, and unduly preferential of Chicago. Reasonable and nonprejudicial distance bases of rates prescribed for the future. Duluth Chamber of Commerce v. C. & N. W., 120 I. C. C. 683.

(3s) Complainant attacked rates on metal beds, in carloads, from New Orleans, La., to Arkansas, Louisiana west of the Mississippi River, Oklahoma and Texas, as unreasonable and unduly prejudicial. Metal beds, in carloads, minimum 20,000 pounds are rated fourth class in western classification. Lower commodity rates, however, are in effect from New Orleans to this territory, some subject to a minimum of 12,000 pounds and others to a minimum of 30,000 pounds. To Oklahoma the commodity rates are subject to minima of 30,000 pounds and 35,000 pounds. HELD, rates attacked not unreasonable or unduly prejudicial except that the rates to Oklahoma are unreasonable to extent they exceed rates ranging from 5 miles single line of 14 cents joint line 17 cents to 92 cents single and joint line for over 800 miles; that rate to Texas common points subject to 30,000 pounds is unreasonable to extent it exceeds 76 cents; that to Texas differential territory unreasonable to extent they exceed rates constructed by adding to the rates prescribed to Texas common points amounts equal to the amounts by which the class C rates to such points exceed the class C rate to the Texas common points. Crescent Bed Co. v. C. R. I. & P. Ry., 123 I. C. C. 41.

(3t) Respondents proposed to revise their rates on bananas, carloads, from New Orleans, and Port Chalmette, La., Gulfport, Miss., Mobile, Ala., and Pensacola, Fla., to destinations in southeastern Carolina and Mississippi Valley territories, also to Ohio River crossings and certain other points in Arkansas, Kentucky, Louisiana, Virginia and West Virginia. From Gulf ports the readjustment is in purported compliance with 109 I. C. C. 211, Bananas from Gulf Ports. The commission is of opinion that a proper revision of rates from the Gulf ports can be published by respondents, based on a mileage scale. It is essential however that a fixed rule for the computation of distances be adopted which will not be subject to varying interpretations. The distance formula prescribed in second supplemental report in the Southern Class Case, 109 I. C. C. 300. A scale is suggested ranging from 32 cents for 100 miles to 96 cents for 1,000 miles. HELD, suspended schedules not justified, without prejudice to the filing of new schedules in conformity herewith. Bananas from Gulf Ports, 123 I. C. C. 181.

(3uvw) In Fertilizers between Southern points, 113 I. C. C. 389, the commission prescribed a distance scale of rates for the transportation of fertilizers and fertilizer materials over standard lines in southern territory, and, with certain exceptions, authorized an arbitrary of 50 cents per net ton to be added to the standard line rates between points on certain so-called short or weak lines which it named of record and between those points and points on standard lines, the arbitraries to accrue solely to the short or weak line carriers. The American Short Line Railroad Association, by petition, now requests similar authority in the case of other short or weak lines, which were overlooked. HELD, the commission is justified in granting the prayers of these petitions, including the general amendment of fourth section order No. 9346. The N. C. & St. L., may use 50 miles as the constructive distance via Hobbs Island and Gunters Landing, Ala. Fertilizers between Southern Points, 123 I. C. C. 193.

(3x) Upon complaints bringing in issue the distance rates on articles in the uniform brick list prescribed in 68 I. C. C. 213, or on hollow building tile only from producing points in Indiana and Illinois to the Chicago switching district, FOUND: That the interstate rates on hollow building tile from St. Anne, Kankakee and Beaverville, Ill., are unreasonable; that the interstate rate on articles in the uniform brick list from Hobart, Ind., is not unreasonable; and that the rates (a) on intrastate shipments of hollow building tile from St. Anne, Kankakee, and Beaverville, and (b) on interstate and intrastate shipments of articles in the uniform brick list from Chicago Heights, Ill., are unduly preferential of those points and unduly prejudicial to Indiana producing points in the Wabash Valley group and

to Hobart. Reasonable and nonprejudicial bases prescribed. Indiana State Chamber of Commerce v. A., T. & S. F., 122 I. C. C. 81.

(3y) Upon further hearing, FOUND: That in applying distance scale of rates prescribed in 112 I. C. C. 7, on lime from Ohio points to destinations in c. f. a. territory, the so-called Woodville, Sandusky, and Carey groups should be considered as a single group. This finding expresses unanimous desire of Ohio lime producers, and commission is unable to find that use of a single group would unduly prejudice other shippers, or be inconsistent with application of distance scale prescribed in original report. Washington Building Lime Co. v. A. & B. B. R. R., 122 I. C. C. 105.

(3z) Rates on common brick from Harrisonville, Mo., to Kansas City, Kans., and Argentine, Kans., found unreasonable to extent they exceeded via various routes, 80 per cent of rates on other brick, which rates are equal to those prescribed for similar distances in Ballou Brick case, 77 I. C. C. 4, considered, in connection with the General Brick case. 68 I. C. C. 213. Reparation awarded. Harrisonville Brick & Tile Co. v. A., T. & S. F., 122 I. C. C. 489.

(4a) Distance rates assessed on cement from Ilasco, Mo., to various destinations in scale territories prescribed in 48 I. C. C. 201, found not unreasonable or unduly prejudicial. Complainant's contention that it was entitled to lowest possible rates which could be made under scale by use of distances over indirect routes through lower rated territory, even though shorter routes were available entirely within higher rated territory, is unsound. While distances used by carriers were not in all instances in accordance with a proper interpretation of term "short-line workable route," it would be impracticable to determine whether rates to each of destinations covered by complaint were based on proper distances. Moreover, complainant has had benefit of lower rates during the period prior to date they were increased by combining scale territories, which more than offsets reductions which would result from change in method of figuring distances. Atlas Portland Cement Co. v. Director General. 122 I. C. C. 680.

(4b) Rates on metal beds from New Orleans to destinations in western Louisiana, Arkansas, Oklahoma, and Texas found not unreasonable or unduly prejudicial as compared with rates contemporaneously in effect from St. Louis, Atlanta, Chicago, Kenosha, and New York, to same destinations, except to extent that rates to Oklahoma exceed rates based on distance scale prescribed herein; that rates to Texas common points exceed Table 14 rate prescribed in 77 I. C. C. 473; and that rates to Texas differential territory exceed rates constructed in accordance with method prescribed, all subject to a minimum of 30,000 pounds. Reasonable rates prescribed for future. Crescent Bed Co. v. C., R. I. & P., 123 I. C. C. 41.

(4c) Class and commodity rates applying to, from, or between points in the Southwest and Kansas-Missouri territory found to be in generally chaotic condition, and the tariffs complicated and unsatisfactory. Comprehensive system of rates based on distance, and embodying uniform class percentages so adjusted as to permit greater carload movement on class rates needed to correct situation. Consolidated Southwestern Cases, 123 I. C. C. 203, 217, 235.

(4d) All-rail class and commodity rates on various articles should be on same level throughout the Southwest and designated portions of Kansas-Missouri territory; and on standard-rail lines a single scale of first-class distance rates should be used as basis for maximum reasonable interstate rates within those areas. Consolidated Southwestern Cases, 123 I. C. C. 203, 382, 385, 386.

(4e) Fifth-class rate on structural steel from Denison, Tex., to Henryetta, Okla., based on the short single-line distance over a route other than route of movement, found unreasonable as compared with lower rates contemporaneously in effect for similar distances between various points in same general territory based on the distance scale prescribed in 77 I. C. C. 473, and to extent it exceeded joint-line rate under that scale for the distance shipments actually moved. Reparation awarded. Okmulgee County Commrs. v. M.-K.-T., 126 I. C. C. 1.

(4f) Rates on lumber and related articles from points in coast, Spokane and Oregon groups (Groups 1, 2, and 3) to Gordon, Irwin, Merriman, and Eli, Nebr., found unreasonable to extent they exceeded rates based on distance scale prescribed in 104 I. C. C. 695, for appli-

cation in same general territory. Carriers required to preserve the existing competitive relationships between the various groups as pointed out in 78 I. C. C. 746, in publication of rates in conformity with that scale. Reasonable rates prescribed for future and reparation awarded. Walrath & Sherwood Lbr. Co. v. C. & N. W., 126 I. C. C. 97.

(4g) Upon further hearing, rates for interstate transportation of lignite coal from mines in North Dakota, to destinations in North Dakota, South Dakota, and Minnesota, over single lines, based on the so-called conference scale of distance rates set out in original report, 89 I. C. C. 726, extended at same rate of progression for distances over 400 miles with addition of 20 cents per ton for joint-line hauls, which is the scale formerly in effect on intrastate traffic in North Dakota, approved for future. Lignite Coal from North Dakota, 126 I. C. C. 243.

(4h) Rate on crude phosphate rock, from Tilphosco and Brewster, Fla., to Meridian, Miss., found unreasonable as compared with lower rates to various destinations in Alabama, Tennessee, and Georgia, for comparable distances, and to extent it exceeds distance rates prescribed in 101 I. C. C. 165, for application on phosphate rock from Florida mines to Knoxville, Tenn. Reasonable rate prescribed for future and reparation awarded. Meridian Fertilizer Factory v. A. C. L., 126 I. C. C. 478.

(4i) Proposed rates on hay between points in Texas and between those points and points in the Shreveport, La., group, based on a composite scale observing as minima the rates prescribed in 48 I. C. C. 312, or those under distance scale prescribed in 101 I. C. C. 116, whichever are higher, plus differentials when through Texas differential territory, using as maximum a rate now applicable as a maximum blanket rate between points in Texas common-point territory, found not justified. In 101 I. C. C. 116, commission stated that whatever rates would be ultimately prescribed between Texas points should be applied between Texas points and Shreveport, but because of loss involved respondents have been unwilling to extend this intrastate adjustment beyond 350 miles. The proposed rates are in nature of a compromise, are apparently satisfactory to no one, and to extent they exceed those constructed in accordance with distance scale prescribed in last cited case, would be unreasonable, and many of them unduly prejudicial. Hay Between Points in Tex., La., and Ark., 126 I. C. C. 524.

(4j) Upon further hearing, rates on sand and gravel from Montgomery, Ala., to La Grange, Ga., found not unreasonable as compared with those contemporaneously in effect from Birmingham. While rates from latter district were lower for like distances than between various other points in the Southeast, carriers point out that rates assailed were lower than those between points in the Southeast other than to the Birmingham and Atlanta groups and compare favorably with those prescribed in 83 I. C. C. 436. Moreover, a scale of maximum interstate rates on sand and gravel for application in this general territory was prescribed in 122 I. C. C. 133 and in accordance therewith, finding in former report 85 I. C. C. 184 reversed. Roquemore Gravel Co. v. A. & W. P. R. R., 126 I. C. C. 575.

(4k) Rates on cement from Ada, Okla., and points in the Kansas gas belt to Texas destinations in Scale III and Scale IV territories, and from Portland and Concrete, Colo., to said Scale IV territory, found unreasonable, and rates from Kansas gas-belt points found unduly prejudicial as compared with those from Ada, Bonner Springs, Kans., Sugar Creek, Mo., and Portland and Concrete, Colo. Reasonable and nonprejudicial distance rates prescribed for interstate application, which will remove the undue prejudice in relationship of interstate and intrastate rates within Texas. Adjustment of intrastate rates left to State authorities and carriers. Oklahoma Portland Cement Co. v. D. & R. G. W., 128 I. C. C. 63.

(4l) Joint-line interstate rates under agreed distance scale on livestock to Atlanta and Howell Stockyards, Ga., over certain lines under separate management and control, found reasonable. Complainant contended that as certain groups of carriers were under common management and control the single-line rates rather than joint-line rates should have been applied in conformity with order in 74 I. C. C. 419. However, carriers showed that the traffic policy of any of the roads was in no way dictated by officials of other carriers. Carriers found not to be under same management and control as defined in 87 I. C. C. 654. Bragg & Millsops Co. v. A. & W. P., 128 I. C. C. 238.

(4m) Original report, 120 I. C. C. 91, prescribing scale of rates on salt from Kansas producing points to points in the Southwest for distances up to and including 800 miles, modified to provide for extension of distance scale up to and including 1,000 miles; for addition of differentials for hauls through New Mexico to points in Texas differential territory when rate-making routes pass through New Mexico; and for the restriction of publication of prescribed rates to agency stations, provision being made for rates to intermediate nonagency stations. Salt Between Western and Southwestern Points, 128 I. C. C. 431.

(4n) In Salt Between Western and Southwestern points, 120 I. C. C. 91, division 3 prescribed reasonable maximum rates on salt, common, in packages, in blocks, or in bulk from Kansas producing points to destinations in southwestern territory. HELD, publication of rates permitted only to agency stations, with a provision to the effect that the rates to intermediate nonagency stations shall be the highest rate published to either of the agency stations between which the nonagency station is located. Scale extended to 1,000 miles, same fourth section relief granted. Salt between western and southwestern points, 128 I. C. C. 431.

(4o) Upon further consideration, findings in former report 123 I. C. C. 41, that rates on metal beds from New Orleans to destinations in Louisiana, Arkansas, Oklahoma, and Texas were not unreasonable or unduly prejudicial, except to Oklahoma, Texas common points, and Texas differential territory, minimum weight 30,000 pounds, modified and rates found unreasonable to extent they exceed column 55 and 41 rates, minimum weight 12,000 and 30,000 pounds respectively, prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203. Reasonable rates prescribed for future. Crescent Bed Co. v. C., R. I. & P., 128 I. C. C. 505.

(4p) In Crescent Bed Co. v. C., R. I. & P. Ry., 123 I. C. C. 41, the Commission found that the rates on metal beds, carloads, from New Orleans, La., to western Louisiana, Arkansas, Oklahoma and Texas were not and are not unreasonable or unduly prejudicial, except that the present rates to Oklahoma, Texas common points, and Texas differential territory, subject to a minimum weight of 30,000 pounds, are unreasonable. Metal beds, carloads, minimum 20,000 pounds, are rated fourth class in western classification. Lower commodity rates, however, are in effect from New Orleans to all of this destination territory, those to the Louisiana, Arkansas and Texas destinations being subject to minima of 12,000 and 30,000 pounds, and those to the Oklahoma destinations to a minima of 30,000 and 35,000 pounds. HELD, rates attacked unreasonable to extent they exceed column 55 and column 41 rates, from and to the same points prescribed in Consolidated Southwestern Cases 123 I. C. C. 203, with minimum weights of 12,000 and 30,000 pounds, respectively. Crescent Bed Co. v. C., R. I. & P. Ry., 128 I. C. C. 505.

(4q) Rates on brick and clay products included in uniform brick list from Perla and Fort Smith, Ark., to points in Alabama, Florida, Georgia, Kentucky, Mississippi, and Tennessee, except points on the Mississippi River, found unreasonable as compared with lower rates constructed under distance scales prescribed in 107 I. C. C. 681; 88 I. C. C. 543; 68 I. C. C. 213, for application in Southeast, official classification territory, and under uniform brick list, respectively, and to extent they exceed 12 per cent of first-class (column 100) all-rail rates approved or prescribed between Perla and Fort Smith, on the one hand, and points in said States on the other, in Consolidated Southwesten Cases, 123 I. C. C. 203. Reasonable rates prescribed for future. Acme Brick Co. v. A. & V., 128 I. C. C. 715.

(4r) Complainant attacked commodity rates charged on brick and other clay products in the uniform brick list, in carloads, from Perla and Fort Smith, Ark., to Alabama, Florida, Georgia, Kentucky, Mississippi and Tennessee as unreasonable and as compared with rates from points in the six states named to Arkansas, with rates from St. Louis, Mo., and other brick producing points, principally in the south, to points in the states above named, and with the intrastate rates in Mississippi and Tennessee, as unduly prejudicial. Perla is in southern Arkansas on the M. P. Fort Smith is in northwestern Arkansas served by several carriers. The short line distances to Memphis, Tenn., from Perla and Fort Smith are 174 and 296 miles, in each instance made over M. P. to Little Rock, Ark., thence C., R. I. & P. Single line distances are 189 and 308 miles, in each instance over the M. P.

Through rates from Perla and Fort Smith and, generally speaking, other points in the southwest, to the southeast are usually made by combination of rates to and from Memphis. At the time of the hearings proportional rates applied from Perla and Fort Smith to Memphis of 11c and 16c. These proportional rates were 2.5c and 1c less than the local rates from these points. Rates on brick from St. Louis, Mo., and alleged competitive points, to the southeast are constructed on the basis of 4.5c over the rates from Cairo, Ill., and Evansville, Ind. Distances from St. Louis to Cairo and Evansville are 152 and 165 miles, respectively. The rates here assailed are not only much higher than the average of the respective scales prescribed by the Commission for application on the same commodities in each of the territories through which shipments from Perla and Fort Smith are transported in moving to the southeast but are also substantially in excess of the higher or southwestern brick scale. HELD, rates attacked unreasonable to extent they exceed 12% of first class all-rail rates Consolidated Southwestern Cases, 123 I. C. C. 203. Acme Brick Co. v. A. & V. Ry., 128 I. C. C. 715.

(4s) Rates on sand from Pacific, Mo., to Fort Smith, Ark., found unreasonable on shipments moving over St. Louis-San Francisco, but not unreasonable on those moving over the Missouri Pacific. Distance rates over the Frisco are based on distance scale prescribed in 77 I. C. C. 473, and rate over Missouri Pacific is lower than that resulting from use of that scale. Harding Glass Co. v. M. P. 128 I. C. C. 754.

(4t) Complainant alleged that the rates on portland cement and wall plaster, in straight or mixed carloads, from Hanover, Mont., and on portland cement, carloads, from Trident, Mont., to the western and central portions of North and South Dakota are unreasonable, unduly prejudicial and unduly preferential of certain points in western trunk line territory. Joint rates are not maintained except to destinations in South Dakota on the Burlington. One factor single line rates apply only to stations west of the Missouri river; to stations east thereof rates are made on combination. Hanover is 7 miles west of Lewistown, Mont., and 110 miles southeast of Great Falls, Mont., on the G. N. and C. M. & St. P. Trident is 6 miles northwest of Logan, Mont., and 68 miles southeast of Helena, Mont., on the N. P. The record is convincing that the rates on cement from Hanover and Trident to this territory of destinations are unreasonable. Transportation and other conditions affecting the movement of this traffic are not so dissimilar from those within existing scale IV territory, as to justify rates higher than those applying within that territory. RATES ON WALL PLASTER. Piedmont and Black Hawk, S. D., alleged to be preferred, Fort Dodge, Ia., also. Taking into consideration the transportation conditions, it appears from a study of the rates in evidence (a) that with some exceptions, the rates from Hanover are unreasonable, especially those made on combination; (b) that certain of the intrastate rates from Piedmont and Black Hawk to South Dakota destinations are unduly preferential; and (c) that the rates to this territory of destination from other points alleged to be preferred, and from Piedmont and Black Hawk to North Dakota are not unduly preferential. No order will be entered at this time in respect of the relation as between intrastate and interstate rates but opportunity will be afforded to the carriers and the state authorities of South Dakota to remove the remaining undue prejudice and preference and unjust discrimination against interstate commerce. The present bases on mixed shipments give an undue advantage to certain other shipping points, alleged to be preferred. Defendants have no objection to granting the same privilege as to stopping in transit to complainant that is given to other producers. HELD, rates on cement, carloads from Hanover and Trident unreasonable and unduly prejudicial to extent they exceed rates ranging from 24.5c for 400 miles to 42.5c for 1,000 miles. Rates on wall plaster unreasonable and unduly prejudicial to extent they exceed rates ranging from 35.5c for 400 miles to 62.5c for 1,000 miles minimum 30,000 pounds, 31c to 54.5c minimum 40,000 pounds and 26.5c to 46.5c, 60,000 pounds. Three Forks Portland Cement Co. v. C. B. & Q. R. R., 129 I. C. C. 107.

(4u) Complainant attacked rates on limestone, broken, crushed or ground, in carloads, from Colrock and Margerum, Ala., to southern territory as unreasonable and unjustly discriminatory and unduly prejudicial to extent they exceed

the rates applied on crushed stone in southern territory. Colrock and Margerum are on the main line of the Southern about 15 and 23 miles, west of Sheffield, Ala. Effective May 6, 1925 the Southern published its crushed stone scale of distance commodity rates on asphaltic limestone, broke or crushed, from Margerum to destinations on its system lines, except to stations in Indiana, Illinois and Kentucky. These rates were made applicable from Colrock on July 15, 1925, and are now in effect. HELD, rates attacked unreasonable and unduly prejudicial to extent they exceed rates ranging from 60c single line and 80c joint line for 5 miles to 390c for 1,000 miles. Colbert Limerock Asphalt Co. v. A. C. R. R., 129 I. C. C. 177.

(4v) In Cooperative Oil & Paint Co. v. Director General, 88 I. C. C. 747, the Commission found that the rates on roofing and paving material, in carloads, from St. Louis and Kansas City, Mo., Cleveland and Lockland, O., and Chicago, Aurora, Madison, Marseilles, and East St. Louis, Ill., to Little Rock, Texarkana and Hope, Ark., and Shreveport, La., were not and are not unreasonable or otherwise unlawful, and dismissed the complaint. On further hearing, 122 I. C. C. 227 the finding was affirmed. HELD, a new scale of rates applicable on roofing and paving material, in carloads, from and to the points here considered has been prescribed in the Consolidated Southwestern Cases, 123 I. C. C. 203, complaint dismissed. Cooperative Oil & Paint Co. v. Director General, 129 I. C. C. 213.

(4w) In Fertilizers between southern points, 113 I. C. C. 389, the Commission prescribed a distance scale of rates within southern territory. It appears that in the maintenance of groups under the authority of that order, the rates between various points will be somewhat higher than they would be if the scale were strictly applied on a point to point basis. Such departures from the scale were forbidden in fourth section order 9346, issued in connection with the original report, and the carriers now ask that that order may be amended so that it will not interfere with the grouping plan. Fourth section order 9346 will be amended to permit the maintenance of rates from and to intermediate points on circuitous routes in excess of the scale basis strictly applied, but subject, however, to the limitation that on and after Sept. 20, 1927, such rates shall not exceed the scale basis by more than 15c per ton. Carolina R. R., asks for authority to maintain the same rates to Snow Hill as are contemporaneously in effect to Maury, and to maintain rates to the intermediate stations on the basis prescribed in the report. Commission is not convinced that the relief sought is necessary or desirable under the circumstances, and the petition will be denied. A supplemental order will be issued authorizing the short or weak lines to maintain the higher basis of 50c per ton over the standard line scale. Fertilizers between southern points, 129 I. C. C. 215.

(4x) Complainant alleged commodity rates on coke, carloads, from Troy, N. Y., to Massachusetts, Rhode Island, and Connecticut, on the New Haven, and Central New England, were and are unreasonable and unduly prejudicial. The N. Y. C. and B. & A. are willing that through rates be established from Troy. The New Haven and Central New England ask that the scale be established for single line hauls and that a difference of at least 20c be maintained between rates for single line and joint line hauls. HELD, rates attacked unreasonable to extent they exceed a distance scale ranging from 113c per ton for 10 miles to 441c for 500 miles, reparation awarded. Hudson Valley Coke & Products Corp. v. N. Y. N. H. & H. R. R., 129 I. C. C. 472.

(4y) Complainant alleged that the rates on portland cement, in carloads, from Mason City, Ia., to northern Minnesota, North Dakota, and points on the stub branches of the Soo Line extending into South Dakota to Greenville and Pollock, were and are unreasonable, unduly prejudicial and unduly preferential of cement producing points in western trunk line territory, including Steelton, Minn., and the Kansas gas belt, and Duluth, Minn. The rates prescribed are those prescribed in Lehigh Portland Cement Co. v. Director General, 61 I. C. C. 613, and are the scale III and IV rates fixed in the original report in Western Cement Rates, 48 I. C. C. 201. The basis sought are the revised scale III and IV rates prescribed in the second supplemental report in Western Cement Rates 69 I. C. C. 644. The Mason City cement mills are served directly by the Northwestern, C. G. A., M. & St. L. and Rock Island, and through switching arrange-

ments by the Milwaukee. They are nearer to this territory of destination than any cement mill, except that at Steelton. Application of the destination scale through from Mason City appears appropriate in this case. The more general application of the destination scale principle to cement rates in western territory was discussed with approval, although not prescribed because the record was not sufficiently comprehensive in Iola Cement Mills Traffic Asso. v. A. V. I. Ry., 115 I. C. C. 49, 63. HELD, rates assailed not unduly prejudicial but for future will be unreasonable to extent they exceed for the distance through from Mason City, the present revised scale III rates to extended scale III territory in Minnesota and North Dakota and to points in South Dakota on the Greenville branch of the Soo Line, and the present revised scale IV rates to extended scale IV territory in North Dakota and to points in South Dakota on the Pollock branch of the Soo Line. Lehigh Portland Cement Co. v. B. F. & I. F. Ry., 132 I. C. C. 3.

(4z) Complainant alleged that the commodity rates on sand and gravel from La Grange, Mo., to destinations in central Illinois and southeastern Iowa are unreasonable, unjustly discriminatory and unduly prejudicial. Shipments from La Grange into Illinois move south along the west bank of the river 8.5 miles to West Quincy, Ill., and thence over the bridge between the latter point and Quincy, Ill. The points in Illinois to which rates are alleged to be unreasonable are on the Burlington, C. M. A., Big Four, C. P. & St. L., C. & E. I., T. P. & W. and Wabash. HELD, rates to central Illinois unreasonable and unduly prejudicial to extent they exceed the basis of rates prescribed in Dolese Bros. Co. v. A. T. & S. F. Ry., 89 I. C. C. 110 and 122 I. C. C. 133. HELD, further, rates to points in southeastern Iowa on the Burlington, east of a line drawn from Pekin, Ia., through Ottumwa to Bloomfield, Ia., and on and south of the Burlington from Burlington to Pekin, unreasonable to extent they exceed the Iowa interstate distance scale, reparation awarded. Missouri Gravel Co. v. C. B. & Q. R. R., 132 I. C. C. 200.

(5a) Complainant alleged rates and minimum weight on iron beds and furniture were unreasonable. Original report 128 I. C. C. 445. HELD, rates assailed on iron beds and other articles of furniture classified therewith, in carloads, from Memphis, Tenn., to destinations in central, Buffalo-Pittsburgh and southern territories, are and for the future will be, unreasonable to extent they exceed, with a minimum of 12,000 pounds, the fourth class rates to be established under Southern Class Rate Investigation, 100 I. C. C. 513, 199 I. C. C. 300, 113 I. C. C. 200 and 128 I. C. C. 567, and to the extent they exceed, with a minimum of 30,000 pounds, the sixth class rates to be established thereunder. Memphis Freight Bureau v. A. G. S. Ry., 132 I. C. C. 223.

(5b) Complainant alleged rates on pu'l rods, sucker rods, and sucker rod joints, in carloads, from St. Louis, Mo., and Toledo, O., to Oklahoma and Texas were unreasonable. Both kinds of rods are wired for shipment in bundles of three, each bundle weighing around 100 pounds, and are loaded in open top equipment in straight or mixed carloads. St. Louis is the pivotal point in the rate adjustment under consideration, the rates from Toledo being made certain differentials over that point according to the adjustment of rates generally from defined territories to the southwest. The rates sought from St. Louis are based on the joint line distance scale of commodity rates prescribed in Memphis Southwestern Investigation, 77 I. C. C. 473, for application on bags, soap and potatoes throughout southern Missouri, Arkansas and Louisiana west of the Mississippi river. Pull rods were formerly rated class A, minimum 36,000 pounds, and were grouped with oil well outfits and supplies in western classification. Since Aug. 15, 1926 they have been rated fifth class. That classification rates sucker rods and sucker rod joints fifth class, minimum 36,000 pounds, when made of iron or steel, and provides for the application on sucker rods and sucker rod joints of the rating and minimum on oil well supplies when shipped in mixed carloads with these articles. HELD, rates assailed were not unreasonable in the past but will be unreasonable for the future to extent they exceed the column 32½ basis of rates prescribed in Consolidated Southwestern Cases, supra, 123 I. C. C. 203, minimum 40,000 pounds. Humble Oil & Refining Co. v. B. S. L. & W. Ry., 132 I. C. C. 225.

(5c) Complainant alleged commodity distance rate charged of $1.20 on 100 cars of gravel and 34 cars of sand shipped

from Paducah, Ky., to Menglewood, Tenn., between May 5 and July 21, 1923 was unreasonable and in violation of section four. On May 23, 1923 a commodity rate of $1.02 was established from Gravel Switch, Ky., to Menglewood on gravel. At the same time a rate of 90c was established from the same point to Dyersburg, Jackson, Bolivar and Memphis, Tenn., 112, 132, 160 and 188 miles. These rates did not apply on sand. Gravel Switch is on defendants line 22 miles northeast of Paducah, Ky., the latter point being directly intermediate to Menglewood. Effective July 22, 1923 the rate was reduced to $1.10. HELD, rates assailed not unreasonable or otherwise unlawful, complaint dismissed. Forcum James Lumber & Cooperage Co. v. I. C. R. R., 132 I. C. C. 293.

(5d) Complainant alleged commodity rates on cottonseed cake and meal, in straight and mixed carloads, from Quanah, Sweetwater and Lubbock, Tex., to Texas, Oklahoma, New Mexico, Colorado, Wyoming, Montana and Nebraska were and are unreasonable. The Commission prescribed a distance scale of rates in Oklahoma Corporation Commission v. A. & S. Ry., 98 I. C. C. 183 in this territory. HELD, rates assailed were unreasonable to extent they exceeded rates prescribed in 98 I. C. C. 183, reparation awarded. Quanah Cotton Oil Co. v. A. T. & S. F. Ry., 132 I. C. C. 304.

(5e) Complainant alleged that rates on cement in the entire southeastern territory were unreasonable, unjustly discriminatory and unduly prejudicial. Cement is frequently, and perhaps usually, loaded to the maximum capacity of the cars furnished, although the comparatively low minimum weights now prevalent in some parts of the south doubtless have an effect on the average loading. Cement may be loaded in any kind of moisture proof equipment and loss and damage claims are negligible. It is attractive traffic from a transportation standpoint, is eagerly sought by the carriers, and moves quite regularly throughout the year, particularly in the southern states, where climatic conditions make construction work possible at all times. The present rates on cement between points in the southern states, exclusive of the Mississippi valley, conform to no recognizable plan. The rates to the ports and many of the large and important consuming centers and junction points are lower, both relatively and actually, than the rates to intermediate points, even over the direct lines. The adjustment largely reflects the old "basing point" system. Defendants admit that the present rates are in urgent need of revision and therefore make no effort to justify them. The intrastate rates are equally inconsistent. On the whole it seems that the Commission may safely reach the conclusion that there is no great difference between densities in western cement scale II territory and in southern territory, but that the comparison would probably favor the former territory if it were possible to segregate its density from that of surrounding territories. The densities in trunk line and central territories are, of course, substantially higher than in either southern territory or the western district. In southwestern territory, where the Commission has normally fixed rates somewhat higher relatively than in southern territory, the Commission has prescribed cement rates on the same III basis in two important cases. The present rates on cement from all points of production to destinations in the Florida peninsula are the rates to Jacksonville, plus proportional rates south thereof, subject to a deduction of 2.5c under the socalled Jones combination tariff. HELD, rates assailed unreasonable to extent they exceed a distance scale of rates ranging from 4c for 5 miles to 46.5c for 1500 miles. Southern Cement Rates, 132 I. C. C. 427.

(5f) Complainant alleged that commodity rate of $2.30 applicable on gypsum block, carloads, from Port Clinton, O., to Detroit, Mich., from June 1923 to Oct. 1924, was unreasonable and unduly prejudicial to extent it exceeded $1.65. Complainant relies largely on Acme Cement Plaster Co. v. A. C. & Y. R. R., 47 I. C. C. 1, 53 I. C. C. 46 and 77 I. C. C. 691. Port Clinton is on the main line of the N. Y. C. about 35 miles east of Toledo, O., and 101.3 miles from Detroit. HELD, rate assailed not shown to have been unreasonable or otherwise unlawful, complaint dismissed. American Gypsum Co. v. N. Y. C. R. R., 132 I. C. C. 561.

(5g) Complainant alleged that rates on plaster, carloads, from Portland, Colo., to Panhandle region northwest of Wichita Falls and Abilene, Tex., and in the extreme northeastern portion of New Mexico, are unreasonable and unduly prejudicial. Portland is about 26 miles west of

Pueblo, Colo., and is served by Santa Fe and D. & R. G. W. At present complainant only enjoys commodity rates only to destinations on the Santa Fe. The record makes it clear that in many instances the relationship in the rates as between Portland on the one hand and Acme, Tex., on the other hand, results in undue prejudice and preference. It is equally clear that the evil lies in the rates from Portland, and not in those from Acme. The record shows no difference in transportation conditions which would justify a level of rates, mile for mile, from Portland, higher than that which obtains from Acme, Tex., and Acme, N. M., to the same territory. HELD, rates charged unreasonable and unduly prejudicial to extent they exceed rates ranging from 21.5c to 41c. Colorado Portland Cement Co. v. A. T. & S. F. Ry., 132 I. C. C. 671.

(5h) Complainant alleged that commodity rate charged on mine run and crude fire clay, in carloads, from Springfield, Ill., and Clayton and St. Louis, Mo., to Bartlesville, Okla., are unreasonable and unduly prejudicial. Springfield is not a producing point of fire clay. The Shipments moving during April and May 1924 represented surplus material on hand when complainants plant at Springfield was closed. The distance over the route of movement is 547 miles, charged 20.5c. There is no probability of any future movement of this commodity from Springfield and there is no necessity, therefore, for relief for the future from this point. Charged from Clayton and St. Louis 14.5c, distance 494 miles. Crude fire clay is of low value, ordinarily being worth less than $2 per ton. The 9702 scale was but an extension of the old Shreveport basis prescribed on sand and gravel in 1918, and these rates were not altered by the findings in Consolidated Southwestern Cases, 123 I. C. C. 203. HELD, rates charged unreasonable to extent they exceed 13.5c from Clayton and St. Louis, Mo., and 14.5c from Springfield, and for the future the rate from Clayton and St. Louis to Bartlesville via the direct route will be unreasonable to extent it exceeds 12.5c, reparation awarded. National Zinc Co. v. C., R. I. & P. Ry., 132 I. C. C. 724.

(5i) While in 48 I. C. C. 201, commission observed that "under present rate systems rates seem more nearly proportional to square root of the distance than to distance itself," this statement must be taken with qualification, as functions of the parabolic curve thus described tend toward a condition as distance increases, where added mileage does not carry any increment in the rate at all. Calif. Growers' & Shippers' Protective League v. S. P., 129 I. C. C. 25, 38.

(5j) Sixth-class rates on crushed stone moving interstate from Security, Md., to Best Gate, Md., found unreasonable as compared with those under distance scale prescribed in 49 I. C. C. 681; 100 I. C. C. 411, from Pennsylvania and Maryland points to destinations in Maryland, New York, New Jersey, Delaware, Virginia, and District of Columbia, and to extent they exceeded lower commodity rates subsequently established. Reparation awarded. North American Cement Corp. v. W. M., 129 I. C. C. 90.

(5k) Rates on Portland cement from Hanover and Trident, Mont., to western and central portions of North Dakota and South Dakota, coterminous with original and extended cement Scale IV territory in those States, found unreasonable as compared with rates under that scale prescribed in 48 I. C. C. 201; 69 I. C. C. 644, from Portland, Colo., to Montana Scale IV territory and Utah destinations; from El Paso, Tex., to groups just described for comparable distances; and unreasonable and unduly prejudicial as compared with lower rates from Mason City, Iowa, and Steelton and Duluth, Minn., competing points, to extent they exceed distance rates herein prescribed. Reasonable and nonprejudicial rates prescribed for future. Three Forks Portland Cement Co. v. C., B. & Q., 129 I. C. C. 107.

(5l) Rates on wall plaster from Hanover, Mont., to western and central portions of North Dakota and South Dakota, found unreasonable as compared with rates contemporaneously in effect from competing points in Loveland, Colo., Laramie, Wyo., and St. Paul, Minn., and from South Dakota points to destinations in North Dakota, for comparable distances; and unreasonable and unduly prejudicial as compared with intrastate rates from Piedmont and Black Hawk, S. Dak., to various South Dakota destinations. While distance rates herein prescribed will not completely remove

existing undue prejudice and preference between intrastate and interstate rates in South Dakota, no order will at present be entered with respect thereto but carriers and State authorities will be given opportunity to adjust their rates so as to remove balance thereof. Reasonable and nonprejudicial basis of rates prescribed for future. Three Forks Portland Cement Co. v. C., B. & Q., 129 I. C. C. 107.

(5m) Contention that as proportional rate is but part of a through rate it is impossible to determine an issue of undue prejudice to one market and undue preference of another solely with respect to proportional rate unless evidence of though rates based on each market is available, not sustained, since each of such rates must be judged upon its own merits. See 46 I. C. C. 343, 350. This is especially apt where inbound rates to prejudiced or preferred markets are upon a distance scale. Des Moines Board of Trade v. F. D., D. M. & S., 129 I. C. C. 138, 145.

(5n) Rates on limestone containing 2.5 per cent or more of asphalt, broken, crushed, or ground from Margerum and Colrock, Ala., to destinations in southern territory, except Florida, found unreasonable and unduly prejudicial as compared with rates on similar asphalt rock from Oklahoma and Texas to Mississippi River points and west thereof and with those on sandstone asphaltic rock produced at Kyrock, Ky., competitive products; with rates prescribed in 96 I. C. C. 319, on crushed asphalt rock from Dougherty, Okla., to Kansas City, Mo.-Kans.; and to extent they exceeded distance rates herein prescribed. Reasonable maximum rates prescribed for future and reparation denied. Colbert Limerock Asphalt Co. v. A. C., 129 I. C. C. 177.

(5o) Rates on lard substitutes from Greenville, Tex., to Arkansas and Louisiana destinations west of Mississippi River and to Joplin, Mo., collected on basis of rates from Fort Worth, Tex., with which Greenville was apparently grouped, found unreasonable to extent they exceeded rates based on distance scale prescribed in 22 I. C. C. 160. While lard substitutes were not originally included in list of commodities on which that scale applied, it has been prescribed for application on packinghouse products in southwestern territory generally and was found to be a reasonable basis on lard substitutes in 32 I. C. C. 192, and other cited cases. Reparation awarded. Texas Refining Co. v. C., R. I. & G., 129 I. C. C. 304.

(5p) Rate on lumber from Luverne, Ala., to Sarasota, Fla., found not unreasonable as compared with lower rates under distance scale for comparable hauls. Scale referred to was not scaled up to length of haul here involved and did not cover the shipment. Moreover, rate assailed compares favorably with rates between various points in same general territory for comparable distance and is lower than rate constructed on basis prescribed in Southern Class Rate Investigation, 100 I. C. C. 513; 109 I. C. C. 300; 113 I. C. C. 200. Aycock-Holley Lbr. Co. v. A. C. L., 129 I. C. C. 306.

(5q) Combinations of single-line interstate distance rates on cream, in 10-gallon cans, in baggage cars in passenger and mixed-train service, from certain points in North Dakota and South Dakota to Aberdeen, S. Dak., found not unduly prejudicial but unreasonable as compared with rates under the Beatrice, C. F. A., and Kirschbaum scales prescribed in 15 I. C. C. 109; 46 I. C. C. 601; and 100 I. C. C. 28, respectively, and to extent they exceeded distance rates herein prescribed, with addition of drayage charges as herein provided. Reasonable rates prescribed for future and reparation awarded. Beatrice Creamery Co. v. C., M. & St. P., 129 I. C. C. 375.

(5r) Rates on coke from Troy, N. Y., to destinations in New England territory found unreasonable as compared with contemporaneous rates under Seaboard distance scale prescribed in 62 I. C. C. 317, 327, or rates of same level from points in New Jersey, Rhode Island, and Massachusetts to same destinations, and to extent they exceeded distance rates based on shortest routes over which carload traffic can be moved without transfer of lading, subject to minimum weights as herein provided. See 113 I. C. C. 200. Reasonable rates prescribed for future and reparation awarded. Hudson Valley Coke & Products Corp. v. N. Y., N. H. & H., 129 I. C. C. 472.

(5s) Class rates on rough quarried granite, c. l., from East Weymouth, Mass., to local points on the N. Y., N. H. & H., found unreasonable and unduly prejudicial as compared with lower commodity rates contemporaneously applicable on common brick and on stone and granite paving and curbing; and to extent they exceeded, exceed, or may exceed, rates based on distance scale herein prescribed, minimum 48,000 pounds. Reparation awarded. Plymouth Quarries v. N. Y., N. H. & H., 129 I. C. C. 621.

(5t) Joint rates on wool, in the grease, in sacks, from points in Nebraska, Kansas, and Missouri, just west of Missouri River, to Boston, Mass., based on distance scale prescribed in Wool Rates Investigation, 1923, 91 I. C. C. 235, found not unreasonable, unduly prejudicial, or unjustly discriminatory as compared with combination of proportional rates previously in effect over same territory; with rates prescribed in 77 I. C. C. 431, from Iowa points to Boston; and rates to Boston from territory west of that here involved. Attack is directed against reasonableness of scale as applied from a small portion of territory, which exceeded for a time the aggregate of intermediates. However, record shows this violation was removed by certain tariff restrictions and presumption of uneasonableness found to have been rebutted. Boston Wool Trade Asso. v. A., T. & S. F., 129 I. C. C. 681.

DIVISIONS

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
§1a. Orders of Commission.

II. PUBLICATION AND TARIFFS.
§2. Obligation to file.

III. COMPUTATION OF DIVISIONS.
§3. In general.
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§10. Evidence and procedure.
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CROSS REFERENCES

See Advanced Rates §7 (6), §18 (10); Allowances; Common Carrier IV, §6½; Evidence §13 (3); Express Companies §37. Industrial Railroads; Jurisdiction of Commission; Passenger Fares and Facilities §11½; Percentage Rates; Reasonableness of Rates §10½; Tap Lines §6½, §7, §14; Through Routes and Joint Rates §14, §18.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) Upon contention that commission is without jurisdiction to require an adjustment of divisions on past shipments because, one-half of the carrier's excess income for some years having been recaptured under section 15a, the earnings on value of railway property held for and used in service of transportation for those years have been "established by law;" and that excess earnings for other years are being held in abeyance to be recovered by and paid to the proper authority whenever net railway operating income, based upon value of property, have been finally determined. FOUND: Contentions are not well founded, recapture payments having been the result of tentative computations based upon carrier's figures and not upon a finding by commission. Divisions Received by B. R. R. & C. Co., 104 I. C. C. 415, 434.

(b) Upon contention that commission is without jurisdiction to prescribe divisions of joint rates, except for future application, where joint rates were not established pursuant to an order issued by it. FOUND: Joint rates here in issue being established pursuant to commission's findings in 58 I. C. C. 220, they come within plain language of section 15 (6) of the act, which gives commission power to require a readjustment of divisions for period subsequent to date investigation was instituted where joint rates were established pursuant to a finding or order of commission. See also 89 I. C. C. 695; 96 I. C. C. 402. Divisions

Received by B. R. R. & C. Co., 104 I. C. C. 415, 433, 434.

(c) Under the law, the commission is authorized to prescribe divisions only where joint rates are involved, or in a proceeding where joint rates are prescribed. Proportional Rates on Livestock, 109 I. C. C. 417, 424.

(d) Power or authority of commission to pass upon lawfulness of international joint rates and fix maxima in which the American lines may lawfully participate is not, as a matter of law, dependent upon adequacy or inadequacy of divisions accorded or available to those lines. Spanish River Pulp & Paper Mills v. A. & W., 120 I. C. C. 251, 252.

(e) The jurisdiction of the commission to require an adjustment of divisions between common carriers in the past is limited to joint rates established pursuant to its findings, and, in cases of that class, from the date the complaint was filed. St. Louis-San Francisco Ry. v. N. A. Ry., 123 I. C. C. 599, 603.

(fg) The Commission has no jurisdiction to fix the divisions of joint intrastate rates. It has no jurisdiction to fix the division of joint interstate rates retroactively unless those rates were established pursuant to an order or finding by it, in which case it may require an adjustment of divisions from the date of filing the complaint, the date of the order of investigation, as the case may be. Sugar Land Ry., 126 I. C. C. 529, 534.

(h) The power of the Commission over divisions is founded upon the public interest; that the carriers are mutually dependent parts of the transportation system; that the public interest requires that all essential parts be maintained, so far as possible, in effective working condition; that the relative amount and cost under economical and efficient management of the service rendered is a prime factor in determining the fair and equitable share of joint revenue which each carrier shall receive; and that included in such cost is a due proportion of the burden of maintaining the financial integrity and credit of the carrier. New England Divisions, 126 I. C. C. 579, 592.

(i) Upon analysis, the "equitable consideration" stressed by defendants mean only that the complainants are in great need of the joint rates in question while defendants are not in such need, and, indeed might in some cases prefer to refrain from participating. It follows that defendants have a strategic advantage, if divisions were to be fixed by the ordinary process of bargaining. But one of the duties of a common carrier is to participate in such joint rates as the public interest requires. This is an incident of their public undertaking, and equity does not necessarily demand that they be compensated by larger divisions in the instances where it might be more advantageous to confine traffic to their own lines. In the opinion of the Commission it was to avoid the unduly prejudicial effect of such strategic advantages upon the weaker carriers and the resulting impairment of transportation facilities upon which substantial proportion of the country depends that the powers of the Commission over divisions were clarified and strengthened. New England Divisions, 126 I. C. C. 579, 654.

(j) Interstate Commerce Act, § 1 (4), as amended by Transportation Act 1920, § 400 (Comp. St. § 8563), makes it the duty of carriers to establish through routes, and in case of joint rates to establish just and equitable divisions thereof. Section 15 (6) as amended by section 418 (Comp. St. § 8583), authorizes the Interstate Commerce Commission, after hearing, to change such division on a finding that the division in force is unjust and inequitable, and, "in cases, where the joint rate * * * was established pursuant to a finding or order of the Commission," it may make its order changing the division retroactive. HELD that, where the rate in question was a changed rate, put into effect by the carriers themselves, but under authority granted by Commission, it was established "pursuant to a finding or order of the Commission," within the meaning of the statute, and that in making a new division the Commission had power to make the change effective from the date of institution of the proceedings for that purpose. Brimstone R. & Canal Co. v. United States, 17 Fed. (2d) 165.

(k) Commission has no jurisdiction to fix divisions of joint intrastate rates. Sugar Land Ry. Co., 126 I. C. C. 529, 534.

(l) Commission has no jurisdiction to fix divisions of joint interstate rates retroactively, unless those rates were established pursuant to an order or finding by it, in which case it may require ad-

justment from date of filing complaint, or date of order or finding, as the case may be. See Section 15 (6); 61 I. C. C. 272. Sugar Land Ry. Co., 126 I. C. C. 529, 534.

(m) Joint rates in which Canadian lines participate found to apply to a service which is not "wholly within the confines of the United States" within meaning of section 1 of the act, and over which the commission has no jurisdiction. The commission having no power to prescribe such joint rates, it must follow that it is also without power to prescribe their divisions. In absence of treaty provisions or concurrent legislation in both countries affecting the matter, conflict of authority would be inevitable if any different rule were followed. New England Divisions, 126 I. C. C. 579, 637, 671.

III. COMPUTATION OF DIVISIONS.

§3. In General.

See Advanced Rates, §18 (10); Through Routes and Joint Rates §11 (2) (p).

(a) In 265 U. S. 274, 284, the Supreme Court said that in fixing divisions commission may take into consideration financial needs of a weaker road and give it a division larger than justice, merely as between the parties, would suggest in order to maintain it in effective operation as part of an adequate transportation system, and in 263 U. S. 456, 478, stated that transportation act seeks affirmatively to build up a system of railways prepared to handle promptly all interstate traffic of the country. Similar considerations may properly govern commission's action in establishing through routes, and commission has taken them into account in cases of this nature. See 78 I. C. C. 328; 95 I. C. C. 237; 88 I. C. C. 312. Ft. S., S. & R. I. R. R. Co. v. A. & V., 107 I. C. C. 523, 525.

(b) Based principally upon its weak financial condition and inability under present divisions to earn sufficient revenue to pay cost of operation, taxes, and a fair return on investment, and taking into consideration relative cost of service, fact that carrier is wholly an originating and delivering line, amounts of revenue required to pay operating expenses, taxes, and a fair return, and importance to the public of the transportation services afforded, existing divisions of joint interstate rates accorded the Minnesota Western R. R. found unreasonable and inequitable. Reasonable and equitable divisions prescribed. Minnesota Western R. R. v. A., T. & S. F., 109 I. C. C. 127.

(c) While in numerous cases the commission has recognized the rate prorate basis as an approximate means of dividing rates in accordance with amount and cost of service rendered, it is evident that the computation of divisions on such basis between carriers in official and western territories, made solely on basis of the respective first-class rates, is not convincing. Different classifications apply in the two territories, rates on lower classes bear considerably different percentage relationships to first class in the east from those in the west, and much traffic between the two territories moves on combinations of local or proportional factors to and from Chicago or Mississippi River gateways. Revenues in Western District, 113 I. C. C. 3, 24.

(d) Proposal of C., B. & Q., to withdraw transit arrangements at Denver, Colo., on grain and products originating on connecting lines, when previous transit has been accorded at Missouri River junctions and traffic is delivered to it for transportation to far western States under joint rates, found not justified. Under present divisional arrangements inbound carriers to river junctions retain their full locals, whereas for movement therefrom to Denver the Burlington is required to perform transportation at a deficit. Record affords no convincing reasons why revenue on traffic accorded a through status by virtue of transit arrangements should not be divided in same way as that on through traffic moving without interruption. Moreover, Missouri River and Nebraska grain markets have long enjoyed present arrangements, curtailment of transit would seriously affect their interests, and situations of character here disclosed should be met by increasing revenues to a reasonable level for existing services rather than by curtailment of services. Transit Privileges on Grain, 113 I. C. C. 374.

(e) The ultimate question here is whether the east side lines or west side lines should bear the expense incident to the transfer across the Mississippi river from East St. Louis, Ill., to St. Louis, Mo., of practically all carload and less carload through freight originating east of the East St. Louis-St. Louis dis-

trict and destined west thereof. Complainants are four of the important west side carriers serving St. Louis, the Frisco, M. P., M. K. T. and Rock Island. The principal defendants are the east side carriers serving East St. Louis, 13 in number, although most of the carriers in the eastern and southern groups are also named as defendants. None of the east side lines serving East St. Louis has its own rails across the river to St. Louis and none of the west side lines serving St. Louis have their own rails directly across the river to East St. Louis. The traffic is transferred from one side of the river to the other by the Terminal Railroad Association and its subsidiaries. For years past the west side lines have borne the transfer charges on practically all eastbound and westbound through traffic. They are willing to continue the present practice with respect to all eastbound traffic, but contend that the east side lines should bear the charges on all the westbound traffic. The practice of breaking the joint rates on East St. Louis rather than on St. Louis is apparently due largely to the fact that in 1877 the C. & A., extended a line from the west across the Mississippi river at Louisiana, Mo., and thence south through Alton, Ill., to East St. Louis. Having its own line into East St. Louis, it there interchanges its traffic with the east side lines. To meet this situation the west side lines, other than the Alton, absorb the transfer charge between St. Louis and East St. Louis. As a rule, the carrier which performs the inbound haul, the delivering carrier, switches or trucks the freight to its connection, or pays the expense of that service if performed by a third party. Regardless of the original cause, the fact is that St. Louis and East St. Louis, as to traffic moving to and from these points, are now in one rate group. In deciding upon what would be a reasonable practice, primary consideration should be given to what is a fair method of apportioning the revenue regardless of the competition of the Alton. If that competition is forceful now, it will continue so, regardless of whether or not the relief sought is granted. The east side lines are entitled to such advantageous effects as it may hereafter produce, but its history does not control in determining a reasonable practice. The history of both the Combination rates and the divisions of joint rates applicable to this traffic indicates that the transfer charge was given little or no consideration in the establishment of any of these rates or divisions. The fact is that, finding the opportunity there, defendants took advantage of it to require complainants to continue to pay the transfer charge, not only on eastbound traffic, but also on westbound traffic. No carrier participating in a through route, except by special agreement with its connection or connections, can be charged with responsibility for transporting any shipment over such through route until that shipment has been offered to it at a recognized interchange point on its lines. Until it has been so offered the responsibility rests with the connecting line. In this instance the connecting lines are the east side carriers whose lines, by virtue of the fact that St. Louis is shown as a point on their lines, extend to the respective points of interchange with complainant west side lines in St. Louis, and the responsibility of transporting this traffic rests with the east side lines until its delivery to complainants at St. Louis. Defendants practice is contrary to the generally accepted practice throughout the country. The usual practice among rail carriers is to divide the switching expenses when the services of an intermediate carrier are utilized in effecting interchange, the switching charge being absorbed by the carrier that delivers the traffic to its connection. There is a generally recognized obligation on part of all carriers on through traffic to make delivery on the rails of their connections, either direct or by bearing the charges of the intermediate switching line, and this is the general practice of railroads throughout the country. The Commission believes this to be a just, fair and reasonable practice for general application, and one which should be followed by the carrier serving the East St. Louis-St. Louis district. HELD, practice of east side lines in requiring the west side lines to bear the transfer charges on westbound freight traffic moving through St. Louis and East St. Louis on combination rates which are the same on St. Louis as on East St. Louis will be unjust and unreasonable, and that the just and reasonable practice with respect to such traffic will be for the east side lines to bear or absorb all such transfer charges. C. R. I. & P. Ry. v. B. & O. R. R., 113 I. C. C. 681.

(f) Upon a consideration of the character of service, and cost studies submitted in evidence, a division of $3 per loaded car, which covers empty as well as loaded movement, found just, reasonable, and equitable to the Peoria & Pekin Union Ry. Co., for interchanging freight cars between all connecting lines in the Peoria switching district. Rates of P. & P. U. Ry., 115 I. C. C. 469, 481, 497, 513, 514.

(g) In 115 I. C. C. 469, commission prescribed a division to the Peoria & Pekin Union of $3 per loaded car interchanged by it "which covered the empty as well as the loaded movement." Upon petition that commission modify its order so as to make a charge of $1.50 per empty car where the loaded movement was not over the Union's line, HELD: Empty cars are generally handled free under rules of American Railway Association and commission does not believe that a separate charge on such cars handled by the Union would be justified at present time. Rates of Peoria & Pekin Union Ry., 118 I. C. C. 127, 129.

(h) Former report 115 I. C. C. 469, prescribing a division to the Peoria & Pekin Union of $3 per loaded car interchanged by it at Peoria & East Peoria, Ill., modified so as to permit substitution of a plan for publication of switching charges and absorption thereof by line-haul carriers, provided such plan is agreed upon by all carriers and satisfactory provision made to protect shippers against any increase in charges. Rates of Peoria & Pekin Union Ry., 118 I. C. C. 127, 129, 130.

(i) Simply because a certain division of a joint rate was once agreed upon by participating carriers and respective services rendered thereunder by them were later changed is not conclusive that one or another of those agreed divisions is equitable. Minnesota-Atlantic Transit Co. v. C., St. P., M. & O., 123 I. C. C. 485, 492.

(j) Provisions of the act protect carriers against confiscatory divisions. See 295 U. S. 274, 285. Ex-Lake Iron Ore from Chicago to Granite City, 123 I. C. C. 503, 509.

(k) It is settled that in determining what the divisions should be, the Commission may, in the public interest, take into consideration the financial needs of a weaker road; and that it may be given a division larger than justice merely as between the parties would suggest "in order to maintain it in effective operation as part of an adequate transportation system," provided the share left to its connections is "adequate to avoid a confiscatory result." New England Divisions, 126 I. C. C. 579, 599.

(l) Circumstances and conditions under which freight rates on perishables were established between Boston and Chicago and conditions affecting divisions of such rates are substantially different from those affecting establishment of rates on milk for application within New England territory, and, aside possibly from some incidental features in connection with so-called fast-freight service, the services are not comparable. Furthermore, divisions from perishable-freight traffic received by some of the New England roads do not afford a sound basis upon which to judge reasonableness of rates on milk throughout New England. Milk and Cream Between New England Points, 126 I. C. C. 38, 63.

(m) Upon reconsideration, findings in former report, 87 I. C. C. 21, that divisions accorded Sewell Valley R. R. Co., out of joint rates on coal from points on its line were not unjust, unreasonable, or inequitable, affirmed. While present divisions on coal traffic, based on a percentage of through rate with a maximum allowance is unusual, and results in relatively low divisions on some movements, the average divisions have not been materially below the maxima allowed and commission is unable to condemn this basis. Moreover, present record demonstrates that a greatly increased tonnage has been handled promptly; that operating costs have been materially reduced since 1922; and it is believed that this showing is indicative of what net income the present basis of rates and divisions may be expected to yield in future. Sewell Valley R. R. Co. v. C. & O., 126 I. C. C. 425.

(n) Upon investigation by commission on its own motion, divisions of joint rates on interstate and foreign commerce maintained by Sugar Land Ry. Co., and its trunk-line connections, found unjust, unreasonable, inequitable, unduly preferential and prejudicial as between carriers parties thereto, to extent they departed from basis of divisions subsequently established by agreement between re-

spective carriers involved. Adjustment of divisions directed, retroactive to Aug. 26, 1920, on which date joint rates of the Sugar Land were increased pursuant to an order or finding of commission and director general advised as to proper basis for adjustment during period of Federal control. Sugar Land Ry., 126 I. C. C. 529.

(o) If a general rate structure is well adjusted, a very significant and valuable test of divisions may be made by comparing them with local rates for same hauls. It should be borne in mind, particularly in New England, that same considerations which justify relatively high divisions also justify relatively high local rates. New England Divisions, 126 I. C. C. 579, 590.

(p) The financial needs of weak lines are an important factor for consideration by commission in cases involving the fixation of divisions. New England Divisions, 126 I. C. C. 579, 599.

(q) While equitable considerations are a factor of importance in the bargain and trade by which carriers arrive voluntarily at divisions, it is not a factor to which commission can give much weight in fixing divisions of joint rates over through routes which are necessary in the public interest. New England Divisions, 126 I. C. C. 579, 654.

(r) A mileage prorate is an unsatisfactory test for divisions when hauls are short on one side and long on the other. A terminal line with a short average haul could not sustain burden of terminal expense without relatively high ton-mile earnings and this is universally recognized in construction of rate scales and in the principle, followed in those scales, that ton-mile yields should decrease with distance. There is no good reason why same principle should not apply to divisions, and it is because of this fact that a rate prorate, when the rates are fairly comparable, affords a valuable test of divisions. New England Divisions, 126 I. C. C. 579, 667.

(s) On further hearing, finding of original report, 96 I. C. C. 116, that operation of joint passenger-train service between Seattle and Tacoma, Wash., and Portland, Ore., and division of earnings therefrom will be in interest of better service to the public, will promote economy of operation, and will not unduly restrain competition; and that terms and conditions under which such division is proposed to be made are just and reasonable, affirmed and new contract extending terms and conditions of original contract for three years and amendment thereto eliminating requirement that one pool train be operated daily between Portland and Centralia, Wash., approved upon showing that pool trains were being operated at a loss and upon arrangement for additional stops and flags of through trains. Puget Sound-Portland Joint Passenger-Train Service, 128 I. C. C. 149.

(t) Pennsylvania and its affiliated lines ask certain modifications of the order reported in 126 I. C. C. 579, New England Division. These requests are denied with the exception of those which seek increases in the divisions of joint rates on anthracite coal which were prescribed, covering movements from mines served by the Pennsylvania to Jersey City, N.J., and to Rotterdam Jct., N. Y. The division prescribed covering the movements to Jersey City was $2.15 per long ton. The Commission is of the opinion that the divisions should be increased. HELD, finding on page 660 of the report in 126 I. C. C. 579 should be amended so as to provide over routes from mines served by the Pennsylvania a division of $2.25 per long ton to Jersey City and a division of $3.30 per long ton to Rotterdam Jct. New England Divisions, 132 I. C. C. 93.

(u) Complainant, Hoboken Manufacturers R. R. Co., a common carrier by railroad engaged in interstate commerce alleged that the division of joint rates accorded to it on shipments of silk from points on the Pacific coast to destinations on its line is unjust and unreasonable. Hoboken is primarily a switching and terminal railroad at Hoboken, N. J. Practically all of its revenues are derived from the performance of those services. Its operations extend over a distance of about 1 mile, exclusive of side and team tracks, from a point at Second St. to Eighteenth St., where it has direct track connections and interchanges freight with the Erie. It also interchanges freight with other railroad companies through the Erie over its own float bridge at Hoboken. Silk moves at a transcontinental any quantity rate of $9 per 100 pounds. Carriers east of Chicago, receive 27.5% of this rate, or $2.475 which is about 175% of their first class rate from Chicago to New York. The Hobokens division is 5.25c or the same as it ordinarily receives on less carload

freight. Special armed guards are employed to protect the silk from theft while it is on the Hoboken until it is unloaded. The unloading is perforced for the Hoboken by the testing company in whose ware-house the silk is stored for the period of free time or 48 hours. Delivery to the consignee is made by the testing company upon the rodero f the Hoboken. HELD, on and since Aug. 6, 1926, the division received by the Hoboken out of joint rates on silk from points on the Pacific coast to destinations will be unjust and unreasonable in that upon its line was, is, and for the future it was, is, and for the future may be less than 22c per 100 pounds. Hoboken Mfrs. R. R. Co. v. A. T. & S. F. Ry., 132 I. C. C. 579.

§4. Inability to Agree.

See Advanced Rates §7 (6); Discrimination §10½; Through Routes and Joint Rates §5.

(a) The act provides a method for adjusting disputes between carriers over divisions and controversies of that character afford no justification for increased rates and will not be permitted to work injury to shippers. This principle, however, has no application where carriers desire to eliminate through routes via Canada since commission has no authority either to require establishment of joint rates over Canadian routes or to prevent their cancellation. Elimination of G. T. Ry. from Certain Routes, 115 I. C. C. 609, 611.

§7. As Evidence.

See Comparative Rates; Evidence §13 (2), §13 (3); Through Routes and Joint Rates §14.

(a) While the commission has frequently said that divisions ordinarily afford little basis for determining reasonable maximum rates, it would seem that they may properly be given more weight in the determination of a reasonable minimum rate in the nature of a proportional rate. Ex lake iron ore from Chicago to Granite City, 120 I. C. C. 75, 80.

(b) Divisions of joint rates are not, generally speaking, of value as a test of reasonableness of rates. Farrell Foundry & Machine Co. v. A., B. & A., 123 I. C. C. 127, 130.

(c) Divisions of a joint rate are not ordinarily a sound test of reasonableness of rates. American Grain & Hay Co. v. I. C., 129 I. C. C. 225, 229.

IV. LEGALITY.

§8. In General.

See Allowances IV; Legality of Rates; Tap Lines §7.

(a) Proportional rates are but parts of through rates and are in nature of divisions rather than of high rates. Where joint through rates are reasonable and free from undue prejudice shippers are not concerned with whether divisions up to or beyond a given gateway are higher on their traffic than on traffic of their competitors. Morrell & Co. v. N. Y. C., 104 I. C. C. 104, 128.

(b) The public is not concerned as to divisions agreed upon by joint carriers so long as through rates are not involved, unless one or more of the divisions are so low as to throw a burden upon other traffic. Alabama Mining Institute v. I. C., 109 I. C. C. 740, 754.

(c) Commission instituted an investigation into and concerning the ownership and control of the Sugar Land Ry. Co., with a view to determining whether the divisions received by it on traffic handled interline with its trunk line connections, and the rules, regulations and practices of that carrier and its connections are unduly preferential or otherwise unlawful. The Sugar Land extends from Cabell, Tex., southerly to Anchor, Tex., 38.5 miles, with a branch of 1.7 miles easterly to House from House Jct, 18.3 miles from Cabell. It connects with the S. P. at Sugarland, 4.9 miles from Cabell; with the Santa Fe at Santa Fe Jct., and Sugarland Jct., 16.2 miles from Cabell; with the International at House; with the I. & B. V. at Anchor and at Houston with all lines entering that city. The Sugar Land conforms to the federal laws applicable to common carriers by railroad engaged in interstate or foreign commerce. It files tariffs and annual reports, pays per diem on freight cars used by it to the owning carriers, enters into average demurrage agreements with some of its patrons, and in all other respects acts as a common carrier. It is and at all times covered by this investigation, has been a common carrier subject to the act. It does not appear that the Sugar

Land has any direct control over either the Sugarland Industries or the sugar company, or that they have any control over the Sugar Land. Practically all traffic handled by the Sugar Land either originates on or is destined to points on its line. The haul of the Sugar Land to and from its various interchange points is less than 1 mile to Sugar Land 11.3 miles to Santa Fe Jct., 15.1 miles to House, 33.6 miles to Anchor and 36.1 miles to Houston. HELD, divisions of joint rates with respondents were on and after August 26, 1920 unreasonable to extent they departed from the divisions agreed upon effective Sept. 1, 1920, and adjustment of said divisions as between respondents should be made in accordance with said basis in respect of traffic on and after Aug. 26, 1920. Sugar Land Ry. Co., 126 I. C. C. 529.

V. REASONABLENESS.

§9. In General.

See Reasonableness of Rates.

(a) Based upon cost of service and a fair return upon value of property held for and used in service of transportation for public generally, just, reasonable, and equitable divisions to Brimstone R. R. & Canal Co., prescribed on traffic to and from its connections and a retroactive adjustment thereof required. Former reports, 68 I. C. C. 375 and 88 I. C. C. 62. Divisions Received by B. R. R. & C. Co., 104 I. C. C. 415.

(b) At request of carriers and in order to facilitate agreement, commission apportioned the rate found reasonable by setting forth amount thereof due each participating carrier, but made no definite finding, and no order to that effect, commission not claiming any authority to so apportion the rate, no joint rate being prayer for, established, or prescribed for future. Watab Paper Co. v. N. P., 107 I. C. C. 131, 135.

(c) In 265 U. S. 274, 284, the Supreme Court said that in fixing divisions commission may take into consideration financial needs of a weaker road and give it a division larger than justice, merely as between the parties, would suggest in order to maintain it in effective operation as part of an adequate transportation system, and in 263 U. S. 456, 478, stated that transportation act seeks affirmatively to build up a system of railways prepared to handle promptly all interstate traffic of the country. Similar considerations may properly govern commission's action in establishing through routes, and commission has taken them into account in cases of this nature. See 78 I. C. C. 328; 95 I. C. C. 237; 88 I. C. C. 312. Ft. S., S. & R. I. R. R. Co. v. A. & V., 107 I. C. C. 523, 525.

(d) When other methods of increasing earnings or reducing operating costs have been examined without discovering required relief for a weak road it becomes necessary to consider preventing needed revenue from passing to more prosperous connections. Minnesota Western R. R. v. A. T. & S. F., 109 I. C. C. 127, 131.

(e) There is nothing to prevent carriers perorfming a movement into transit point from being adequately compensated for all expenses in connection with such service through a proper apportionment of through charges in division between respective carriers forming through route. Montgomery Cotton Exchange v. S. A. L., 109 I. C. C. 579, 584.

(f) Divisions of through rates accorded certain short lines in lower Mississippi Valley by Illinois Central and other carriers on coal moving with divisions accorded such short lines by carriers moving similar traffic from Birmingham district of Alabama. Illinois Central reserves same or about same amount of through rate at common junction points as is reserved by carriers serving Alabama mines, and as long as this basis of equality is maintained, and divisions of the Illinois Central are not so low as to throw a burden upon other traffic, and weak short lines are beneficiaries of a liberal policy in respect of divisions, there is no undue prejudice or discrimination. Alabama Mining Institute v. I. C., 109 I. C. C. 740, 752, 755.

(g) Former report 115 I. C. C. 469, requiring establishment of joint rates on traffic interchanged by the Peoria & Pekin Union at Peoria or East Peoria, Ill., and classifying division of the Toledo, Peoria & Western west of Peoria as an east-side carrier thereby requiring that line to bear division of the Pekin Union on all traffic brought into Peoria over its western division, modified so as to classify eastern division of the Toledo's line with east-side or East-Peoria carriers and its western division with west-side carriers. Rates of Peoria & Pekin Union Ry., 118 I. C. C. 127, 128.

(h) Upon petition of the Peoria & Pekin Union, former report 115 I. C. C. 469, providing that said line shall not receive any division on traffic delivered to C. & N. W. at Peoria or East Peoria, Ill., by west-side carriers for switching service at those points, modified so as to not prevent the Pekin from receiving a division of joint rates on such traffic provided same shall come out of rates or proportions or joint rates now accruing to the C. & N. W. Rates of Peoria & Pekin Union Ry., 118 I. C. C. 127, 128, 129.

(i) While divisions ordinarily afford little basis for determining reasonable maximum rates, they may properly be given more weight in determination of a reasonable minimum rate in nature of a proportional rate. Ex-Lake Iron Ore from Chicago to Granite City, 120 I. C. C. 75, 80.

(j) Simply because a certain division of a joint rate was once agreed upon by the participating carriers and the respective services rendered thereunder by them were later changed is not conclusive that one or another of those agreed divisions is inequitable. Minnesota Atlantic Transit Co. v. C., St. P., M. & O. Ry., 123 I. C. C. 485, 492.

(k) While it may be urged that the divisions are, perhaps, noncompensatory, the provisions of the act now protect carriers against confiscatory divisions. Ex-Lake Iron Ore from Chicago to Granite City, 123 I. C. C. 503, 509.

(l) Frisco Ry. attacked as unjust, unreasonable, inequitable and prejudicial, the division of $2.50 per car allowed it for the transportation from the interchange track of the Southern Ry. to the coal tipple of the Mississippi Warrior River section of the Inland Waterways, known as the barge line, near Cordova, Ala., of coal, in carloads, moving from points on the N. A. and Southern to New Orleans, La., and to Mobile, Ala. Original report in 88 I. C. C. 107. HELD, the divisions between complainant and defendants of the joint rates here considered have been and since and including August 26, 1920, and for future will be unjust, unreasonable and inequitable to extent they differ from the following basis: on traffic to New Orleans between August 26, 1920 and June 30, 1922, 55 cents per ton to Southern and N. A., $3 per car to complainant, and remainder to barge line. Since June 30, 1922 and for future 49.5 cents per ton to Southern and N. A. Ry., $2.70 per car to complainant and remainder to barge line. On traffic to Mobile, Ala., between August 26, 1920 and June 30, 1922, 45 cents per ton to Southern and N. A., $3 per car to complainant and remainder to the barge line. Since June 30, 1922 and for the future 40.5 cents per ton to Southern and N. A., $2.70 per car to complainant and remainder to barge line. St. Louis San Francisco Ry. v. N. A. Ry., 123 I. C. C. 599.

(m) Divisions of joint rates on anthracite coal from points on the lines of the C. R. R. Co. of N. J., via Maybrook, N. Y., to points on the New York, New Haven & Hartford and Central New England railroads, found not in violation of section 208 (b) of the transportation act, 1920. Reasonableness and fairness of divisions on this traffic via Maybrook and New York Harbor under section 1 (4) of the interstate commerce act left for determination in a pending proceeding. C. R. R. Co. of N. J. v. N. Y., N. H. & H., 122 I. C. C. 661, 675, 677.

(n) Refusal of rail carriers at Duluth to accord the Minnesota-Atlantic Transit Co., increased divisions for handling carload freight between cars and floor of its privately owned docks, found not unjustly discriminatory, unduly prejudicial, nor in violation of section 1 (4) of the act. The law does not require defendants to perform service sought merely because they perform them at their own docks so long as no discrimination is practiced. Here defendants perform no loading or unloading at any private dock, at any dock leased by it to steamship lines or shippers, or at docks of other carriers to which, for convenience of shipper or steamship line, it switches cars. Moreover, the issue of divisions has not been presented with sufficient particularity to warrant a finding as to their reasonableness. Minnesota-Atlantic Transit Co. v. C., St. P., M. & O., 123 I. C. C. 485.

(op) Upon further hearing, carriers being unable to agree upon divisions of joint rates to be paid the St. L.-S. F. Ry., on coal, moving from points on the Northern Alabama and Southern railways to New Orleans, and points taking same rates, and to Mobile, and transported from interchange track of the

Southern Ry., to coal tipple of the Mississippi Warrior River barge line, near Cordova, Ala., just, reasonable, and equitable divisions to be received by respective carriers established and readjustment thereof back to date of commission's order prescribing joint rates required. Former report, 88 I. C. C. 107. St. Louis-San Francisco Ry. v. N. A. Ry., 123 I. C. C. 599.

(q) In Sewell Valley R. R. Co., v. C. & O. Ry., 87 I. C. C. 21, division 1 found that the divisions accorded complainant out of joint rates on coal from points on its line were not unjust, unreasonable or inequitable, and the complaint was dismissed. The evidence presented upon the further hearing does not show any material change in the line of the Sewell Valley excepting that the branch line which terminated at Rupert, W. Va., has been extended 4 miles to Glencoe, W. Va. Certain betterments have been made in the way of reducing curvatures and grades, and there has been a substantial replacement of 70 pound rails with 100 pound rails. The Sewell Valley is practically an intermediate carrier of coal which now constitutes more than 90% of the total tonnage. The present record demonstrates that a greatly increased tonnage has been handled promptly and that operating costs have been materially reduced, and it is believed that the showing made for the years since 1922 is indicative of what net income the present basis of rates and divisions may be expected to yield to this railroad in the future. The present basis of divisions on coal accorded complainant is perhaps unusual, and results in relatively low divisions on some movements, but the average divisions have not been materially below the maximum allowed, and the Commission is unable to condemn this basis. HELD, previous findings affirmed. Sewell Valley R. R. v. C. & O. R. R., 126 I. C. C. 425.

(r) In the original complaint No. 11756 certain steam railroads operating almost wholly in New England, sought increased divisions out of joint freight rates between points in New England on their lines and all other points in the United States and adjacent foreign territories. Original report, New England Divisions, 62 I. C. C. 513, Report on reargument, New England Divisions 66 I. C. C. 196, report construeing original order New England Divisions 85 C. C. 482. It is estimated that the increase in divisions realized under the order averaged 9.75% for the New Haven and Central New England; 11.8% for the Boston & Maine; 6% for the Rutland; 6.62% for the Maine Central; and 2% for the Central Vermont. THE INCREASES SOUGHT ON MERCHANDISE TRAFFIC. Speaking broadly, subject to exceptions, the request is that 0% be substituted for the 15% in the effective order. In the opinion of the Commission the available evidence does not show that the New England divisions, considered as a whole, are too low in relation to comparative costs of service. The dangers of an assumpton that deficiencies in local earnings must inevitably be made up on interchange business at the expense of connecting lines is obvious. Communities and the roads which serve them might too readily arrive at the conclusion that they are "unable" to increase local rates and, in disregard of the principle of self-help, unduly rely upon others to carry their burdens. However, it is clear that the financial needs of weaker lines are an important factor in the consideration of divisions. THE PETITION OF THE WESTERN CARRIERS. The joint rates to or from points in what is known as Illinois and Wisconsin prorating territory were increased 40% in 1920 instead of 33.3%, and as to those rates the western lines are willing to share in the burden of the increased New England divisions. Apparently this prorating territory all of that portion of Illinois in which the western lines operate and all portions of Wisconsin where the rates to and from the Atlantic Seaboard territory are made certain percentages of the Chicago rates. It also appears that the 40% increase was extended to the rail-lake-rail rates to and from Duluth and the Twin Cities. The joint all rail rates to the Twin Cities, however, were increased only 33.3%. The Commission finds that it does not justify the conclusion that the divisions now received by the New England lines under the amended order on traffic to and from western points is too high. Western carriers ask only that the burden of the increase be confined to the eastern defendants. This involves the question as to what the primary divisions of the joint rates should be east and west of Chicago or other border gateway. The record is inedequate for the determinination of this important

issue. The fact stands out, however, that in the case of transcontinental rates the western and eastern lines, with the exception of the New England complainants, have agreed upon a division of 27.5% east of Chicago, with 3c added as a terminal arbitrary in the case of citrus fruit, and to this the B. & A. in New England has also agreed. Related percentages have been agreed upon east of the other border gateways. For the purposes of this case, therefore, these primary divisions of the joint rates may be taken as fair and reasonable without prejudice to the rights of both groups of carriers to bring this issue before the Commission for determination in another proceeding upon a more adequate record. This will give the eastern lines, with the exception noted above as to citrus fruit, 27.5% of the transcontinental joint rates for their haul east of Chicago and related percentages east of other border gateways, out of which the increased divisions of the New England complainants are to be paid, and will leave to the western lines, subject to the same exception, 72.5% west of Chicago and related percentages west of the other gateways, out of which no contribution is to be made to the New England lines. Many of the joint intergroup rates between New England and western trunk line territory were increased 40% at the time of the general increase of 1920 instead of the normal 33.3%. As to these, the western lines are willing to contribute pro rata to the increased New England divisions. In the case of such joint rates, however, as were not increased 40%, the evidence is not convincing that the western lines should contribute to the New England increase. The record warrants the conclusion that the divisions received by the eastern lines out of these rates are adequate to enable them to bear the full burden of the increases. It should be said, however, that in the case of all the joint rates between the Atlantic seaboard and western trunk line territory it appears that the divisional arrangements between the eastern and western lines are in need of revision. THE PETITION OF THE SOUTHERN CARRIERS. Class rates are not an accurate index of differences in general rate levels. A larger part of the traffic moves on commodity rates in the south, and many of these rates are as low as or lower than rates which move the same traffic in the eastern group. It appears that the southern carriers have had the principal voice in fixing the level of the freight rates between the two groups, but that the the eastern lines have had the principal voice in fixing the divisions. By reason, however, of the relatively greater increases which have been made in the eastern intragroup rates than in the intergroup rates, the divisions which the eastern lines receive out of the latter are considerably smaller in comparison with the corresponding local rates than they were when they were first established. The divisional situations differ, also, as to class and commodity rates. Competitive influences have affected the commodity rates more than the class rates, and the shrink made necessary by such influences has apparently been borne chiefly by the southern lines. While it is difficult to draw general conclusions from the evidence as to the commodity rate divisions, it appears that the southern lines have on the whole made out the better case. With respect to commodity rates via Potomac Yard, Norfolk, and Richmond, it has not been shown that the southern lines should reasonably be required to contribute to the increased New England divisions, except where they receive as large percentage of the rate as they receive of the class rate upon which the traffic would move in the absence of a commodity rate. With respect to both class and commodity rates via the Ohio river crossings, it has not been shown that the southern lines should be required to contribute to the increased New England divisions. With respect to both class and commodity rates via Hagerstown, there is no showing that would justify a change in the present divisional arrangements. These conclusions are without prejudice to any different conclusions which might be reached if the issue of the divisions between the southern carriers and their northern connections were more directly raised and more comprehensively tried in another proceeding. Obviously there is no rhyme or reason in many of these divisions. PETITION OF DELAWARE & HUDSON. The D. & H. asks that the amended order be modified so that it shall not be required to receive lower divisions generally on traffic interchanged with complainants than prior to the effective date of the order. Its petition also contains specific prayers that rates to and from points on the

line of the Rutland between Rouses Point and Ogdensburg, N. Y., and to and from points on its own lines north of Albany, Troy or Delanson, N. Y., shall be excluded, and that it shall not be required to surrender to complainants a greater share of its gross operating revenues than is surrendered "by other defendants in this proceeding, or other defendants operating in the eastern rate group, considered as a whole." The D. & H. interchanges more tonnage, including or excluding coal, with complainants than any other connection except the New York Central and the Pennsylvania. Conceding that a tentative valuation is without probative effect in any judicial proceeding where the value of the property is in issue, the Commission is of the opinion that tentative valuations made by the same body following identical methods in each case are an aid in checking the relative status of property investment acounts of carriers. HELD, the Commission is not persuaded that the present divisions of the D. & H. on joint merchandise traffic with the New England complainants are unjust, unreasonable or inequitable. PETITION OF THE ERIE. Erie alleged that their division of joint rates on all class and commodities with the New England carriers are unjust, unreasonable, and unduly prejudicial. They also desire exemption from the amended order. HELD, the Commission is not persuaded that the present divisions of the Erie lines on joint merchandise traffic interchanged with the New England lines are unjust, unreasonable or inequitable. PETITION OF CENTRAL OF NEW JERSEY. They seek to be exempted from the amended order. It may be that this defendant is not receiving a fair proportion of the revenue from the joint rates which accrue to the lenes west of the Hudson river; it may be that too large a share of the revenue accrues to the New England lines; both these situations may exist in combination; or neither of them may exist. Upon the record it is impracticable to determine the facts in this respect. The issue was presented by the Jersey Central in the evidence as one wholly between it and the New England lines, whereas other carriers are directly involved. Under the circumstances it appears that the Central of New Jersey has presented insufficient evidence with respect to this traffic and that it can be accorded no relief upon this record. HELD, the Central of New Jersey has sustained its contention that it should be exempted from the amended order in the case of interchange merchandise traffic in which it is the sole participating deefndant. PETITION OF NEW YORK CHICAGO & ST. LOUIS. This petition was filed by the N. Y. C. & St. L., successor of the L. E. & W., and asks in behalf of the latter for exemption from the order. The L. E. & W. was a comparatively weak line operating in central territory which was consolidated with the N. Y. C. & St. L. in 1923. HELD, the meager evidence introduced affords no basis for the relief sought. CANADIAN TRAFFIC. The Commission is of the opinion that the joint rates in which Canadian lines participate apply to a service which is not "wholly within the confines of the United States" and over which it has no jurisdiction. The Commission has repeatedly held that it has no power to prescribe such joint rates and it must follow that it is without power to prescribe their divisions. In the absence of treaty provisions or concurrent legislation in both countries affecting the matter, conflict of authority would be inevitable if any different rule were followed. The conclusion that the Commission is without authority to do what is sought makes it unnecessary to consider the evidence bearing on these divisions. THE NEW ENGLAND STEAMSHIP COMPANY. This company operates boat lines on Long Island sound between Bridgeport, New Haven and New London, Conn., Providence, R. I., Fall River and New Bedford, Mass., on the one hand and New York City on the other. The New Haven owns all its stock and bonds but it is separately operated. It was not originally named as a complainant and, therefore, its divisions were not affected by the order, 85 I. C. C. 482, 489. But where it is an intermediate carrier in rail-water-rail routes between points on the New Haven or Boston & Maine and points of defendants lines, the divisions of the New England rail lines were increased. The New England Steamship Company has now been made a complainant and seeks the same increase in its divisions as was granted to the rail lines. Here the New England Steamship Company enjoys all rail rates and the same divisions as the all rail lines received prior to the order herein, and its situation with respect to the expense of transfer

at New York City is more favorable than that of the New Haven. HELD, the meager record with respect to this water carrier does not sufficiently support a conclusion that its divisions are unjust, unreasonable, or inequitable. JOINT RATES TO AND FROM POINTS ON OTHER NEW ENGLAND LINES. Complainants participate in joint rates to and from points in New England on the C. & A., C. P., G. T., B. & A. and certain independently operated short lines. The record contains no specific evidence with respect to such joint rates to and from points on the B. & A., C. P. and G. T. On most of the traffic to and from the Bangor & Aroostook points combination rates based on its junction with the Maine Central apply. There are certain joint rates, but in such instances it appears that the division of the B. & A. is the same as the proportional rate which it receives on similar traffic as to which joint rates do not apply. In other words, the combination rate is published as a joint rate, doubtless for the convenience of shippers. The result of the order as it now reads is that complainants receive an increase in divisions when combination rates apply but not when joint rates equal to the combination apply. The B. & A. is not seeking an increase in its divisions of such joint rates. HELD, the order should be further amended so that it will cover complainants divisions of joint rates to and from points on the B. & A. and short lines named above, but without affecting the divisions received by the B. & A. or the short lines or the manner in which the latter are deducted before prorating or borne by the New Haven, as the case may be. SPECIAL COMMODITY DIVISIONS. HELD, an increase, corresponding to the increase granted in the case of the divisions of other joint rates on merchandise traffic, should be granted in the case of divisions of these various commodity rates. BOSTON AND ALBANY AMENDMENT. The B. & A., which is leased to and operated by the N. Y. C., is a defendant in No. 756 although it is a New England line. The original order did not separate this carrier from the other defendants. That order would have increased the divisions of complainants on joint traffic with the B. & A. within New England, and it would have reduced the divisions of the latter not only on such traffic but also on traffic in which it participates with other defendants and complainants as an intermediate carrier. The latter traffic is largely to and from points on the New Haven. The original order further provided that complainants divisions should be increased by 15% of their own amount or by 15% of the amount of defendants divisions, whichever was smaller. The result of including the B. & A. with the other defendants would thus have been to increase the divisions of the New Haven the full 15% in practically all cases where the B. & A. is an intermediate carrier, notwithstanding that only a small part of the entire haul might be west of the Hudson river. On traffic interchanged directly with other defendants, on the other hand, the divisions of the New Haven for similar hauls were in many cases increased by less than the full 15%. Upon consideration it seems to the Commission that these results were unfair to the N. Y. C. system. The conclusion is warranted that operating conditions are on the whole substantially more favorable on the B. & A. than on the New Haven. HELD, the Commission is not persuaded that the present divisions of the New England complainants on traffic interchanged with defendants through the B. & A. are unjust, unreasonable or inequitable. DIVISIONAL ARBITRARIES. Some of the divisions which complainants receive are made up in part of a percentage of the joint rate and in part of a specific amount termed an arbitrary. There is no evidence that the arbitraries were increased at the time of the general 5% increase in rates. Nor is there evidence that they were increased at the time of the 15% increase, except in so far as it became effective after December, 1917, i. e., during federal control. HELD, on March 28, 1922 complainants and defendants divisions of the joint rates in issue were the divisions which existed in Dec. 1917, changed in proportion, in each case, to the changes in the joint rate of which the division is a part which occurred between Dec. 31, 1917 and Dec. 1, 1919. HELD, it would seem unfair for the future to increase all arbitraries—those of defendants as well as those of complainants—as they existed in Dec. 1917, by 50% and to forget the past. In making this suggestion the Commission has in mind the particular circumstances of this case, including the increase in complainants divisions which was ef-

fected by the order, the fact that the increase was in part premised on the circumstances that the arbitraries had not been increased in harmony with the general rate changes, and the subsequent trend of earnings on the New England lines. The suggestion is not to be taken as an indication that the Commission is of the opinion that arbitrary divisions should not in general be changed in proportion with rate changes. On the contrary, the fact that in the past there has been no such change has resulted in substantial injustice to many carriers. DIVISIONS ON ANTHRACITE COAL. The New Haven, Central New England, Boston & Maine, Maine Central and Central Vermont ask that their divisions of joint rates on anthracite coal be increased 15%. It is immaterial to defendants, they say, whether coal moves all rail to New England or to tidewater for transshipment by barge. This can hardly be true of the D. & H., which has no route of its own to tidewater and secures only a short haul when the coal moves that way. The claim has more substance in the case of the other anthracite lines, all of which reach tidewater. But while this is a factor of importance in the bargain and trade by which carriers arrive voluntarily at divisions, it is not a factor to which the Commission can give much weight in fixing divisions of joint rates over through routes which are necessary in the public interest. The evidence shows that the anthracite divisions of the New England complainants are in many cases less than a mileage prorate would produce and in yet more cases they are lower than a rate prorate would produce, using Anderson scale rates as a measure both east and west of the Hudson river although it is conceded that the level of local rates should be lower in trunk line territory than in southern New England and lower still than in northern New England. These comparisons give no consideration to the socalled "disability ratio" of the New England lines. Their divisions are much less favorable on this traffic than their current divisions on merchandise traffic. HELD, a just and reasonable result will be produced if the divisions on prepared sizes are made the following amounts per long ton, based on the rates in effect in 1923; To Jersey City, $2.15 over the Pennsylvania and $2.10 over all other routes. To Maybrook, $1.90 over Reading and Jersey Central and $1.80 over all other routes. To Mechanicville, $2.30 over all routes. To Rotterdam Jct., $2.65 over all routes. DIVISIONS OF BITUMINOUS COAL. The New Haven, Central New England, Maine Central and Central Vermont seek an increase of 10% in all their divisions of joint rates on bituminous coal. The two originating roads most vitally interested are Pennsylvania and B. & O. The evidence indicates that the bituminous divisions of the New England lines, unlike their anthracite divisions, are in all cases in excess of what a mileage prorate would produce. However, judged by complainants exhibits, they are in many cases less than a rate prorate would produce, using the Anderson scale as a measure. A mileage prorate is an unsatisfactory test when the hauls are short on one side and long on the other. As a matter of fact a terminal line with so short an average haul as the Central Vermont could not sustain the burden of the terminal expense without relatively high ton mile earnings. This is universally recognized in the construction of rate scales and in the principle that ton mile yields should decrease with distance. There is no good reason why the same principle should not apply to divisions, and it is because of this fact that a rate prorate, when the rates are fairly comparable, affords a valuable test of divisions. While the bituminous divisions appear to be relatively less favorable than the merchandise divisions, the Commission believes that weight should be given to the considerations mentioned in connection with the anthracite divisions,—namely, to the fact that defendants particularly concerned in the bituminous traffic are the defendants upon whom the burden of the increase in merchandise divisions chiefly fell, and to the fact that the increase in merchandise divisions was in part based upon serious financial depression of the New England lines from which they appear to be recovering. HELD, sufficient reason has not been shown for increasing the divisions of bituminous joint rates received by the B. & M., Me. C., and C. V. In the case of the New Haven, need exists for the fixing of reasonable rates in view of the failure of the carriers in general to agree upon a basis, and in prescribing these divisions the Commission thinks the evidence warrants some slight shrink in defendants share and corresponding increase in the New

Haven share. This can be accomplished by fixing defendants divisions from the Clearfield region to both Jersey City and Maybrook at $2.43 and by providing that the divisions from the other regions shall be related thereto by adding or deducting the established differentials. No sufficient reason is shown for changing the aggregate divisions received by the New Haven on bituminous interchanged with the N. Y. C. at B. & A. gateways or Beacon. New England divisions, 126 I. C. C. 579.

(s) Upon further hearing, divisions of joint rates between lines in New England and other carriers in eastern, southern, and western territories, as covered by commission's order of March 28, 1922, found unjust, unreasonable and inequitable in some instances but not in others. Just, reasonable, and equitable divisions prescribed or suggested for future application. Former reports, 62 I. C. C. 513; 66 I. C. C. 196; and 85 I. C. C. 482. New England Divisions, 126 I. C. C. 579.

(t) Complainant, Erie, R. R., alleged that the divisions, claimed by defendants of the joint through rates on anthracite coal from producing points in Pennsylvania to destinations in Illinois beyond the Chicago switching district and within the boundary marked by the line of the E. J. & E., are unjust, unreasonable, inequitable and unduly prejudicial. The through rates prior to Nov. 13, 1922 were made on full combination over Chicago. In Chicago Coal Merchants Asso. v. Director General 73 I. C. C. 161, the Commission found that the rates on this traffic were unduly prejudicial to the destinations here considered and unduly preferential of points within the Chicago switching district, and prescribed certain arbitraries over Chicago to remove such undue prejudice. On Nov. 13, 1922 the carriers established this relationship by reducing the through rates so as to maintain the arbitraries prescribed. The divisions claimed by defendants by their lines are composed of these arbitraries plus 30c, subject to their local rate as maxima. The division claimed by complainants for their lines is their full local rate to Chicago, leaving as a division for defendants only the arbitraries prescribed by the Commission. Taking the adjustment as a whole, however, the mathematical average of complainants and defendants shares of the through rates prior to Nov. 13, 1922 were 78.6 and 21.4%, respectively. Of the present through rates, 21.4% is roughly the equivalent of the applicable arbitraries over Chicago plus 20c per ton, subject to defendants local rates as maxima. HELD, just, reasonable, equitable and nonprejudicial divisions on this traffic are, and for the future will be, the applicable arbitraries over Chicago plus 20c per ton subject to defendants local rates as maxima, to accrue to defendants, with the remaining portions of the through rates to accrue to complainants, since Feb. 17, 1924. Erie R. R. Co. v. C. & N. W. Ry., 129 I. C. C. 743.

(u) Complainant, Artemus Jellico R. R., alleged that the divisions of joint rates received by it, for the transportation of interstate shipments of bituminous coal from mines on its line are unjust, unreasonable and unduly discriminatory. Complainants line is situated in the southeastern part of Kentucky and extends from Artemus to Wheeler, with a branch to Anchor, distance 12.9 miles. It connects with the L. & N. at Artemus about 20 miles southeast of Corbin, Ky. Corbin is on the main line of the defendant, L. & N., extending from Cincinnati, O., to Atlanta, Ga. Passenger service on complainants line is operated by a socalled jitney line under a contract which provides that complainant shall receive one fourth of the gross receipts from the passenger business. The record is not convincing that complainants difficulties are principally traceable to lack of fair divisions. Paucity of traffic seems to constitute the chief reason for its failure to earn a fair return. HELD, divisions received out of interstate joint rates on bituminous coal since Nov. 5, 1925 have been and for future will be unjust, unreasonable and inequitable, and should be not less than 25c per net ton. Artemus Jellico Railroad Co. v. L. & N. Ry., 132 I. C. C. 183.

(v) Divisions of joint rates on anthracite coal from Pennsylvania points to destinations in Illinois beyond Chicago switching district, found unreasonable, inequitable, and unduly prejudicial to extent they exceed applicable arbitraries over Chicago, plus 20 cents per ton, subject to defendant's local rates as maxima, to accrue to defendants, with balance of through rates to accrue to complainants. In 73 I. C. C. 161, arbitraries over Chicago were prescribed to remove undue prejudice which arbitraries carriers established by reducing through

rates so as to maintain the arbitraries. Here, divisions climed by complainants would stand no portion of a similar reduction; those claimed by defendants only a portion of it; and no consideration would be given to divisions accruing to connecting lines. Erie Railroad Co. v. C. & N. W., 129 I. C. C. 743.

§10. Evidence and Procedure.

See Evidence; Procedure Before Commission.

(a) Expenses of one particular short line should not govern as to maximum expenses of another particular short line, unless some definite showing as to similarity of conditions is in evidence, but where a number of comparable short lines have been selected with particular care such comparisons are of probative value. Divisions Received by B. R. R. & C. Co., 104 I. C. C. 415, 424, 425.

(b) In order to be helpful, exhibits dealing with divisions, like those covering rates, should give either the distances over the direct lines, or the average distance over all lines, or the average hauls of all actual shipments. Rates of Peoria & Pekin Union Ry. Co., 115 I. C. C. 469, 506.

(c) To require specific evidence, and separate adjudication, in respect to each division of each rate of each carrier, would be tantamount to denying the possibility of granting relief. New England Divisions, 126 I. C. C. 579, 643.

(d) If a general rate structure is well adjusted, a very significant and valuable test of divisions may be made by comparing them with local rates for same hauls. It should be borne in mind, particularly in New England, that same considerations which justify relatively high divisions also justify relatively high local rates. New England Divisions, 126 I. C. C. 579, 590.

(e) Although in the fixation of divisions the Commission is required to take into account the amount of revenue required to pay operating expenses, taxes, and a fair return on the property held for and used in the service of transportation, this is only one of the elements which it is required to consider, and the fact that complainant has not earned a fair return does not necessarily entitle it to an increase in divisions that will produce such return. Artemus Jellico R. R. Co. v. L. & N. R. R., 132 I. C. C. 183, 188.

DOUBLE ADVANCES

See Advanced Rates §9½.

DOUBLE LOADING

See Classification §7½.

DRAYAGE

See Absorption of Charges §5 (a) (b) (d); Allowances §8 (5) (b), §8 (8).

(a) This investigation was instituted on motion of the commission on April 6, 1925 into and concerning the lawfulness and propriety of Southwest Missouri R. R. tariff I. C. C. 12, providing for certain absorptions on account of the drayage of ore, in carloads, from mines and switches enumerated in said tariff to the company's terminals and loading tracks at Picher and other points in Oklahoma. The Southwest Missouri is an electric line owning no freight cars. The Picher mining district is not served directly by any trunk line but is served by the Northeast Oklahoma R. R., and Miami Mineral Belt R. R., as well as by the Southwest Missouri. The average distance from all of the mines in this district to a loading track of either the Northeast Oklahoma or the Miami Mineral Belt is less than .025 mile. There are only 8 or 10 mines in this district that with respect to drayage distances are as favorably located to the tracks and sidings of the Southwest Missouri as to the tracks and sidings of the Northeast Oklahoma or the Miami Mineral Belt. With a view of attracting to its rails ore traffic from certain mines in this district which would normally move over the Northeast Oklahoma or Miami Mineral Belt because of the shorter drayage required to the loading tracks of one or the other of those roads, the Southwest Missouri then filed the tariff here under consideration. It describes four zones one half mile in width and provides that on ore, in carloads, drayed to specified loading tracks, from mines in zone 1, not over ¼ mile from such loading tracks, no draying absorption will be paid; that from mines in zone 2, within one half mile beyond zone 1, a drayage absorption of 15c per ton will be paid; that from mines in zone 3, within one half mile beyond zone 2, a drayage absorption of 30c per ton will be paid; and that from mines in zone 4, within one half mile beyond zone 3, a drayage absorption of 45c per ton will be paid. The tariff also contains a list

of mines with their zone location and the amount of absorption on ore originating at each mine. The operation of the absorption arrangement is to pay to the teamster making the haul to the Southwest Missouri tracks the amount specified in the tariff, thereby generally relieving the shipper of the necessity of making any payment to the teamster in addition to the turn around charge, should the shipper desire to ship over the Southwest Missouri, and at the same time according to the shipper for the rail transportation a rate as low as that available over other lines. The amount received from the carrier does not represent the teamster's total charge for the haul from the mines, but he receives in addition the 50c turn around charge from the shipper. The tariff provides no policing rules intended to insure that the allowances paid are correct. While as a matter of form the amounts of the tariff absorption are paid to the teamster, the teamster is in fact the agent of the shipper and not of the carrier. The railroad to which the ore is being drayed is designated by the shipper and the teamster hauls the ore to that railroad as directed by the shipper. The Southwest Missouri pays to the teamster a part of the drayage charges which the shipper would otherwise have to pay if he desired to ship by that line. While the Southwest Missouri volunteers to make this payment, it does not by the absorption tariff hold itself out to perform any part of the drayage service from the mine bins to its loading tracks, and in fact it expressly disclaims that it has possession of the ore or any control over it until the drayage service has been completed and the ore has been placed in the course of rail transportation by delivery to the carrier at its loading tracks. When closely analyzed the tariff under consideration in its present form is nothing more or less than a statement that out of its published tariff rate for rail transportation subject to the jurisdiction of the commission the Southwest Missouri will make to shippers at certain mines, either directly or indirectly through the medium of payments to teamsters employed by and under the direction and control of those shippers, specified rebates varying in amount in inverse ratio with the accessibility of such mines to that carrier's rails, but that shippers at other mines, including those nearer to as well as farther distant from its rails, will be required to pay the full published tariff rate if they tender to the Southwest Missouri at the same loading tracks like traffic for like transportation subject to the act. Such a practice is clearly unjustly discriminatory in violation of section 2 which provides that no carrier subject to the act shall, directly or indirectly, by any special rate, rebate or other device, charge or receive from any person a greater or less compensation for any service rendered in the transportation of property subject to the act than it charges or receives from any other person for doing for him a like and contemporaneous service in the transportation of a like kind of property under substantially similar circumstances and conditions. HELD, the tariff described in this report provides for the application of more than one rate, and for unjustly discriminatory rates, to the transportation of a particular class of traffic from one point of origin to certain points of destination, in violation of section 2 and 6 of the act. Drayage absorptions by S. W. M. R. R., 113 I. C. C. 179.

(b) Upon investigation by commission on its own motion into and concerning a certain tariff of Southwest Missouri R. R., an electric line, providing for absorption of drayage charges on ore from the Picher, Okla., district, FOUND: Such tariff is nothing more or less than a statement that out of its published tariff rate the carrier will make to shippers at certain mines, either directly or through the medium of payments to teamsters employed by them, specified rebates varying in amount in inverse ratio with the accessibility of such mines to its rails, but that shippers at other mines, including those nearer to as well as farther distant from its rails, will be required to pay full published tariff rate if they tender at same loading tracks like traffic for like transportation. Such tariff clearly results in unjust discrimination under section 2, and provides for application of more than one rate in violation of section 6 of the act. Drayage Absorptions by S. W. M., 113 I. C. C. 179.

(c) Carrier contended that in absence of a violation of the statute the commission is without power to substitute its judgment for that of a carrier with respect to its operating policies, and urges that since its absorptions for drayage services are available to any teamsters who care to perform the service, there is no discrimination between them and com-

mission has no authority to require that they shall be supplied or withdrawn, citing 91 I. C. C. 539, 547, wherein commission said: "There is nothing in the act to prevent establishment of such service or publication of charges in connection therewith by carriers subject to the act." HELD: Quotation relied upon referred to accessorial terminal services by carriers subject to commission's jurisdiction in the collection and delivery of freight commonly referred to as store-door delivery, which services carriers undertake to perform as a part of the transportation subject to commission's jurisdiction. Drayage Absorption by S. W. M., 113 I. C. C. 179, 183.

(d) Complainant alleged refusal of defendant to refund drayage charges on two cars of grapes forwarded on Sept. 27 and 29, 1922 from Pasadena and Cucamonga, Calif., to Jersey City, N. J., and defendants failure to complete transportation contract, as unreasonable and unlawful. Shipments were reconsigned at Pittsburgh and billed for delivery to complainant at Jersey City over defendants lines. The cars arrived in the vicinity of Jersey City on Oct. 21, 1922 but because of freight congestion were placed on Manhattan Produce Yards, N. J., about 5 miles west of Jersey City, where delivery was accepted by complainant. He then had the grapes trucked to Newark, N. J., about 4 miles and sold them there. The transportation charges are not attacked, but complainant contends that by reason of defendants failure to effect delivery at billed destination in violation of its legal obligation he has been subject to the payment of drayage charges from point of delivery to Newark in amount of $197.90. It does not appear that defendants failure to effect billed delivery was due to any unreasonable conduct or practices on its part. On the contrary its inability to do so was because of circumstances beyond its control. As complainant chose for his own convenience to take delivery at Manhattan Produce Yards rather than await delivery at Jersey City, defendants obligation to perform further transportation was terminated by the delivery made. HELD, drayage charges not result of violation of section 1, complaint dismissed. Berger v. Pennsylvania R. R., 115 I. C. C. 697.

(e) Interstate shipments of grapes moving to Jersey City, N. J., because of congestion, were placed at a point short of billed destination. Complainant was duly advised of existing conditions but elected to take delivery and dray shipments. Upon contention that failure to effect delivery specified in bill of lading violated carrier's legal obligation, HELD: Failure to effect delivery desired was not due to any unreasonable conduct or practice of carrier but to circumstances beyond its control, and as shipper chose for his own convenience to accept delivery short of billed destination the carrier's obligation to perform further transportation terminated with delivery made. Drayage charges incurred were not therefore a result of any violation by carrier of section 1 of the act. Berger v. P. R. R., 115 I. C. C. 697.

(f) On strawberries from Plant City, Fla., consigned to Jersey City, N. J., delivery was accepted at Manhattan Produce Yards, N. J., a point four miles short of billed destination. No claim for reparation was made for drayage charges incurred because of carrier's failure to complete delivery, but relying upon 69 I. C. C. 59, complaint alleged misrouting and sought damages resulting therefrom in amount of difference in price at which strawberries were sold and price they might have brought if delivery had been made at Jersey City. HELD: Contention of misrouting not sustained. There was no deviation from route named in bill of lading, and transportation charges are same to Manhattan Produce Yards as to Jersey City. Situation here involves carrier's failure to complete a transportation service which it contracted to perform and on which no violation of the act can be predicated. Complainant's remedy, therefore, if any, lies in the courts. Long v. A. C. L., 120 I. C. C. 601.

(g) Carriers make allowances to shippers who, in lieu of switching, dray their cotton from uptown warehouses to ship side which cotton carriers are under obligation to transport under transit arrangements. Upon contention of water-front warehouses that inasmuch as city-delivery and shipside rates are to be equalized such allowance should be discontinued or allowance made for handling cotton from water-front warehouses to ship side, HELD: No reason appears for condemning reasonable allowances for drayage, such drayage being a substitute for rail transportation, but they must not be more than

reasonable and must not be used as a cloak for unlawful preferences to shippers furnishing such substitute service. This applies equally to barging where barging is used as a substitute for switching. Rates on Cotton to Gulf Ports, 123 I. C. C. 685, 696.

(h) Hand or electric trucking of cotton, or movement by overhead trolley from warehouse or compress to the wharf, is not a substitute for rail transportation but is an intraplant movement just the same as the handling of commodities from the interior of a warehouse to the railroad car or dray and no allowances may lawfully be made therefor. Rates on Cotton to Gulf Ports, 123 I. C. C. 685, 696, 697.

(ha) Complainant sought refund of allowance for "drayage and ferriage in lieu of lighterage," on grapes unloaded at Jersey City and carted across the Hudson River to New York, provided in tariff. Upon contention that complainants were not entitled to refund because while they were entitled to lighterage they did not desire it because points in interior Manhattan and Brooklyn could be reached only by trucking or carting and that drayage preformed was, therefore, not a service "in lieu of lighterage" but a more extensive service to points which could not be reached by lighters, HELD, Complainants clearly had the right to lighterage, but having not elected to exercise that right and having carted shipments across the river in accordance with tariff, they were entitled to allowance specified. Moreover, it is immaterial to what point in New York shipments were hauled. Reparation awarded. Taub v. L. V., 128 I. C. C. 105.

(hb) Complainant alleged that defendants refusal to refund allowance for drayage and ferriage in lieu of lighterage on 15 cars of grapes, unloaded at Jersey City, N. J., during the period Oct. 13, 1923, to Oct. 17, 1924, and carted to New York deliveries, was and is in violation of section 6. Complainants shipments originated in California and were consigned to them either at Jersey City or at New York, the record not being clear as to point of destination. The cars were unloaded at Jersey City and their contents carted across the Hudson river to destinations in New York. Complainants clearly had the right to lighterage. Having elected not to exercise that right and having carted the shipments across the Hudson river in accordance with the requirements of defendants tariff they were entitled to the allowance specified. It is immaterial to what point in New York the shipments were hauled. HELD, reparation awarded to the amount of 3c per 100 pounds. Taub v. L. V. R. R., 128 I. C. C. 105.

(i) Proposed absorption of charges for draying lead or zinc ore to loading tracks of Southwest Missouri R. R. in the Picher district of northeastern Oklahoma and southeastern Kansas, found not justified. Proposed schedules violate section 6 of the act because they do not plainly state places between which the property will be carried, and they would also create undue prejudice and preference. Method of publishing rates for transportation of certain classes of property which provides by way of absorption for a uniform reduction in rates is neither a proper method nor one which satisfies the requirements of section 6. Moreover, if permitted to become effective, schedules would be inconsistent with the performance of the duty imposed upon commission by section 15a of the act. Absorption of Drayage Charges, 128 I. C. C. 405.

DRESSING IN TRANSIT

See Facilities and Privileges §6½, §15.

DUNNAGE

See Allowances §8 (2½).

DUPLICATE SHIPMENT

See Classification §12½.

ELECTRIC LINES

I. CONTROL AND REGULATION.
II. THRU RATES WITH STEAM ROADS.
III. RIGHT TO FUEL RATES.
IV. RATES, TRANSFERS AND DIVISIONS.
V. FACILITIES.
VI. OPERATION.
VII. REGULATIONS.
VIII. SWITCHING CONNECTIONS.

CROSS REFERENCES

See Absorption of Charges §5½ (a); Locomotive Inspection (i) (j).

I. CONTROL AND REGULATION.

See Control and Regulation; Interstate Commerce II.

(a) Differences in traffic and opera-

tions in general between steam and electric lines, including interurban electric lines, are such that Congress has recognized the distinction in their treatment under various provisions of the law. Commission is authorized, however, to establish joint rates on traffic interchanged between steam and electric lines engaged in general business of transporting freight, and can pass upon the justness, reasonableness, and equitableness of divisions of rates for such interchanged traffic. Spokane & Eastern Ry. v. S. P. & S., 109 I. C. C. 713, 716.

(b) Order of the commission of December 14, 1925, approving rules and instructions for the inspection and testing of locomotives propelled by power other than steam power in accordance with the locomotive-inspection act, as amended, applies to (a) electric railways subject to the interstate commerce act and which are not street, suburban, or interurban railways, and (b) street, suburban, and interurban electric railways operated as part of general railroad systems of transportation. Rules for Testing Other than Steam Power Locomotives, 122 I. C. C. 414.

(c) Every carrier by railroad subject to the interstate commerce act and which is not in strictness a street, suburban, or interurban electric railway, is subject to the locomotive-inspection act, as amended. And even though it is a street, suburban, or interurban electric railway, if it is operated as a part of a general railroad system of transportation, such electric railway is also within scope of the locomotive-inspection act, as amended. Rules for Testing other than Steam Power Locomotives, 122 I. C. C. 414, 422.

(d) Eelctric railways which have developed into railways which are more than interurbans, and which do not fall fairly within the expression "street, suburban, and interurban electric railways" as used in the locomotive-inspection act, are not excluded from the scope of that act, as amended. This view is in harmony with the body of this statute and the provisions and scope of various other laws enacted for the same purpose. Rules for Testing other than Steam Power Locomotives., 122 I. C. C. 414, 424, 425.

(e) It is unnecessary for the commission to determine whether electric lines upon which no locomotives are used are subject to the locomotive-inspection act, as amended. Rules for testing other than Steam Power Locomotives., 122 I. C. C. 414, 426.

(f) Certain electric lines found not properly classed as street, suburban, or interurban electric railways. Accordingly, such carriers are subject to the locomotive-inspection act, as amended. Rules for testing other than Steam Power Locomotives., 122 I. C. C. 414, 428.

(g) If state statute affecting electrification of railroad conflicts with lawful act of Congress already taken, the act of Congress prevails. Staten Island Rapid Transit Ry. Co. v. Public Service Commission of State of New York, 16 Fed. (2d) 313.

(h) Order directing steam railroads to remove discrimination against electric railroad, without designating manner of removal, HELD not invalid as a requirement that steam roads establish through routes or joint rates, or allow common use of terminals, without finding of public necessity or convenience necessary under Interstate Commerce Act, § 1, par. 21, section 3, par. 4, and section 15, pars. 3, 4, as amended by Transportation Act, 1920, §§ 402, 405, 418. Chicago, I. & L. Ry. Co. v. United States, 46 Sup. Ct. 226.

(i) Interstate Commerce Commission's order to remove discrimination of steam railroads against electric railroad, which in practical effect, was a requirement that they interchange traffic, with result that electric road would get part of steam roads' business, HELD not invalid, as taking of property in violation of due process clause. Chicago, I. & L. Ry. Co. v. United States, 46 Sup. Ct. 226.

(j) Finding of Interstate Commerce Commission that electric railroad, discriminated against, was engaged in general transportation of freight, HELD conclusive in action to set aside order directing removal of discrimination, wherein evidence heard by Commission was not introduced. Chicago, I. & L. Ry. Co. v. United States, 46 Sup. Ct. 226.

(k) Interstate Commerce Commission's order to remove discrimination between steam railroads and electric railroad, entered at instance of electric railroad, is valid, under Interstate Commerce Act, § 15, as amended by Transportation

Act 1920, § 418, without finding that electric road was engaged in general transportation of freight. Chicago, I. & L. Ry. Co. v. United States, 46 Sup. Ct. 226.

II. THRU RATES WITH STEAM ROADS.

See Through Routes and Joint Rates.

(a) Complaint of Spokane & Eastern Ry. & Power Co., and Inland Empire R. R., electric lines, alleging that their divisions of joint rates on traffic interchanged between them and connecting steam roads are unreasonable, inequitable, and unduly prejudicial, dismissed. The record, based largely if not wholly, upon financial needs, fails to disclose evidence regarding relative expense of freight and passenger transportation on the electric lines and steam roads respectively, the electric roads have failed to make two of their immediate connections parties to proceeding, and record is inadequate in other important respects to justify findings upon which to base a satisfactory divisional adjustment. Spokane & Eastern Ry. v. S. P. & S., 109 I. C. C. 713.

(b) Proposed elimination of Salt Lake & Utah R. R. an electric line as an intermediate carrier in routing of eastbound and westbound transcontinental traffic, found justified and not unreasonable or otherwise unlawful. Such route is artificial, can draw traffic only through the most vigorous and expensive solicitation methods, and no advantage to anyone other than intermediate line would result. On the other hand, such participation is a positive disadvantage to other carriers and transcontinental shippers, and results in needless delays and considerable added expense of operation. While such intermediate line is in a weak financial condition public interest will not be served by solving its financial problems at sacrifice of efficiency and economy of operation. Restrictions in Routing over S. L. & U., 115 I. C. C. 357.

(c) Upon further consideration, finding in former report, 115 I. C. C. 357, that proposed elimination of Salt Lake & Utah R. R., an electric line, as an intermediate participating carrier in the routing of eastbound and westbound transcontinental traffic was not unreasonable or otherwise unlawful, affirmed. The inclusion of the Salt Lake & Utah in transcontinental routes can benefit no one but that line, and can add nothing to transportation facilities. It will result, rather, in inefficient and uneconomical operation, upon which the commission is unwilling to place its stamp of approval. Restrictions in Routing over S. L. & U., 122 I. C. C. 208.

(d) Certain carriers found to be street, suburban, or interurban electric railways not operated as part of general railroad system of transportation and accordingly not within scope of the locomotive-inspection act, as amended. Rules for testing other than Steam Power Locomotives, 122 I. C. C. 414, 425, 426.

(e) Alleged lack of reciprocity and other matters of dissimilarity between steam and electric railroads HELD not, as a matter of law, circumstances negativing discrimination in refusal of steam roads to establish through routes, joint rates, and interchange switching service. Chicago, I. & L. Ry. Co. v. United States 46 Sup. Ct. 226.

IV. RATES, TRANSFERS AND DIVISIONS.

See Transfer; Divisions.

(a) Complainant, Kaw Valley, is an electrically operated common carrier extending from Lawrence, Kas., to Kansas City, and alleged that the maintenance by defendants of rates of 2.5c plus $10 per car for sand, from Grinter and Sirridge, Kans., on its line, to destinations on the Clay County Ry., in Kansas City, while maintaining a rate of 2.5c to other destinations in Kansas City is unduly prejudicial. The movement of sand to the waterworks is temporary and when the works are completed no further shipments will be made. It can not be found upon all the facts that the limitation placed upon the 2.5c rate so as to make it apply only when the haul is over not to exceed three lines unduly prefers the competing carriers and sand producing plants and unduly prejudices complainant. The circumstances and conditions surrounding transportation of sand from Grinter and Sirridge to the waterworks are not substantially similar to those surrounding transportation at 2.5c from competing sand producing points to the same destination and from the same points to other destinations within the Kansas City switching limits. HELD, rate attacked not unduly prejudicial, complaint dismissed. Kansas City

K. V. & W. Ry., v. A. T. & S. F. Ry., 120 I. C. C. 258.

(b) Rates on sand from Sirridge and Grinter, Kans., on the Kansas City, Kaw Valley & Western Ry., an electric line, to destinations on the Kansas City, Clay County & St. Joseph Ry., within Kansas City switching limits, found not unduly prejudicial as compared with lower rates contemporaneously maintained from same origin points to other destinations in Kansas City district, and from other sand-producing points in same general territory to destinations on the Clay County. Circumstances and conditions surrounding transportation from Grinter and Sirridge are not substantially similar to those surrounding transportation at lower rates from alleged preferred points, the former embracing a four-line haul necssitating use of two intermediate carriers, whereas from the latter, less than a four-line haul is involved in conjunction with which the use of only one intermediate carrier is necessary. Kansas City, K. V. & W. Ry. v. A., T. & S. F., 120 I. C. C. 258.

V. FACILITIES.

See Facilities and Privileges.

(a) Upon investigation by commission on its own motion into and concerning a certain tariff of Southwest Missouri R. R., an electric line, providing for absorption of drayage charges on ore from the Picher, Okla., district, FOUND: Such tariff is nothing more or less than a statement that out of its published tariff rate the carrier will make to shippers at certain mines, either directly or through the medium of payments to teamsters employed by them, specified rebates varying in amount in inverse ratio with accessibility of such mines to its rails, but that shippers at other mines, including those nearer to as well as farther distant from its rails, will be required to pay full published tariff rate if they tender at same loading tracks like traffic for like transportation. Such tariff clearly results in unjust discrimination under section 2, and provides for application of more than one rate in violation of section 6, of the act. Drayage Absorptions by S. W. M., 113 I. C. C. 179.

ELECTRIC TRUCKING

See Allowances §8 (1) (c); Facilities and Privileges §12½ (c).

ELEVATION

See Allowances §8 (3); Transit.

ELKINS ACT

See Crimes I.

EMBARGOES

See Demurrage §3½; Reconsignment §4½; Routing and Misrouting §4¼.

(a) Prior to arrival at original destination shipper requested diversion to embargoed point but was advised that request could not be accomplished without permit. Necessary permit was obtained and shipment was forwarded as requested but at a combination to and from reconsignment point. Tariff permitted reconsignment or diversion to embargoed points where shipments move under permits, and also provided that where car is placed for unloading and is reforwarded without being unloaded published rates to and from point of reconsignment will apply. Carriers assert that permit clause has reference to shipments moving from points of origin under permits and that since shipment here was not so made combination was properly applied. FOUND: Application of permit clause not being so restricted and in absence of showing that shipment was actually placed for unloading at reconsignment point, it was subject to application of a lower through rate. Reparation awarded for overcharges. Prairie Oil & Gas Co. v. M. V., 104 I. C. C. 252.

(b) Where it is necessary to forward shipments over an indirect route on account of an embargo existing over direct route, shippers should not be debarred from reasonable rates over accessible route. Orford Soap Co. v. B. & M. R. R., 107 I. C. C. 338.

(c) Initial carrier refused to accept shipments because of existing embargo of connecting lines and they were held at point of origin. On day embargo was canceled further request was made that shipments be accepted, but carrier again refused, erroneously informing complainant that "connections advise positively no route open." Complainant thereupon forwarded shipments by a route involving a higher rate and additional reconsignment charges. HELD: As no embargo was in effect on date second request was made by shipper, initial line had no valid reason for refusing to accept shipments. Such refusal found unlawful and reparation awarded for addi-

tional reconsignment charges and difference between rate charged and that applicable over alleged embargoed route. Haviland v. A. N., 109 I. C. C. 253.

(d) Refusal of director general, due to an embargo, to reconsign to Syracuse, N. Y., a carload of lumber shipped from Sweetwater, Ala., to Cincinnati, Ohio, necessitating ultimate reconsignment to Detroit, Mich., found to have resulted in collection of reconsignment, demurrage, and storage charges that were unreasonable and inapplicable. Shipment was tendered for transportation without complete routing instructions, and while an embargo did exist over certain routes, others over which no embargo existed were open via which shipment could have moved from Cincinnati to Syracuse, which would have been consistent with routing instructions given. Reparation awarded. Thames v. Director General, 112 I. C. C. 677.

(e) Combination rates and demurrage charges assessed on shipments of lumber originally moving from Eutaw, Ala., to Louisville and Cincinnati, shipment to latter point being reconsigned to Latty, Ohio, and all subsequently reconsigned to Nicetown Station, Philadelphia, found inapplicable. Carriers contended that cars were accepted at Louisville and Latty only as new shipments subject to local rates to and from those points upon theory that shipments could not have been reconsigned because of a tariff rule which prohibited reconsignment to embargoed points. Such rule, however, placed a limitation only on reconsignments "to a station or point of delivery" against which an embargo has been placed and here no embargo was in effect against points above outlined, including Nicetown Station. Moreover, circumstances under which shipments were handled and reshipped did not change their essential character as through reconsigned shipments and lower joint rates were applicable thereon. See also 51 I. C. C. 174; 92 I. C. C. 469. Reparation awarded. Elledge v. Director General, 113 I. C. C. 704.

(f) Coal moving during Federal control was consigned to a car pool and due arrival notices furnished. After expiration of free time shipments were held under constructive placement and demurrage accrued. Thereafter an embargo was placed against consignee, and consignor ordered shipments reconsigned upon ascertaining that they were refused by consignee. Upon contention that failure of carrier to make delivery on or before effective date of the embargo, and acceptance by carrier of other shipments for transportation to consignee after that date without advising complainant of the embargo, constituted railroad error, HELD: Governing tariff made no provision for notice to consignor of refused or unclaimed shipments and no part of the demurrage accrued before complainant had knowledge of the situation. Its position was same as if there had been no embargo. If therefore follows that demurrage did not accrue because of observance of the embargo and thus because of railroad error. Superior Coal Co. v. Director General, 115 I. C. C. 710.

(g) Routing instructions of shipper on lumber moving from Quitman, Ga., to East New York, N. Y., reconsigned to Ozone Park, N. Y., specified "Long Island Delivery." Due to an embargo on delivering line, one of the connecting carriers named in routing instructions changed the waybill to read "South Brooklyn R. R. delivery," and shipment moved forward accordingly. Upon tender of delivery consignee refused shipment, insisting for delivery as shown in bill of lading, and this demand was complied with. HELD: That the carrier inserting unauthorized routing in waybill was guilty of misrouting. Reparation awarded. Underwood Lbr. Corp. v. A. C. L., 120 I. C. C. 175.

(h) Shipment of lumber from Charleston, S. C., to Boston, Mass., moved as routed by shipper. Certain routes were embargoed but not route of movement, and upon request for diversion of shipment to Armory, Mass., complainant was notified that same could not be effected on shipments moving under permits. Shipment moved through to Boston, where demurrage accrued. HELD: As shipment moved via an unembargoed route over which no permit was necessary and delivering carrier at Boston was in possession of diversion instructions prior to arrival of car, a reconsignment charge less than that assessed was applicable and demurrage assessed was illegal due to erroneous detention at Boston. Reparation awarded. National-American Wholesale Lbr. Asso. v. A. C. L., 120 I. C. C. 665.

(i) Lumber consigned to New Haven, Conn., for reconsignment beyond was routed "via Harlem River, N. Y., N. H.

& H." Reconsignment was refused at New Haven because of embargo on shipments via Harlem River for all points on lines of New Haven. Complainants thereupon paid charges up to New Haven and tendered new bills of lading for movement beyond for which local rates were collected. Upon contention that accepting new bills of lading nullified the embargo and, in effect, waived its provisions, HELD: No permits having been issued for movement beyond New Haven, carrier rightfully refused to reconsign to embargoed points. However, as local shipments from New Haven were not embargoed new bills of lading could be accepted upon payment of freight charges to New Haven. In no other way short of waiting until embargo was lifted could shipments have moved out of New Haven without unloading cars. Charges assessed were therefore applicable. Philbrick Co. v. N. Y., N. H. & H., 123 I. C. C. 197.

(j) Complainant consigned shipment to its agent. Carrier's agent recognized consignee as complainant's employee and upon arrival of car wired arrival notice to complainant. Pending disposition of shipment demurrage accrued which complainant contended was inapplicable because of carrier's failure to notify consignee in writing of arrival of car in accordance with demurrage tariff. HELD: Contention is without merit since evidence is conclusive that shipment was consigned to complainant's agent for purpose of evading an embargo. In reality complainant was both consignor and consignee and written notice to complainant instead of its agent whose address was same as complainant's was a substantial compliance with tariff provision respecting notice of arrival. Milne Lbr. Co. v. D., T. & I., 123 I. C. C. 573.

(k) To evade an embargo complainant consigned shipment to its agent. Upon arrival at destination carrier's agent recognized consignee as complainant's employee and wired arrival notice to plainant. Shipment was held as unclaimed and pending its disposition demurrage charges accrued which complainant contended were unlawfully assessed because of carrier's failure to comply with tariff governing furnishing of notice of refused and unclaimed shipments under which consignor is not held liable for demurrage charges between date notice should have been sent and date actually sent. HELD: Contention is without merit. Tariff rule does not require carrier which has given notice to consignee, later to notify the same party as consignor that it has not claimed its own shipment, the law not requiring the performance of a vain act. See 74 I. C. C. 461. Milne Lbr. Co. v. D., T. & I., 123 I. C. C. 573.

(l) Certain destinations were embargoed except as to shipments moving under permits, the embargo notice excepting shipments to various points for final delivery but specifically prohibiting reconsignment therefrom to points against which the embargo was placed. Shipments here were billed without permits to the unembargoed points and forwarded therefrom to the embargoed destinations as reshipments, local rates being charged. Upon contention that by permitting shipment to so move lower joint rates were made applicable and that acceptance of shipments at reshipping points constituted a waiver of the embargo, HELD: Only by use of the reconsigning rule could these movements become through traffic. Here the reconsigning rule was rendered inoperative by provisions of the embargo and charges assessed were therefore applicable. Congdon & Carpenter Co. v. N. Y., N. H. & H., 123 I. C. C. 721.

(m) C. l. rate on shipment of one boiler and parts from Kewanee, Ill., to Wichita Falls, Tex., found applicable. Complainant's evidence failed to support its contention that charges should have been collected on basis of l. c. l. rate. Carrier showed that while at time of movement an embargo was in effect against c. l. shipments of like traffic, complainant obtained a permit for one c. l. shipment and that in accordance with bill of lading and permit shipment was handled as a carload from origin to destination. See also 92 I. C. C. 639. Kinnison Bros. v. Director General, 128 I. C. C. 703.

(n) A lawful embargo is, of course, a legitimate reason for refusing to accept cars for shipment via the embargoed route. Dyersburg Milling Co. v. Director General, 129 I. C. C. 739, 741.

(o) Complainant contracted with shipper for alfalfa meal from Colorado points to be shipped to Dyersurg, Tenn., routed via East St. Louis, Ill., but upon tender of shipments shipper was advised to leave routing open because of the outstanding embargoes and conges-

tion at St. Louis. Shipments were forwarded over cheapest route via Memphis. Upon contention that shipments were misrouted as there was no transit rate applicable via Memphis, and charges to ultimate destinations were in excess of those which would have accrued had shipments moved via East St. Louis, FOUND: Record fails to show that carrier or shipper had information that shipments were to be mixed in transit or that ultimate destination was not Dyersburg. Unrouted bills of lading having been issued and accepted, shipments were not misrouted as carrier was lawfully bound to move them over cheapest route, which was via Memphis. Dyersburg Milling Co. v. Director General, 129 I. C. C. 739.

EMERGENCY RATES

See Evidence §21½.

(a) Because of strike in anthracite fields which brought about a shortage of fuel for household use, an emergency, such as is contemplated by section 15(4) of the act, found to exist, requiring prompt establishment of additional joint rates and through routes on bituminous coal in prepared sizes from certain mining districts in the Virginias and eastern Kentucky, and on semianthracite coal from certain Virginia mines, to points in New England and Middle Atlantic States. Additional through routes, and temporary joint rates in connection therewith, prescribed without prejudice to subsequent consideration of requests for their being made permanent. Transportation of Anthracite Coal, 104 I. C. C. 341.

(b) Rate on crude petroleum from points in Arkansas to Texas City, Tex., for export, found not unreasonable or unduly prejudicial as compared with lower rate to other Gulf ports, which lower rate was subsequently made applicable to Texas City. Rate charged was in substance an emergency rate established to enable an overproduction of crude oil to be used, and its subsequent reduction does not establish that it was unreasonable prior thereto. While complainant was at a disadvantage, during period of movement, as compared with other ports, there is no showing that disadvantage was undue or that it suffered damage. Swiftsure Petroleum Co. v. M. P., 107 I. C. C. 637.

(c) Upon applications of carriers in western district seeking increases in freight rates, generally averaging 5 per cent with exceptions as to certain commodities, predicated on alleged existence of a financial emergency in that district, HELD: No such emergency exists in western trunk-line territory as a whole as would warrant commission in prescribing a general percentage increase in freight rates therein. Record held open for further consideration in connection with proceedings relating to the Hoch-Smith Resolutions (S. J. Res. 107). Revenues in Western District, 113 I. C. C. 3.

(d) Interstate Commerce Act, §1, subd. 15, as added and amended (Comp. St. Ann. Supp. 1923 § 8563), authorizing Commission in case of emergency to suspend rules and establish just and reasonable directions with respect to car service, applies only to unexpected conditions, and does not authorize suspension of rules to meet anticipated conditions, or placing in effect of emergency orders previously condemned as unjust and unreasonable. Berwind-White Coal-Mining Co. v. United States, 9 Fed. (2d.) 429, 430.

EMPLOYERS' LIABILITY ACTS

See Personal Injuries; Safety Appliance Acts.

(a) Foreman of working gang, engaged in carrying lumber for repair of bridge used in interstate commerce, who was injured while attempting to board moving work train on siding, was engaged in "interstate commerce," within the federal Employers' Liability Act. Central R. Co. of N. J. v. Monahan, 11 Fed. (2d) 212.

(b) Private police officer, employed under authority of state law by railroad engaged in both interstate and intrastate commerce and whose function it is to arrest offenders against any lawful authority, state or national, but having nothing to do with transportation, HELD not engaged in interstate commerce, so as to be entitled to recover for injury under Employers' Liability Act, notwithstanding at time of injury he was investigating theft of property which had been moving in interstate commerce. Delaware, L. & W. R. Co. v. Scales, 18 Fed. (2d.) 73.

(c) The Employers' Liability Act covers only persons who, at the time when alleged cause of action arose, were engaged in interstate commerce. Delaware, L. & W. R. Co. v. Scales, 18 Fed. (2d.) 73.

(d) Whether employee was injured in interstate commerce, so as to entitle him to recover under Employers' Liability Act, depends on whether, at time of injury, he was engaged in interstate commerce, or in work so closely connected with interstate transportation as practically to be a part thereof. Delaware. L. & W. R. Co. v. Scales, 18 Fed. (2d.) 73.

(e) State laws, in so far as they cover same field, are superseded by federal Employers' Liability Act. Southwell v. Atlantic Coast Line R. Co., (N. C., 1926) 131 S. E. 670.

(f) In suit for damages under Federal Employers' Liability Act. (45 USCA §§ 51-59 [U. S. Comp. St. §§ 8657-8665]), for death of railroad employee, killed while coupling cars when cut of cars was thrown against such cars, question whether railroad company was negligent in failing to promulgate rules requiring signals or warnings for protection of employees working as decedent was in making up trains HELD for jury. Harris v. Chicago & E. I. Ry. Co., (Ind. 1927) 158 N. E. 636.

(g) In suit for damages, under Federal Employers' Liability Act (45 USCA §§ 51-59 [U. S. Comp. St. §§ 8657-8665]), for death of railroad employee, killed while coupling air hose when cut of cars was thrown against cars on which he was working, question whether railroad company was negligent in failing to have a brakeman at end of cut of cars that was kicked onto track where decedent was working held for jury. Harris v. Chicago & E. I. Ry. Co., (Ind. 1927) 158 N. E. 636.

(h) In action for damages, under federal Employers' Liability Act (45 USCA §§ 51-59 [U. S. Comp. St. §§ 8657-8665]), for death of railroad employee, question whether inspector with whom decedent was working, and who knew of decedent's inexperience in making up cars, was negligent in failing to take steps to protect decedent, where decedent was killed by cut of cars between which decedent was working while coupling air hose, HELD for jury. Harris v. Chicago & E. I. Ry. Co., (Ind. 1927) 158 N. E. 636.

(i) In suit for damages for death of railroad employee, whether decedent, killed while coupling air hose on cars being made up for shipment, while substituted for another workman, services being much more dangerous than his regular work on rip track, had assumed risk of employment, under federal Employers' Liability Act (45 USCA §§ 51-59 [U. S. Comp. St. §§ 8657-8665]), HELD question of fact for jury. Harris v. Chicago & E. I. Ry Co., (Ind. 1927) 158 N. E. 636.

EMPTY CARS

See Cars and Car Supply §7⅝; Classification § 12⅞.

EQUALIZATION OF RATES

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
II. CIRCUMSTANCES AND CONDITIONS.
§2. In general.
§3. Commercial advantages and disabilities.
§4. Competition.
(1) In general.
(2) Railroads.
(3) Rail-and-water.
(4) Water.
(5) Market competition.
§5. Low state rate.
§6. Preference of markets.
§7. Size of community.
III. EFFECT OF EQUALIZATION.
§8. Adjustment of related rates.

CROSS REFERENCES

See Advanced Rates §5 (2), §11½; Blanket Rates §7, §8, §10; Classification §20; Differentials §5, §6, 7; Discrimination; Evidence §66; Import Traffic §2 (3o); Local Rates and Combinations; Long and Short Hauls; Market Competition; Reasonableness of Rates §28; Relative Rates.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) In situations where rates standing by themselves are lawful and commission is called upon to impose rate

equalization, facts developed of record should leave no doubt that exercise of such power by commission would be not only warranted by law but necessary or appropriate in public interest. Galveston Commercial Asso. v. A. & S., 109 I. C. C. 114, 125.

II. CIRCUMSTANCES AND CONDITIONS.

§2. In General.

See Differentials; Evidence §2, §56; Reasonableness of Rates §12½, §28.

(a) Complainant attacked commodity rate of 99c charged on one tank car of gasoline shipped Feb. 13, 1925, from Peckham, Okla., to Port Arthur, Ont., as unreasonable and, as compared with rates on like traffic by steamers to Port Arthur and rate of 93c from Peckham to Winnipeg, Man., unjustly discriminatory and unduly prejudicial. Car moved Frisco to Kansas City, Mo., C. G. W. to Minnesota Transfer, Minn., Soo Line to Duluth thence D. W. & P., and C. N. to Port Arthur. Charge 49c to Duluth and 50c beyond. There was contemporaneously a combination from Peckham to Winnipeg of 93c, made 43c to St. Paul and 50c beyond. Port Arthur and Fort William are on Lake Superior. The competition met by shippers at Winnipeg from these points is due to the fact that oil is shipped by tank steamers on the lake, which is the same competition that the D. W. & P. and C. N. meet on shipments from Duluth to Port Arthur. Competition between the carriers and the equalizing of commercial advantages between neighboring points of destinations appear to have been the controlling elements in establishing petroleum rates to the northwest. HELD. rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Northwestern Oil Co. v. St. L. S. F. Ry., 112 I. C. C. 488.

(b) Complainant attacked commodity rates charged on cast iron pipe and fittings, carloads, two years prior to Oct. 18, 1924, from Anniston, Ala., Atlanta, Ga., Chattanooga, Tenn., and other points in those states and from Charlotte, N. C., to Wichita, Kans., as unreasonable, unjustly discriminatory and unduly prejudicial. Wichita is on south central Kansas served by six steam lines and one electric line. Birmingham or Chattanooga rates may be taken as typical. HELD: Rates attacked not unreasonable but unduly prejudicial to Wichita and unduly preferential of Oklahoma points and Kansas City to the extent they exceed the rates to Enid, Okla; the undue prejudice should be removed in such a manner that the rates to Wichita will not exceed the rates to Kansas City by more than the amount of the difference between the present rates to Enid and Kansas City, reparation denied. Wichita Chamber of Commerce v. A. & V. Ry., 112 I. C. C. 569.

(c) Complainant attacked commodity rates charged on zinc ore, carloads, shipped between Feb. 14, 1923, and Jan. 24, 1925, from points on the lines of defendants, Northeast Oklahoma and Miami Mineral Belt R. R., in Kansas and Oklahoma to Van Buren, Ark., as unjustly discriminatory and unduly prejudicial in favor of its competitors operating zinc smelters at East St. Louis and other points in Illinois and Indiana. Van Buren is on both the M. P., and Frisco. From the territory of origin it is intermediate to, and about 11 miles less distant than, South Fort Smith, Ark., by the Frisco and about the same distance as South Fort Smith via the M. P. The average distance from the shipping points under consideration on these two roads to the junction points is 6 miles, and the average total distance to Van Buren is 194 miles. Charged 3.5c to junctions and 7.5c beyond. During this period the same rates applied to South Fort Smith, but to the smelting points east of the Mississippi the rates were 18c to East St. Louis, 21.5c to Peoria, Ill., and 24.5c to Chicago, of which 3c represented the portion of the revenue accruing to the short lines for the movements to the junction points. HELD: Rates attacked not unduly prejudicial or unjustly discriminatory, reparation denied, complaint dismissed. Falcon Zinc Co. v. Northeast Oklahoma R. R., 113 I. C. C. 265.

(d) The duty of a carrier to equalize treatment among shippers extends only to those whom it is bound to serve. Winding Gulf Colliery Co. v. C. & O., 115 I. C. C. 113, 116; Ragland Coal Co. v. V. Ry., 115 I. C. C. 147, 150.

(e) Rates which are designed to effect market equalization necessarily disregard distance to some extent. Nashville Traffic Bureau v. L. & N., 118 I. C. C. 748, 752.

(f) Upon further hearing in 95 I. C. C. 539, FOUND: That record does not permit prescription of maximum or mini-

mum reasonable rates on ex-lake grain from Buffalo to New York, Philadelphia, Baltimore, and Boston, for export, since present rates have not been shown to be unreasonable or otherwise unlawful, but if such rates were to be prescribed, evidence warrants conclusion that line-haul rates to water-front elevators at New York, Philadelphia, and Baltimore should be identical and that maintenance of same rates to water-front elevators at Boston would not be unlawful. Maritime Asso., Boston Chamber of Commerce v. A. A. R. R., 126 I. C. C. 199, 211, 216.

(g) In equalizing rates a percentage difference in distance is preferable to a fixed mileage difference for all distances. Galveston Commercial Asso. v. G. H. & S. A., 128 I. C. C. 349, 388.

§3. Commercial Advantages and Disabilities.

See Blanket Rates §7; Differentials §5, §6, §7; Discrimination §4, §5, Evidence §2; Express Companies §19; Interstate Commerce Commission; Reasonableness of Rates §12½.

(a) It is not purpose of interstate commerce act that commission should attempt to equalize fortunes, opportunities, or abilities and disregard transportation conditions, Diffenbaugh Case, 222 U. S. 42, 46; but this principle does not foreclose commission from considering probable effects which would follow prescribing of relationships in rates proposed by certain shippers and opposed by their competitors. See 78 I. C. C. 549, 552. Morrell & Co. v. N. Y. C., 104 I. C. C. 104, 124.

(b) While commercial conditions are factors to be considered in determining lawful rates, they should not be given such importance as completely to outweigh factors more directly related to transportation, such as cost and value of service. Morrell & Co. v. N. Y. C., 104 I. C. C. 104, 134.

(c) Proposed adjustment of rates on lumber and related articles from south Pacific coast origin groups to Canadian points, involving advances and reductions, and designed for purpose of equalizing those rates with north Pacific coast points, found not justified as a whole. Carriers long maintained equal rates from this general territory but parity was disrupted when rates from north Pacific coast points were revised without concurrent revision from south Pacific coast points. While circumstances warranting higher rates from north Pacific coast points on one kind of lumber than on other kinds are not necessarily controlling as to rates from south Pacifi ccoast points, reductions proposed will restore former equalization, no reason appearing why the disparity should be continued or why equal rates should not obtain. The evidence, however, does not support a finding that change proposed in the minima, restriction proposed in the lumber list, or cancellation of transshipment of proportional rates is warranted. Lumber and Related Articles, 107 I. C. C. 57.

(d) Carriers may voluntarily equalize commercial or geographic disadvantages in many instances in which commission could not require such equalization. See 222 U. S. 42. Galveston Commercial Asso. v. A. & S., 109 I. C. C. 114, 121.

(e) Contention that since carriers have equalized rates to Gulf ports on cotton fabrics, bagging and ties, soap, and other commodities, they should be required to do so as to cottonseed cake and meal, not sustained. No competition was shown between commodities instanced and cottonseed cake and meal, undue prejudice alleged being against one port to advantage of another in rates on same commodities, i. e., cake and meal, which issue does not include undue prejudice as between various commodities. Galveston Commercial Asso. v. A. & S., 109 I. C. C. 114, 121.

(f) Class rate on window glass moving rail and water from Jeannette, Pa., to Jacksonville, Fla., found not unreasonable, discriminatory, or unduly prejudicial as compared with rail-and-water commodity rates from the same origin point to Savannah, Ga. Allegations of complaint rests solely upon fact that on certain other commodities the two ports are accorded same rates. However, no showing was made that any of the commodities upon which rate parity is maintained compete with window glass, or that assessment of a class rate on window glass and a commodity rate on a competing commodity results in undue prejudice. Towers Hardware Co. v. P. R. R., 109 I. C. C. 651.

(g) Rates on fuel and crude oil from Smackover, Ark., to Lincoln, Nebr., found unreasonable to extent it exceeded lower

rate contemporaneously in effect to Omaha, Nebr., and Council Bluffs, Iowa, which lower rate was subsequently established to Lincoln. Lincoln is usually accorded same rates on oil from Smackover as Omaha and related points, this relationship being recognized in 36 I. C. C. 109. Lincoln Traction Co. v. M. P., 109 I. C. C. 653.

(h) Proposed increased rates on plaster board, wall plaster, stucco, and plaster blocks, in straight or mixed carloads, from Los Angeles and Seattle, to Utah common points, for purpose of placing Los Angeles and Seattle on a more nearly equal basis, found not justified. Rate comparisons submitted by carriers, unaccompanied by a showing of similarity of transportation conditions found to be of little probative value. On other hand, protestants instanced a number of rates from eastern points to destinations in western territory which have recently been reduced and contend that present rates should be reduced instead of increased. Plaster Board to Utah Common Points, 112 I. C. C. 3.

(i) Proposed increased translake rate on salt from Ludington and Manistee, Mich., to Chicago, Ill., and intermediate points, applicable over car-ferry route of the Pere Marquette to Milwaukee, and the C., M. & St. P., beyond, found justified. In Salt Cases of 1923, 92 I. C. C. 388, commission fixed minimum translake rate 1 cent under all-rail rates. The Pere Marquette has its own rails from Ludington and Manistee to Chicago, but the differential in favor of translake route attracts all the traffic and in order to secure the entire haul it desires to maintain same rate over both routes. In the general cases carriers were specifically authorized to apply all-rail rate over translake route and the commission sees no reason for changing finding made therein to effect that a translake rate equal to all-rail rate is justified. Salt from Ludington Group, 112 I. C. C. 255.

(j) Relationship of fuel-oil rates from southern California to Arizona with those from the mid-continent field to the same destinations found not unduly prejudicial, with exception of rates from Galveston and other Texas points to Douglas and Bisbee, Ariz. If rates from California and mid-continent fields into Arizona were constructed strictly according to relative distances, as California would have them, the only logical result would be to deprive mid-continent producers from competing in this territory, provided the price of fuel oil in the two fields is anywhere near same. Associated Oil Co. v. A. E. R. R., 112 I. C. C. 350.

(k) Upon further consideration, original report, 96 I. C. C. 485, modified and rates on gasoline from Tulsa and grouped points in Oklahoma to destinations in Indiana found unreasonable and unduly prejudicial as compared with rates from same origin points to Chicago and other Illinois destinations. In view of substantial similarity of transportation conditions in Indiana and Illinois, there is no warrant for maintenance of higher rates to points in western Indiana than to Chicago and other Illinois points taking same rates. Concurrently, rates on fuel oil and other products taking same rates from same origins to same destinations found unreasonable to extent they exceeded 80 per cent of the contemporaneous rates on gasoline. Reasonable and nonprejudicial rates prescribed for future. Indiana State Chamber of Commerce v. A., T. & S. F., 112 I. C. C. 481.

(l) Rates on soap from complainant's pier at foot of Sussex Street, Jersey City, N. J., within lighterage limits of greater New York, to various New England destinations, found not unreasonable or unduly prejudicial as compared with lower rates from freight stations, piers, and shipping points on Manhattan Island and Brooklyn, N. Y. A finding of undue prejudice would require a showing of substantial similarity of transportation conditions not here shown, in addition to a competitive relationship, and while cost of transporting complainant's shipments is greater by substantial amounts than cost of transporting those from Manhattan and Brooklyn, the present differences between assailed rates and those from Manhattan and Brooklyn are not shown to be greater than differences in transportation conditions warrant. Colgate & Co. v. N. Y. C., 112 I. C. C. 573.

(m) Rates on prepared roofing, asphalt shingles, roofing and building paper, and certain other related articles, from various producing points in c. f. a., Buffalo-Pittsburgh, and trunk-line territories to southern territory, and from points in trunk-line territory to Virginia and West Virginia, found unreasonable and unduly prejudicial to extent they

exceed rates determined on basis of those prescribed in Southern Class Rate Investigation, 109 I. C. C. 300. Reasonable and nonprejudicial rates and relationships prescribed for the future. Standard Paint Co. v. Director General, 112 I. C. C. 589.

(n) Complainant attacked rates charged on egg case material carloads from Caruthersville, Mo., to Illinois, Indiana, Iowa, Wisconsin, Michigan, Minnesota, Missouri, North Dakota, South Dakota, Nebraska, and Kansas, as unjust and unreasonable and unduly prejudicial as compared with rates from Cairo, Ill., Karnak, Ill., Illmo, Mo., and Memphis, Tenn. Caruthersville is on the Mississippi river, 220 miles south of St. Louis, Mo. It is served directly by the Frisco and Cotton Belt in connection with the Deering Southwestern. The competing points are also on the Mississippi, their distances from St. Louis being as follows: Memphis 306 miles, Cairo 147 miles. Illmo 138 miles. Applicable rates are generally those on lumber. HELD, rates attacked on lumber, egg case material, box lumber and shooks, in carloads, from Caruthersville to Iowa, South Dakota and Minnesota and points in Illinois and Wisconsin on the east bank of the Mississippi river served by the Burlington unjust and unreasonable and unduly prejudicial to extent rates exceed those from Cairo by more than 5c; to Wisconsin except those mentioned to extent they exceed rates from Cairo by more than 7c and to Illinois except those mentioned to extent they exceed intrastate rates from Cairo by more than 8c, to Kansas and Nebraska not unreasonable or otherwise unlawful, reparation awarded. Dillman Egg Case Co. v. A. T. & S. F. Ry., 113 I. C. C. 447.

(o) Complainant attacked commodity rates charged on eggs, carloads, from Kansas, Nebraska, Oklahoma and Missouri to Laredo, Tex., since Aug. 30, 1922 as unjust, unreasonable and, as compared with rates maintained from the same points of origin to Houston, San Antonio, Corpus Christi, and other destinations in Texas common point territory unduly prejudicial. Laredo is a Rio Grande crossing and the gateway through which complainants shipments move into and out of Mexico by rail. It is served principally by the I. & G. N., and T. M., and, for rate making purposes, is located in what is known as Texas differential territory. Eggs are rated third class in western classification, but generally move on commodity rates from the origin territory here considered to Texas common points. Shipments of eggs to Laredo and Mexico are transported in refrigerator cars. They can not be otherwise transported safely particularly during the season when Mexico imports its eggs. Much of this equipment returns north empty. A distance scale of rates to Texas differential territory which would be just and reasonable to shippers and carriers alike could not be determined from and is not warranted by the present record. The record does not support a finding that Laredo is entitled to a rate adjustment different from that now accorded to other points in differential territory. Third class differentials on eggs apply generally to such other points and they are higher in many instances than to Laredo. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Sames Moore & Co. v. A. T. & S. F. Ry., 113 I. C. C. 501.

(p) Complainant attacked commodity rate of 83.5c charged on butter, eggs and dressed poultry, in straight or mixed carloads, from Benson, Minn., to Milwaukee, Wis., and Chicago, Ill., on traffic having final destination at those points, and the same rate to Chicago charged as a factor of the through combination rates on similar traffic destined to eastern points between April 15, 1922 and Dec. 5, 1923 as unreasonable, unjustly discriminatory and unduly prejudicial. Shipments originated at Benson a local point on the G. N., and moved over that line to St. Paul and various connections beyond. The rate to both Chicago and Milwaukee was a joint commodity rate of 83.5c which in every instance was also used as a factor to Chicago on shipments destined east of there. Effective Dec. 6, 1923 it was reduced to 77c. Butter, eggs and dressed poultry are rated third class in the western and official classifications. The rate attacked compares favorably with the rates from other points on the G. N., where such forceful competition did not exist and with rates from other producing points in this general territory. Apparently the adjustment of Dec. 6, 1923 is satisfactory to complainant and has removed any undue prejudice which may have existed in the relation of the rate from Benson with those from Granite Falls and Marshall.

Complainant has not proved any damage as a result of undue prejudice and has not sustained the allegation of unjust discrimination. HELD, rate attacked not unreasonable, complaint dismissed. Benson Produce Co. v. G. N. Ry., 113 I. C. C. 541.

(q) Complainant attacked rates on pulpboard, not corrugated or indented, carloads, from Hartsville, S. C., to destinations in trunk line, New England, and Buffalo Pittsburgh territories as unduly prejudicial to Hartsville and unduly preferential of Gordon, Ga., and Roanoke Rapids, N. C. Hartsville is on the A. C. L., and S. A. L. Gordon is on the C. of Ga., Roanoke Rapids on the S. A. L., and Canton on the Southern. The connecting lines from the northern gateways to destinations in the territories named are generally the same whether the traffic originates at Hartsville or at the other points named. Defendants proposed to remove the undue prejudice by publishing from Hartsville the same rates as now apply on wrapping paper from that point. The effect of the proposed adjustment would be to reduce the rates from Hartsville to such an extent that they will also be lower than the rates from Gordon, and to narrow the existing spread between the rates from Hartsville and from Roanoke Rapids. HELD, rates unduly prejudicial, carriers to publish rates on basis suggested by them from Hartsville and Canton, namely, the wrapping paper rates. Sonoco Products Co. v. A. C. L. R. R., 113.I. C. C. 553.

(r) Complainant attacked combination rates charged on peaches and grapes, carloads, from California to Hibbing, South Hibbing, Ely, Aurora, Virginia, Eveleth, Chisholm, and Gilbert, Minn., two years prior to Jan. 22, 1925 as unreasonable. Charged combination on Duluth, Minn., composed of $1.73 to Duluth and third class beyond. Contention of complainant is based upon Va. Ch. of Com. v. A. T. & S. F. Ry., 92 I. C. C. 732 wherein the Commission prescribed the same rates to Virginia, Minn., as to Duluth. Defendants are willing to establish the rate of $1.73 to all points. HELD, rates attacked unreasonable to extent they exceed the rate to Duluth, reparation awarded. Hansen Peterson Co. v. A. T. & S. F. Ry., 113 I. C. C. 575.

(s) Complainant attacked commodity rates on coke, carloads, from Appalachia, Stonega and other producing points in Virginia and from Birmingham, Ala., and Chattanooga, Tenn., to California as unreasonable, unduly prejudicial and in violation of section four. In 104 I. C. C. 483, division 3 found that the rates on coke, carloads, from Chattanooga to Pacific coast terminals were not unreasonable or unjustly discriminatory, but were unduly prejudicial to the extent they exceeded the rates from Birmingham. HELD, rates attacked not unreasonable or unduly prejudicial from Appalachia, Stonega and other Virginia points, and from Birmingham but rate from Chattanooga not unreasonable but unduly prejudicial as stated in 104 I. C. C. 483 which undue prejudice has since been removed, complaint dismissed. Romann & Bush Pig Iron & Coke Co. v. I. R. R. Co., 113 I. C. C. 622.

(t) In 102 I. C. C. 641, the Commission found rates on iron and steel articles, carloads and less carloads, from Birmingham, Ala., to Nashville, Tenn., were not unreasonable or unduly prejudicial except that the carload rate was unduly prejudicial to Nashville to the advantage of Chattanooga and Knoxville, Tenn., to extent it exceeded 3c more than the rate from Birmingham to Chattanooga and 4c less than from Birmingham to Knoxville. Defendants filed a petition for modification of report and order because the parties have since agreed to the establishment of a rate of 24c from Birmingham to Nashville, 205 miles, under a compromise scale which would result in a rate of 20c to Chattanooga, 143 miles, and 28c to Knoxville, 254 miles. HELD, an order will be issued modifying the order heretofore entered permitting the establishment of the proposed relationship of rates on or before Nov. 1, 1926. Traffic Bureau of Nashville v. L. & N. R. R., 113 I. C. C. 673.

(u) Complainant attacked commodity rates charged on barytes carloads from Cartersville, Ga., to Pennsylvania, New York and Delaware, as unreasonable, unjustly discriminatory and unduly prejudicial as compared with rates from Sweetwater, Tenn., to the same destinations. Sweetwater is on the main line of the Southern between Chattanooga and Knoxville, Tenn. Cartersville is served by the N. C. & St. L., L. & N. and S. A. L. 47 miles north of Atlanta. For sometime prior to June

25, 1925 rates from Sweetwater and Cartersville to the same destinations, except Hazard, were the same. Early in 1925 shippers at Sweetwater complained that the maintenance of the same rates from Cartersville placed shippers at Sweetwater at a disadvantage in competing with shippers at Cartersville. On June 25, 1925 tariffs reducing the rates from Sweetwater 50c per long ton without making a like reduction in the rates from Cartersville, became effective. Complainant introduced no evidence of probative value bearing upon the reasonableness of the rates attacked. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Thompson Weinman & Co. v. A. C. Ry., 118 I. C. C. 21.

(v) Complainant attacked combination rate of 69c composed of 27.5c to East St. Louis, Ill., and 41.5c beyond charged on tank cars of gasoline and naptha shipped since March 22, 1923 from Beckett, Okmulgee, Bristow, Tulsa, and Wilson, Okla., to Blue Creek, W. Va., as unreasonable to extent they exceeded the rates to Charleston, W. Va. Blue Creek is 13 miles northeast of Charleston on the B. & O. Charleston is recognized by defendants as one of the western termini of eastern trunk line territory and a dividing point between central and trunk line territories. On traffic between that point and points in central territory the general basis of rates applicable in that territory applies. The evidence is directed against the rate of 41.5c from East St. Louis to Blue Creek as compared with 28.5c to Charleston. A spread of 15c is warranted Blue Creek over Charleston. HELD, rates attacked unreasonable to extent they exceed 57.5c, reparation awarded. Transcontinental Oil Co. v. B. & O. R. R., 118 I. C. C. 518.

(w) Complainant attacked commodity rates on sand, in carloads, from Lawrence, Kans., to points east of Kansas City, Mo., as unreasonable and unduly prejudicial as compared with rates from Turner, Muncie, Grinter, Sirridge and Armourdale, Kans., the latter points being within the switching limits of Kansas City. Plant at Lawrence is on the south side of Kaw river on the Santa Fe 41 miles from Kansas City. Rates from Lawrence to destinations within a radius of 150 miles east of Kansas City are combinations of local rate to and from Kansas City subject to combination rule. The average distance from all the same plants is 5.8 miles and rates from all of the preferred points to the destination territory are the same as the rates from Kansas City. Lawrence is at a disadvantage of 50c. HELD, rates attacked from Lawrence to points within a radius of 150 miles east of Kansas City unreasonable and unduly prejudicial to extent they exceed by more than 20c per ton the rate from Turner, Muncie, Grinter, Sirridge and Armourdale, Kans., Jackson v. A. T. & S. F. Ry., 118 I. C. C. 547.

(x) Complainant attacked commodity rate of 4c charged on sand, in carloads, from Lawrence, Kans., to destinations in the Kansas City, Mo., switching district as unreasonable and unduly prejudicial. Lawrence is 41 miles west of Kansas City. A rate of 2.5c applies from other sand producing points with the Kansas City switching district. The record is persuasive that a difference of 30c per ton is too high for the difference in distance. HELD, rate attacked unreasonable and unduly prejudicial to extent it exceeds by more than 1c the rate from points within the Kansas City district. Jackman and Jackman v. A. T. & S. F. Ry., 118 I. C. C. 560.

(y) Complainant attacked commodity rates charged on sand and gravel, carloads, from Illinois and Wisconsin producing points to Chicago, Ill., as unreasonable and unduly prejudicial, also that failure and refusal of the Milwaukee to absorb the switching charges on this traffic of the Northwestern and North Shore at Elgin, Ill., and Racine, Wis., is unduly prejudicial. Carriers proposed certain increases in the rates on sand, gravel and crushed stone within the Chicago district. Group rates have for many years applied to Chicago and Chicago rate points from Milwaukee and Northwestern points in Zones I and II the latter zone taking a differential of 5c over the former. An arbitrary has usually been added to the single line rates for connecting line delivery. An increase of 5c is made in the rate from Zone I and Zone II on the Northwestern and Milwaukee, somewhat greater increases from other points in Zone I, increases of 1 and 6c in the single line rates, and 12 and 17c in the connecting line rates from Indiana producing points and corresponding increases in the connecting line rates from Illinois Zones II

and III. The single line rates under Zones 420, as a whole, and from complainants plants in particular, are relatively lower than the rates on these commodities to other destinations and appear to give ample consideration to the great volume in which these commodities move to the Chicago market. The lower the differential between the respective zones or districts the less the consideration given to differences in distance and the more closely the adjustment approaches a strictly group basis. The 65c and 70c rates, as in the case of the nearer distant points in any group or differential adjustment, are higher, distance considered, than the rates from the farther distant points but whether considered alone or as a part of a differential adjustment, compare favorably, transportation conditions considered, with other rates of record on the same and other commodities. These connecting line rates of 95, 100 and 105c usually represent a 30c arbitrary over the single line rates. It appears that any higher arbitrary will confine the shipments largely to single line deliveries. The rates on stone within the district have never borne any differential or percentage relationship to the rates from Zone I on the Northwestern and Milwaukee. Comparatively little sand and gravel originates within the district. There is no competitive or transportation reason for grouping Zone I with the Chicago district, either by increasing the rates within the district to the basis proposed by defendants or by reducing the rates from Zone I to the basis proposed by complainants. The rates on slag from Joliet to the district should be maintained on the same level as the rates on sand, gravel and crushed stone, and rates on sand, gravel, crushed stone and slag within the district should be increased at this time to the same level as on other commodities. The transportation and commercial competition which governs the rates and differentials on sand, gravel and crushed stone to the Chicago district are not shown to exist with respect to the movement of these commodities to any points in Wisconsin. The fact that the Milwaukee absorbs the switching charges of the Northwestern and North Shore on certain other commodities does not warrant a finding of undue prejudice. HELD, rates attacked not found unreasonable, rates within the district proposed not justified, connecting line arbitrary to be 20c instead of 30c, complaint dismissed. Chicago Gravel Co. v. A. T. & S. F. Ry., 118 I. C. C. 633.

(z) The Commission can not regulate rates for the purpose of equalizing cost of production or manufacture and primarily it is not its concern to equalize market competition. American Cedar Mfrs. Asso. v. N. Y. C. R. R., 118 I. C. C. 721, 723.

(aa) The duty of a carrier to equalize treatment among shippers extends only to those whom it is bound to serve. Winding Gulf Colliery Co. v. C. & O., 115 I. C. C. 113, 116; Ragland Coal Co. v. V. Ry., 115 I. C. C. 147, 150.

(bb) Complainant attacked rates charged on butter, eggs and dressed poultry, carloads and less carloads, from North Dakota, South Dakota, Nebraska, and Minnesota to Duluth, Minn., as unreasonable, and unduly discriminatory and unduly preferential of Chicago, and that the practice of defendants of publishing rates including refrigeration charges on such traffic and according special concentration and storage arrangements as unjustly prejudicial. The territory of origin involved embraces all of North Dakota and South Dakota, that part of Nebraska on and north of the main line of the U. P. from Omaha west, and that part of Minnesota north and west of the Omaha from Sioux City, Ia. to St. Paul. Third class rates are generally applicable from points on the N. P. to both Duluth and Chicago. Carload commodity rates have been established, however, from certain points of origin. Less than carload rates on butter to Chicago are maintained but to Duluth they move at second class rate. Commodity rates are published to Chicago from many stations on the Milwaukee. Rates to Duluth carload and less carload are on class basis, and less carload rates to Chicago are on the class basis. Northwestern maintains carload commodity rates from South Dakota west of the river and Nebraska west of Fremont and Lincoln. to both Chicago and Duluth. Dairy products are now transported almost exclusively in refrigerator cars. Butter and eggs are precooled before loading and loss and damage claims amount to little. The through rate to eastern points is not involved in this proceeding which concerns only the rates from the origin territory to Chicago on the one hand and to Duluth on the other. In arriving at a decision, however, the Commission

can not ignore the fact that these rates are but factors in the through combination rate to eastern destinations where the bulk of the shipments move. There is no doubt that Duluth is subjected to undue prejudice, especially in view of the commodity rates which are maintained to Chicago from certain points and which are denied Duluth from the same localities. The Commission believes that these rates on dairy products should be revised to the end that these two great gateways, Chicago and Duluth, will in the future stand on a fixed relationship one to the other; and it believes also that an adjustment should so be made as to obviate in the future the charge of discrimination and undue prejudice alleged by one shipping point against another. The Commission sees no reason why Chicago and Duluth should not be accorded like treatment as to the concentration privileges. HELD, rates attacked to Duluth which do not move beyond by lake or lake and rail unreasonable to extent they are more than 90% of third class rates prescribed in 98 I. C. C. 691; less carloads not more than 90% of second class rates prescribed in 98 I. C. C. 691; to Chicago 80% of third class and 80% second class respectively. HELD, further, on dairy products to Duluth destined beyond, unreasonable to extent they exceed 80% of third class rates and to Chicago 70% of the third class rates. Defendants should remove the undue prejudice by cancellation of concentration privileges to Chicago or establish the same concentration privilege to Duluth. Duluth Chamber of Commerce v. C. & N. W. Ry., 120 I. C. C. 683.

(cc) In the fixing of rates in the past on washed gravel, crushed stone, slag, sand, clay gravel, and unwashed gravel, the commission has not recognized existence of difference in transportation characteristics, or in any other facts entitled to consideration in the fixing of rates, such as to warrant a different basis of rates on some as distinguished from others. Where scales have been prescribed in any territory they have been rated the same. Rates on Chert, Clay, Sand, and Gravel, 122 I. C. C. 133, 163.

(dd) Proposed revised rates on granite, marble, and stone, from New England and New York to Wisconsin, Minnesota, and Michigan destinations, designed to correct error in tariff publication; to narrow, simplify, and clarify various tariff descriptions; and to equalize through rates so they will reflect the full Chicago combination basis, found justified on such commodities when carved, lettered, polished, or traced, but not justified when not so finished. Eastern manufacturers can now underbid protestants, and under rates found not justified this handicap would be aggravated as it would then be cheaper to manufacture in the East and ship the finished product. Moreover, Chicago is an accepted basing point for making rates from New England to territory west of Chicago, and carriers offered no justification for resulting situations under which joint rates would exceed the lowest available combinations that would apply if no joint rates were published. Granite, Marble, and Stone from Eastern Points, 122 I. C. C. 319.

(ee) Rates on cotton from Corinth, Miss., to Monroe, Ga., found not unreasonable or otherwise unlawful as compared with those from Memphis, to which Corinth is intermediate; from New Orleans to Monroe and other Georgia destinations; or with rate subsequently established. Rates from Memphis and New Orleans were depressed and in 89 I. C. C. 47, it was found that rates on cotton to the Southeast departed in many instances from provisions of fourth section. Moreover, comparisons of rates assailed with those from other origins to Monroe for similar distances indicate that rate from Corinth was properly adjusted with relation to general level of rates from other Mississippi points intermediate to various river crossings, and from points in interior Tennessee and Alabama. Manget Bros. Co. v. G. R. R., 123 I. C. C. 532.

(ff) Respondents proposed to readjust, by increases and reductions, the rates on pig iron, in carloads, between points in central territory for application on interstate and intrastate movements. Pig iron is a low grade, heavy loading commodity, usually moved in open top equipment or almost any type of car available, with practically no loss in transit. It requires no expedited service. For a period of 35 years or longer, it has been the practice of carriers serving central territory to maintain rates on pig iron between points in that territory and from Mississippi river and Illinois producing points to destinations in central territory, based upon competitive and commercial con-

ditions. The rates as covered by the suspended schedules preserve the origin and destination groups which have existed for many years. Distance is given much consideration in the proposed adjustment, but commercial and competitive conditions and existing relationships are the controlling factors. D. T. & I. publishes a rate of $1 between Detroit and Toledo while competing carriers serving those points publish a rate of $1.39. It is not proposed to change the rate over the Ironton, but the suspended rate proposed by the other carriers between these points is $1.40. This rate for a distance of about 60 miles is substantially on the same level as the rates between other points in central territory for similar distances. HELD, there is no indication that the present rate of $1 between Toledo and Detroit is burdensome upon other traffic. Undue prejudice can not be found. The W. & L. E. proposed a rate from Cleveland to Detroit 25c below the level of the general structure. The record does not show that this rate would be less than reasonable, nor that it would result in undue prejudice. Present rate between Detroit and Cleveland, 166 miles is $3.02. Under the proposed adjustment the rate from Detroit to Cleveland would be $2.75 over all lines and from Cleveland to Detroit it would remain $3.02 over all lines except the W. & L. E., which proposes $2.75. HELD, respondents to establish a rate of $2.75 between these points over all lines now publishing the rate of $3.02. HELD, the proposed rate of $2.15 from the Chicago district would be unduly prejudicial to St. Joseph, Benton Harbor and Bridgman, and unduly preferential to Michigan City and must be canceled. HELD, proposed rate of $2.40 from the Chicago district to Goshen, North Manchester, Huntington and Wabash, Ind., would be unduly preferential of Chicago and unduly prejudicial to Toledo, and must be canceled. HELD, proposed increased rate of $2.90 from Toledo to Logansport, Ind., not justified. Rates on pig iron between points in central territory are not constructed upon any scientific basis. They have been established from time to time to keep pace with the growth of the pig iron industry. The Commission is convinced that the proposed adjustment, while not all that might be desired, is an improvement over that now existing. The approval of the Commission with the exceptions hereinbefore noted, is without prejudice to different conclusions which may be reached in other proceedings both upon the level and the relationship of these rates. Pig iron in central territory, 126 I. C. C. 111.

(gg) Complainants operating mines in the Pittsburgh district of Pennspylvania and in the Ohio No. 8 and Cambridge districts in Ohio, alleged that the rates on bituminous coal, carloads, from those districts to lower Lake Erie ports for transshipment by vessel to destinations beyond were unjust and unreasonable per se, relatively unreasonable and unduly prejudicial as compared with the rates in effect on like traffic from other districts in the Appalachian region. Complainants in the Fairmont district alleged that the rate on bituminous coal, carloads, therefrom to the above ports for transshipment by vessel beyond was unreasonable and unduly prejudicial as compared with the rates from the Pittsburgh, Ohio No. 8 and Cambridge districts, the Crooksville and Shawnee districts of southern Ohio and the Connellsville district of southwestern Pennsylvania. Original report in Lake Cargo Coal Rates, 1925, 101 I. C. C. 513 decided July 16, 1925. Coal destined to Lake Erie ports for transshipment by vessel to points beyond is known as "lake cargo" coal, as distinguished from both so called commercial coal destined to the lake cities proper and not transshipped by vessel, and bunker coal used as vessel fuel. Most of it moves to those ports only during the season of open navigation on the Great Lakes, ordinarily from the latter part of April to the latter part of November. The rates thereon apply from the mines to the raised or hump tracks beyond the classification yards at the Lake Erie ports. From these tracks the loaded cars are dropped by gravity to dumping machines on the docks. A separate tariff charge for transferring the coal from cars to vessels is not in issue. The rates on lake cargo coal are treated as in the nature of proportional rates to the ports for part of a through movement to cross lake destinations. They include no terminal delivery to consignees at the ports. The local rates on socalled commercial coal include such delivery. For this and other reasons as, for example, concentrated movement at times when commercial coal is not moving heavily, rates on lake cargo coal always have been lower than the local rates on commercial coal. Lake cargo coal moves by

water to various lake and river ports in the United States and in Canada, east, north, and northwest from the port of transshipment, by far the greater part to Lake Superior and Lake Michigan docks, whence it is distributed by rail throughout the year. Approximately one half of the lake cargo coal so moving to the head of the lakes is used by northwestern railroads as railroad fuel, and the remainder is distributed in the region south and southwest of Lake Superior and west of Lake Michigan for domestic, steam gas and other purposes. The transportation from the mine to the port being interstate or foreign in character it is subject to the jurisdiction of the Commission under the general provisions of section 1, irrespective of the mode of transportation beyond the port. The present rates from the Pittsburgh, Ohio, No. 8, Cambridge and Fairmont districts to all of the ports reached by them are $1.66, $1.63, $1.63 and $1.81. The straight average distances to all the lake ports to which the attacked rates apply are 178 miles from the Pittsburgh district, including mines on the P. & W. Va. from which the district rate over routes embracing the B. & O. was established since the original hearings herein, 165 miles from Ohio No. 8, and 172 miles from the Cambridge districts. The road haul service on the different lines varies, but the conditions are not all in favor of or against the product of any particular district. Generally speaking, the movement from the southern districts is down grade to the Ohio river, up grade from the river, and finally down grade to the ports. The terminal service at the several ports with respect to lake cargo coal from the various districts is not substantially dissimilar. Lake cargo coal is available for handling in trains of large size. Weather conditions during the period of movement of this traffic generally are such as not to impede operations. Commercial coal moves throughout the year but in greatest volume during the winter months when operations usually are more difficult and expensive than in the summer. The rate on local commercial coal from Ohio No. 8 to Cleveland is $1.74, of which an average of $1.63 or the equivalent of the rate attacked from this district to Cleveland, accrued to the line haul carriers on the shipments following the absorption of switching charges thereon on the basis of a weighted average charge of 11c. On that basis, it would appear that, although the rate attacked is less than the rate on local commercial coal from this particular district to Cleveland, defendants derive, on an average, no more revenue under the later rate than under the rate attacked. Complainants have instanced no rate or set of rates on coal which are lower for similar distances than the rates which they enjoy, but it is clear that the rates from the southern districts are relatively much lower, distance considered, and these rates on lake cargo coal appear to be surrounded by more favorable circumstances and conditions than any other coal rates which have been brought to the attention of the Commission. Differentials generally are made to fit particular situations, and the circumstances and conditions may vary in different cases, but the Commission may not disregard differentials prescribed in other cases or voluntarily established for comparable distances, especially those from the same origin territory to other destinations. Under the issues before the Commission it can only determine whether the rates attacked from the complaining districts are just, reasonable, and free from undue prejudice. It is no part of its duty to canvass and compare wage scales and other expenses and incidents of industrial operation, or the social and economic conditions stressed with the view of adjusting the rate structure to them. FAIRMONT DISTRICT COMPLAINT. Rate from this district to the lake ports is $1.81 or 12c over Pittsburgh. Their product is said to be similar to the Pittsburgh and Ohio No. 8 coals and suitable for the lake cargo trade. Its movement, except for lake transshipment is mainly eastward. The differentials in the rates on lake cargo coal from the Fairmont district over Pittsburgh and to Ohio districts should be greater rather than less than the present differentials. CONCLUSIONS. Upon the more complete record now before the Commission, it is of the opinion that the rates on the same class of traffic from other districts in the same region shipping a large amount of lake cargo coal are entitled to more weight in passing upon the reasonableness of the rates attacked than any other rate comparisons, although it takes into consideration that such rates from the southern districts may not be reasonable maxima in all instances. The cost studies of complainant are sufficient to show that

the costs warrant a substantial reduction in the rates from the complaining districts in Ohio and Pennsylvania. It cannot be denied that the increases have been proportionately greater in the rates from the complaining districts than in those from the southern districts, and in fact proportionately greater than in the class and commodity rates generally in the same territory. It is true that the Commission has approved the manner of increasing these rates, and it has held that such increases were not proof that the resulting rates were unreasonable, but this does not prevent it from according relief from rates so increased where the facts otherwise justify it. HELD, rates attacked are unreasonable to the extent they exceed $1.46 per ton from the Pittsburgh district and $1.43 from the Ohio No. 8 and Cambridge districts. The Commission does not regard the present relationships between the rates from the complaining Pittsburgh-Ohio districts and the southern districts as proper, but the reductions required in the rates from the Pittsburgh and Ohio districts will go far toward removing the alleged undue prejudice to those districts. It is expected, however, that the carriers will increase the differentials between the above mentioned districts and the southern districts by the amount of the reduction in the rates from the former, subject to what is said below regarding the rates from the Fairmont district. The record is not sufficiently developed to warrant specific findings with respect to the relationships between the rates from the complaining Pittsburgh and Ohio districts and other districts in Ohio, Pennsylvania and Maryland which ship lake cargo coal, but the carriers should be prepared to justify any change in the present differentials between those districts with the exception of the differential from Connellsville over Pittsburgh, which is now 40% of the differential from Fairmont over Pittsburgh and might properly be increased to the same percentage of the differential from Fairmont over Pittsburgh that is established pursuant to this decision. Under the issues now presented, it is unnecessary for the Commission to consider whether the rates from the southern districts are lower than reasonable minima, but it is of the opinion that the carriers would not be justified in reducing the present rates from those districts. This does not apply to the rates from the Fairmont district, which might be reduced to $1.71 without creating too small a differential over those from the Pittsburgh and Ohio districts. The Commission does not, however, find the rates from the Fairmont district unreasonable or unduly prejudicial as alleged. Lake Cargo Coal Rates, 1925, 126 I. C. C. 309.

(hh) Complainant attacked commodity rates on sand and gravel, carloads, from Muscatine, Ia., to destinations in central and western Illinois, as unreasonable, unjustly discriminatory and unduly prejudicial as compared with rates on crushed stone from Buffalo and Linwood, Ia., to same destinations. The rates on sand and gravel from Muscatine are considerably higher than those on crushed stone from Buffalo and Linwood, the latter being prescribed in Dolese Bros. Co., v. A. T. & S. F. Ry., 89 I. C. C. 110. Formerly the rates on all these commodities from all producing points mentioned were equal. Sand and gravel compete with crushed stone for road building purposes, and any substantial difference in rates is a matter of great importance to producers. Complainants traffic requires hauls only 18 or 20 miles longer than does the traffic from Buffalo and Linwood. Rates were voluntarily established on the Rock Island 10c over those from Buffalo and Linwood. HELD, rates for future unreasonable to extent they exceed by more than 10c per ton the rates on crushed stone from Buffalo and Linwood. Automatic Gravel Products Co. v. C. R. I. & P. Ry., 126 I. C. C. 487.

(ii) Proposal of the L. & N. R. R. to increase its single-line rates on forest products from Decatur, Ala., and related points to Nashville, Tenn., in order to place Decatur on same rate basis as Florence and Sheffield, Ala., found not justified. While proposed rates are low as compared with joint-line rates from points on other lines for comparable distances, are not high as compared with rates to Ohio River cities, and compare favorably with those prescribed in 104 I. C. C. 15 for joint-line hauls of comparable distance, such rates are higher than the distance scale of single-line rates on lumber prescribed for application between Meridian, Miss., and points on the Southern, Alabama Great Southern, and Mobile & Ohio railroads. Forest Products from Decatur, 126 I. C. C. 252.

(jj) Upon a consideration of unusually favorable circumstances and conditions surrounding movement of lake-cargo coal; the relatively lower rates from southern districts; the decided change in relative tonnage shipped from Pittsburgh and Ohio districts and the southern districts, respectively; the present depressed condition of coal-mining industry in Pittsburgh and Ohio districts; the changed conditions since decision regarding those rates issued in 101 I. C. C. 513; and fact that cost of the service warrants a substantial rate reduction, HELD: That bituminous coal rates from mines in Pennsylvania, Ohio, and West Virginia in the Pittsburgh, Ohio, No. 8, and Cambridge districts to lower Lake Erie ports for transshipment by vessels are unreasonable but not unduly prejudicial. Rates on like traffic from mines in the Fairmont district found not unreasonable or unduly prejudiical. Reasonable rates prescribed for future and former eport, 101 I. C. C. 513, modified in part. Lake Cargo Coal Rates, 1925, 126 I. C. C. 309.

(kk) Carriers may voluntarily equalize commercial or geographical disadvantages in many instances in which the commission could not require such equalization. See 222 U. S. 42. Gum Motor Co. v. A., T. & S. F., 128 I. C. C. 61, 62.

(ll) Complainant attacked commodity rate charged of 5c on 68 cars of crushed stone and chatts moving from Webb City and Oronogo Jct. Mo., to Arcadia, Crawford County, Kas., between Oct. 5, 1922, and April 3, 1923, as unreasonable to extent it exceeded 4c effective May 8, 1923. Distances are 45.2 and 48.9 miles. In Crawford County Commissioners v. St. L. S. F. Ry., 93 I. C. C. 502, the Commission prescribed a rate of 4c on broken stone or chatts from Webb City, Oronogo and Joplin, Mo., to destinations on the M. P. in Crawford County for distances between 48 and 60 miles from Joplin. Oronogo and Oronogo Jct. are 0.5 miles apart on defendants line. HELD, rate attacked unreasonable to extent it exceeded 4c, reparation awarded. Ziegler Bros. v. St. L. S. F. Ry., 128 I. C. C. 257.

(mm) In equalizing rates a percentage difference in distance is preferable to a fixed mileage difference for all distances. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349, 388.

(nn) Upon further hearing, present rates on crushed stone from Buffalo and Linwood, Iowa, to points in northern Illinois, found in many instances not in accord with findings in original report, 89 I. C. C. 110, wherein reasonable and nonprejudicial rates were prescribed to 10 so-called key points and carriers were left to work out a schedule of properly related rates to all other destinations. As intention of original report was to prescribe rates that would eliminate disparity in rates from Iowa quarries and not to sanction blanketing of key-point rates all the way back to Buffalo and Linwood or to avoid further misunderstanding, carriers will be expected to publish rates in accordance with rates prescribed to points shown in appendix hereto, and to points not named in appendix, rate to nearest point named therein by shortest workable route. Such rates are in accord with original finding and will be reasonable for the future. Dolese Bros. Co. v. A., T. & S. F., 128 I. C. C. 471.

(oo) Commission can not readjust rates merely in order to equalize market competition. Virginia Pig Iron Asso. v. C. & O., 128 I. C. C. 737, 740.

(pp) Respondents proposed to increase their present rate of 17c on potatoes, in carloads, from Kansas City, Mo., to Coffeyville, Kas., to 21c. Proposed rate is class C. While the proposed rate is on a lower level than the rate prescribed in Consolidated Southwestern Cases 123 I. C. C. 203, it is materially higher than the rates maintained by respondents to other points in Kansas with which Coffeyville dealers must compete, and which should be properly related. HELD, proposed schedules not justified. Potatoes from Kansas City, 129 I. C. C. 458.

(qq) In the original report, Midcontinent Oil Rates, 1925, 112 I. C. C. 421, the Commission considered the general adjustment of rates on petroleum products from the southwestern producing and refining territory, to destinations in western trunk line territory and in Illinois, the northern peninsula of Michigan, and a portion of northwestern Indiana, and prescribed an adjustment of reasonable and nonprejudicial rates or bases of rates for the future. Upon further consideration and in light of the additional evidence presented, the Commission is of the opinion that the keenly competitive situation as between the refiners in northern Oklahoma and those in central Kansas, and the approximately equal average distances from these two districts, warrant a parity of rates therefrom to

the destination territory here under consideration. HELD, the rates in issue on gasoline, and other socalled refined oils now taking the same rates, in carloads, are unduly prejudicial as between the origin groups, and that rates related one to another as between the respective origin groups in the amounts set forth, and which do not exceed the rates therein set forth or rates made upon the bases therein set forth, will be for the future just, reasonable and nonprejudicial for application on this traffic from and to the groups or points shown: from group 3 to St. Louis, Mo., 31.5c, Keokuk, Ia. 33c, Peoria, Ill., 35.5c, Davenport, Ia., 35.5c, Chicago, Ill., 38.5c, Milwaukee, Wis., 41.5c. Differentials under group 3 from group 1 to St. Louis 8c, Davenport 7c. From group 2 to St. Louis, and other points named 2c. Midcontinent Oil Rates 1925, 132 I. C. C. 103.

§4. Competition.

(1). In General.

See Competition.

(a) It is a familiar principle that each community is entitled to the benefits arising from its natural advantages. But another principle, equally well settled, is that a carrier may meet competition so long as it is not guilty of undue prejudice, does not charge rates which are so low as to burden other traffic, and does not contravene the declared policy of Congress to foster and preserve in full vigor both rail and water transportation. Galveston Commercial Asso. v G. H. & S. A. Ry., 128 I. C. C. 349, 379.

§4. (4) Water Competition.

See Evidence §14 (5); Water Competition.

(a) Proposed increases in class rates between Washington and Oregon points, on the one hand, and Columbia River basin points, on the other, to conform to the general rate adjustment in Washington and Oregon, and in purported compliance with commission's findings in 113 I. C. C. 38, found justified. Pursuant to findings in 21 I. C. C. 640, interstate distributive class rates were established generally in Washington and Oregon, but because of potential, if not actual, water competition on the Columbia River, no advance was made in rates between points involved in this proceeding, which rates have long been depressed. Increases proposed place these rates on the distributive scale basis which for similar distances are the same as, or less than, scale of class rates prescribed in 74 I. C. C. 207 for application in same general territory. Class Rates Between Oregon and Washington, 128 I. C. C. 108.

§4 (5) Market Competition.

See Market Competition.

(a) Equalization of prices of goods in foreign markets can not be accepted as a guide for determining a proper rate adjustment for rail movements in this country, or whether certain interests are given an unfair advantage by maintenance of export rates. Export Rates on Wheat and Products, 107 I. C. C. 276, 285, 286.

(b) In situations where rates standing by themselves are unlawful and commission is called upon to impose rate equalization, facts developed of record should leave no doubt that exercise of such power by commission would be not only warranted by law but necessary or appropriate in public interest. Galveston Commercial Asso. v. A. & S., 109 I. C. C. 114, 125.

(c) Complainant attacked rates on soap, carloads, from Jersey City, N. J., to destinations in New England territory as unjust, unreasonable, unjustly discriminatory and unduly prejudicial. Commission is asked to prescribe rates that do not exceed the rates from Manhattan and Brooklyn, N. Y. Complainant's factory in Jersey City is within the free lighterage limits of New York Harbor, opposite the lower end of Manhattan Island, served by the Pennsylvania. Rates attacked except to Boston and intermediate points are the fifth class rates. Rate to Boston is 90% of fifth. Defendants state that fifth class rates apply generally on soap throughout official territory. The shipper or receiver of lighterage freight obtains, generally speaking, all the service that a shipper of freight through the pier station does, and in addition, a service involving a further handling of the freight to and from the lighters and the use of lighters to move it. Generally speaking, where shipper or consignee is located on the water front, the lighterage rate saves him the cost of cartage to or from the rail stations. This complainant trucks its freight two blocks to its private pier. On short haul traffic there is usually a difference between the light-

erage rates and the terminal rates; and while on long haul traffic the difference diminishes as the distance increases, the point where the difference vanishes is far from uniform. The hauls here are not long, the maximum distance being 262 miles. The cost of transporting complainant's shipments under the attacked rates is undoubtedly greater by substantial amounts than the cost of transporting its competitors' shipments from Manhattan and Brooklyn to the same destinations. HELD: Rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Colgate & Company v. N. Y. C. R. R., 112 I. C. C. 573.

(d) Applicable combination rates on muriate of potash from Salduro, Utah, to Chicago Heights, Ill., a group D point, found not unreasonable as compared with lower rates contemporaneously in effect to St. Louis, Mo., a group E point. Complainant showed that same rates applied to both groups on a number of commodities and that prior to and subsequent to movement equal rates applied to both groups on potash. Carriers, on the other hand, contend that rates established were depressed and were made to meet competition with imported fertilizer materials from Atlantic ports and showed that on a number of commodities the rates between Salt Lake City and Chicago are higher than those to or from St. Louis. Armour Fertilizer Works v. W. P. R. R., 115 I. C. C. 684.

(e) Rates which are designed to effect market equalization necessarily disregard distance to some extent. Nashville Traffic Bureau v. L. & N., 118 I. C. C. 748, 752.

(f) Complainant alleged that rates on lumber and box shooks, carloads, from McNary and Flagstaff, Ariz., to California destinations were and are unjust, unreasonable and unduly prejudicial as compared with rates on like commodities from El Paso, Tex., Albuquerque, N. M., and California and Oregon. Flagstaff is on the Santa Fe 57 miles east of Ashfork, Ariz., McNary is at the southern terminus of the Apache Ry., a line 72 miles long, which connects with the Santa Fe at Holbrook, Ariz., 91 miles east of Flagstaff. Present rates from Flagstaff are 47.5c to Niland for a distance of 515 miles, 51c for distance of 520 to 556 miles to main line destinations, and 55c to branch line destinations. The rates from McNary to Niland for 678 miles, 65c to main line destinations for distances of 683 to 716 miles, and 69c to branch line destinations for distances of 691 to 699 miles. The rates from McNary are made by adding to the local rate of 12c of the Apache Ry. from McNary to Holbrook the rate from Holbrook to destination. The rate from El Paso to the destination territory is 40c to main line points for distances of 629 to 666 miles and to branch line points 42c for distances of 641 to 649 miles. The rates attacked are on a higher level than are the rates from the same points of origin to destinations in California over lines other than the S. P., and are on a higher level than rates from lumber producing points in California to destinations in that state. HELD, rates attacked to main line and branch line points in the Imperial Valley unreasonable to extent they exceed 44.5c from Flagstaff and 49.5c from McNary, reparation awarded. Cady Lumber Co. v. Apache Ry., 120 I. C. C. 593.

(g) In 73 I. C. C. 161 the commission found not unreasonable rates on coal from inner and outer crescents to points within the Chicago switching district. Rehearing was had, and second decision rendered in 89 I. C. C. 137. Defendants complied with both decisions by reducing substantially rates to points within and without the Chicago district which were found not unreasonable but unduly prejudicial. The Chicago switching district extends from Ivanhoe, Ind., on the southeast to Des Plaines, Ill., on the northwest, a distance of about 40 miles, and averages about 12 miles in width. The affected area covers the northern part of the Chicago switching district and the delivering carriers chiefly concerned are the C. & N. W., C., M. & St. P., Soo Line, C. G. W., and C. B. & Q. The first or southern zone should comprise all of that part of the former differential area lying south of the line of Irving Park Blvd. and that the second or northern zone should embrace all points in the district north of the line of Irving Park Blvd. with the exception of Weber and Greenwood St. On bituminous coal a zone should be established coextensive with the second anthracite zone. HELD, previous findings affirmed as to the reasonableness of the rates, but under section 3 hard coal to southern zone should be 10 cents over Chicago rate, northern zone, except Weber and Greenwood St., 20 cents over, and on bituminous coal northern zone 10 cents over. In No. 12668 complainant attacked the rate

charged on carloads of bituminous coal during federal control from mines in central and southern Illinois to Edgebrook and Morton Grove, Ill., as unreasonable and unjustly discriminatory. HELD, rates not unreasonable but only one factor should be added to the combination to arrive at the proper rate, reparation awarded. Chicago Coal Merchants Asso. v. Director General, 123 I. C. C. 169.

(h) Complainant attacked fifth class rates of 36.5 cents and 41.5 cents charged on tablets and papeteries, in carloads, from East Hartford, Conn., to Baltimore, Md., and Washington, D. C., as unreasonable and unduly prejudicial to extent they exceeded 30 cents and 36.5 cents from Holyoke, Mass., to Baltimore and Washington. East Hartford is 2.7 miles east of Hartford. Both articles are rated fifth class. HELD, rates attacked not unreasonable but for future will be unreasonable and unduly prejudicial to extent they exceeded the rates from Holyoke, Mass., reparation denied. Taylor Atkins Paper Co. v. N. Y., N. H. & H. R. R., 123 I. C. C. 583.

(i) Complainant attacked commodity rate of 38.5 cents charged on lumber, carloads, from Nashville, Tenn., to Toronto, Ont., as unreasonable, unduly preferential of Chattanooga, Tenn. For years rates on lumber from Nashville and Chattanooga to central territory have been made combination on the Ohio River. The present through rates from Nashville and Chattanooga to Toronto are 4 and 10.5c, respectively, less than the lowest combination on the Ohio River. The rates on lumber from Nashville and Chattanooga to points in Canada are in most instances the same. The rates to Buffalo, N. Y., and Hamilton, Ont., are the same from both cities. Numerous other points to which the rates are the same are shown of record. Toronto and points taking the same rate are practically the only departures from the long established practice of making the rates from the two points the same. HELD, rate attacked not unreasonable but unduly prejudicial to the extent it exceeds the rates from Chattanooga. Farris Hardwood Lumber Co. v. L. & N. R. R., 123 I. C. C. 587.

(j) Complainants assail carload rates on natural gasoline from Ranger, Breckenridge, and South Bend, Tex., to various destinations in official and southern territories, as unreasonable to extent they were in excess of the rates from Electra, Iowa Park, Burkburnett, Fort Worth, and Wichita Falls, Tex., and other points in the Burkburnett group and unduly prejudicial as compared with the rates on gasoline from points in the Houston-Galveston-Beaumont group in south Texas and from Shreveport and other Louisiana points taking the same rates. Complainant alleged that the carload rates on the same commodity from Carroll and Mine 11, Tex., also in the Ranger group, to the same destination territory, are unreasonable and unduly prejudicial, to extent they exceed rates from the Burkburnett group. The through rates from this territory to the east are made on the combinations of proportionals to and from the Mississippi River or other gateways. The tariffs do not contain routing instructions and the lowest combination on any gateway is the applicable through rate over all routes. In most instances the through rates from the Ranger group are higher than those from the Burkburnett group, the difference being 1, 2 and 3.5 cents. In a few instances where the rates from both groups were made on St. Louis, Mo., the through rates are the same, Ranger having the same proportional as Burkburnett to that gateway. The attacked rates can not be found unreasonable, except to Brunswick. Although the record throws doubt upon the propriety of the relative adjustment as between the Ranger and Burkburnett groups to certain destinations, particularly where the rates make through Vicksburg, it seems impracticable to attempt to deal with these situations in advance of disposition of the general investigation. In the meantime there is no apparent necessity for requiring the establishment of joint rates. Furthermore, although the principal basis of complaint is the relationship between the assailed rates from the Burkburnett group, violation of section 3 is not alleged, but only in respect of the rates from south Texas and from the Shreveport district. HELD, assailed rates not unreasonable or otherwise unlawful, except that the through rate to Brunswick unreasonable to extent it may exceed 58.5 cents, reparation awarded. Chestnut & Smith Corp. v. A. & R. R. R., 123 I. C. C. 707.

(k) Commission can not readjust rates merely in order to equalize market

competition. Virginia Pig Iron Asso. v. C. & O., 128 I. C. C. 737, 740.

III. EFFECT OF EQUALIZATION.

§8. **Adjustment of Related Rates.**

See Relative Rates.

(a) In Galveston Commercial Asso. v. G. H. & S. A. Ry., 128 I. C. C. 349 the Commission prescribed rate relationships between Galveston and other Texas ports on the one hand, and New Orleans, La., on the other, in respect of certain traffic in import, export or coastwise movement from and to points in southern Kansas, Arkansas, Oklahoma and Texas. It is apparent that the publication of higher rates on export, import, or coastwise traffic than on domestic traffic from and to the same points would precipitate a rate situation which it is desirable to avoid. HELD, the Commission shall interpose no objections to compliance with the orders in these cases with respect of import, export and coastwise traffic without observing the southwestern rates as maxthe rates so published in accordance with ima, provided that a further revision in the above quoted requirement in the report on further hearing be made concurrently with the revision of the domestic rates in compliance with the Consolidated Southwestern cases. Galveston Commercial Asso. v. G. H. & S. A. Ry., 132 I. C. C. 95.

ERRONEOUS RATES

See Advanced Rates §5 (6); Demurrage §17; Evidence §22¼; Passenger Fares and Facilities §15; Reasonableness of Rates §13a; Reparation §8; Routing and Misrouting §3; Tariffs §3 (2).

ESTIMATED WEIGHTS

See Weights and Weighing §5.

EVIDENCE

I. BURDEN OF PROOF.

§1. In general.

II. CIRCUMSTANCES AND CONDITIONS OF PROBATIVE VALUE.

§1½. In general.
§2. Advantage of location.
§2½. Additional service.
§3. Agreed facts, admissions and agreements.
§4. Averages.
§5. Basing-point system.
§5½. Back haul.
§6. Bona-fide investment.
§6½. Bridge mileage.
§7. Capitalization.
§8. Car-mile or train-mile revenue.
§8½. Categorical answers.
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§11. Comparison of classifications or rate territories.
§12. Comparison or character of commodity.
§13. Comparison of rates.
(1) In general.
(1½) Commodity and class rates.
(2) Divisions and joint rates.
(3) Divisions and local rates.
(4) Import or export and domestic rates.
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§14. Competition.
(1) In general.
(1½) Cross country.
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§15. Contract relying on rate.
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§16. Cost of production.
§17. Cost of operation.
§18. Cost of service.
§19. Credit.
§19½. Custom.
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§20. Distance of haul.
§21. Dividends.
§21½. Emergency rates.
§22. Equipment furnished.
§22a. Equalization of costs.
§22¼. Erroneous rate.
§22½. Expert evidence.
§23. Failure to serve prejudiced locality.
§24. Fixed charges.

§25. Government regulation and operation.
§25¼. Harbor or water facilities.
§25½. Hearsay evidence.
§25¾. History of rate.
§26. Import duty.
§26½. Interest on capital.
§26¾. Intention.
§27. Investment relying on rate.
§28. Local rates and combinations.
§29. Long continuance of voluntary rate.
§30. Low rate in opposite direction.
§31. Manufactured product.
§31½. Maps.
§32. Market competition.
§33. Merger of terminals.
§34. Mineral lands owned by carrier.
§34¼. Mixed shipments.
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§36. Need for revenue.
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§38. New rates.
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§40. Oral testimony.
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§43½. Permanent improvements.
§43½a. Physical valuation.
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§44¼. Prior decision of Commission.
§44½. Public interest.
§44¾. Public records.
§45. Profit to shipper.
§46. Rate to carrier as shipper or consignee.
§47. Rate via competing route.
§47a. Rate wars.
§47b. Rate territories.
§48. Rebates.
§48½. Repair of equipment.
§49. Reproduction value of road.
§50. Return on investment.
§51. Revenue of road.
§52. Risk of loss or damage.
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§53. Size of community.
§54. Size of load.
§54½. Speed of train.
§55. Standard of lines.
§56. Standard of rates.
§56½. Statistical tables.
§57. Surplus.
§57½. System line haul.
§57½a. Taxes.
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§58. Ton-mile revenue.
§59. Two or three line haul.
§59½. Unearned increment.
§60. Unpublished rate.
§60½. Use of commodity.
§61. Value of commodity.
§62. Value of service.
§63. Volume of traffic.
§64. Voluntary or subsequent reduction of rate.
§64½. Wages.
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§64⅞. War conditions.
§64⅞a. Water mileage.
§65. Weight or bulk of shipment.
§66. Widespread rate adjustment.

III. JUDICIAL NOTICE.
§67. In general.
IV. PRESUMPTIONS.
§68. In general.
V. STARE DECISIS.
§69. In general.

CROSS REFERENCES

See Advanced Rates III, §5 (4), §6, §16½, §18, §18 (4); Blanket Rates §3, VII; Cars and Car Supply III, §6, §36; Claims §2½; Classification II, §17, §19; Courts VI; Discrimination V, §4; Divisions §7, §10; Equalization of Rates II; Express Companies VII, XIII; Hoch-Smith Resolution (x); Long and Short Hauls §12, §12 (2); Loss and Damage II, III, IV; Overcharges; Passenger Fares and Facilities II; Procedure Before Commission VII, VIII; Proportional Rates IV; Reasonableness of Rates II; Reparation III, §25; Special Contracts V; State Rates and Regulation; Switch Tracks and Switching V; Tariffs §19; Through Routes and Joint Rates §15; Undercharges III, §4; Water Carriers V; Weights and Weighing IV.

I. BURDEN OF PROOF.

§1. In General.

See Advanced Rates §3; Blanket Rates §16; Burden of Proof; Crimes §25; Discrimination §14; Long and Short Hauls §12 (1); Loss and Damage §15; Routing and Misrouting §8; Through Routes and Joint Rates §15; Undercharges §5; Weights and Weighing IV.

(a) Mere statements of opinion that certain rates are believed to be compensatory are as insufficient as similar statements would be that certain rates, challenged as unreasonable, are regarded as reasonable. Class and Commodity Rates between Western Points, 104 I. C. C. 578, 584.

(b) In an issue, provable by a preponderance of the evidence, as between two parties, one of whom alleges an affirmative which it establishes by the best obtainable evidence and the other of whom introduces no evidence but rests its case solely upon the alleged insufficiency of its adversary's showing, the doubt, if there be a doubt, must be resolved in favor of the former. Wertheim Coal & Coke Co. v. L. V. R. R., 112 I. C. C. 513, 518.

(c) Where a statute of limitations is of general application the burden of showing that it does not apply to a particular case is usually on the party who denies the bar of the statute. 17 Ruling Case Law, 1004. Krauss Bros. Lbr. Co. v. Director General, 112 I. C. C. 117, 118.

(d) Proposed restriction to transcontinental routing of the application of the transcontinental Deming, N. Mex., rates as maxima on grain and related articles from defined territories to all destinations in Texas found not justified. Carriers merely referred to inconsistent routing provisions, their history and results, and some of the out-of-line hauls which are or may be made under present tariffs, but did not seriously attempt to justify reasonableness of resulting rates. While they should be permitted, even encouraged, to eliminate wasteful transportation, in seeking, as here, to disrupt a rate adjustment of long standing they must show that resulting rates will be reasonable, and will not result in other violations of the act. This burden carriers have failed to sustain. Grain and Related Articles, 113 I. C. C. 195.

(e) While a traffic test which furnishes evidence as to the level of existing rates on a particular class of traffic is entitled to weight in arriving at maximum reasonable rates it is not controlling. Fertilizers between Southern Points, 113 I. C. C. 389, 419, 420.

(f) Rates on fiber furniture, l. c. l., from Columbia, S. C., to points in southern classification territory, found not unjustly discriminatory or unduly prejudicial. Other than general statement to effect that complainants meet competition in the sale of their product with manufacturers at Winston-Salem and Siler City, N. C., there was no showing as to extent of competition met from those points. Mere reference to lower rates to common points of destination is not sufficient to establish undue preference and prejudice. South Carolina Penitentiary v. A. & R. R. R., 113 I. C. C. 584.

(g) The statutory burden rests upon defendants to establish the reasonableness of rates increased since Jan. 1, 1910. American Door & Mfg. Co. v. B. & O. R. R., 122 I. C. C. 471, 472.

(h) There is no statutory burden upon carriers to prove character of a commodity where question in issue is legality of rates under section 6 of the act. Fraser v. A. C. L., 122 I. C. C. 520, 526.

(i) Defendant urged that complainant has failed to establish the unreasonableness of that rate. The burden is on defendant to establish the reasonableness of that rate. Chicago Carton Co. v. N. Y. C. R. R., 126 I. C. C. 457, 459.

(j) It is not a defense to say that revision of rates assailed will necessitate revisions in rates from or to other points and on other products, for correction of one unlawful rate adjustment can not be defeated simply because it may necessitate changes in other rates. Southwestenr Millers' Leagus v. A. T. & S. F., 126 I. C. C. 23, 30.

(k) The burden of establishing the reasonableness of a rate charged rests upon carriers. Chicago Carton Co. v. N. Y. C., 126 I. C. C. 457, 459.

(l) As a prerequisite to the commission's approval of rates under section 1 of the act it is only necessary for carriers to show, as it is in all suspension proceedings where the commission approves rate changes, that rates are with-

in the limits of reasonableness, i. e., not more that reasonable maxima nor less than reasonable minima. Federated Metals Corp. v. C. R. R. Co. of N. J., 126 I. C. C. 703, 709.

(m) Burden of proof is upon complainant to show that rates charged were inapplicable. Nebraska Bridge Supply & Lumber Co. v. A. G. S., 128 I. C. C. 94, 96.

(n) Violation of section 1 is alleged, and the burden rests upon defendants to justify the reasonableness of the rates attacked. Michigan Bean Co. v. D. G. H. & M. Ry., 128 I. C. C. 207, 209.

(o) The burden is upon defendants to justify the reasonableness of rates increased since Jan. 1, 1910. Republic Creosoting Co. v. A. G. S. R., 128 I. C. C. 547, 550.

(p) The burden is upon the carriers to establish the reasonableness of the rate attacked. Bakeries Service Corp. v. B. &. M. R. R., 128 I. C. C. 695, 696.

(q) Under the act, section 15, paragraph (7), as amended, the burden of proof to show that the proposed rates are just and reasonable is upon respondents, and this is especially true where, as here, the commodities affected are the products of agriculture. Fruits and vegetables between Pacific coast states, 129 I. C. C. 569, 570.

II. CIRCUMSTANCES AND CONDITIONS OF PROBATIVE VALUE.

§1½. In General.

See Advanced Rates§18; Blanket Rates §18; Divisions §7; Equalization of Rates II; Long and Short Hauls §12; Procedure Before Commission VII, VIII; Reasonableness of Rates II; Reparation III.

(a) Rates proposed by carriers must be shown to be not only reasonable but otherwise lawful. South Dakota R. R. Commrs. v. C. & N. W., 107 I. C. C. 35, 47.

(b) Unreasonably high rates may not be maintained in order to control routing of traffic. Arbogast & Bastian Co. v. L. V., 107 I. C. C. 105, 108.

(c) Revenues are derived, not from rates alone, but from traffic. Hunter Bros. Mercantile Co. v. Am. Ry. Exp. Co., 107 I. C. C. 313, 318.

(d) Carriers may accord rates which commission may not require, and their doing so does not of necessity afford a criterion for testing propriety of their refusal to accord similar treatment to other commodities, under other conditions, or in other territories. See 23 I. C. C. 432, 437. Western Paper Makers' Chem. Co. v. A. A. R. R. Co., 109 I. C. C. 133, 137.

(e) Shippers, in opposing a proposed revision in rates or an individual commodity, estimated the annual increase in revenue which would be produced thereby, and introduced evidence to show increased prosperity of carriers with a view to showing that they were not in need of this additional revenue. HELD: Such evidence is of little or no force in determining the propriety of rate level on an individual commodity. See 263 U. S. 456, 482. Bananas from Gulf Ports, 109 I. C. C. 211, 219.

(f) To require cotton produced in a vast area to move long distances in an uncompressed condition constitutes wasteful transportation not in the interest of economical operation, it being general practice throughout the Cotton Belt to permit or require concentration and compression at first convenient compressing point en route to destination in line of movement for traffic. Montgomery Cotton Exchange v. S. A. L., 109 I. C. C. 579, 586.

(g) The commission has repeatedly condemned carriers for adjusting their rates and practices so as to impede or stifle movement of commodities in any given direction. See 96 I. C. C. 359, 362, and cases there cited. Montgomery Cotton Exchange v. S. A. L., 109 I. C. C. 579, 586.

(h) Where a carrier introduces evidence entirely beyond scope of the proceeding, in an endeavor to establish that certain statements in a report of commission were incorrect, such evidence can not be considered where objected to by complainant. Northern W. Va. Coal Asso. v. P. R. R., 109 I. C. C. 604, 608.

(i) Mere fact that application of a shipper for a specific rate on a specific commodity was not made in advance of a movement is no justification for charging an unreasonable rate. Tamms Silica Co. v. C. & N. W., 109 I. C. C. 618, 620.

(j) Railroad facilities of the country have proved capable of handling increased traffic without appreciable car shortages and with greater expedition

and reliability than in previous years. Revenues in Western District, 113 I. C. C. 3, 20.

(k) Commission's decision involving rates on a particular class of traffic can not properly be predicated solely upon an attempt to average existing rates and maintain revenues of carriers. It is commission's duty to determine what are maximum reasonable rates and to prescribe such rates, whether the effect be to increase or reduce carrier's earnings. Fertilizers between Southern Points, 113 I. C. C. 389, 419.

(l) Based upon sound economic grounds fertilizer is a commodity which should be leniently treated in distributing the burden of freight transportation. The need for continued progress in use of this commodity is so great and degree of its use is so dependent upon financial considerations that all burdens associated with its use should be made as light as possible. Fertilizers between Southern Points, 113 I. C. C. 389, 421.

(m) The act contemplates that carriers shall receive just and reasonable compensation for transportation service rendered by them. It does not contemplate that they shall participate in transportation without any charge, and it certainly does not permit or require such transportation at less than no charge. Such a result is wholly repugnant to the letter and spirit of the law, and when it is sought to be accomplished it is to be condemned. The commission's power under the law is ample to deal with cases of this kind and commission would be derelict in its duty if it did not intervene to prevent unwarranted dissipation of carrier revenue regardless of where the responsibility lies. Standard Oil Co. v. A., T. & S. F., 113 I. C. C. 597, 605.

(n) An isolated shipment of limestone rock from Margerum Ala., to Dallas, Tex., to be used for street paving, moved to Memphis, Tenn., at commodity rate applicable on broken stone, and at commodity rate applicable on paving stone, rough quarried, beyond. Upon contention that broken or crushed stone rate should have applied over entire route, using scale prescribed in 77 I. C. C. 473, HELD: Scale basis sought was not prescribed to apply to Texas common points and its extension to that territory from New Orleans on paving and roofing materials was denied in 102 I. C. C. 31, being found too low for application between those points. Moreover as class rates are ordinarily assessed on sporadic movements, charges collected under commodity rates in instant case were not unreasonable. Florence Chamber of Commerce v. S. Ry., 118 I. C. C. 7.

(o) No matter how numerous the territories are to which shippers have access, they are entitled to ship their products to any market at nonprejudicial rates. See 98 I. C. C. 488. Clinchfield Coal Corp. v. C., C. & O., 118 I. C. C. 79, 81.

(p) Piecemeal revision of rates is not desirable except in unusual circumstances. Horses and Mules from Chicago, 120 I. C. C. 607, 610.

(q) Any advantage in rates enjoyed by one manufacturer over others greater than warranted by distance and transportation conditions results in undue commercial advantage to the favored manufacturer and wrongfully restricts the profits or trade of the other manufacturers subject to relatively higher rates. Consolidated Southwestern Cases, 123 I. C. C. 203, 318.

(r) The propriety of departing from a uniform scale of rates applicable throughout a wide territory can not depend upon whether particular movements are switching or road-haul service. Iola Cement Mills Traffic Asso. v. A., T. & S. F., 122 I. C. C. 337, 346.

(s) In arriving at the rates on cement prescribed in Western Cement Rates, 48 I. C. C. 201; 52 I. C. C. 225; 69 I. C. C. 644; and the related rates prescribed in various other cases, the commission has not been controlled by the general level of rates on other commodities, whether switching or line haul, but rates prescribed have been made with special regard to the conditions surrounding transportation and marketing of that particular commodity with the view to establishing, and securing the maintenance of, general levels of rates in and between the several scale territories not only reasonable per se as applied to that commodity but under which the rates from competing producing points are related to each other with close regard to distance. Iola Cement Mills Traffic Asso. v. A., T. & S. F., 122 I. C. C. 337, 347.

(t) While it is of importance to consuming public that access be had to the

greatest possible number of mines, especially in times of emergency, where distances over a number of routes are unduly circuitous, fairness demands that such routes be disregarded in determining upon a basis for fixing reasonable rates for application over routes which are not unduly circuitous. Anthracite Coal Investigation, 122 I. C. C. 527, 535.

(u) Carriers participating in circuitous routes under similar circumstances and conditions may reasonably expect to charge higher rates than over the short route, but extent of such circuity which would justify a difference in rates may depend upon methods of construction. Where grouping is extensively employed at both origin and destination, and where reasons of sound public policy exist for treating rates and routes collectively rather than individually, substantial differences in distance over routes whose use public convenience and necessity require may reasonably be disregarded; but fact that rates are to be applicable over such routes must be given due weight in fixing their level. Anthracite Coal Investigation, 122 I. C. C. 527, 536.

(v) It is the commission's duty to prescribe maximum reasonable rates and to remove any existing undue prejudice and preference of which complaint is made. It is not the commission's province to require circuitous or more expensive routes to meet rates of shorter or less expensive routes. However, in fixing rates by any route, the commission may give consideration to the rates of other routes and attempt to devise an adjustment which on the whole will provide reasonable rates and at same time, as nearly as may be, permit various routes to engage in the traffic where they so desire. Consolidated Southwestern Cases, 123 I. C. C. 203, 374.

(w) A rate from one point to another does not contemplate movement beyond destination and back again. Arnold & Co. v. S. Ry., 126 I. C. C. 141, 143.

(x) Circumstances and conditions under which freight rates on perishables were established between Boston and Chicago and conditions affecting divisions of such rates are substantially different from those affecting establishment of rates on milk for application within New England territory, and, aside possibly from some incidental features in connection with so-called fast-freight service, the services are not comparable. Furthermore, divisions from perishable-freight traffic received by some of the New England roads do not afford a sound basis upon which to judge reasonableness of rates on milk throughout New England. Milk and Cream Between New England Points, 126 I. C. C. 38, 63.

(y) Rates on pig iron between points in c. f. a. territory are not constructed upon any scientific basis, but have been established from time to time to keep pace with growth of pig-iron industry. Pig Iron in C. F. A. Territory, 126 I. C. C. 111, 124.

(z) Rates in general are ordinarily lower between Memphis and the Southeast than between Ohio River cities and the same territory. Fruits and Vegetables to Memphis, 126 I. C. C. 226, 228.

(aa) Protestants objected to consideration of certain testimony in original record on ground that it was "relevant, competent, and material" only to intrastate rates and that that portion pertaining to interstate rates was not segregatedand again offered atsecond hearing, asserting that they were thus deprived of such testimony and were left in ignorance of evidence to be considered. HELD: Even if testimony received at original hearing should not properly be considered in determination of interstate rates, counsel making objection did not demand segregation of that testimony prior to rendition of previous report and at last oral argument stated that he did not even then move to strike such testimony. Moreover, commission's attention is not directed to any testimony which is not relevant and material to issues involved. Lignite coal from North Dakota, 126 I. C. C. 243, 245.

(bb) Contention that rates on grain and products from origin points on specified lines in Idaho, Montana, Oregon, Utah, Wyoming, and Colorado, to destinations in California and the Pacific Northwest, higher than contemporaneous rates for like distances from Montana points of origin to same destinations, result in undue prejudice and preference, not sustained. Record is not convincing that transportation conditions are as favorable from origin territory here involved to the north Pacific coast as from the lower rated Montana points.

Moreover, low rates from Montana points were established to meet competition with Canadian lines and record does not warrant a finding that competition at north Pacific coast markets between shippers in origin territory involved and Montana shippers is as severe as that at same markets between Montana and Canadian shippers. Ogden Grain Exchange v. A. E. R. R. Co., 126 I. C. C. 255, 270, 271, 281.

(cc) It is no part of commission's duty to canvass and compare social and economic conditions surrounding a particular industry with a view to adjusting rate structure to them. Lake Cargo Coal Rates, 1925, 126 I. C. C. 309, 359.

(dd) Mere admission of matter which, under rules of evidence applicable to judicial proceedings, would be deemed incompetent, does not invalidate order of Interstate Commerce Commission. Western Paper Makers' Chemical Co. v. United States, 46 Sup. Ct. 500.

(ee) Invoices alone are not sufficient to establish the character of the commodity or determine the rates applicable. Glarner & Co. v. Southern Ry., 129 I. C. C. 75, 76.

(ff) In view of the Interstate Commerce Act prescribed rate may consist of variety of elements, such as character of the commodity to be transported, distance of carriage, privileges and facilities accorded, and rules and regulations accompanying tariff, or imposed by the commission and in order to find the rate all elements which produce it must be taken into account. Lothrop v. Spokane, P. & S. Ry. Co., 10 Fed. (2d.) 225.

§2. Advance of Location.

See Blanket Rates §7; Discrimination §9; Equalization of Rates §3; Reasonableness of Rates §19.

(a) Other things being equal, a city with a maximum of efficient railroad service has advantages over one with restricted service, no matter how efficient that restricted service may be. York Mfrs. Asso. v. P. R. R., 107 I. C. C. 219, 228.

(b) While shippers are entitled to benefits of their location, shippers at other points may not be denied the right of access to markets at rates that are reasonable and free from undue prejudice and preference. Western Indiana Gravel Co. v. N. Y., C. & St. L., 109 I. C. C. 727, 730.

(c) Rates on grain from points in northern Illinois and southern Wisconsin on certain lines of the Illinois Central and C., B. & Q. railroads to Chicago, Ill., district, and on feed in reverse direction, found not unreasonable or unduly prejudicial as compared with rates on those commodities from same origin points to other Illinois, Missouri, Indiana, Kentucky, and Ohio destinations. Disadvantage of Chicago district is primarily one of location, shippers there located seeking to market feed against the flow of the ingredients, in competition with manufacturers shipping with it. Moreover, rates assailed are for most part local rates, and under circumstances of this case their reasonableness may not be tested by comparisons with proportional rates, and fact that local rates on feed lower than on grain are maintained to a few points is not convincing that same basis should be extended to all points. Chicago Board of Trade v. C., B. & Q., 113 I. C. C. 295.

(d) In seeking a location for a jobbing house or factory one of the first things considered is the freight-rate situation. Consolidated Southwestern Cases, 123 I. C. C. 203, 211.

§3. Agreed Facts, Admissions and Agreements.

See Reparation §17.

(a) Burden is with carriers to make and promulgate their rates and charges. Lothrop v. Spokane, P. & S. Ry. Co. 10 Fed. (2d.) 225. Same v. Oregon-Washiington R. & Nav. Co. 10 Fed (2d.) 225. Same v. Southern Pac. Co., 10 Fed. (2d.) 225.

§4. Averages.

See Blanket Rates §15½ (j) (r).

(a) While reasonableness of any given rate can not be measured solely by comparing its earnings with average earnings on all traffic, comparisons of this kind are not entirely without significance in a case where commission is called upon to determine proper rating on an article for application throughout a widespread region. Nat'l. Council of Furniture Assos. v. A. A., 112 I. C. C. 289, 297.

(b) Commission's decision involving

rates on a particular class of traffic can not properly be predicated solely upon an attempt to average existing rates and maintain revenues of carriers. It is commission's duty to determine what are maximum reasonable rates and to prescribe such rates, whether the effect be to increase or reduce carriers' earnings. Fertilizers between Southern Points, 113 I. C. C. 389, 419.

(c) For obvious reasons, the average earnings of all carriers, based as it is on an average short haul and embracing local as well as proportional traffic, can not be used as a measure for proportional rates proposed. Grain and grain products, 115 I. C. C. 153, 162.

(d) The Commission has frequently commented upon the fallacy of attempting to measure the reasonableness of rates on particular commodities by comparing the earnings on such commodities with the earnings on all traffic. Cotton linters from Southwest, 118 I. C. C. 419, 430.

(e) In many cases in which rates have been attacked as unreasonably high the Commission has called attention to the impracticability and impropriety of measuring rates on low grade traffic by a comparison of ton mile earnings thereunder with the average earnings on all traffic. Ex lake Iron ore from Chicago to Granite City, 120 I. C. C. 75, 81.

(f) If the Commission were to accept the theory that rates on all low grade commodities should be reduced solely if and because they produced a higher revenue than the average of all freight such a reduction would result in a lowering of the average which, in turn would require a further reduction in the rates on the low grade commodities, and this theory could be extended ad infinitum. Conversely, to hold that rates are unreasonably low because they afford ton mile earnings less than those on all traffic would lead to similar circle of increases. The Commission has also had occasion to point out in previous cases that car mile and train mile statistics are in general criteria of greater significance than ton mile figures in judging the reasonableness of rates on heavy, low grade commodities moving in large volume. Ex lake iron ore from Chicago to Granite City, 120 I. C. C. 75, 81.

(g) If the commission accepted the theory that rates on all low-grade commodities should be reduced solely if and because they produced a higher revenue than average of all freight, such a reduction would result in a lowering of the average which, in turn, would require a further reduction in rates on the low-grade commodities, and this theory could be extended ad infinitum. Conversely, to hold that rates are unreasonably low because they afford ton-mile earnings less than those on all traffic would lead to similar cycle of increases. Ex-Lake Iron Ore from Chicago to Granite City, 120 I. C. C. 75, 81.

(hi) The commission knows of no fairer method of comparing distances than average short-line distances. Fox Paper Co. v. A., T. & S. F., 122 I. C. C. 399, 403.

(j) The reasonableness of group rates must be judged by average conditions. Aberdeen Commercial Club v. C. P. R. R., 126 I. C. C. 498, 506.

(k) The average earnings and hauls on all traffic and on "other ores and concentrates" include those accruing to individual lines from divisions of joint rates for through movements. The Commission has repeatedly said that such comparisons are of little value in considering the reasonableness of joint rates on a particular commodity between particular points. United Zinc Smelting Corp. v. B. & O. R. R., 126 I. C. C. 677, 686.

(l) No satisfactory conclusion can be formed as to the reasonableness of the charges on these shipments by comparing them with the average charge on all freight. Brownell & Field Co. v. N. Y. N. H. & H. R. R., 132 I. C. C. 599, 601.

§5. Basing-Point System.

See Basing Points and Lines.

(a) In referring to the contention that combination rates should be charged on interline traffic such a distinction between single line and interline movements is inconsistent with, and would be destructive of, the principle of a transportation system well co-ordinated nationally which now prevades the act. Any thorough going application of the combination rate theory would fill the country with barriers against the free movement of commerce and create artificial advantages for certain communities and artificial disadvantages for many more. Oklahoma Millers League v. A. & M. R. R., 128 I. C. C. 523, 529.

(b) A complicated situation exists

along the border line between any two rate territories subject to rate levels as different as those that exist in case of class rates in official and southern territories. However, there must be a border line somewhere. Generally speaking, the Ohio River is the natural boundary between the two territories and should be the boundary determining the application of official and southern classifications. Southern Class Rate Investigation, 128 I. C. C. 567, 585.

§8. Car-mile or Train-mile Revenue.

See Classification §5 (b); Reasonableness of Rates §6.

(a) Car-mile revenue is often employed as a basis for comparison of c. l. rates, but is obviously improper for comparison of l. c. l. shipments which move at a flat charge to scattered destinations in small individual lots or parcels. Newspapers in Baggage Cars, 104 I. C. C. 527, 532.

(b) Determination of reasonableness or unreasonableness of rates is not a matter of mathematical computation, but involves exercise of an informed judgment. It can scarcely be said with any degree of accuracy that comparison of car-mile earnings under rates on one commodity computed on same weight is lacking in probative value. There is no fixed scale of progression or regression with changing distances for earnings per mile. Furniture from Southern Points, 112 I. C. C. 302, 309.

(c) Both ton mile and car earnings are significant and entitled to consideration in rate comparisons. Fertilizers between Southern Points, 113 I. C. C. 389, 402.

(d) Owing to differences in bulk and weight there must of necessity be marked variations in the revenue per car produced by articles in the same and other classes, and a disparity either way is not conclusive of the propriety of an adjustment. El Paso Compress & Fumigation Co. v. M. P. R. R., 115 I. C. C. 166, 167.

(e) The fact that car earnings under the rate attacked exceed those on certain other unrelated commodities does not of itself tend to show unreasonableness. United Paperboard Co. v. C. & E. R. R., 120 I. C. C. 27, 30.

(fg) Car-mile and train-mile statistics are in general criteria of greater significance than ton-mile figures in judging reasonableness of rates on heavy, low-grade commodities moving in large volume. Ex-Lake Iron Ore from Chicago to Granite City, 120 I. C. C. 75, 81.

(h) Operating costs do not increase in proportion with increase in car loading, as increase in cost on this account is in fact relatively small. While both ton-mile and car-mile yields merit consideration in determining reasonableness of rates, the latter are of more significance in case of heavy-loading commodities. Ex-Lake Iron Ore from Chicago to Granite City, 123 I. C. C. 503, 505.

(i) The average car-mile earnings of all Class I railroads in Texas for 1921 were 40.27 cents, which would be 36.244 cents, if reduced 10 per cent under general reduction of 1922. Oklahoma Portland Cement Co. v. D. &. R. G. W., 128 I. C. C. 63, 81.

(j) Average freight revenue per loaded-car mile of all c. l. and l. c. l. traffic handled by Class I railroads during 1923 was 31 cents in the eastern district and 25 cents in the southern district. Memphis Freight Bureau v. A. G. S., 128 I. C. C. 445, 451.

(k) Both the commission and the courts have repeatedly referred to a flexible limit of judgment in reaching a conclusion as to the reasonableness of a rate or a schedule of rates. Otherwise stated, there is a zone of reasonableness within which any rate is just and reasonable to the carrier as well as just, fair and reasonable to the shipper that utilizes the carriers services. Calif. Growers & Shippers Protective League v. S. P. Co., 129 I. C. C. 25, 34.

§10. Combinations to Fix Rates.

(a) Having regard for difference in structure of freight and express classifications, commission can not predicate a condemnation of freight rate for light and bulky articles solely upon a showing that express rates are lower between some points. Parlor Frame Mfrs. Asso. v. A. A. R. R., 118 I. C. C. 154, 155.

§11. Comparison of Classifications or Rate Territories.

See Classification; Comparative Rates.

(a) Due chiefly to difference in traffic density, a higher rate level prevails generally in the Southwest than in c. f. a. territory. West Coast Lumbermen's Asso. v. A. & S., 104 I. C. C. 695, 699.

(b) The commission can not assent to a proposition that a rate level in official classification territory lower than in southern and western territories can properly be offset by establishment of higher classification ratings in lower-rated territory. Classification of Radio Sets and Talking Machines, 107 I. C. C. 175, 177.

(c) Transportation conditions in c. f. a. territory are dissimilar to and more favorable than those in southern territory. Knoxville Iron Co. v. L. & N. R. R., 107 I. C. C. 627, 631.

(d) The rates from midcontinental fields to northern Nebraska, South Dakota and northern Minnesota, lying west of a line extending from Duluth, Minn., through Sioux Falls, are relatively higher than those to the remainder of western trunk line territory. The traffic and other conditions therein have been recognized in the past as warranting a somewhat higher level of rates than obtains in other portions of western trunk line territory. Midcontinent oil rates, 1925, 112 I. C. C. 421, 447.

(e) The level of rates generally in the east is lower than in western trunk line territory, due to the more favorable transportation conditions. Midcontinent oil rates 1925, 112 I. C. C. 421, 457.

(fg) Local and joint class rates between points in Arizona, on the one hand, and points in California, New Mexico, and El Paso, Tex., on the other hand, found unreasonable. Rates assailed are materially higher than those prescribed in 21 I. C. C. 640, and 74 I. C. C. 207, for application in the Pacific Northwest and at present in effect throughout the northern half of the Mountain-Pacific group. Operating and transportation conditions in territory here under consideration compare favorably with those in much of the territory in which the lower rates apply. Temporary scale of distance rates prescribed which will accord the Pacific Southwest substantially same scale of rates as now applies in the Pacific Northwest. Arizona Corp. Commission v. A. E., 113 I. C. C. 52.

(h) As to certain commodities, rates in Southeast are as a whole on a lower level than rates in Southwest. Fletcher-Wilson Coffee Co. v. L. & N., 113 I. C. C. 319, 321.

(i) More favorable transportation conditions and greater traffic density north of the Ohio river warrant a lower level of rates in that territory than in the south. Fertilizers between Southern Points, 113 I. C. C. 389, 398.

(j) Sixth class is relatively a much lower class in central than in southern territory, and the class rates are better adapted in the former than in the latter to the movement of carload traffic in volume. Fertilizers in Southern Territory, 113 I. C. C. 389, 400.

(k) It has been generally recognized for years that transportation conditions in the southeast do not warrant any higher basis of rates than in the southwest, and rates in the southeast are in many cases lower than in the southwest. Fertilizer materials between southern points, 113 I. C. C. 389, 403.

(l) A careful study of the statistics while showing in some instances marked differences in individual items, leads to the conclusion that, considering all the figures together, a uniform scale of rates could with propriety be applied throughout southern Missouri, Oklahoma, Arkansas, Louisiana and common point territory in Texas. The evidence indicates that Arkansas and Oklahoma and southern Missouri are a homogeneous rate region and that transportation conditions would seem to dictate in general the observance therein of a uniform distance scale. Oklahoma Traffic Asso. v. A. G. S. Ry., 113 I. C. C. 635, 641.

(m) Intervener introduced an exhibit showing that for the year 1923 freight operating expenses in the southern district were lower than in the western or eastern district. Such a showing can hardly determine the proper measure of a rate on a single kind of commodity. Sterchi Bros. v. G. N. Ry., 113 I. C. C. 665, 666.

(n) Commission has recognized that usually transportation conditions in the southwest warrant a somewhat higher basis of rates than in the southeast, and that fact may be judicially noticed. United Fig & Date Co. v. A. C. L. R. R., 115 I. C. C. 643, 645.

(o) The transportation conditions in western Louisiana, Arkansas and southern Missouri are substantially the same. Description of Missouri group B territory, 118 I. C. C. 119, 120.

(p) Rates maintained or prescribed

for application in or to the Mississippi valley can not be used as a gauge for reasonable maximum rates in or to the southeast. Bradley & Woertz v. I. C. R. R., 118 I. C. C. 233, 235.

(q) As is quite commonly known, the general level of class and many commodity rates in the south, mainly because of the comparatively light traffic density, is considerably higher than in the territory north of the Ohio and Potomac rivers. Utah-Idaho Sugar Co. v. C. R. I. & P. Ry., 118 I. C. C. 256, 258.

(r) The Commission has previously recognized that the level of the rates in Mississippi valley territory is lower than in southeastern territory. Florence Chamber of Commerce v. A. T. & S. F. Ry., 118 I. C. C. 710, 712.

(s) Transportation conditions in the southeast do not warrant any higher basis of rates than in the southwest, and in many instances the rates are lower in the southeast than in the southwest. Capital Grain & Feed Co. v. I. C. R. R., 118 I. C. C. 732, 746.

(tuv) Operating conditions on line of the Southern Pacific from Los Angeles, Calif., to Curtiss, Ariz., are more favorable than those on the Southern Pacific from California points to Utah common points via Roseville, Calif. Severe weather conditions are encountered along latter routes, whereas weather conditions do not interfere with train operations on line from Los Angeles to Curtiss. Apache Powder Co. v. A., T. & S. F., 118 I. C. C. 457, 461.

(w) Transportation conditions throughout southern Missouri, Oklahoma, Arkansas, western Louisiana, and common-point territory in Texas are substantially similar. Import Iron and Steel from Gulf Ports, 118 I. C. C. 482, 487.

(x) Texas differential territory is recognized as a territory of comparatively light traffic density in which carriers require a higher level of rates than in Texas common-point territory to the east thereof. Peyton Packing Co. v. A. & S., 122 I. C. C. 3, 5.

(y) Rates from more sparsely settled and less well developed western portions of the Dakotas may properly be higher, relatively, than rates from the eastern portions. Grain and Products, 122 I. C. C. 235, 267.

(z) There is not now any sound reason why interterritorial shipments that cross the Mississippi or Ohio rivers should pay materially higher rates than intraterritorial shipments which do not cross one of those boundary lines. See 118 I. C. C. 601. Fox Paper Co. v. A., T. & S. F., 122 I. C. C. 399, 402.

(aa) Rates prescribed to the Mississippi Valley were not designed as standards of reasonable maximum rates but primarily to bring rates in harmony with fourth section, and at same time return to carriers substantially the same revenue as earned under adjustment theretofore maintained. Florence Chamber of Commerce v. I. C., 122 I. C. C. 653, 657, 658.

(bb) Rates west of the Mississippi River should be somewhat higher than east of the river. Crescent Bed Co. v. C., R. I. & P., 123 I. C. C. 41, 46.

(cc) Montana coal rates, as a rule, are on a somewhat lower level than those in other western States. American Fuel Co. v. A., T. & S. F., 123 I. C. C. 101, 105.

(dd) In so far as practicable, all rates, intrastate and interstate, should contribute in fair proportion to revenues of carriers. Therefore, in a general territory where traffic and operating conditions are substantially similar, the rates for given distances should be substantially same. Consolidated Southwestern Cases 123 I. C. C. 203, 211.

(ee) Transportation conditions throughout Southwest found to be substantially similar and not greatly less favorable than in Kansas, Nebraska, or southern Missouri. Consolidated Southwestern Cases, 123 I. C. C. 203, 215, 217.

(ff) In numerous cases commission has recognized that rates in the Southwest may properly be somewhat higher than in southern territory. Consolidated Southwestern Cases, 123 I. C. C. 203, 382.

(gg) All-rail class and commodity rates on various articles should be on same level throughout to Southwest and designated portions of Kansas-Missouri territory; and on standard-rail lines a single scale of first-class distance rates should be used as basis for maximum reasonable interstate rates within those areas. Consolidated Southwestern Cases, 123 I. C. C. 203, 382, 385, 386.

(hh) Transportation and traffic conditions in Texas differential territory

and in northwestern Oklahoma warrant higher rates than in Texas common-point territory or remainder of the Southwest. Consolidated Southwestern Cases, 123 I. C. C. 203, 389.

(ii) Rates in Florida are generally on a somewhat higher level than in other portions of the Southeast. Luten Bridge Co. v. A. C. L., 123 I. C. C. 612, 614.

(jj) Rates within the Southeast are generally higher than elsewhere in the country. See 112 I. C. C. 421. Chestnut & Smith Corp. v. A. & R. R. R., 123 I. C. C. 707, 715.

(kk) Eastern and central Texas and Oklahoma are much alike as regards topography, railroad grades and curves, and climatic conditions, and railroad operating conditions are not of themselves sufficiently dissimilar to warrant a substantial difference in rate levels. See also 123 I. C. C. 203. Oklahoma Portland Cement Co. v. D. & R. G. W., 128 I. C. C. 63, 70.

(ll) While the average traffic density is somewhat less in Texas as a whole than in Oklahoma and Kansas, such difference is not sufficient to warrant a level of rates on cement from the Kansas gas belt and Ada to points in eastern and central Texas substantially higher than in eastern Oklahoma. Oklahoma Portland Cement Co. v. D. & R. G. W., 128 I. C. C. 63, 70, 71.

(mm) The transportation conditions throughout the southwest, embracing Arkansas, Oklahoma, Louisiana west of the Mississippi river, and Texas common point territory, and in western Kansas are substantially similar and not much less favorable than in Nebraska or in the remainder of Kansas Missouri territory, which embraces Kansas and southern Missouri. Oklahoma Portland Cement Co. v. D. & R. G. W. Ry., 128 I. C. C. 63, 74.

(nn) Rates in southwestern territory may properly be somewhat higher than rates for comparable distances in southern territory. Sugar between Louisiana and Texas Points, 128 I. C. C. 309, 316.

(oo) It is generally understood that comparatively little carload freight moves under class rates in southwestern territory. Boren Stewart Co. v. G. C. & S. F. Ry., 128 I. C. C. 493, 494.

(pp) While showing in some instances marked differences in individual lines, considering all the figures together, a uniform scale of rates could with propriety be applied throughout southern Missouri, Oklahoma, Arkansas, Louisiana and common point territory in Texas. Oklahoma Millers League v. A. & M. R. R., 128 I. C. C. 523, 535.

(qq) Recognition must be given to more favorable transportation conditions and lower class-rate level in official territory as compared with those in southern territory. Rates over routes partly through official territory lower than rates for same distances wholly within southern territory are not necessarily unduly prejudicial or preferential. Southern Class Rate Investigation, 128 I. C. C. 567, 575.

(rr) Where two territories in which rate levels and classifications vary widely, lie contiguous for long distances no plan of through rates can avoid some anomalous situations. Groups constitute a practical way of avoiding many of the difficulties and where this method is impracticable without undue sacrifice of revenue, the situation may be met, either by appropriate fourth-section relief or by establishment of rates over certain of the higher rated routes that conform to the fourth section but do not in all cases meet the rates of lower-rated routes to and from relatively unimportant competitive points. Southern Class Rate Investigation 128 I. C. C. 567, 577.

(ss) In the ordinary situation little is gained by comparing rating of a commodity in one classification with rating for same commodity in another classification when rating in neither classification has been fixed by us. However, the correctness of the principle of classification uniformity is well established. That principle presumes that if ratings on any given commodity in two classifications, as official and southern, are on the proper basis, the ratings will be substantially the same. If they are different there is presumptive error in one or both classifications. Kalamazoo Vegetable Parchment Co. v. C., K. & S., 128 I. C. C. 675 681.

(tt) Transportation conditions throughout southern Missouri, Arkansas, Louisiana west of the Mississippi river, Oklahoma and Texas common point territory warrant the same level of rates. Leggett & Platt Mfg. Co. v. A. T. & S. F. Ry., 129 I. C. C. 219, 222.

(uu) Generally, rates in official classification territory are on a lower basis

than in southern territory, or from southern territory to official territory. The reverse is true, however, on some of the heavy moving commodities. Jackson v. M. C. Ry., 129 I. C. C. 235, 239.

(vv) Transportation conditions in Illinois are not materially different from those in the territory east of the Illinois-Indiana state line, and a lower level of rates in Illinois than in central territory generally is not justified. Soap and soap powder, 129 I. C. C. 392, 394.

(ww) The rates shown are substantially higher than the rates which respondents seek to cancel, but western territory is generally higher rated than central territory. Straw to Indiana and Ohio, 132 I. C. C. 85, 87.

(xx) In southeastern territory the general level of rates is higher than in either central or trunk line territories. Tidal Western Oil Corp. v. M. K. T. R. R., 132 I. C. C. 681, 683.

§12. Comparison or Character of Commodity.

See Advanced Rates §5 (3); Classification §3½, §17, §18; Comparative Rates; Reasonableness of Rates §7½.

(a) Rates on whisky in glass, in barrels or boxes, found not unreasonable as compared with rates on drugs, medicines, and chemicals, which do not require special policing and protection accorded shipments of whiskey transportation of which under present conditions is a source of annoyance and unusual expense to carriers. Green v. A., T. & S. F., 104 I. C. C. 24.

(b) Meats, cured, and hides, green-salted: Rates on cured meats, packed, and green-salted hides from Chicago and other c. f. a. packing points, including Mississippi River points, St. Louis to Dubuque, to destinations in trunk-line and New England territories, found not unreasonable or unduly prejudicial in relation to contemporaneous rates on hogs and sheep in double-deck cars, or on cattle from and to same points. Morrell & Co. v. N. Y. C., 104 I. C. C. 104, 135.

(c) Meats, dried, dry-salted, smoked, and pickled: Rates on, loose, from Chicago and various other packing points to destinations in trunk-line territory east of Buffalo-Pittsburgh line and to New England territory found unjust and unreasonable for future to extent they exceed contemporaneous rates on cured meats and packing-house products packed, from and to same points. Reasonable rates prescribed. Morrell & Co. v. N. Y. C., 104 I. C. C. 104, 136, 137.

(d) Sulphuric acid: Rates on, found not unreasonable as compared with rates on coal-tar pitch, caustic potash, coal tar, lignin liquor, and lignin pitch. Royster Guano Co. v. M. C., 104 I. C. C. 151.

(e) Rates on broom handles found unreasonable to extent they exceeded rates 1.5 cents over those contemporaneously maintained on lumber. Reasonable rates prescribed for future and reparation awarded. Deshler Broom Factory v. A., T. & S. F., 104 I. C. C. 183.

(f) Zinc skimmings, dross and ashes: Rates on zinc skimmings, zinc sal-ammoniac skimmings, and zinc dross and ashes, found not unreasonable as compared with rates on spelter, zinc ore, and various other commodities. Falcon Zinc Co. v. M. P., 104 I. C. C. 267.

(g) Rates on empty tight wooden barrels and kegs from St. Louis to Los Angeles found not unreasonable. Carmile earnings do not compare unfavorably with those under rates on numerous articles. Empty wooden barrels and kegs are light articles and generally move under class rates, and fact that carriers in certain territories have seen fit, under exceptions to classification, to apply lower bases to encourage movement can not be taken as a measure of reasonable rates. Cocoa-Cola Co. v. A., T. & S. F., 104 I. C. C. 377.

(h) Rosin is desirable traffic. It is not injured by water and may be transported in inferior box-car equipment. The loading is comparatively heavy and damage claims are rare. Vera Chemical Co. v. A. C., 104 I. C. C. 408, 411.

(i) Rate on leather, split, found not unreasonable as compared with rates on various other kinds of leather. Griess-Pfleger Tanning Co. v. E., J. & E., 104 I. C. C. 464.

(j) Rates on wooden bull-wheel arms, cants, and pins, found unreasonable to extent they exceeded contemporaneous rates on lumber, it not being shown that rates on latter are below general level of lumber rates in immediate territory. See also 59 I. C. C. 751 and other cases cited. Reasonable rate prescribed for future and reparation awarded. Marion Ma-

chine, Foundry & Supply Co. v. P. R. R., 104 I. C. C. 471.

(k) Rates on unfermented grape juice, in bulk, in barrels, found unreasonable and unduly prejudicial to extent they exceed rates contemporaneously in effect on same commodity, in glass, in boxes. Reasonable rates prescribed and reparation awarded. Joseph v. O.-W. R. R. & N. Co., 104 I. C. C. 477.

(l) Following 74 I. C. C. 567, rates on stucco mix, magnesium chloride, and crushed-rock dash, articles constituting a complete commodity, viz., magnesite stucco, and shipped in separate packages in same car, found unreasonable to extent they exceeded lower rate on "stucco" commodities here shipped falling within that general description. Reasonable rate prescribed for future and reparation awarded. Rocbond Co. v. A., T. & S. F., 104 I. C. C. 517.

(m) Internal-combustion engines and related commodities: Rates on, found not unreasonable as compared with rates on valves and other pipe fittings, oil-well supplies, agricultural implements, and other similar commodities. Lone Star Gas Co. v. A., T. & S. F., 104 I. C. C. 623.

(n) Rates on sand and gravel from points in western Pennsylvania to destinations in Ohio, West Virginia, and New York, found unreasonable and unduly prejudicial to extent they exceed rates contemporaneously maintained on slag and crushed stone. Reasonable and nonprejudicial scale of distance rates prescribed for future. Penn. Sand & Gravel Prod. Asso. v. B. &. O., 104 I. C. C. 717.

(o) Rates on flaxseed from South Dakota points to Minneapolis, Duluth, Chicago, Milwaukee, Des Moines, Omaha, and Kansas City, found unreasonable to extent they exceed contemporaneous wheat rates from and to same points by more than 12 per cent.Reasonable rates prescribed for future. South Dakota R. R. Commrs. v. C. & N. W., 107 I. C. C. 35.

(p) Limestone, agricultural: Rates applicable on crushed stone, assessed on agricultural limestone from Buffalo, Iowa, to Illinois destinations, in absence of specific rates on latter commodity, found unreasonable to extent they exceeded subsequently-established specific joint commodity rates on agricultural limestone having value for purposes of soil treatment only. Reparation awarded. Dolese Bros. Co. v. C., R. I. & P., 107 I. C. C. 127.

(q) Pulp wood: Applicable rate on sporadic shipments of pulp wood found unreasonable as compared with, and to extent it exceeded, rate on wood pulp, the manufactured product of pulp wood. Reparation awarded. Watab Paper Co. v. N. P., 107 I. C. C. 131.

(r) Gasoline and kerosene: Rates on, from Gates to Port Arthur, Tex., for export, found not unreasonable as compared with rates on various other commodities for same distance in same territory. Texas Co. v. T. & P. Ry., 107 I. C. C. 147.

(s) Lamp globes, glass, lettered: Class rates applicable on, in boxes, l. c. l., found unreasonable to extent they exceeded lower contemporaneous commodity rate on unlettered glass lamp globes and other commodities. Reasonable rates prescribed for future and reparation awarded. Boyle-Dayton Co. v. A., T. & S. F., 107 I. C. C. 151.

(t) Fabricated-steel tank material: Rates on, found unreasonable to extent they exceeded lower contemporaneous rate on structural iron and steel, fabricated or unfabricated. Reasonable rates prescribed for future and reparation awarded. Parkersburg Rig & Reel Co. v. C. & N. W., 107 I. C. C. 187.

(u) Rates on rig-iron outfits found unreasonable to extent they exceeded 85 per cent of rates contemporaneously in effect on oil-well outfits and supplies. Reasonable rates prescribed for future and reparation awarded. Parkersburg Rig & Reel Co. v. C. & N. W., 107 I. C. C. 187.

(v) Rates on rough granite found unreasonable to extent they exceeded lower contemporaneous rates on dressed granite, which lower rates were extended to cover rough granite subsequent to movements here involved. Reparation awarded. Bourgoin & Co. v. C., B. & Q., 107 I. C. C. 376.

(w) Rate on common brick made of a composition of clay and shale found unreasonable to extent it exceeded rate on same commodity made from low-grade clay only. Reliance Brick Co. v. M., K. & T., 107 I. C. C. 381.

(x) Rates on bristol board and printing paper found unreasonable to extent they exceeded lower contemporaneous rate on binder's board, box board, and

pulp board. Express Publishing Co. v. A. S., 107 I. C. C. 528.

(y) Rates on tallow and grease, inedible, found not unreasonable as compared with rates on lard, lard compounds, cottonseed oil, and other commodities. Hopfenmaier v. B. & O., 107 I. C. C. 577.

(z) No convincing reason found why rates on vegetables, generally, from producing districts in South Carolina to interstate destinations, should be made with relation to rates on potatoes, except perhaps as a matter of convenience. Vegetable rates in Mississippi Valley are not constructed upon any fixed relationship to rates on potatoes, and while in 43 I. C. C. 291, commission approved certain rates on fruits and vegetables which were made over the rates on potatoes, it is not committed to this doctrine for general application. South Carolina Produce Asso. v. A. & R., 107 I. C. C. 613, 615.

(aa) Contention that rates on cabbage from South Carolina producing districts to interstate destinations are unreasonable to extent they exceeded contemporaneous rates on potatoes, not sustained, carriers showing that rates on potatoes from South Carolina are maintained upon a low basis and to accord such a rate basis would result in a low level of cabbage rates from South Carolina. South Carolina Produce Asso. v. A. & R., 107 I. C. C. 613, 615, 618.

(bb) Following 89 I. C. C. 437, rate on cabbage found unreasonable to extent it exceeded rate on onions and potatoes. Reparation awarded. Harmon v. A., T. & S. F., 109 I. C. C. 90.

(cc) Rates assessed on Boxes, Hallock, in crates, and box material, in mixed carloads, found unreasonable to extent they exceeded rates on box material. Reparation awarded. Crystal Springs Mfg. Co. v. I. C., 109 I. C. C. 177.

(dd) While bananas are a food staple that moves regularly in large volume, they receive a large amount of superior service and their transportation is attended by various items of expense which are not present at all, or at least to as great an extent, in connection with ordinary freight. Bananas from Gulf Ports, 109 I. C. C. 211, 221.

(ee) Cranes, road wheel: Rate on, found unreasonable to extent it exceeded rate on machinery and machines. Reparation awarded. Valley Paving & Construction Co. v. E. R., 109 I. C. C. 255.

(ff) Copper is a desirable commodity from a transportation standpoint in that it may be loaded to maximum carrying capacity of cars, is transported in any kind of a box car that can be locked and sealed, and moves in large volume throughout the year. The only risk assumed by carriers in its transportation is that of theft, claims for loss and damage having been negligible in amount. Brass, Bronze, and Copper Articles, 109 I. C. C. 351, 358.

(gg) Rates on cans, iron, steel, tin, and galvanized found not unreasonable or otherwise unlawful as compared with rates on iron powder kegs or cans, fiber and wooden pails, furniture, brooms, and other metal and wooden containers. Gille Mfg. Co. v. K. C. S., 109 I. C. C. 408.

(hh) Rate on mowers, lawn, found unreasonable to extent it exceeded rate on agricultural implements. Reparation awarded. Rich Steel Products Co. v. S. P., 109 I. C. C. 465.

(ii) Rate on core sand from Provincetown, Mass., to Norwich, Conn., found unreasonable as compared with lower rates on common or building sand and numerous other low-grade commodities, such as crushed stone, brick, and ice, for comparable distances. Reparation awarded and maximum reasonable rate prescribed for future. Richmond Radiator Co. v. N. Y., N. H. & H., 109 I. C. C. 497.

(jj) Rate on granite, monumental, found not unreasonable or otherwise unlawful as compared with lower rates on building or paving stone, rough or dressed, not carved, lettered, polished, or traced. These two classes of stone are not shown to be competitive, and the comparisons are not persuasive since unsupported by evidence concerning the relative transportation characteristics of the kinds of stone on which they apply and of monumental granite. Olson v. M., St. P. & S. S. M., 109 I. C. C. 526.

(kk) Rates on beans, soya, found not unreasonable as compared with lower rates on wheat, which lower rates were subsequently established on soya beans. Chicago Hts. Mfrs. Asso. v. B. & O., 109 I. C. C. 545.

(ll) Rate on nitrate of soda found unreasonable to extent it exceeded lower rate on fertilizer and other commodities taking fertilizer rates. Reparation

awarded. Armour Fertilizer Works v. N. O., T. & M., 109 I. C. C. 549.

(mm) Fact that two commodities are similar does not of itself afford a sufficient basis for finding that same rate should be applied on both. Dolese Bros. Co. v. C., R. I. & P., 109 I. C. C. 561, 564.

(nn) The dressed-poultry movement in November and December is very desirable traffic because it provides a return movement in refrigerator cars which during those months are used as baggage cars and sent westward loaded. Those are months of heavy demand for baggage cars and light demand for refrigerator cars. Nat'l. Poultry, Butter & Egg Asso. v. Am. Ry. Exp. Co., 109 I. C. C. 565, 568.

(oo) A considerably greater number of cars are required for transporting uncompressed cotton than compressed and relative expenses per unit of uncompressed cotton is materially greater than that of compressed cotton. Montgomery Cotton Exchange v. S. A. L., 109 I. C. C. 579, 586.

(pp) To require cotton produced in a vast area to move long distances in an uncompressed condition constitutes wasteful transportation not in the interest of economical operation, it being general practice throughout the Cotton Belt to permit or require concentration and compression at first convenient compressing point en route to destination in line of movement for traffic. Montgomery Cotton Exchange v. S. A. L., 109 I. C. C. 579, 586.

(qq) Livestock rates yield car-mile earnings lower than on most other commodities. This is true generally throughout the country. American Nat'l Live Stock Asso. v. O.-W. R. R. & N. Co., 109 I. C. C. 621, 629.

(rr) Rate on brick, fire, found unreasonable as compared with lower rates on silica blocks. General Refractories Co. v. E. J. & E., 109 I. C. C. 635.

(ss) Interstate rate on fire brick from Joliet, Ill., to Gary and Indiana Harbor, Ind., and South Chicago, Ill., found unreasonable as compared with lower rates on silica blocks and numerous other commodities, and to extent it exceeded a rate based on maximum scale for like distances prescribed in General Brick case, 68 I. C. C. 213. Reasonable maximum rate for future prescribed. General Refractories Co. v. E. J. & E., 109 I. C. C. 635.

(tt) Fact that lower rates apply on spices than on pyrethrum flowers can not be considered a violation of either section 2 or 3 of the act. These commodities are not like kinds of traffic and there is no competition between them. Nor does it follow that a violation of either of these sections exists because rate adjustment permits eastern grinders to secure pyrethrum flowers from the Orient at lower delivered prices via Atlantic ports than those paid by grinders in the Midwest on shipments through Pacific coast ports. Winona Asso. of Commerce v. C., R. I. & P., 109 I. C. C. 648, 649.

(uu) Rates on candle pitch found not unreasonable as compared with rates on roofing, paving, and fuel pitch. Armstrong Cork Co. v. P. R. R., 109 I. C. C. 655, 656.

(vv) Rate on broom and mop handles, without metal attachments, in the rough, or in the white but not further finished, and not primed, shellacked, varnished, painted, treated, or waxed, found unreasonable to extent it exceeded rate on lumber; and rate on dowel pins and curtain poles, in same unfinished state, to extent it exceeded 15 per cent higher than lumber rate. Reasonable rates prescribed for future and reparation awarded. Lumberton Broom & Mop Handle Factory v. N. O. & N. E., 109 I. C. C. 659.

(ww) Rates on canned goods from Illinois freight association territory to certain west-bank Mississippi River points in that territory found not unreasonable as compared with rates on cereal beverages in Illinois territory, or with cereal-beverages rates and canned-goods rates in western trunk-line and c. f. a. territories, except to extent they exceeded fifth class. Transportation conditions in Illinois are not shown to be more favorable than in c. f. a. territory and prescription of rates lower than fifth class would be based not on transportation conditions but on existence of commodity rates voluntarily established by carriers to meet competitive conditions, and which they regard as too low. Burlington Shippers' Asso. v. A., T. & S. F., 109 I. C. C. 694.

(xx) Rates on canned goods found not unreasonable as compared with rates on cereal beverages. Record failed to show circumstances surrounding establishment and maintenance of cereal beverage rates, nor is it established that there is any direct competition between

these two commodities. Burlington Shippers' Asso. v. A., T. & S. F., 109 I. C. C. 694, 699.

(yy) Fact that rates on numerous noncompeting commodities compare favorably with those on a specific commodity for like distances can not be accepted as justification for maintaining through rates in excess of aggregates of intermediate rates. Green Lbr. Co. v. A. A. R. R., 109 I. C. C. 710, 711.

(zz) Rates on oil, linseed, found unreasonable and unduly prejudicial to extent they exceeded rates on cottonseed, copra, soya-bean, and analogous vegetable oils. Reasonable rate for future prescribed and reparation awarded. Glidden Co. v. I. C., 109 I. C. C. 721.

(3a) Tin plate scrap is a refuse of little intrinsic value and it can move only under a rate relatively low as compared with articles usually classed as junk. Metal & Thermit Corp. v. C. R. R. of N. J., 112 I. C. C. 523, 525.

(3b) Rate comparisons unaccompanied by a showing of similarity of transportation conditions are of little probative value. Plaster Board to Utah Common Points, 112 I. C. C. 3, 4.

(3c) Comparisons of rates on one commodity with those on other commodities not analogous are of little probative effect in determining reasonable rates. Graham Co. v. C., R. I. & P., 112 I. C. C. 51, 53.

(3d) Class rates on asphalt found unreasonable in past as compared with lower commodity rates applying on cement and petroleum road oil, and to extent they exceeded lower rate subsequently established. Present rate found not unreasonable since transportation, commercial, and other qualities of the three commodities are not so similar as to warrant prescription of same rates for all of them, or a fixed relationship between them. Reparation awarded. Warren Brothers Co. v. S. P., 112 I. C. C. 87.

(3e) Comparisons based merely upon differences in distance do not constitute sufficient justification for a finding either of unreasonableness or of undue prejudice. Bos Sand Co. v. A. T. & S. F, 112 I. C. C. 121, 123.

(3f) Following Hires Condensed Milk Co., 38 I. C. C. 441, and other cited cases, rates on canned evaporated milk found unreasonable to extent they exceeded rates contemporaneously maintained on other canned goods. Basis of reasonable rates for the future prescribed and reparation awarded. Pet Milk Co. v. P. R. R., 112 I. C. C. 155.

(3g) Fifth-class rate on red oil found not unreasonable as compared with sixth-class rates under exception to classification on inedible stearine, tallow, grease and other soap stock. While red oil compares favorably from a transportation standpoint with certain other articles used in manufacture of soap, the commission is not prepared to say that failure to accord red oil by exception the same rating as these other articles results in unreasonableness. Williams Co. v. C. N. E., 112 I. C. C. 158.

(3h) Rates on fish oil found unreasonable for future but not in the past as compared with lower rates on vegetable oils. Procter & Gamble Mfg. Co. v. B. & O., 112 I. C. C. 177.

(3i) A showing which contrasts the actual loading of one commodity against the minimum c. l. weights of others is of little probative force in measuring the reasonableness of rates. Procter & Gamble Mfg. Co. v. B. & O., 112 I. C. C. 177, 182.

(3j) Rates on camp outfits found unreasonable to extent they exceeded those contemporaneously maintained on contractors' outfits there being no dissimilarity in the transportation service rendered these two classes of commodities. Measure of reasonable maximum rates prescribed for future and reparation awarded. Standard Pipe Line Co. v. T. & P., 112 I. C. C. 186.

(3k) Rates on cigar-box lumber found not unreasonable as compared with rates on lumber and various lumber articles, including box shooks. Rates assailed produce low ton-mile and car-mile earnings, and while earnings on shipments in question were shown to be slightly higher than those under comparable lumber rates instanced by complainant, that fact alone does not demonstrate that rates assailed were or are unreasonable. Eggerss-O'Flyng Co. v. A. G. S., 112 I. C. C. 218.

(3l) Fact that earnings on a specific commodity were slightly higher than those under rates on a comparable commodity does not, in and of itself, demon-

strate that higher rates were or are unreasonable. Eggerss-O'Flyng Co. v. A. G. S., 112 I. C. C. 218, 219.

(3m) While reasonableness of any given rate can not be measured solely by comparing its earnings with average earnings on all traffic, comparisons of this kind are not entirely without significance in a case where commission is called upon to determine proper rating on an article for application throughout a widespread region. Nat'l Council of Furniture Assos. v. A. A., 112 I. C. C. 289, 297.

(3n) Mere fact that two rates reflect varying general changes does not conclusively establish that each is on a proper level and fact that rates on one commodity may not be on a proper level does not prove that rates on other commodities which reflect same general changes also are not on a proper level. Furniture from Southern Points, 112 I. C. C. 302, 309.

(3o) Refined-oil rate assessed on petroleum refined-oil distillate having a specific gravity in excess of 36°, from Casper, Wyo., to Sioux City, Iowa, found not unreasonable. While the oil here shipped is much lower in value than that of various commodities on which refined-oil rates apply, such as kerosene and gasoline, rate charged compares favorably with those on low-grade oils from Casper and Tulsa, Okla., to various destinations for comparable distances, and with rates found reasonable by commission in other cases. Sioux City Gas & Elec. Co. v. C., B. & Q., 112 I. C. C. 344.

(3p) Third-class rates on wine in bulk in barrels, and in tank cars, found not unreasonable, as compared with fourth-class rates on nonalcoholic fruit juices and flavoring sirups, or with rates on numerous other commodities. Garrett & Co. v. N. Y. C., 112 I. C. C. 519.

(3q) Less-than-carload commodity rate assessed on candy found not unreasonable as compared with lower c. l. rate contemporaneously maintained on chocolate, carpets and rugs, drugs, medicines, perfumery, toilet preparations and chemicals. Comparisons submitted are of little probative force in absence of evidence as to comparative transportation and other conditions, and while carriers subsequently established such lower rate on confectionery unreasonableness of the l. c. l. rate is not established, nor it is admitted, by subsequent reduction. Bunte Bros. v. C. & N. W., 112 I. C. C. 557.

(3r) In the absence of evidence as to comparative transportation and other conditions, rate comparisons of different commodities are of little probative force in measuring reasonableness of rates on a particular commodity. Bunte Bros. v. C. & N. W., 112 I. C. C. 557, 558.

(3s) Rates on worn-out autotruck rims with solid rubber tires attached found unreasonable and unduly prejudicial to extent they exceed the rates on scrap iron. Reasonable and nonprejudicial rates prescribed for the future. Ames & Co. v. N. Y., N. H. & H., 112 I. C. C. 624.

(3t) The commission has recognized greater transportation hazards of flaxseed and that shipments of flaxseed in bulk require a higher class of equipment than that required for transportation of grain. See 25 I. C. C. 337; 85 I. C. C. 217. Kellogg & Sons v. D., L. & W., 112 I. C. C. 629, 635.

(3u) Rates on single carloads of timbers, poles, or piling found unreasonable to extent they exceeded the contemporaneous rates on fir lumber, in single carloads. Transportation conditions incident to carriage of the former are no different from those encountered in movement of the latter and the hazard and expense of transportation in the one case is no greater than in the other. Reparation awarded. Dutton Lbr. Corp. v. Director General, 112 I. C. C. 661.

(3v) Rates on canned meats found unreasonable as compared with rates on other canned goods. Reparation awarded. Armour & Co. v. L. & N., 112 I. C. C. 695.

(3w) When considering rates on generic articles, such as canned goods, which move generally through the land, exact tonnage of one kind of canned goods which may move within a given period from one point to one destination is not controlling. Armour & Co. v. L. & N., 112 I. C. C. 695, 696.

(3x) Rate on wooden insulator pins found unreasonable to extent it exceeded rate contemporaneously applicable on lumber. Reparation awarded. Joslyn Mfg. & Supply Co. v. C. & E. I., 112 I. C. C. 743.

(3y) The difference in spread in class rates on common salt and medicated livestock salt applied to commodity rates on common salt does not of itself fix the measure of a proper commodity rate on medicated salt. Yakima Grocery Co. v. O.-W. R. R. & N. Co., 112 I. C. C. 751, 753.

(3z) Carriers compared rate on sirup from Montgomery, Ala., to Tampa, Fla., with those on canned goods, soap, and other articles for purpose of showing that rates on sirup are reasonable, arguing that comparison with canned goods is especially apt since sirup is packed in tins, and is worth more than a carload of canned goods. HELD, comparisons are insufficient to overcome the presumption of unreasonableness arising from fact that the rate on sirup exceeds the aggregate of intermediates, and is out of line as compared with rates on that commodity from Memphis, Nashville, and New Orleans, to same destination. Alabama-Georgia Syrup Co. v. A. C. L., 113 I. C. C. 283, 284, 285.

(4a) Upon contention that theater chairs compete with portable chairs, church furniture, and wood benches, and that an increase in the minimum on theater chairs would be unduly prejudicial to the latter, HELD: This competition, which is limited, should not be controlling in determination of a reasonable minimum on theater chairs. Theater Chairs to Southwestern Destinations, 113 I. C. C. 313, 318.

(4b) Rates on uncompressed cotton linters from points in Texas, Louisiana west of the Mississippi River, Oklahoma, and Arkansas, to numerous destinations in United States and Canada, found not unreasonable or otherwise unlawful as compared with rates on cotton, any quantity, cottonseed-hull fiber, and cotton motes. Complainants' position in assuming that any-quantity rates on cotton are proper basis for l. c. l. shipments only is untenable for that commodity generally moves in the Southwest on any-quantity rates. Carriers have regarded cotton motes and other mill waste as similar in transportation characteristics to hull fiber rather than to linters and record is not convincing to the contrary. Moreover, no specific attack is made on rates from and to particular points except those from a point located on the Kansas City, Mexico & Orient, a weak line whose rates are subject to special consideration. Burton-Dixie Corp. v. A. T. & S. F., 113 I. C. C. 384.

(4c) Upon investigation by commission on its own motion into and concerning the general basis of rates on fertilizer and fertilizer materials in southern territory, FOUND: That in view of characteristics of this traffic it is reasonably entitled to a relatively low basis of rates. Maximum reasonable rates based on a distance scale prescribed for uniform application over standard lines, and certain so-called short or weak lines accorded arbitraries or a percentage over such prescribed standard line rates. Fertilizers between Southern Points, 113 I. C. C. 389.

(4d) There are manifest limitations to the doctrine that burden of rail transportation should be distributed among the various kinds of freight with some regard for economic needs of country. It may be conceded that commission has no power to fix rates upon any kind of freight which will fail to produce some margin over operating cost. Moreover, the fact that certain carriers are largely dependent upon a particular form of traffic and have little opportunity to recoup a deficiency in profit upon such traffic by recourse to higher rates upon other kinds must be taken into consideration. Fertilizers between Southern Points, 113 I. C. C. 389, 420.

(4e) The terms newsprint paper and printing paper describe separate and distinct articles, and they are readily distinguishable. Great Northern Paper Co. v. B. & A. R. R., 113 I. C. C. 463, 464.

(4f) Rates on certain alloys of lead, viz., babbitt, solder, terne, and type metal which have lead as a base in composition with tin, antimony, or other metals in varying proportions, from Newark, N. J., to Buffalo, Pittsburgh, Chicago, and other destinations in Illinois, Indiana, Ohio, Pennsylvania, New York, Kentucky, and Tennessee, found unreasonable to extend they exceeded sixth-class. While no substantial movement of these commodities has been shown which would warrant establishment of commodity rates thereon, the present rates on these alloys are clearly out of line with rates found reasonable by commission on copper, brass, bronze, lead, antimonial lead, and tin. Reasonable rates prescribed for future and reparation awarded. Federated Metal

Corp. v. C. R. R. Co. of N. J., 113 I. C. C. 487.

(4g) Double first-class rate on l. c. l. shipments of cash or document boxes found unreasonable to extent they exceeded rates contemporaneously applicable on actresses make-up boxes and various other iron, steel, and tin boxes n. o. i. b. n., rated first class and with which cash or document boxes come into active competition. Carriers subsequently established first-class rates and while a finding of unreasonableness can not be presumed from the voluntary reduction considering the elements of bulk, weight, value, and expense of handling, cash or document boxes which bear a close analogy to other boxes taking first-class rates, were entitled to move at similar rates. Reparation awarded. Horder's v. C. A. T. Co. of U. S., 113 I. C. C. 520.

(4h) Rates on linseed oil from Minneapolis, Minn., to Dallas, Tex., found unreasonable to extent they exceeded rates based on distance scale prescribed in 98 I. C. C. 183 for application on cottonseed oil. Reasonable rates prescribed for future and reparation awarded. Deforest Co. v. A., T. & S. F., 113 I. C. C. 591.

(4i) In an endeavor to show unlawfulness in the rates on imported matting, matting rugs, and various straw goods, shipper introduced evidence showing that on berry and fruit baskets, cereal products, green coffee, flax tow, flax fiber, and petroleum, rates from Pacific coast are the same to southeastern territory as to destinations in c. f. a. territory. HELD: Such comparison is of little or no probative value, it not being shown to what extent, if any, commodities here under consideration come into competition with commodities instanced. Sterchi Bros. v. G. N., 113 I. C. C. 665, 666.

(4j) Rates on derricks, iron and steel equal to those on oil-well outfits and supplies, found not unreasonable as compared with lower rates on structural iron and steel and iron and steel pipe. Derricks are not sufficiently analogous to structural iron and steel or iron and steel pipe, to warrant according same rates to both. The oil-well outfits and supplies' list includes many articles, of varying value and weights, all of which are given like rates to permit mixing, and even if derricks are of lower value than some commodities in that list, that fact alone is not a compelling reason for according lower rates on derricks. Carter Oil Co. v. A., T. & S. F., 113 I. C. C. 757.

(4k) Viewed from the standpoint of quantum alone, the ore rates are undeniably among the lowest rates in the country in comparison with those on other low grade commodities, but such comparisons are of little value here because of transportation conditions peculiar to the ore traffic. Chicago Gravel Co. v. A. T. & S. F. Ry., 118 I. C. C. 633, 644.

(4l) Rates on barrels, telescoped, found not unreasonable as compared with rates on lumber. Telescoped barrels, although made largely of wood, have passed far beyond the lumber stage of manufacture, and uses and transportation characteristics of the two commodities are dissimilar. Moreover, considerations of carrier and market competition together with regularity and volume of movement which are of prime importance in fixing lumber rates enter only slightly and then in a different manner into the determination of rates on telescoped barrels. For these reasons rates on telescoped barrels should not be the same as, or definitely related to, the lumber rates. Hollingshead Co. v. A. A. R. R. 115 I. C. C. 95.

(4m) Rate on natural ice found not unreasonable as compared with rates on brick, common brick, manure and other commodities. Rawlings v. C., B. & Q., 115 I. C. C. 103.

(4n) Upon contention that a reasonable basis of rates for dried fruits would be lower than the class C level applicable on fresh fruits because dried fruits are rated lower than most fresh fruits in western classification, and transportation characteristics, such as heavier loading and less susceptibility to loss and damage, together with the fact that dried fruits do not require expedited service, all favor that commodity. HELD, these elements would have weight if commodities were more nearly comparable, but it is common knowledge that the value of dried fruits is much in excess of that of fresh fruits and class C rates are obviously too low to apply on a commodity as valuable as dried fruits. Anderson-Taylor Co. v. A., T. & S. F., 115 I. C. C. 313, 317, 318.

(4o) Box board is a low-grade commodity made from scrap paper, comparable with wood-pulp board. Both com-

modities are used for similar purposes, are included under same general headings and given same rating in consolidated classification and exceptions thereto, and from a transportation standpoint are practically identical. Lynchburg Chamber of Commerce v. B. & O., 115 I. C. C. 465, 466.

(4p) Third-class rate on cabinets charged on servidor doors, a patented article with double panels enclosing a narrow compartment to permit delivery or removal of clothes and other articles from hotel rooms without an employee having to enter the room, found illegal, and lower commodity rate on ordinary doors, found applicable. Servidor doors compete with ordinary doors, and while they constitute a combination article having characteristics of both doors and cabinets and might reasonably take higher rates than common doors, their primary purpose and use continues to be that of a door. Here commodity rate on doors was not restricted to certain types or qualities of doors and it therefore applied on servidor doors which are of higher value, possess features not common to ordinary doors, and presumably not contemplated when commodity rate on doors was published. Reparation awarded. Servidor Co. v. C., M. & St. P., 118 I. C. C. 49.

(4q) Following Midland Linseed Products Co., 68 I. C. C. 522, rates on linseed oil, found unreasonable to extent they exceeded those contemporaneously in effect on cottonseed oil. Reasonable rates for future prescribed and reparation awarded. Glidden Co. v. C. R. R. Co. of N. J., 118 I. C. C. 59.

(4r) Rates on stone, rough or sawed, not further finished, from Bedford district in southern Indiana to Wichita, Kans., found not unreasonable or unduly prejudicial as compared with rates on dressed and other kinds of stone, brick, or cement. Cuthbert Cut Stone Co. v. St. L.-S. F., 118 I. C. C. 69.

(4s) Bedford stone is unique in character and very desirable, carriers regarding it somewhat as a luxury. The traffic is increasing materially in volume year by year. It is shipped freely throughout the country, apparently regardless of freight charges, and notwithstanding the many sources of stone and other building materials nearer points of consumption. Cuthbert Cut Stone Co. v. St. L.-S. F., 118 I. C. C. 69, 76.

(4t) Rates on wood pulp from Reedsport, Oreg., to Camas, Wash., found not unreasonable as compared with rates contemporaneously maintained on fuelwood. Pulp wood is more valuable and loads heavier than fuel-wood, is also a commercial commodity and should bear its share of costs entering into manufacture of paper, while fuel-wood is a waste commodity on which rates are made low in order to permit of its movement in competition with other fuel, particularly in the territory considered where it moves in large volume. Moreover, rate assailed is a joint rate applying not generally for average conditions but between specific points where transportation conditions are unfavorable and extremely costly. Crown Williamette Paper Co. v. S. P. Co., 118 I. C. C. 95.

(4u) Rates on hay from points in South Dakota to destinations in Iowa, Nebraska, Illinois, Wisconsin, and Minnesota should be higher than on wheat. Hay is less valuable and moves in less desirable equipment, but loading is much lighter, and it yields much less revenue per car than wheat, even with a higher rate. South Dakota R. R. Commrs. v. C. & N. W., 118 I. C. C. 139, 150.

(4v) Rates on pipe, riveted steel, found unreasonable as compared with rates on numerous iron and steel articles and various other commodities, and to extent they exceeded rates contemporaneously in effect on wrought-iron or steel pipe, welded or seamless, including pier tubing. Former report 92 I. C. C. 692 reversed and reparation awarded. Duluth Boiler Works v. A., T. & S. F., 118 I. C. C. 161.

(4w) The line of demarcation separating commodities should not be controlled by mechanical processes but by actual differences in grades. See also 77 I. C. C. 727. Cotton Linters from Southwest, 118 I. C. C. 419, 425, 426.

(4x) The transportation characteristics of linters and hull fiber and shavings differ in several respects from those of cotton. The former almost always move in uncompressed form in carloads at carload rates, are loaded and unloaded by shippers, and do not usually require transit, whereas cotton while moving in compressed form in carloads from concentration points moves at any-quantity rates, is loaded and unloaded by or at expense of carriers, and almost always requires transit. Cotton Linters from Southwest, 118 I. C. C. 419, 429.

(4y) Rates on such commodities as potatoes, melons, plaster, mattresses, and furniture are not comparable with linters and cottonseed-hull fiber and shavings in measuring reasonableness of rates on latter. Cotton Linters from Southwest, 118 I. C. C. 419, 429, 430.

(4z) Rate on sawdust, equal to the rates on lumber, found unreasonable as compared with rates on various commodities of higher value. Reasonable rate prescribed for future and reparation awarded. Apache Powder Co. v. A., T. & S. F., 118 I. C. C. 457.

(5a) Crushed stone costs considerably more to produce than sand or gravel, but on account of its transportation and competitive characteristics is generally accorded same rate. Chicago Gravel Co. v. A., T. & S. F., 118 I. C. C. 633, 637.

(5b) Rates on envelopes, in straight carloads from West Carrollton, Ohio, and Waukegan, Ill., to Wichita, Kans., found unreasonable to extent they exceeded 150 per cent of contemporaneous rates on newsprint paper from and to same points, minimum 40,000 pounds. Reasonable rate prescribed for future and reparation awarded. Western Newspaper Union v. A., T. & S. F., 118 I. C. C. 692.

(5c) The character of the article shipped, but not the use to which it is put determines the rate applicable. Menasha Woodenware Co. v. D. S. S. & A. Ry., 120 I. C. C. 415, 416.

(5d) Fact that there is a difference in rates as between two commodities which ordinarily take same rates is not of itself sufficient to prove the higher rates unreasonable. Jackson Traffic Bureau v. I. C., 120 I. C. C. 33, 34.

(5e) First class l. c. l. rating in official, western and southern classifications on dust cloths, found not unreasonable or unduly prejudicial as compared with lower second-class rating on dust mops. The dust cloths are pieces of cotton cloth cut to size and saturated with paraffine oil and are primarily intended for dusting automobiles, furniture and the like, whereas, dust mops are used principally if not exclusively on floors The two articles are, therefore, not directly in competition, and even though competition does exist between them, ratings thereon need not be same if their classification characteristics are substantially different. The record here shows that dust cloths have a substantially greater value per pound than mops. Auto Supplies Mfg. Co. v. A., T. & S. F., 120 I. C. C. 40.

(5f) Rate on core sand found unreasonable as compared with rates on other low-grade commodities such as common sand, crushed stone, gravel, and ice. Reasonable rate prescribed for future and reparation awarded. Smith Co. v. N. Y., N. H. & H., 120 I. C. C. 43.

(5g) Upon further hearing, former report 98 I. C. C. 331, modified in part, and ratings and rates on coconut stearine in boxes or barrels found unreasonable to extent they exceed third class l. c. l., and fifth class, c. l., minimum 30,000 pounds, and unduly prejudicial to extent they exceed ratings and rates contemporaneously applicable on palm-kernel, palm, and mixed stearines, in bags, boxes, or barrels. Reasonable ratings and rates prescribed for future and reparation denied. Best Foods v. C. R. R. Co. of N. J., 120 I. C. C. 169.

(5h) Rates on broom and mop handles, dowels, and curtain poles, not further finished than sawed, turned to shape, planed or sand belted, found unreasonable and unduly prejudicial to extent they exceeded rates contemporaneously in effect on lumber by more than 15 per cent; and rates on same articles when shellacked, painted, or varnished, found unreasonable and unduly prejudicial to extent they exceeded by more than 3 cents per 100 pounds rates found reasonable herein when not shellacked, painted or varnished. See 52 I. C. C. 598, 616 and other cited cases. Reasonable and nonprejudicial rates prescribed for future and reparation awarded. Lumberton Broom & Mop Handle Factory v. G. & S. I., 120 I. C. C. 233.

(5i) Rates on chairs, in the white, k. d., found not unreasonable as compared with rates on refrigerators, bedsteads, kitchen safes, and other comparable commodities. Complainant failed to show volume of movement of commodities with which comparison is made and since volume of movement is one of the elements which must be considered, comparisons submitted are of little probative value. Memphis Furniture & Mfg. Co. v. L. & N., 120 I. C. C. 269.

(5j) Rate on basket tops, found unreasonable to extent it exceeded rate contemporaneously maintained on lumber. Reasonable rate prescribed for future and reparation awarded. Liberty Cooperage & Lbr. Co. v. N. Y., C. & St. L., 120 I. C. C. 271.

(5k) Rates on iron or steel barrels or drums, used as containers in shipping mineral water, from Detroit, Mich., and Sharon, Pa., to Hot Springs, Ark., found not unreasonable as compared with lower rates from same origin points to destinations in southwestern Arkansas and in Louisiana on iron oil barrels, with lower rates on wooden barrels and on furniture from and to same points, or with lower rates established subsequent to movement. Rates to Hot Springs compare favorably with those to certain other Arkansas points, iron or steel barrels or drums yield less earnings than do several other commodities of heavier loading, movement is light, and subsequently established rates were in the nature of a general readjustment involving both increases and reductions. Mountain Valley Springs Co. v. C., R. I., & P., 120 I. C. C. 313.

(5l) First-class l. c. l. rate on hams, beef, fresh-salted, found unreasonable to extent it exceeded rate one class lower than l. c. l. rate on fresh meats. See 85 I. C. C. 725. Application of a rate reasonable for fresh meats to meats partially cured by salting is unreasonable in view of protection against deterioration afforded by the salting process. Guggenheim Bros. v. B. & O., 120 I. C. C. 340.

(5m) Class rates on meters, water, l. c. l., from Boston, Mass., to Pacific coast points, found not unreasonable as compared with lower commodity rates on numerous articles on which the risk, weight, density, and value per pound are less favorable to carriers than complainant's product, or with commodity rates established subsequent to movement. The commodities with which comparisons are made are shown to be water-compelled rates and present commodity rates on meters were established for same reason. Hersey Mfg. Co. v. B. & A., 120 I. C. C. 413.

(5n) Upon reargument, original report 104 I. C. C. 104 reversed, and through rates on cured meats and hides from certain packing points west of Mississippi River to destinations in trunkline and New England territories found not unreasonable or unduly prejudicial in relation to existing rates on hogs and sheep in double-deck cars, and on cattle, from and to same points. Morrell & Co. v. N. Y. C., 120 I. C. C. 537, 539, 540.

(5o) Rate on pins and brackets, wooden insulators, found unreasonable to extent it exceeded rate contemporaneously in effect on lumber. Reasonable rate prescribed for future and reparation awarded. Peninsular Teleph. Co. v. S. Ry., 120 I. C. C. 669.

(5p) Line-haul rate, plus switching charge on crushed stone from points on Chicago, North Shore & Milwaukee Ry., within the Racine, Wis., switching limits, to Chicago and other Illinois points, found not unreasonable as compared with rates on other articles moving between numerous points in same territory for comparable distances, or with rates on gravel from Fontana, Wis., a similarly situated short-line point, to Chicago. Carriers show that sand and gravel rates are depressed due to competitive conditions, and cite decisions in which higher rates have been prescribed in various sections of the country. Assailed rates do not appear unreasonable, and also apply from a group including North Milwaukee and Waukesha, Wis., competing points, to Chicago. Moreover, in 118 I. C. C. 633, present rate from Racine to Chicago, which does not include absorption of switching charges, was found not unreasonable. Racine Crushed Stone Co. v. C., M. & St. P., 120 I. C. C. 717.

(5q) Class rates on compo-board, found not unreasonable as compared with lower commodity rates contemporaneously in effect on wall board, box board, fiber board, and pulp board. Fact that the lower commodity rates were subsequently extended to include Compo-board does not of itself indicate that class rates previously applicable were unreasonable. Disbrow & Co. v. Director General, 120 I. C. C. 720.

(5r) Fact that commodity rates on fiber board, pulp wood, and wall board have been extended to include Compo-board does not of itself indicate that class rates previously applicable on latter commodity were unreasonable. Disbrow & Co. v. Director General, 120 I. C. C. 720, 721.

(5s) The commission has no special qualifications as an official body to de-

termine from samples whether a certain shipment consists of linters or shavings. Where, as here, a violation of section 6 is alleged it has concurrent jurisdiction with the courts, and the mode of proof does not differ in essence from that in court. The usual method of proving the character of a commodity or article is to introduce the commodity or article itself, or an agreed sample thereof, and, where the decision involves an intricate analysis, to adduce competent evidence by expert witnesses. Fraser v. A. C. L. R. R., 122 I. C. C. 520, 525.

(5t) The transportation characteristics of linseed oil are similar to cottonseed and other vegetable oils, and the carload rates on those analogous oils should be the same. Fredonia Linseed Oil Works Co. v. A., T. & S. F. Ry., 123 I. C. C. 153, 156.

(5u) In the fixing of rates in the past on washed gravel, crushed stone, slag, sand, clay gravel, and unwashed gravel, the commission has not recognized existence of a difference in transportation characteristics, or in any other facts entitled to consideration in the fixing of rates, such as to warrant a different basis of rates on some as distinguished from others. Where scales have been prescribed in any territory they have been rated the same. Rates on Chert, Clay, Sand, and Gravel, 122 I. C. C. 133, 163.

(5v) Invoices alone do not satisfactorily establish the character of a commodity shipped, when that is in issue, or determine the rate applicable, as the inherent character of an article is not changed or affected by manner in which it is invoiced. Concrete evidence, however, such as samples of the shipments are helpful. Fraser v. A. C. L., 122 I. C. C. 520, 522, 524.

(5w) The commission has no special qualifications as an official body to determine the character of commodities from samples. However, where a violation of section 6 is alleged, it has concurrent jurisdiction with the courts, and mode of proof does not differ in essence from that in court. Usual method of proving the character of a commodity or article is to introduce the commodity or article itself, or an agreed sample thereof, and, where the decision involves an intricate analysis, to adduce competent evidence by expert witnesses. Fraser v. A. C. L., 122 I. C. C. 520, 525.

(5x) Rates on live poultry higher than rates on dressed poultry between same points found not unjustly discriminatory or unduly prejudicial to live-poultry shippers and unduly preferential of dressed-poultry shippers. Live and dressed poultry are not analogous from a transportation standpoint and conditions surrounding their shipment are not substantially similar. Consolidated Southwestern Cases, 123 I. C. C. 203, 256, 260.

(5y) Fertilizer, because of its beneficial effect on the land and its very immediate and great effect on traffic, should be kept on as low a level of rates as transportation conditions will warrant. Consolidated Southwestern Cases, 123 I. C. C. 203, 269.

(5z) Rates on nitrate of soda in the Southwest may well be somewhat higher than those on other fertilizer. Consolidated Southwestern Cases, 123 I. C. C. 203, 269.

(6a) In general proceedings, where rates on practically all articles other than a few so-called basic commodities are in issue, commission should, in fixing level of rates on any one article, have reasonable regard for relative transportation conditions of the respective articles and prescribe rates on each commodity fairly related to those prescribed on others with similar characteristics. Consolidated Southwestern Cases, 123 I. C. C. 203, 304.

(6b) Due to the disparity in distances, as well as failure to show a movement under the rates applicable on the analogous commodities the comparison has little value. Humble Oil & Refining Co. v. B. S. L. & W. Ry., 126 I. C. C. 717, 720.

(6c) Transportation characteristics of pig iron can not be similar to those of such low-priced commodities as ashes, cinders, and scrap iron. Pig iron in C. F. A. Territory, 126 I. C. C. 111, 120.

(6d) Nitrate of soda is desirable traffic as it moves in large volume, loads heavily, and no special service is required in its handling. Owing to its susceptibility to damage by water it is shipped in box cars, and as it is an oxidizing material, the commission's regulations for transportation of explosives require it to be shipped under a yellow label. Nitrate of

soda is imported from Chile and its principal use is as fertilizer or fertilizer ingredient, although it is also used to a considerable extent in manufacture of explosives and for other purposes. When used as fertilizer it may be applied direct to the soil or mixed with other substances as an ingredient of prepared fertilizer. Egyptian Powder Co. v. I. C., 126 I. C. C. 293, 295.

(6e) The transportation characteristics and use of muriate of potash, sulphate of potash, and kainit are similar to those of nitrate of soda. Egyptian Powder Co. v. I. C. R. R., 126 I. C. C. 293, 296.

(6f) Except for fact that uncompressed cotton is compressed by and at expense of carriers, the circumstances surrounding its movement and that of compressed cotton are identical. Manget Bros. Co. v. A. C. R. R., 126 I. C. C. 403.

(6g) The fact that two articles may resemble each other in respect of material, appearance, process of manufacture, value, and other characteristics, their only difference being the uses to which they are put, while not sufficient to make them the same, may afford a basis for a finding of unreasonableness or undue prejudice. Chicago Carton Co. v. N. Y. C., 126 I. C. C. 457, 458.

(6h) Wood pulp is desirable traffic. It loads heavily, moves in regular volume, and is not susceptible to damage in transit. Hamersley Mfg. Co. v. E. R. R. Co., 126 I. C. C. 491, 492.

(6i) Fleshings consist of refuse of tanneries in the form of pieces of flesh and waste scraped from hides. It is a low-grade commodity used in making glue, being preserved for shipment by a milk-of-lime treatment and, as shipped, consists of approximately 80 per cent water and 20 per cent solid matter. It is not easily damaged and may be transported in either box cars or open-top equipment. Keystone Glue Co. v. S. Ry. Co., 126 I. C. C. 507, 508.

(6j) Zinc ore is desirable traffic from a transportation standpoint, as it moves throughout the year and loads to capacity of cars used, and claims for loss are negligible. It is usually shipped in box cars but, not being subject to damage by elements, may be transported in open-top cars in time of car shortage. United Zinc Smelting Corp. v. B. & O., 126 I. C. C. 677, 678.

(6k) Rates on solder and certain other alloys of lead, including terne metal, found not unreasonable but unduly prejudicial to extent they exceeded lower rates contemporaneously maintained on tin. Undue prejudice ordered removed and reparation denied. Former decision in 92 I. C. C. 319, and 113 I. C. C. 487, modified. Federated Metals Corp. v. C. R. R. Co. of N. J., 126 I. C. C. 703.

(6l) The commission has consistently prescribed same rates on sand, gravel, and crushed stone. Washington Building Co. v. B. & O., 128 I. C. C. 9, 19.

(6m) Second-class rate applicable on games or toys n. o. i. b. n., and assessed on domestic mah-jongg sets from San Francisco and Paraffin, Calif., to Chicago, found applicable, but unreasonable as compared with lower commodity rate contemporaneously in effect on toys, and to extent it exceeded lower commodity rate applicable in opposite direction, to which basis rates assailed were subsequently reduced. Reparation awarded. Paraffie Companies v. S. P. 128 I. C. C. 421.

(6n) China clay is a low-grade commodity used as a filler in the manufacture of paper and is of much lower value than newsprint or other kinds of paper. Newton Falls Paper Co. v. R. Co., 128 I. C. C. 563.

(6o) A raw material is generally accorded a lower rate than the finished product. Colbert Limerock Asphalt Co. v. A. C. R. R., 129 I. C. C. 177, 183.

(6p) It is proper that the rates on fuel oil should be lower than those on gasoline. Haydite Co. v. A. T. & S. F. Ry., 132 I. C. C. 134.

(6q) If the characteristics of fuel oil warrant lower rates thereon than on gasoline, as they do, there is no valid reason why the differential or minimum difference under the gasoline rates should not bear a uniform relationship to the volume of such rates; otherwise, and as at present, the rates on fuel oil may be relatively too low for short hauls and relatively too high for long hauls. Haydite Co. v. A. T. & S. F. Ry., 132 I. C. C. 132, 138.

(6r) Upon sound economic grounds fertilizer is a commodity which should be leniently treated in distributing the burden of freight transportation. Rauh & Sons Fertilizer Co. v. A. C. & Y. Ry., 132 I. C. C. 287, 290.

(6s) Grapes and other deciduous

fruits are close enough in their transportation characteristics to bear a comparable relation as a classification matter. Calif. Growers & Shippers' Protective League v. S. P., 129 I. C. C. 25, 57.

(6t) Invoices alone are not sufficient to establish character of commodity shipped or determine rates applicable. Glarner & Co. v. S. Ry., 129 I. C. C. 75, 76.

(6u) The carload minimum is a part of the rate. Therefore, where minima differ exhibits introduced for comparison should plainly indicate the fact. Three Forks Portland Cement Co. v. C., B. & Q., 129 I. C. C. 107,, 116.

(6v) Sixth-class rates on blocks, last, from Gaylord, Mich., to New York City, Brockton, Mass., and Philadelphia, found unreasonable as compared with lower contemporaneous rates on lumber published to apply on wooden last blocks between points in New England, trunk-line, and c. f. a. territories: and to extent they exceed rates contemporaneously in effect on lumber. In 52 I. C. C. 598, 620, lumber rates were recommended for application on wooden last blocks as well as on various other wooden articles in practically the same stage of manufacture. Reasonable rates prescribed for future and reparation awarded. Jackson v. M. C., 129 I. C. C. 235.

(6w) Mere fact a rate under attack appears out of line with other rates to which it is ordinarily closely related does not necessarily prove that it has been unreasonable in the past. It may be that the comparative rates are too low. But in determining a reasonable level for the future, relationship which the different commodities should bear to each other may properly be given consideration. Jackson v. M. C., 129 I. C. C. 235, 240.

(6x) Rates on canned goods including canned milk from points in Illinois Freight Association and c. f. a. territories to Memphis, New Orleans and other Mississippi Valley points, found not unreasonable as compared with rates on axle grease, fruits and vegetables, and other commodities between same and to various other Mississippi Valley points. Rates assailed are fairly aligned with those to the rest of the South, Southwest, and Southeast; are considerably lower than those prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203; and record affords no basis for a disturbance of present adjustment or change in relationship between points in destination territory. National Canners Asso. v. B. & O., 129 I. C. C. 269.

(6y) Rate on beans, soy, soja or soya, found unreasonable as compared with rate on wheat, corn, and rye, flax and millet seed, sorghum seed, cottonseed, cottonseed cake and meal. See 77 I. C. C. 473; 98 I. C. C. 183, 213, 265. Binding-Stephens Seed Co. v. A., T. & S. F., 129 I. C. C. 291, 292, 293.

(6z) Fourth-class rate on cans, empty tin, found unreasonable as compared with lower commodity rates contemporaneously in effect on enamel ware, tinware, snuff boxes, tobacco boxes, and tobacco boxes and box shapes, made of tin, were not shown to be more desirable traffic than tin cans, and a higher rate on latter commodity found unwarranted. Metal Package Corp. v. B. & O., 129 I. C. C. 301.

(7a) Transportation characteristics of coal tar and liquid asphalt are similar and those commodities compete to some extent with each other. Continental Roofing Mfg. Co. v. G. & S. I., 129 I. C. C. 313, 316.

(7b) Fact that commodities introduced for comparison are more hazardous to handle than commodity involved, does not warrant disturbance of rate basis generally applicable on that commodity. General Sprayer Co. v. A., B. & A., 129 I. C. C. 318, 320.

(7c) Rates on common unglazed doors from points in Oregon to destinations in trunk-line and New England territories found unreasonable to extent they exceeded 115 per cent of rates on lumber found reasonable in 78 I. C. C. 495, 513, between same points on same commodity. Reparation awarded. M. & M. Wood Working Co. v. O.-W. R. & N., 129 I. C. C. 329.

(7d) Rates on acids, muriatic, sulphuric, and nitric, found not unreasonable as compared with rates contemporaneously in effect on other acids. Bruce & Co. v. C. & N. W., 129 I. C. C. 435, 437.

(7e) Finding in original report, 104 I C. C. 66, that proposed rates on fruits and vegetables between points in California and Oregon, Washington, Idaho, Utah, and Montana, involving both increases and reductions, had not been justified, affirmed. Circumstances and conditions under which commission prescribed or found not unreasonable higher rates on like traffic are too dissimilar in too many important respects to entitle such comparisons to much weight and evidence does not indicate that present rates are depressed by real or potential water competition or that they are not remunerative. Fruits and Vegetables Between Pacific Coast States, 129 I. C. C. 569.

(7f) Rough quarried granite is shipped in condition in which it comes from the quarry, except that it is broken into rough rectangular pieces which are loaded indiscriminately into box cars, without protection, being handled at destination in same manner as ordinary brick. Plymouth Quarries v. N. Y., N. H. & H., 129 I. C. C. 621.

(7g) Fifth-class rate on benzol found unreasonable as compared with lower commodity rate contemporaneously in effect on gasoline. In 78 I. C. C. 12 and 78 I. C. C. 353 it was found that rates on benzol should not exceed those on gasoline. Reparation awarded Caldwell & Taylor v. C., R. I. & G., 129 I. C. C. 626.

(7h) Rates on beets and carrots with clipped tops in straight or mixed carloads, from points in lower Rio Grande Valley of Texas to destinations east of Mississippi River and north of Ohio unreasonable as compared with rates be- River, found not unduly prejudicial but tween the same and various other points for comparable distances, and to extent that factors or arbitaries east of Mississippi River exceeded rates contemporaneously applicable on same commodities "without tops." Reasonable rates prescribed for future and reparation awarded. Carfiel & Morris v. N. Y. C., 129 I. C. C. 658.

(7i) In attempting to justify lower rates on "beets, with clipped tops," complainants compare rates thereon with lower rates on cabbage and potatoes. FOUND: It has been generally recognized that potatoes should take rates lower than those on other vegetables, and in absence of information tending to show that transportation characteristics of cabbage and beets are such as to demand any relationship in rates, contemporaneous rates on cabbage do not afford a reliable guide. Carfiel & Morris v. N. Y. C., 129 I. C. C. 658, 661.

(7j) Rates on school books from Chicago to Oklahoma City, Okla., and Dallas, Tex., found not unreasonable, discriminatory, unduly prejudicial, or otherwise unlawful as compared with lower rates on paper articles, including school blanks or forms and school copy books. Complainant contends that as schoolbooks are approved by State educational authorities, and follow a prescribed form they should take lower rates applicable on school blanks or forms. However, schoolbooks in question can not be termed forms. Moreover, rates assailed are lower than third-class rates on books n. o. i. b. n. between same points. Wheeler Publishing Co. v. A., T. & S. F., 129 I. C. C. 672.

(7k) While no higher rates on grain than on products thereof is extraordinary and commission has frequently prescribed same rates on both commodities, mere showing that rates thereon differ is not conclusive that higher rates on grain are unreasonable, as it may indicate that rates on the products are too low. Indianapolis Board of Trade v. B. & O., 129 I. C. C. 675, 680.

(7l) Fourth-class rates on baking powder found not unreasonable or otherwise unlawful. Complainant contends that rate assailed was unreasonable to extent it exceeded fifth-class rate subsequently established following decision in 112 I. C. C. 645, in which fourth-class rating was found unreasonable to extent it exceeded fifth class, and as it was a party to that complaint it now seeks reparaation on shipments which moved during the two years previous to date lower rate was established. However, in 20 I. C. C. 43, it was found that subsequent reduction of a rate is not of itself sufficient to justify an award of reparation. Moreover, no reparation was sought in first cited case and Rule III (s) of Rules of Practice provides that reparation will not be awarded upon a complaint in which it is not specifically

prayed for or upon a new complaint by same complainant based upon finding in original proceeding. Royal Distributing Co. Inc. v. B. & O.,129 I. C. C. 749.

§13. Comparison of Rates.

(1) In General.

See Infra §47; Advanced Rates §5 (3), §8½; Blanket Rates §18; Branch Lines §2; Classification IV, §17, §20; Comparative Rates; Discrimination; Rail-and-Water Rates; Reasonableness of Rates §7½, §28; Relative Rates; Through Routes and Joint Rates §13½, §15.

(a) Gross-weight comparisons offered in an attempt to show arithmetically relative revenues under rates on livestock and on fresh and cured meats, based upon average loadings and including average weight of classes of equipment generally employed, together with estimated allowances for cars returned empty, can not be employed as an exact yardstick in making freight rates, since too many other factors must be taken into consideration, for example, gross-weight comparisons completely ignore differences in value of the article compared. Morrell & Co. v N. Y. C., 104 I. C. C. 104, 115, 116.

(b) Where shipments move to first billed destination and are thence reconsigned to new destination and rates are applied on two separate movements, comparisons with rates for continuous line hauls are of little value. Fess v. C., H. & G. L., 104 I. C. C. 262.

(c) In an endeavor to show unreasonableness in rates on newspapers in baggage cars publishers offered extensive studies of revenue from newspapers with revenue derived from the Government for carriage of closed-pouch mail. FOUND: Incidents of this traffic in handling and in methods of computing charges are so different from any other traffic that any comparison with rates for railway-mail service are valueless. Newspapers in Baggage Cars, 104 I. C. C. 527, 536, 537.

(d) Mere comparisons of the rates and earnings on one commodity with the rates and earnings on other commodities for the purpose of showing the reasonableness of rates is not convincing without a showing that such rates are comparable in other respects. Ballman-Cummings Furniture Co. v. C. & E. I. Ry. Co., 109 I. C. C. 413, 415.

(e) Rate comparisons which fail to show volume of movement, value of commodities with which comparisons are made, similarity of transportation conditions, and other pertinent traffic information are of little probative value in determining reasonableness of rates on a particular commodity. Dolese Bros. v. v. C., R. I. & P., 109 I. C. C. 561, 563.

(f) From the standpoint of percentages of the corresponding first class rates, fifth class in the southern classification is the substantial equivalent of the fourth class in the official and class A in western. Tennessee Electric Power Co. v. L. & N. R. R., 112 I. C. C. 491, 493.

(g) Comparisons are of little probative force in the absence of evidence as to comparative transportation and other conditions. Bunte Bros. v. C. & N. W. Ry., 112 I. C. C. 557, 558.

(h) Rate comparisons unaccompanied by a showing of similarity of transportation conditions are of little probative value. Plaster Board to Utah Common Points, 112 I. C. C. 3, 4.

(i) Comparisons based merely upon differences in distance do not constitute sufficient justification for a finding either of unreasonableness or of undue prejudice. Bos Sand Co. v. A., T. & S. F., 112 I. C. C. 121, 123.

(j) Mere comparisons of rates without a showing of the conditions under which such rates were established or the volume of movement thereunder, are of slight probative value in determining the reasonableness of rates. Anderson Taylor Co. v. A. T. & S. F. Ry., 115 I. C. C. 313, 318.

(k) Mere comparisons of rates without a showing of conditions under which such rates were established or volume of movement thereunder, are of slight probative value in determining reasonableness of rates. Anderson-Taylor Co. v. A., T. & S. F., 115 I. C. C. 313, 318.

(l) Rate on sand, silica, from points in the Ottawa district in Illinois to Sandusky, Ohio, found not unreasonable as compared with those for various distances on iron ore and other heavy-loading commodities. Frohman Chemical Co. v. B. & O., 115 I. C. C. 322.

(m) Commodity rates on iron and steel pull and sucker rods from Marion, Ind., to Oklahoma and Texas destinations found not unreasonable. Complainant compared assailed rates with lower rates on iron and steel articles to and from same points and contended that they should not exceed those on general run of iron and steel articles, particularly bar and structural iron and steel. However, rates under attack are lower than commodity rates on oil-well supplies, compare favorably, distance considered, with those on same commodity from St. Louis, Toledo, and Pittsburgh to Oklahoma and Texas destinations, and with rates approved by commission in cases heretofore decided. Marion Machine F. & S. Co. v. C., C., C. & St. L., 115 I. C. C. 327.

(n) Mere rate comparisons without a showing of movement or conditions under which rates were established are of little probative value in determining reasonableness of rates on a particular commodity. Lautz Marble Corp. v. E. R. R., 115 I. C. C. 543, 546.

(o) Rates on ingots, brass, found unreasonable as compared with those on copper ingots. Federated Metals Corp. v. P. R. R., 115 I. C. C. 719.

(p) Comparisons based upon distance alone, are insufficient to establish unreasonableness of rates. See 64 I. C. C. 78. Crerar Clinch Coal Co. v. A. A. R. R., 118 I C. C. 171, 174.

(q) Ratings on paper cups, c. l. and l. c. l., in official, southern, and western classifications and class rates governed thereby found unreasonable as compared with ratings on various other paper articles, glass tumblers, wooden bowls, and fiber-board berry baskets with covers detached. Reasonable ratings and rates prescribed for future and reparation awarded. Public Service Cup Co. v. A. C. L., 118 I. C. C. 697.

(r) It is seldom, if ever, that a rate can be found unreasonable without comparison with the rates to other points. One of the best tests of reasonableness of a rate is by comparison with the rates on like traffic in the same territory. The act recognizes no distinction between relative unreasonableness and intrinsic or absolute unreasonableness. Sioux City Chamber of Commerce v. C. B. & Q. Ry., 120 I. C. C. 7, 14.

(s) Comparisons of inbound and outbound rates are not very helpful where only the inbound or the outbound rates are in issue. Anthony Produce Co. v. B. & A. R. R., 120 I. C. C. 224, 226.

(t) Comparisons of rates alone are of practically no value. Allaire Woodward & Co. v. A. T. & S. F. Ry., 120 I. C. C. 249, 250.

(u) Complainants comparisons of the rate attacked with rates within or to other territories are unaccompanied by a showing of any movement at those rates or of the conditions influencing their establishment It is well settled that such comparisons are of little probative value. Hamm Co. v. B. & O. R. R., 120 I. C. C. 345, 350.

(v) The most helpful evidence in determining the reasonableness of rates are comparisons of the rates on like traffic, moving under like circumstances and in the same territory. McLeod v. T. & P. Ry., 120 I. C. C. 550, 553.

(w) Complainants comparisons are lacking in probative value. They compare the rates in a great number of instances with dissimilar traffic and on similar traffic in different territories. In other instances they compare the earnings under the rates charged on the shipments herein considered, with those of the carriers in the western territory. Comparisons of this nature are not helpful in determining the reasonableness of the rates herein considered. McLeod v. T. & P. Ry., 120 I. C. C. 550, 553.

(xy) Comparisons of inbound and outbound rates are not very helpful in establishing unreasonableness or undue prejudice where only the inbound or outbound rates are in issue. Anthony Produce Co. v. B. & A., 120 I. C. C. 224, 227.

(z) Comparisons of rates alone, without showing value of commodity, volume of movement, or other transportation characteristics, are of practically no value in measuring reasonableness of rates. Allaire, Woodward & Co. v. A., T. & S. F., 120 I. C. C. 249, 250.

(aa) Rate comparisons unaccompanied by a showing of volume of movement or conditions influencing their establishment are of little probative value in measuring reasonableness of particular rates. Hamm Co. v. B. & O., 120 I. C. C. 345, 350.

(bb) Rate comparisons unaccompanied by a showing of value or com-

modity, volume of movement, or other conditions influencing their establishment are of little probative value in measuring the reasonableness of particular rates. Allaire, Woodward & Co. v. A., T. & S. F., 120 I. C. C. 249, 250; Vegetables from Virginia, 120 I. C. C. 319, 323; Hamm Co. v. B. & O., 120 I. C. C. 345, 350; Vera Chemical Co. v. A. C., 120 I. C. C. 434, 437.

(cc) Comparisons of rates, without showing volume of movement and transportation characteristics of commodities compared, are without probative value in measuring reasonableness of rates. Vera Chemical Co. v. A. C., 120 I. C. C. 434, 437.

(ddee) In order to be used as a basis for a finding of unreasonableness comparisons need the support of data respecting traffic, transportation and other pertinent conditions and considerations. Pelham Phosphate Co. v. A. C. L. R. R., 122 I. C. C. 509, 512.

(ff) Bare comparisons of rates on a particular commodity moving in one direction with rates on unrelated commodities moving in opposite direction, without any showing of the various elements affecting their establishment, fall far short of establishing unlawfulness of the rates in effect on the particular commodity. Peyton Packing Co. v. A. & S., 122 I. C. C. 3, 6.

(gg) Rates on grain from points in Indiana on the Chicago, Indianapolis & Louisville Ry. to Chicago, when reshipped over lake or lake-and-rail lines, found not unreasonable or otherwise unlawful because lower than rates on similar traffic from same origin points to Indianapolis. Complainant contended that assailed rates are unduly low as a result of which traffic is diverted by way of Chicago instead of moving by way of Indianapolis. However, local rates to Chicago are upon a much higher level than rates assailed and evidence of shippers is to effect that the bulk of their grain moves to interior destinations and Ohio River markets and that greater quantities of grain are shipped to Indianapolis than to Chicago, the latter market being desirable principally for off-grade grain. Indianapolis Board of Trade v. C., I. & L., 122 I. C. C. 289.

(hh) The commission has consistently refused to condemn rates on grain merely because they are the same as, or are, in fact, the combination of the primary grain markets. Ogden Grain Exchange v. A. & S., 122 I. C. C. 691, 716.

(ii) Comparison of rates based upon distance alone have little probative value when rates compared are group rates, in the establishment of which the element of distance must to an extent be subordinated to other considerations. Cherry Co. v. C., M. & St. P., 123 I. C. C. 59, 61.

(jj) The maintenance of a higher rate to one point than to others to which it is closely related does not necessarily indicate that the higher rate is unreasonable. Consolidated Rendering Co. v. N. Y., N. H. & H., 123 I. C. C. 98, 100.

(kk) Fact that earnings under rates assailed are slightly higher than those under similar rates for shorter distances, is not persuasive that they are excessive. Chestnut & Smith Corp. v. A. & R. R. R., 123 I. C. C. 707, 714.

(ll) A mere comparison of rates and earnings without other supporting data is not helpful. Federated Metals Corp. v. Pennsylvania R. R., 126 I. C. C. 144, 146.

(mm) For determining the reasonableness or unreasonableness of rates applied to given shipments, the earnings and distances over the routes actually traversed constitute a better measure than do computations based on short line distances without regard for routes of movement. United Zinc Smelting Corp. v. B. & O. R. R., 126 I. C. C. 677, 690.

(nn) Comparisons of average earnings and hauls on all traffic and on a particular commodity are of little value in considering the reasonableness of joint rates on such particular commodity between particular points. United Zinc Smelting Corp. v. B. & O., 126 I. C. C. 677, 686.

(oo) The Commission has frequently found that the mere showing of rates to a point higher than to a more distant point over the same route does not prove that the former are unreasonable. Memphis Freight Bureau v. A. G. S. R. R., 128 I. C. C. 445, 462.

(pp) The projection of short haul rates for comparison with those for longer hauls, regardless of the method used, is not a satisfactory test of reasonableness. Calif. Growers & Shippers Protective League v. S. P. Co., 129 I. C. C. 25, 39.

(qq) Comparisons with rates on freight traffic are not of material value in determining rates on cream in baggage car service, for the reason that the two classes of service are not comparable. Beatrice Creamery Co. v. C. M. & St. P. Ry., 129 I. C. C. 375, 382.

(rr) Comparisons based merely upon differences in distance do not constitute sufficient justification for a finding of unreasonableness. Chicago Heights Mfrs. Asso. v. C. G. T. T. R. R., 132 I. C. C. 43, 45.

(ss) Defendants assert that the rates from East Helena and Murray are materially depressed, and this shows that those from Bradley are relatively on a still lower basis. It is undisputed that the rates are, at least, not unreasonably high, but this fact alone does not sustain defendants contention. Bunker Hill & Sullivan Co. v. O. W. R. R. & N., 132 I. C. C. 266, 271.

(tt) Fact that commodities introduced for comparison are more hazardous to handle than commodity involved does not warrant disturbance of rate basis generally applicable on that commodity. General Sprayer Co. v. A., B. & A., 129 I. C. C. 318, 320.

(uu) Combinations of single-line interstate distance rates on cream, in 10-gallon cans, in baggage cars in passenger and mixed-train service, from certain points in North Dakota and South Dakota to Aberdeen, S. Dak., found not unduly prejudicial but unreasonable as compared with rates under the Beatrice, C. F. A., and Kirschbaum scales prescribed in 15 I. C. C. 109; 46 I. C. C. 601; and 100 I. C. C. 28, respectively, and to extent they exceeded distance rates herein prescribed, with addition of drayage charges as herein provided Reasonable rates prescribed for future and reparation awarded. Beatrice Creamery Co. v. C., M. & St. P., 129 I. C. C. 375.

(vv) Proposed revision of rates on lime between points in southern territory for purpose of removing fourth-section departures; of eliminating inequalities between producers; and of providing a uniform basis of rates to apply between points in the South, found justified. Proposed rates are same as or lower than those on lime prescribed in 85 I. C. C. 341. and other cited cases between points in c. f. a. territory and between various other points, and comparison with rates on brick, wall plaster, lumber, and various other commodities indicates that proposed rates are on a low level and produce relatively low car-mile earnings. Respondents directed to publish rates between other points in southern territory indicated, to become effective contemporaneously with those herein found justified. Lime Between Southern Points, 129 I. C. C. 635.

§13 (1½). Comparison of Commodity and Class Rates.

See Class Rates; Commodity Rates.

(a) Fifth-class rates on hoofs and horns, animal, used in making such articles as combs, buttons, machete handles, and pipe bits, found not unreasonable as compared with lower sixth-class rates on hoofs used in manufacture of gelatine and glue, on horns, horn waste, hoofs, and hoof waste suitable only for fertilizer, and on bone used in manufacture of such articles as combs and buttons. As to last-named commodity the record does not show percentage of total tonnage of bones that can be used in manufacturing products other than fertilizer, the average loading of bones, or a comparison of prices at which horns, hoofs, and bones are sold to consuming manufacturers. Tomkins-Summer Co. v. B. & O., 115 I. C. C. 24.

(b) Sixth-class rate on sand, refuse, found unreasonable as compared with lower rates contemporaneously in effect on various other commodities. Reasonable rate prescribed for future and reparation awarded. American Radiator Co. v. D. & T. S. L. R. R., 115 I. C. C. 529.

(c) By a commodity rate being higher than a class rate is an abnormality we do not wish to be understood as holding that the presumption of unreasonableness is by any means conclusive, but what we do say is that such an adjustment is abnormal and on its face unreasonable, and requires substantial evidence to justify it. A mere recital of its continued existence is not sufficient. Gay Sullivan & Co. v. A. G. S. R. R., 122 I. C. C. 201, 203.

(d) Class rates as they now exist are frequently not accurate indicia of general rate levels or transportation conditions of different sections of the country. Ok-

lahoma Portland Cement Co. v. D. & R. G. W., 128 I. C. C. 63, 75.

(e) A number of articles are rated as high as or higher than scrapbrass or scrapcopper but move at commodity rates lower than the class rates under consideration. That fact, alone, is insufficient to justify the establishment of commodity rates on scrap brass or scrap copper. Atlas Iron & Metal Co. v. A. T. & S. F. Ry., 132 I. C. C. 299, 301.

§13 (2). Divisions and Joint Rates.

See Divisions; Local Rates and Combinations; Through Routes and Joint Rates.

(a) While divisions ordinarily afford little basis for determining reasonable maximum rates, they may properly be given more weight in determination of a reasonable minimum rate in nature of a proportional rate. Ex-Lake Iron Ore from Chicago to Granite City, 120 I. C. C. 75, 80.

(b) The use of comparisons of divisions in determining the reasonableness of the joint rate attacked is of little or no probative value, for, such comparisons, without evidence of the circumstances and conditions surrounding the traffic, are not controlling. The divisions of a joint rate are not, generally speaking, of value as a test of the reasonableness of the rate. Farrell Foundry & Machine Co. v. A. B. & A. Ry., 123 I. C. C. 127, 130.

(c) The Commission has often found that divisions of a joint rate are not ordinarily a sound test of the reasonableness of rates. American Grain & Hay Co. v. I. C. R. R., 129 I. C. C. 225, 229.

§13 (3). Division and Local Rates.

See Divisions; Local Rates and Combinations.

(a) Although local rates are not necessarily controlling in determining the measure of proportional rates from and to the same points, they are not without probative value. Lake Cargo Coal Rates, 1925, 126 I. C. C. 309, 334.

§13 (4). Import or Export and Domestic Rates.

See Export Rates and Facilities; Import Traffic.

(a) Export rates yielding very low earnings can not be accepted as the proper measure of reasonable domestic rates. Chestnutt & Smith Corp. v. A. & R. R. R., 123 I. C. C. 707, 713.

(b) Export rates yielding ton-mile earnings as low as 6.12 and 7.4 mills for hauls of 1,591 and 1,793 miles, respectively, can not be accepted as proper measure of reasonable domestic rates. Chestnut & Smith Corp. v. A. & R. R. R., 123 I. C. C. 707, 713.

§13 (5). Proportional and Local Rates.

See Local Rates and Combinations; Proportional Rates.

(a) Conditions surrounding proportional and local rates are dissimilar. Nooney & Co. v. P. R. R., 112 I. C. C. 35, 36.

(b) Although local rates are not necessarily controlling in determining measure of proportional rates from and to same points, they are not without probative value. Lake Cargo Coal Rates, 1925, 126 I. C. C. 309, 334.

§13(6). State and Interstate Rates.

See Advanced Rates §5 (7¼); Discrimination §8 (6); Equalization of Rates §5; Routing and Misrouting §4¼; State Rates and Regulation.

(a) Rate on coal from docks in Menominee, Mich., to complainant's paper mill in Marinette, Wis., found not unreasonable or unduly prejudicial. The service is regarded as a line-haul movement, rather than a switching service, and rate applicable compares favorably with intrastate rates on like traffic in various States for corresponding distances. Marinette & Menominee Paper Co. v. C. & N. W., 107 I. C. C. 21, 26, 28.

(b) Rates on crate and box material from Bainbridge and Brunswick, Ga., to destinations in Florida on Florida East Coast Ry. found not unreasonable as compared with lower intrastate rates on like traffic in Florida for comparable distances. Elberta Crate Co. v. A. C. L., 107 I. C. C. 499.

(c) Rates on crate and box material from Bainbridge and Brunswick, Ga., to destinations in Florida on Florida East Coast Ry., found unduly prejudicial to complainants and unduly preferential of their competitors shipping intrastate in Florida to extent that the factors from Jacksonville exceed rates contemporaneously maintained on like traffic for equal distances moving intrastate from points

in Florida to same destination. Elberta Crate Co. v. A. C. L., 107 I. C. C. 499.

(d) Interstate rates should not be made too high on assumption that intrastate rates may be too low. Southern Class Rate Investigation, 109 I. C. C. 300, 304.

(e) Intrastate rates were neither prescribed nor approved by the commission but are maintained under state authority and can not be regarded as controlling in determining the measure of the interstate rates or the relationship of the interstate and intrastate rates. Iola Cement Mills Traffic Asso. v. A., T. & S. F. Ry., 122 I. C. C. 337, 345.

(f) In so far as practicable, all rates, intrastate and interstate, should contribute in fair proportion to revenues of carriers. Therefore, in a general territory where traffic and operating conditions are substantially similar rates for given distances should be substantially the same. Consolidated Southwestern Cases, 123 I. C. C. 203, 211.

(g) Class and commodity rates on various articles between Oklahoma and designated portions of Kansas and Missouri, in their relations to relatively lower intrastate rates within those portions of Kansas and Missouri, found to result in undue prejudice and preference and in unjust discrimination against interstate commerce. Consolidated Southwestern Cases, 123 I. C. C. 203, 350, 351.

(h) Rates on crushed stone from Thornton, Ill., to destinations in northern Indiana and southwestern Michigan found unreasonable as compared with contemporaneous intrastate rates from various Michigan competing points; with those to other Illinois destinations for comparable distances; and with lower rates to Elkhart, Ind., and Niles, Mich., points less distant than Kalamazoo, Mich. As rates beyond Elkhart and Niles rise abruptly traffic from Thornton to farther distant territory is practically excluded. However, while Illinois and Michigan intrastate rates are generally lower than corresponding interstate rates, they should be properly aligned with corresponding interstate rates to Niles and Elkhart, and less distant Indiana destinations. Reasonable basis of rates prescribed for future. Brownell Improvement Co. v. B. & O. C. T., 126 I. C. C. 414.

§13(7). Rail and Water Rates.

See Rail and Water Rates.

(a) Although the commission has used a ratio of water miles to rail miles for purpose of comparing rail-and-water and all-rail rates, before this is done careful analysis should be made of conditions surrounding transportation of different lines. Under rail-and-water rates traffic must be unloaded from the ship and reloaded into cars; and cost of operating ship is practically same whether it carries full cargo or no cargo, and much depends upon ability of ship to obtain a proper load and return cargo. Moreover, transportation conditions in connection with both rail hauls and water hauls change from time to time. Alexander Grocery Co. v. B., S. L. & W., 104 I. C. C. 155, 161.

(b) The mere fact that there has been a considerable movement of a commodity by water from and to certain points is no proof that all-rail rates on same commodity from and to same points were or are depressed or subnormal. Dutton Lbr. Corp. v. Director General, 112 I. C. C. 661, 674.

§14. Competition.

(1) In General.

See Advanced Rates §5 (7); Competition; Discrimination §8 (3).

(a) While commercial conditions and carrier competition are factors to be considered in determining lawful rates, they should not be given such importance as completely to outweigh factors more directly related to transportation, such as cost and value of service. Morrell & Co. v. N. Y. C., 104 I. C. C. 104, 134.

(b) Within recognizable limits, carrier competition makes for adequacy of service at reasonable rates, but duplication of service by reason of duplicated plant and duplicated labor costs may result to disadvantage of carriers and shippers alike. Denver & Rio Grande Investigation, 113 I. C. C. 75, 156.

(c) A rate deflected by competition is manifestly no measure of a reasonable maximum basis. Benson Produce Co. v. G. N., 113 I. C. C. 541, 547.

(d) A carrier may properly initiate rates to meet competitive conditions so long as such rates are lawful. Grain and grain products, 115 I. C. C. 153, 164.

(ef) Where a carrier elects to meet

commercial or carrier competition, in doing so, it must not cause undue prejudice. See 43 I. C. C. 458, 465. Minnesota-Dakota Transit Millers v. A. A. R. R., 118 I. C. C. 585, 592.

(g) Healthy competition is no less important between ports than between rail or water carriers. There is, however, a limit beyond which disregard by rail carriers of geographical advantages of one port in favor of another will impair rather than promote healthy competition between the ports. There is ground for believing that a policy of port equalization, if carried beyond reasonable limits, has the effect of strengthening unduly, at expense of others, those ports which by reason of natural or acquired advantages have attained commanding positions in export and import trade. Such a policy also encourages waste in rail transportation. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349, 369.

(h) Rail carriers' actual water competition on local rail traffic is the cost to shipper of marine insurance, plus expense to reach the dock at point or origin, local steamer rate, and expense of making delivery at destination. Pacific Coast Fourth Section Applications, 129 I. C. C. 3, 15.

(i) Under the law as construed by the commission all-rail rates "can be no lower than necessary to meet existing competition." Pacific Coast Fourth-Section Applications, 129 I. C. C. 3, 18.

(j) Finding in original report, 104 I. C. C. 66, that proposed rates on fruits and vegetables between points in California and Oregon, Washington, Idaho, Utah, and Montana, involving both increases and reductions, had not been justified, affirmed. Circumstances and conditions under which commission prescribed or found not unreasonable higher rates on like traffic are too dissimilar in too many important respects to entitle such comparisons to much weight and evidence does not indicate that present rates are depressed by real or potential water competition or that they are not remunerative. Fruits and Vegetables Between Pacific Coast States, 129 I. C. C. 569.

§14 (2½). Pipe Line Competition.

See Pipe Lines.

(a) Based upon light traffic density and unfavorable operating and financial conditions, joint distance commodity rate assessed on petroleum crude oil from Texon, Tex., to Texas City, Tex., for coastwise movement, found not unreasonable because it exceeded lower rate subsequently established, such lower rate being literally forced upon carrier to meet pipe-line competition. Kay County Gas Co. v. G., C. & S. F., 115 I. C. C. 736.

§14 (3). Railroad Competition.

See Discrimination §8 (3); Equalization of Rates §4 (2); Long and Short Hauls §9; Railroad Competition; Reasonableness of Rates §8 (2).

(a) While carrier competition is a factor to be considered in determining lawful rates, it should not be given such importance as to completely outweigh factors more directly related to transportation, such as cost and value of service. Morrell & Co. v. N. Y. C., 104 I. C. C. 104, 134.

(b) Absence of carrier competition does not warrant maintenance of rates upon an unduly high level. Was-Cott Corp. v. K., G. J. & E., 109 I. C. C. 468, 470.

(c) Where a carrier elects to meet commercial or carrier competition, in doing so, it must not cause undue prejudice. See 43 I. C. C. 458, 465. Minnesota-Dakota Transit Millers v. A. A. R. R., 118 I. C. C. 585, 592.

§14 (5). Water Competition.

See Discrimination §8 (5); Equalization of Rates §4 (4); Long and Short Hauls §10; Reasonableness of Rates §8 (4).

(a) A rate established by rail lines from the Atlantic to the Pacific coast to meet water competition might well be near the border line of confiscation for that movement and still be unreasonable as a maximum when applied to a small proportion of total movement. Associated Oil Co. v. A. E. R. R., 112 I. C. C. 350, 360.

(b) It is not commission's province to require carriers to meet rates of water carriers by maintenance of rates lower than reasonable maxima. Consolidated Southwestern Cases, 123 I. C. C. 203, 319.

(c) The policy declared by Congress in section 500 of the transportation act,

1920, is to foster and preserve in full vigor both rail and water transportation. Traffic between trunk-line territory and Texas ports and points contiguous thereto is naturally tributary to ocean lines and to permit rail carriers from St. Louis, Chicago, Pittsburgh, Cleveland, and other points to maintain rates so low as to deprive such water carriers of the traffic naturally theirs is not in accord with the spirit of section 500. Consolidated Southwestern Cases, 123 I. C. C. 203, 341.

(d) Although ordinarily carriers are not obligated to meet water competition, nevertheless they may not create an unduly prejudicial situation by meeting it at one point and failing to meet it at a competing point. Bunker Hill & Sullivan Co. v. O. W. R. R. & N., 132 I. C. C. 266, 271.

(e) While in 249 U. S. 557, Supreme Court declared the specific purpose of section 4 (2) is to insure and preserve water competition and to prevent competition that kills, the only fair construction to be placed upon that portion of the act is that it is not applicable except in those cases where rates have been increased after water competition has been eliminated. Woodstock Lbr. Co. v. B. & A., 129 I. C. C. 255, 257.

§15½. Cost Computations.

See Infra §17; Weights and Weighing II.

(a) Complainant objected to figures of carriers purporting to show cost of performing lighterage service as being incomplete, lacking in detail, and of such character as to leave not only a wide margin of possible error, but a wide opportunity for difference of opinion. HELD: While cost figures without the details upon which those figures are based are open to serious criticism, the lack of detail goes to weight to be given cost study and not to its relevancy. Motion to strike the study from record denied. Colgate & Co. v. N. Y. C., 112 I. C. C. 573, 578.

(b) A cost study is ordinarily little more than a very rough indication, and, even if unusually comprehensive and exact, it should not be the sole basis for fixing rates. The value of the service to the shipper and many practical considerations may be of equal or greater importance. Switching at St. Louis and East St. Louis, 120 I. C. C. 216, 220.

(cd) Car-foot-mile formula for determining relative costs for transportation of milk is not, in its present form, adaptable to freight service. Character of milk traffic, expedited service given it, regularity of movement, with loaded cans in one direction and empty cans in return movement, constituting practically a "shuttle service," and other features, make it more nearly comparable with passenger-train service, and exclusion of operations and expenses of freight service and limitations of cost study to passenger-train service, including passenger proper, express, mail, and milk, is not improper. Milk and Cream Between New England Points, 126 I. C. C. 38, 48.

(e) Theory that milk is an auxiliary service and might properly be charged only with out-of-pocket cost, with no charge for any portion of expenses which would be incurred whether milk services were rendered or not, found not tenable. The same theory might apply with equal force to mail or express and would result, if followed, in one or more "auxiliary" services becoming unduly preferred in so far as rates are concerned. See 74 I. C. C. 48, 71. Milk and Cream Between New England Points, 126 I. C. C. 38, 60.

(f) While it is true that car-foot-mile does not constitute an ideal single unit of measure for apportionment of a number of individual accounts carrying expenses common to different services, nevertheless it remains the best basis immediately available for apportioning common expenses that is practicable and at same time reasonably fair and equitable. Although results are not regarded as furnishing precise and accurate ascertainments of relative costs, they are entitled to considerable weight. Milk and Cream Between New England Points, 126 I. C. C. 38, 60.

(g) Cost figures are at best only estimates and are not at times of sufficient accuracy or certainty to warrant their use in determining reasonableness of rates. Amer. Fruit & Veg. Shippers Asso. v. Amer. Ry. Exp. Co., 128 I. C. C. 651, 658.

(h) Cost studies based on the average cost of handling all traffic can not be accepted as showing cost of tonnage of a particular commodity or class of commodities Calif. Growers' & Shippers' Protective League v. S. P., 129 I. C. C. 25, 52.

§17. Cost of Operation.

See Infra §18; Supra §15½; Advanced Rates §7 (2), §10, §11; Division §3; Reasonableness of Rates §9; Transportation §14.

(a) Maintenance charges of the great Northern Ry. Co., for the year 1924, found not a safe standard of normal charges for other roads. Revenues in western District, 113 I. C. C. 3, 22.

(b) A showing that for a particular year the freight operating expenses in southern district were lower than in western or eastern district can hardly determine proper measure of a rate on a single commodity. Sterchi Bros. v. G. N., 113 I. C. C. 665, 666.

(c) Cost of transportation per mile by water is comparatively high for short distances and very small for long distances. See 24 I. C. C. 570. Wool Rates Investigation, 1923, 120 I. C. C. 493, 503.

§18. Cost of Service.

See Supra § 17; Advanced Rates §7 (2); Hoch-Smith Resolution (bb); Reasonableness of Rates §9, §19.

(a) It is extremely difficult, if not impossible, to ascertain accurately the cost of transporting a particular kind of traffic for a certain distance. Sugar from Key West, 112 I. C. C. 347, 348.

(b) Value of a commodity and cost of service should be given important consideration but they are by no means controlling factors in determining proper rates on individual commodities. The public interest requires that value of service, or what the traffic can reasonably bear, be also given important consideration. Frohman Chemical Co. v. B. & O., 115 I. C. C. 322, 323.

(c) The value of a cost study showing average cost per unit of switching obviously depends upon selection of a test period representative as to number of cars handled, a careful count of actual number switched, and proper assignment and apportionment of expense to switching service involved. Rates of P. & P. U. Ry., 115 I. C. C. 469, 487.

(d) Ton-mile earnings over a road traversing a mountainous territory where operating conditions are unusual and difficult may well be somewhat higher than earnings for a haul over level country. Cameron, Joyce & Schneider v. D. & R. G. W., 120 I. C. C. 129, 130.

(e) The ratio in favor of water transportation as compared with rail transportation increases with length of water haul, but what the ratio may be in case of long hauls between the costs through Panama Canal is purely speculative. Wool Rates Investigation, 1923, 120 I. C. C. 493, 503.

(f) The rapid growth of traffic in dairy products from mid-western States, its present volume, its importance to the producer, and its necessity to the consumer, are considerations which should place the cost of movement at a minimum fixed with due regard to revenue of carriers. Duluth Chamber of Commerce v. C. & N. W., 120 I. C. C. 683, 692.

(g) It is recognized that operating costs do not increase in proportion with increase in car loading and that the increase in cost is in fact relatively small. Both ton mile and car mile yields merit consideration, but the latter of more significance in the case of heavy loading commodities. Ex-Lake Iron Ore from Chicago to Granite City, 123 I. C. C. 503, 505.

(h) The rates and charges of a railroad can not be based entirely on the cost for each particular character of service rendered. If such was the case, the passenger with baggage would pay more than the passenger without baggage, and the rates to large industrial centers would vary dependent upon the character of terminal service employed, including connecting line switching. Cost of service is an important element, but not the only or necessarily the controlling one by which to measure a rate or charge for a particular service. Rates on Cotton to Gulf Ports, 123 I. C. C. 685, 702.

(ij) Generally speaking, terminal services are relatively more expensive in connection with water service than with rail service. On other hand, what may be termed line-haul expenses of ocean carriers are relatively low for long hauls. Consolidated Southwestern Cases, 123 I. C. C. 203, 370.

(k) Freight rates combine two factors of cost—(1) terminal cost and (2) line-haul cost. The first remains constant, whatever the length of haul, but it is a generally accepted theory that latter is somewhat higher for shorter than

for longer hauls. Consolidated Southwestern Cases, 123 I. C. C. 203, 385.

(l) Operating costs do not increase in proportion with increase in car loading, as increase in cost on this account is in fact relatively small. While both ton-mile and car-mile yields merit consideration in determining reasonableness of rates, the latter are of more significance in case of heavy-loading commodities. Ex-Lake Iron Ore from Chicago to Granite City, 123 I. C. C. 503, 505.

(m) Rates and charges of a railroad can not be based entirely on cost for each particular character of service rendered. If such were the case, the passenger with baggage would pay more than the passenger without baggage, and rates to large industrial centers would vary dependent upon character of terminal service employed, including connecting switching. Cost of service is an important element but not the only or necessarily the controlling one by which to measure a rate or charge for a particular service. Rates on Cotton to Gulf Ports, 123 I. C. C. 685, 702.

(n) While the Commission might not require a reduction in the rates attacked merely because the costs warrant it, that fact is of importance in considering whether the rates may be reduced to relate them more fairly to those from the southern districts. Lake Cargo Coal Rates, 1925, 126 I. C. C. 309, 363.

(o) Theory that milk is an auxiliary service and might properly be charged only with out-of-pocket cost, with no charge for any portion of expenses which would be incurred whether milk services were rendered or not, found not tenable. The same theory might apply with equal force to mail or express and would result, if followed, in one or more "auxiliary" services becoming unduly preferred in so far as rates are concerned. See 74 I. C. C. 48, 71. Mil and Cream Between New England Points, 126 I. C. C. 38, 60.

§20. Distance of Haul.

See Blanket Rates §9; §15½ (a) (h) (i) (j) (k); Bridges and Tolls; Car Ferry; Differentials; Distance Rates; Evidence §58; Reasonableness of Rates §10, §36; Through Routes and Joint Rates §6.

(a) Carriers are left free to ignore differences in distance so long as they do not unduly prefer one port or locality or maintain rates so low as to burden other traffic. See 95 I. C. C. 539. But an order from commission requiring them to ignore such differences is a different thing. Galveston Commercial Asso. v. A. & S., 109 I. C. C. 114, 125.

(b) Fact that carriers have entirely disregarded element of distance in fixing rates on a specific commodity to various points does not necessarily show unreasonableness in rates. Adams & Kelly Co. v. A., T. & S. F., 109 I. C. C. 241, 243, 244.

(c) Distances over short tariff routes have a closer relation to the actual distances traversed in the movement of the traffic than do the strict short line distances, and the Commission is of the opinion that averages based on the former method may be fairly used for comparative purposes. Midcontinent Oil rates 1925. 112 I. C. C. 421, 439.

(d) Rate on sand from Michigan City, Ind., to points on connecting lines in Chicago, Ill., switching district, found not unreasonable or unduly prejudicial as compared with lower rates from Dune Park, Aetna, Millers, and Gary, Ind., and other near-by competing producing points. The comparisons, based merely upon differences in distance do not constitute sufficient justification for a finding either of unreasonableness or of undue prejudice, the differential between Michigan City and alleged preferred points is less than that prescribed by commission between the inner and outer zones, Michigan City having been found to be properly included in the higher 52-mile scale, whereas alleged preferred points are in the lower 35-mile scale, indicating that alleged preferred points are entitled to advantage of their location. Furthermore, certain of these points are not served by same carriers serving Michigan City. Bos Sand Co. v. A., T. & S. F., 112 I. C. C. 121.

(e) The unnecessary hauling of traffic over unduly circuitous routes at same rates that are applicable over direct routes result in wasteful transportation. Brick and Clay Products in the South, 113 I. C. C. 380, 381, 382.

(f) Distance is not the only factor to be considered either in making of a rate by a carrier or in commission's determination of what would be a reasonable basis. Benson Produce Co. v. G. N., 113 I. C. C. 541, 546, 547.

(g) The present rates on milk and cream in the west and northwest are about 10% below those in central territory which are based on the scale prescribed in 46 I. C. C. 601. The average haul in central territory was found to be considerably less than 50 miles. Milk and cream in northwest, 115 I. C. C. 77, 80.

(h) Fact that rates applicable under one distance scale in a particular section of territory are higher than rates under a similar scale applicable in contiguous territory does not establish unreasonableness of higher rates where both scales apply over extensive areas in which traffic, operating and transportation conditions vary. Wichita Chamber of Commerce v. Am. Exp. Co., 115 I. C. C. 729, 731.

(i) Rates on wrought-iron or steel pipe and fittings between points in Texas and points in Oklahoma found unreasonable to extent they exceeded rates for like distances computed under scale prescribed on iron and steel pipe in Memphis-Southwestern Investigation, 77 I. C. C. 473. Reasonable rates prescribed and reparation awarded. Lone Star Gas Co. v. C., R. I. & G., 118 I. C. C. 717.

(j) Rates which are designed to effect market equalization necessarily disregard distance to some extent. Nashville Traffic Bureau v. L. & N., 118 I. C. C. 748, 752.

(k) Carriers are left free to ignore differences in distances for competitive or other reasons so long as they do not unduly prefer one port or locality or maintain rates so low as to burden other traffic. But an order from the commission requiring them to ignore such differences is quite a different thing. Iron and Steel Fabricated in Transit, 120 I. C. C. 325, 327.

(l) Distance is not necessarily a controlling factor in switching costs, the time consumed in rendering service being of more importance. Switching at St. Louis and East St. Louis, 120 I. C. C. 216, 222.

(m) Distance is an important consideration in determining proper rate relationship between territories where there is no material difference in transportation conditions. Como Chemical Co. v. A., T. & S. F., 120 I. C. C. 517, 519.

(n) Comparison of rates based upon distance alone have little probative value when rates compared are group rates, in the establishment of which the element of distance must to an extent be subordinated to other considerations. Cherry Co. v. C., M. & St. P., 123 I. C. C. 59, 61.

(o) Upon further consideration, the Nashville, Chattanooga & St. Louis Ry., authorized to use 50 miles as the constructive mileage in determining rates on fertilizers over its route via Hobb's Island and Gunters Landing, Ala. In 100 I. C. C. 513, a similar constructive mileage was authorized for application between these points and no reason appears why same exception should not be made in this case. Original report, 113 I. C. C. 389. Fertilizers Between Southern Points, 123 I. C. C. 193, 194, 195.

(p) Distances computed over shortest routes over which carload traffic can be moved without transfer of lading required to be used in computing rates under distance scales prescribed or approved for application in the Southwest. Consolidated Southwestern Cases, 123 I. C. C. 203, 384.

(q) Fact that earnings under rates assailed are slightly higher than those under similar rates for shorter distances, is not persuasive that they are excessive. Chestnut & Smith Corp. v. A. & R. R. R., 123 I. C. C. 707, 714.

(r) Ordinarily rates for greater distances do not increase in ratio of added distance. For Lake Cargo Coal Rates, 1925, 126 I. C. C. 309, 327.

(s) Commission can not accede to view that distance is not one of the most important factors which should be considered in determining whether or not port adjustments are unlawful. However, it is by no means the only factor. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349, 387.

(t) The unnecessary hauling of traffic over unduly circuitous routes at the same rates that are applicable over direct routes results in wasteful transportation. Western Cement Rates, 132 I. C. C. 273, 278.

(u) While in 48 I. C. C. 201, commission observed that "under present rate systems rates seem more nearly proportional to square root of the distance than to distance itself," this statement

must be taken with qualification, as functions of the parabolic curve thus described tend toward a condition, as distance increases, where added mileage does not carry any increment in the rate at all. Calif. Growers' & Shippers' Protective League v. S. P., 129 I. C. C. 25, 38.

(v) Fact that spread between rates to more distant destinations increases instead of decreases in accordance with the general principle may be offset by fact that a higher level of rates is justified in a territory of relatively low traffic density. National Canners Asso. v. B. & O., 129 I. C. C. 269, 278.

§22. Equipment Furnished.

See Infra §48½; Cars and Car Supply; Classification §12⅞; Minimums; Reasonableness of Rates §13; Refrigeration §4¼.

(a) Characteristics surrounding transportation of newspapers in baggage cars are so varied as to weights and revenue per shipments, length of hauls, volume of tonnage, and methods of handling and diffusion, that it is impractical to attempt to determine reasonableness of a flat charge by allocations of costs of transportation. Newspapers in Baggage Cars, 104 I. C. C. 527, 533.

(b) Baggage-car service for newspapers is different from any other freight or passenger service rendered by railroads in several important characteristics, and for this reason many ordinary tests used in determining reasonable rates for transportation services, such as comparisons with rates on other commodities for corresponding distances, can not be employed. Newspapers in Baggage Cars, 104 I. C. C. 527, 537.

(c) The empty-car movement occasioned by livestock traffic in comparison with loaded-car mileage is relatively high as compared with box, refrigerator, coal, flat, and tank cars. American Nat'l. Live Stock Asso. v. A., T. & S. F., 122 I. C. C. 609, 616.

(d) In the transportation of dolomite to glass industries, box cars are necessary as dirt and cinders from locomotives render it unfit for use as a flux. Ordinary dirt or dust, aside from cinders, does not affect such use, nor is dolomite damaged by dampness as is fluxing lime. Dolomite and Fluxing Stone, 128 I. C. C. 23, 24.

§22¼. Erroneous Rate.

See Advanced Rates §5 (6); Erroneous Rates.

(a) Carriers over a long period of time erred in not collecting applicable rates and complainant urged that this long-continued practice raises a presumption that basis upon which rates were collected, was and is reasonable. HELD: A practice based on an error, however long maintained, raises no presumption whatsoever. Berninghaus Co. v. C. & N. W., 109 I. C. C. 104, 106.

§22½. Expert Evidence.

See Tariffs §18 (a).

§25½. Hearsay Evidence.

(a) No consideration accorded statements contained in letters not sworn to, such evidence being considered as hearsay. Knight-Luttrell Iron Co. v. S. A. L., 120 I. C. C. 580, 581.

§29. Long Continuance of Voluntary Rate.

See Infra §43, §68; Advanced Rates §5 (4); Express Companies §22; Reasonableness of Rates §16, §16½, §25.

(a) The commission has frequently found that a prima facie presumption of reasonableness attaches to a rate long voluntarily maintained. But the continuance of a given rate is not conclusive evidence of the reasonableness of that rate. Tunnell Co. v. P. R. R., 120 I. C. C. 425, 427.

(b) The long continuance of a rate or rate basis is entitled to consideration. However, the primary question here is whether the assailed rates, in whatever manner constructed, are reasonable and free from unlawfulness. Acme Brick Co. v. A. & V. Ry., 128 I. C. C. 715, 719.

§30. Low Rate in Opposite Direction.

See Comparative Rates; Discrimination §11; Reasonableness of Rates §27¾.

(a) Contention that rates on cabbage from South Carolina producing districts to northern destinations are un-

reasonable as compared with southbound vegetable rates, not sustained. Vegetables which move at southbound rates are mainly northern-grown hardy winter vegetables substantially different in character and move under much less exacting transportation conditions. Moreover, the southbound rates have been influenced by competition of eastern and western vegetables as well as by competition with boat lines bringing such vegetables to south Atlantic ports for distribution into the interior. South Carolina Produce Asso. v. A. & R., 107 I. C. C. 613, 615, 618.

(b) Rate charged on washing powder from San Diego, Calif., to Cleveland, Ohio, found not unreasonable as compared with lower rate contemporaneously maintained in reverse direction, which lower rate was subsequently established eastbound. Citrus Soap Co. v. B. & O., 109 I. C. C. 63.

(c) Reduction in rate in one direction does not necessarily require similar treatment in reverse direction, and failure to make such change immediately does not constitute grounds for awarding reparation without specific proof of damage. Citrus Soap Co. v. B. & O., 109 I. C. C. 63, 65.

(d) Westbound rate on lawn mowers from Battle Creek, Mich., to Los Angeles, Calif., found not a fair measure of a reasonable maximum rate on like traffic moving eastbound between same points. Rich Steel Products Co. v. S. P. Co., 109 I. C. C. 465, 467.

(e) The fact that a rate is higher in one direction between the same points than it is in the reverse direction does not of itself establish unreasonableness of the higher rate. Garrett & Co. v. N. Y. C. R. R., 112 I. C. C. 519, 521.

(f) The fact that a rate is higher in one direction between the same points than it is in the reverse direction does not of itself prove that the higher rate is unreasonable. Colgate & Co. v. N. Y. C. R. R., 112 I. C. C. 573, 576.

(gh) Difference in transportation conditions in opposite directions may justify a difference in rates. Anderson-Taylor Co. v. A., T. & S. F., 115 I. C. C. 313, 319.

(i) Transportation conditions east of Mississippi are more favorable than those west and justify a lower level of rates. Teague Hardware Co. v. C., B. & Q., 118 I. C. C. 221, 225, 226.

(j) Rate on wrought-iron pipe from Bowling Green, Ky., to Florence, Ala., found unreasonable to extent it exceeded a lower rate contemporaneously in effect in reverse direction. Reasonable rate for future prescribed and reparation awarded. Nashville Machine & Supply Co. v. L. & N., 118 I. C. C. 577.

(k) Bare comparisons of rates on a particular commodity moving in one direction with rates on unrelated commodities moving in opposite direction, without any showing of the various elements affecting their establishment, fall far short of establishing unlawfulness of the rates in effect on the particular commodity. Peyton Packing Co. v. A. & S., 122 I. C. C. 3, 6.

(l) Fact that rates in one direction exceed rates in opposite direction does not demonstrate unreasonableness of the higher rates. See 51 I. C. C. 23, 24. Stanley Lbr. Co. v. A. & V., 122 I. C. C. 506, 508.

(m) On further hearing, original report 98 I. C. C. 352, prescribing reasonable and nonprejudicial rates for interstate transportation of fresh meats and packing-house products, from Duluth, to St. Paul, Minn., affirmed. Transportation conditions being substantially same in both directions, there is a clear discrimination in charging lower rates from St. Paul to Duluth than from Duluth to St. Paul, and under circumstances, it is impossible to conclude that Duluth packing plant suffers no injury because of this discriminatory freight-rate situation, or that its competitive position would not be improved if such discrimination were removed. It is an unfair situation for which no justification has been offered and should be corrected. Duluth Chamber of Commerce v. C., St. P., M. & O., 122 I. C. C. 739.

(n) Findings in original report, 95 I. C. C. 104, reversed in part and rates on scrap brass and scrap copper from New York rate points to Pittsburgh, East Liberty, and Meadville, Pa., found unreasonable to extent they exceeded rates contemporaneously in effect in the opposit direction between specified dates. Reparation awarded. Union Smelting & Refining Co. v. C. R. R. of N. J., 128 I. C. C. 129.

(o) Rate on linseed oil from Chicago, Ill., to Milwaukee, Wis., found not unreasonable or otherwise unlawful as compared with rates contemporaneously in ef-

fect in the opposite direction. Lower rate is necessary to enable Milwaukee manufacturers to compete in the Chicago market with manufacturers located at Minneapolis and Chicago. Rate assailed is lower than those to other Illinois points for comparable distances and is the same as rate applicable on cottonseed, corn, and soya-bean oils to Milwaukee. American Linseed Co. v. C., M. & St. P., 128 I. C. C. 163.

(p) Shipments of linseed oil from Chicago to Milwaukee moved in box cars in direction of prevailing empty-car movement. Upon contention that rate on such traffic should be lower than rate applicable on linseed oil in opposite direction, which is shipped largely in tank cars, with empty-return movement, HELD, Heavier loading of tank cars than of box cars minimizes any advantage to carrier which it might derive through utilization of cars which would otherwise move empty. American Linseed Co. v. C., M. & St. P., 128 I. C. C. 163, 165.

(q) Difference in transportation conditions may justify a higher rate in one direction than in the opposite direction, provided the higher rate is not intrinsically unreasonable. See 92 I. C. C. 671. American Linseed Co. v. C., M., & St. P., 128 I. C. C. 163, 166.

(r) Second-class rate applicable on games or toys n. o. i. b. n. and assessed on domestic mah-jongg sets from San Fransico and Paraffin, Calif., to Chicago, found applicable, but unreasonable as compared with lower commodity rate contemporaneously in effect on toys, and to extent it exceeded lower commodity rate applicable in opposite direction, to which basis rates assailed were subsequently reduced. Reparation awarded. Paraffine Companies v. S. P. 128 I. C. C. 421.

(s) Rates on furniture from Memphis, Tenn., to points in c. f. a., Buffalo-Pittsburgh, and southern territories found unduly prejudicial to extent that rates from Memphis to competing points in said territories exceed rates contemporaneously maintained in the reverse direction; and unduly preferential of competing points in southern territory to extent that relations of rates to common destinations in said territories are less favorable to Memphis than those which would result from establishment of rates from Memphis and southern territory competing points made on bases of rates herein found reasonable. Nonprejudicial bases of rates prescribed for future. Memphis Freight Bureau v. A. G. S., 128 I. C. C. 445.

(t) The fact that the rate in one direction exceeds the rate between the same points in the opposite direction does not in itself demonstrate that the higher rate is unreasonable. Montello Granite Co. v. M. St. P. & S. S. M. Ry., 129 I. C. C. 427, 428.

(u) Carriers should be permitted to establish rates on commodities produced in their territory which will meet market competition without being compelled to maintain the same level of rates in the opposite direction. Morse Dry Dock & Repair Co. v. A. C. L. R. R., 132 I. C. C. 351, 353.

(v) Fifth-class rate on soy, soja, or soya beans from Bloomington, Ill., to Fort Smith, Ark., found unreasonable as compared with lower rate contemporaneously in effect from Norfolk, Va., to Atlanta, Ga., and Athens, Tenn., for similar distances; and to extent it exceeded lower rate subsequently established in reverse direction. Class rates are the same in both directions, and carriers failed to show why rate assailed should exceed that in reverse direction. Reparation awarded and reasonable rate for future prescribed. Binding-Stephens Seed Co. v. A., T. & S. F., 129 I. C. C. 291.

§31. Manufactured Product.

See Classification §10, §11, IV; Reasonableness of Rates §17.

(a) Raw Materials and Finished Products: Differences in value, and in value of services, are important elements in determining rates on finished or manufactured articles in relation to those on raw material or product from which they are derived. Morrell & Co. v. N. Y. C., 104 I. C. C. 104, 116.

(b) Raw materials and Finished Products: Applicable rate on sporadic shipments of pulp wood found unreasonable as compared with, and to extent it exceeded, rate on wood pulp, the manufactured product of pulp wood. Reparation awarded. Watab Paper Co. v. N. P. Ry., 107 I. C. C. 131.

(c) Rates dependent upon the method in manufacturing a commodity rather than on nature of the commodity are unlawful. Cotton Linters from Southwest, 118 I. C. C. 419, 434, 435.

(d) It does not necessarily follow that rates on raw material are unreasonable because they are higher than rates on the finished product. Hammersley Mfg. Co. v. E. R. R. Co. 126 I. C. C. 491, 493.

(ef) Broom handles were assessed commodity rate applicable on finished handles. Contemporaneously a lower rate applied on "handles, in rough, sawed or turned to shape, not further finished" which complainant contended was applicable. Carrier, however, urged that after the handles are turned to shape they are not in marketable condition until they are either tumbled or sanded which they contend is a "further finishing" process preventing application of rate sought. HELD: Since evidence adduced does not clearly show condition of handles when shipped it is insufficient to warrant a finding that rate charged was inapplicable. Nat'l. Broom Co. v. A., T. & S. F., 128 I. C. C. 98, 99.

(g) Although it is true that a manufactured article would ordinarily be rated higher than the material from which it is made, the comparatively small number of classes into which all commodities must be grouped in the classification places an important limitation upon the application of that principle. Eggerss-O'Flyng Co. v. C. & N. W., 128 I. C. C. 644, 649.

(h) Raw materials are generally accorded lower rates than the products. Kawneer Co. v. C. & N. W. Ry., 132 I. C. C. 643, 644.

(i) Raw material is generally accorded a lower rate than the finished product. Colbert Limerock Asphalt Co. v. A. C., 129 I. C. C. 177, 183.

§32. Market Competition.

See Equalization of Rates §4 (5), §6; Express Companies §19; Long and Short Hauls §8; Market Competition.

(a) Fact that element of primary market competition does not exist to as great an extent on one commodity as on another does not justify rates based upon "what the traffic will bear" without regard to other transportation conditions. South Dakota R. R. Commrs. v. C. & N. W., 107 I. C. C. 35, 43.

(b) Equalization of prices of goods in foreign markets can not be accepted as a guide for determining a proper rate adjustment for rail movements in this country, or whether certain interests are given an unfair advantage by maintenance of export rates. Export Rates on Wheat and Products, 107 I. C. C. 276, 285, 286.

(c) Where a locality or community is endeavoring to build up a market and in doing so is confronted by competition and the intrenched influence of other long-established markets in same general territory, elaborate evidence is not required to show that such locality or community is entitled to relief under the act if the rates are improperly related. See also 61 I. C. C. 226, 233; 64 I. C. C. 485, 489. Sioux Falls Live Stock Exchange v. A., T. & S. F., 109 I. C. C. 501, 512.

(d) Under methods generally followed in marketing cotton the crops of many growers, composed usually of different grades and staples, are concentrated at one point so that enough bales can be accumulated to fill orders for the several grades and staples. Concentration points thus serve as markets for the cotton growers. Montgomery Cotton Exchange v. S. A. L., 109 I. C. C. 579, 581, 582.

(e) It is the province of carriers to conduct commerce in channels demanded by the public. Public interest is not conserved by shutting out, through denial of a necessary transportation service, an important agricultural product from markets which it can reach over routes requiring less service than that over other routes primarily because one of the carriers on whose lines traffic orginates does not reach those markets over routes which would give it a long haul. Montgomery Cotton Exchange v. S. A. L., 109 I. C. C. 579, 587.

(f) The reasonableness of a rate does not necessarily depend upon the ability of shippers profitably to market their product under it. Rawlings v. C. B. & Q. R. R., 115 I. C. C. 103, 104.

(g) The grain and milling industry is highly competitive and a difference of a few cents per 100 pounds, or even less, between competitors is frequently more than can be absorbed by competitors suffering the disadvantage. Minnesota-Dakota Transit Millers v. A. A. R. R., 118 I. C. C. 585, 596.

(h) Where a certain commodity is shipped by two plants located in the same

vicinity and one of those plants has the benefit of a lower freight rate than the other, an attempt on the part of the plant having the higher rate to increase the selling price to the extent of the difference in rates would result, in many instances, in failure to secure the business. The prices for the raw materials and the cost of manufacturing may be exactly the same to each, but the plant having the higher rate is handicapped to that extent. Hollingshead Co. v. Director General, 120 I. C. C. 55, 57.

(i) Where a certain commodity is shipped by two plants located in same vicinity and one of those plants has the benefit of a lower freight rate than the other, an attempt on part of plant having the higher rate to increase selling price to extent of the difference in rates would result, in many instances, in failure to secure the business. The prices for raw materials and cost of manufacturing may be exactly same to each, but plant having the higher rate is handicapped to that extent. Hollingshead Co. v. Director General, 120 I. C. C. 55, 57.

(j) For competitive reasons it is highlv desirable that rate paid by a retail dealer located on one route be as nearly as may be the same as rate paid by a dealer located on another route at same point. Anthracite Coal Investigation, 122 I. C. C. 527, 536.

(k) Those who propose a system of rates, the avowed purpose of which is to promote long distance competition, confuse an economic problem with a transportation problem. Primarily it is not the concern of the Commission to equalize market competition. A shipper who comes to the Commission with a proposition of this character urging that the difference in freight rate against him is what keeps him out of an important market near which a competitor is situated implies to a greater or less extent that the difference in freight rates represents the amount of his handicap. But freight is only one of the factors in a shippers selling price. Among the cost factors figures by a shipper in laying down his product at a certain destination, fundamental and most important are his costs of production, including his costs of raw material and labor, and all of the elements which combined make up the cost of the finished product at his plant. These are secrets, perhaps the most closely guarded in the shippers business. Oklahoma Portland Cement Co. v. D. & R. G. W. Ry., 128 I. C. C. 63, 77.

(l) Competition between cement manufacturers is exceedingly keen throughout the country and any basis of rates from one producing point that is relatively lower than from another in territory where transportation conditions justify the same scale, unduly prefers one to the undue prejudice of the other. Experience has demonstrated that the most equitable and satisfactory method of removing preference and prejudice ordinarily present in rate adjustments on cement created through rivalry of producing points and carriers, is establishment of distance scales, thereby according each point of production the advantage of its location. Oklahoma Portland Cement Co. v. D. & R. G. W., 128 I. C. C. 63, 81, 82.

(m) Healthy competition is no less important between ports than between rail or water carriers. There is, however, a limit beyond which disregard by rail carriers of geographical advantages of one port in favor of another will impair rather than promote healthy competition between the ports. There is ground for believing that a policy of port equalization, if carried beyond reasonable limits, has the effect of strengthening unduly, at expense of others, those ports which by reason of natural or acquired advantages have attained commanding positions in export and import trade. Such a policy also encourages waste in rail transportation. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349, 369.

(n) Receivers of coal by the rail-and-water route from Pennsylvania anthracite fields fix selling price of anthracite at Boston and the determinative factor in that selling price is the rail-and-water rate. Chadwick Coal Yard Co. v. N. Y., N. H. & H., 129 I. C. C. 165, 172.

§34¼. Mixed Shipments.

See Classification §7.

(a) Mixed vegetables from industries on the Santa Fe and Pacific Electric railways at Los Angeles, Calif., destined to Salt Lake City and Ogden, Utah, are subjected to switching charges at Los Angeles, while on shipments originating beyond Los Angeles switching charges are absorbed and the Los Angeles rate assessed. Upon complaint alleging un-

reasonableness, HELD: It is practice of carriers in the West to absorb switching charges only on competitive business. Traffic originating beyond Los Angeles constitutes competitive business whereas the traffic here involved is not competitive. Frank Produce Co. v. Director General, 118 I. C. C. 88.

§36. Need for Revenue.

See Infra §50, §51, §58; Advanced Rates §5 (4); Reasonableness of Rates §20, §30, §36.

(a) It is well established that the unfavorable financial condition of a carrier is not a justification for the continuance of an unreasonable rate on a particular commodity. Smith Co. v. N. Y., N. H. & H. Ry., 120 I. C. C. 43, 45.

§40½. Origin Of Traffic.

See Advanced Rates §5 (8); Through Routes and Joint Rates §9.

(a) Shippers are entitled to move their products to any market at reasonable and nonprejudicial rates and commission has repeatedly condemned action of carriers in adjusting rates so as to impede or stifle movement of commodities in any given direction. Old Ben Coal Corp. v. C., C., C. & St. L., 115 I. C. C. 84, 87.

(b) Fact that commodities consumed along a carrier's line can be supplied from origins on other parts of its system neither affords justification for, nor establishes reasonableness of, proposed increased rates from points located off the system. Grain and Products, 115 I. C. C. 615, 616.

(c) A finding by commission in a proceeding dealing with rate level on a particular commodity as a whole from points of origin covering a wide territory may not be considered as controlling in determining the reasonableness of rates from a particular origin point. Colgate & Co. v. P. R. R., 118 I. C. C. 243, 245.

(d) It has been long settled that no carrier has the right to so adjust rates on its own lines as unduly prejudice shippers on other lines, or to deprive such shippers of reasonable and just rates, merely through a desire to serve shippers on its own lines. White Eagle Oil & Refining Co. v. A., T. & S. F. Ry., 122 I. C. C. 223, 224.

(e) A carrier originating traffic or receiving it from its connections should be allowed to carry it as far as it can before delivering it to a connecting line, if public interest does not suffer thereby. See 81 I. C. C. 272, and other cited cases. Routing on Cotton, 129 I. C. C. 387, 391.

§42¼. Paper Rates.

See Advanced Rates §5 (4);§5 (7½); Reasonableness of Rates §24.

(a) A shipper may rightfully assail, and commission may properly condemn, unreasonable or otherwise unlawful rates regardless of their present use. Nebraska State Ry. Comm. v. A. & W., 113 I. C. C. 467, 469.

(b) Carriers showed that no shipments of commodity in issue moved from and to points involved since establishment of lower rate, and contended that such shipments constituted a sporadic movement, citing cases wherein commission declined to award reparation on such movements. HELD: Cases cited do not support that finding here. Every shipper is entitled to a reasonable rate on his traffic, and where he attacks the reasonableness of a rate, whether class or commodity, that issue must be decided on its merits. See 100 I. C. C. 411. Davies & Thomas Co. v. C. R. R. Co. of N. J., 128 I. C. C. 241, 242.

§43. Past Rates.

See Supra §29; Advanced Rates §5 (4); Reasonableness of Rates §25.

(a) Rates on wheat bran, in straight and in mixed carloads with grain and products, from points in western and southwestern States to points in Louisiana, Texas, and New Mexico, during statutory period immediately preceding filing of complaint, found not unreasonable, discriminatory, or unduly prejudicial as compared with rates on similar feeds in same general territory. In 101 I. C. C. 14 rates were found unreasonable and unduly prejudicial for future only, but there relationship and not rates themselves were fixed. While carrier's practice of charging higher rates on bran than on other commodities during reparation period may well be found to have been unreasonably and unduly prejudicial, that would not mean that amounts of the individual rates charged were intrinsically too great for services rendered.

Robinson Milling Co. v. A. & S, 109 I. C. C. 595.

(b) Rates on zinc concentrates from points in the Joplin, Mo.-Miami, Okla., ore field to distinations in Illinois, Indiana, Ohio, West Virgina, and Pennsylvania found not unreasonable or otherwise unlawful. Such rates do not appear excessive as compared with those prescribed are approved as reasonable maxima in 61 I. C. C. 92 and other cases, and are subnormal in since that they are as low or lower than rates in effect prior to the general increase of 1920, whereas freight rates generally are from 12.5 to 26 per cent higher than rates in effect prior to that date. Moreover, record shows a large increase in value of concentrates since removal of the general increase, demand for zinc is rapidly increasing, and the Joplin-Miami field is the only large source of supply. United Zinc Smelting Corp. v. B. & O., 126 I. C. C. 677.

§43½a. Physical valuation.

See Physical Valuation

(a) Conceding that a tentative valuation of a carrier's property is without probative effect in any judicial proceeding where value of the property is in issue, HELD: That tentative valuations made by same body following identical metods in each case are an aid in checking the relative statis of property investment account of carriers. New England Divisions, 126 I. C. C. 579, 621.

§44¼. Prior Decision of Commission.

See Advanced Rates §14¾; Blanket Rates §4; Panama Canal Act; Previous Decisions of Commission; Through Routes and Joint Rates.

(a) Rates on grain and products from points in Washington and Oregon south of Snake River to Portland, Seattle, Tacoma, and other north Pacific ports, established as a result of commission's decision in Inland Empire Shippers League, 59 I. C. C. 321, found not unreasonable or unduly prejudicial. While competition from Puget Sound ports for purchase of wheat in the basin south of Snake River has been to a large extent destroyed, Portland enjoying a virtual monopoly of wheat from that territory, only by continuance of present differential in favor of Portland can that point be accorded benefits to which it is entitled by reason of its natural advantages. Walla Walla County Farm Bureau v. N. P., 107 I. C. C. 110.

(b) Rates on cottonseed between points in Oklahoma and Texas found unreasonable to extent they exceeded rates contemporaneously applicable for like distances between Shreveport, La., and Texas points under distance scale prescribed in Oklahoma Corp. Comm., 98 I. C. C. 183. Reparation awarded. Altus Cotton Oil Mill v. A., T. & S. F., 109 I. C. C. 92.

(c) Rates on lumber from points in Washington, Oregon, Idaho, Montana, and British Columbia, to Lincoln and Omaha, Nebr., and other points in Nebraska, Kansas, Missouri, Iowa, and South Dakota, found not unreasonable during period when such rates were on basis higher than to Twin Cities. These rates were formerly on a parity, the equalization being disrupted by application of general reductions required in Reduced Rates, 1922, 68 I. C. C. 676, which rate parity carriers subsequently restored. Rates assailed, however, are shown to compare favorably with rates from the Northwest to various points for substantially equal or greater distances. Adams & Kelly Co. v. A., T. & S. F., 109 I. C. C. 241.

(d) Bran, wheat: Rates on, in straight and in mixed carloads with grain and products, during statutory period immediately preceding filing of complaint, found not unreasonable, discriminatory, or unduly prejudicial as compared with rates on similar feeds in same general territory. In 101 I. C. C. 14, rates were found unreasonable and unduly prejudicial for future only, but there relationship and not rates themselves were fixed. While carrier's practice of charging higher rates on bran than on other commodities during reparation period may well be found to have been unreasonable and unduly prejudicial, that would not mean that amounts of the individual rates charged were intrinsically too great for services rendered. Robinson Milling Co. v. A. & S., 109 I. C. C. 595.

(e) Carrier presented in evidence a prior report of commission for purpose of establishing that certain rates were not unduly prejudicial. HELD: Present case must be disposed of upon conditions shown to have existed during period covered by complaint, and since former case related to a different period it was not

given consideration. Northern W. Va. Coal Asso. v. P. R. R., 109 I. C. C. 604, 608.

(f) Upon oral argument, former report, 95 I. C. C. 430, wherein rates on animal manure from Perth and Lovelock, Nev.,to eastbound transcontinental groups B to J, inclusive, and M, were found unreasonable, and reasonable rates based on the Calivada scale prescribed in 73 I. C. C. 496, and 91 I. C. C. 228, were prescribed for future to Groups F to J, inclusive, and M, affirmed. The Calivada scale rates are not on a depressed scale as compared with distance rates prescribed on fertilizer in the Southwest in Memphis-Southwestern Investigation, 77 I. C. C. 473. Minimum distance, scale of progression, minimum weights, and other considerations applicable to the two scales are different, much of the haul at rates herein prescribed is performed under transportation conditions at least no less favorable than those obtaining in the Southwest, and ton-mile earnings under rates prescribed decrease as distance increases. Pacific Manure and Fertilizer Co. v. A. & R. R. R., 109 I. C. C. 615.

(g) Following Midland Linseed Products Co., 68 I. C. C. 522, rates on linseed oil found unreasonable to extent they exceeded those contemporaneously in effect on cottonseed oil. Reasonable rates for future prescribed and reparation awarded. Glidden Co. v. C. R. R. Co of N. J., 118 I. C. C. 59.

(h) A finding by commission in a proceeding dealing with rate level on a particular commodity as a whole from points of origin covering a wide territory may not be considered as controlling in determining the reasonableness of rates from a particular origin point. Colgate & Co. v. P. R. R., 118 I. C. C. 243, 245.

(i) Proposed revision, including increases and reductions, in rates between points in southern Missouri, eastern Oklahoma, Arkansas, and Louisiana, and from points in this territory to Mississippi River crossings and Memphis, in purported conformity with distance scale of rates prescribed in Memphis Southwestern Investigation, 77 I. C. C. 473, and 98 I. C. C. 654, found not justified. While rates prescribed in above case were fixed as reasonable maxima, present lower adjustment on fruits and vegetables was not disapproved therein. Moreover, schedules as proposed would result in undue prejudice to Memphis in favor of St. Louis, in addition to creating fourth-section violations. Fruits and Vegetables, 120 I. C. C. 395.

(j) A finding of the commission made many years ago and designed primarily to place certain points upon a proper relationship, should not be accepted ipso facto as proving intrinsic unreasonableness in same rates subsequently attacked for sole purpose of reparation. Marshall and Jefferson v. T. & P., 120 I. C. C. 455, 458.

(k) Upon reargument, original report 104 I. C. C. 104, reversed, and through rates on cured meats and hides from certain packing points west of Mississippi River to destinations in trunkline and New England territories found not unreasonable or unduly prejudicial in relation to existing rates on hogs and sheep in double-deck cars, and on cattle, from and to same points. Morrell & Co. v. N. Y. C., 120 I. C. C. 537, 539, 540.

(l) Rates on lubricating-oil stock from Chaison, Tex., to Eldorado and Topeka, Kans., found unreasonable to extent they exceed rates constructed in accordance with oil rates prescribed in 112 I. C. C. 421, from Texas points to destinations in western trunk-line territory. However, as findings in that case were designed to effect proper relations rather than to establish maximum reasonable rates, they do not afford a proper measure of reasonableness in the past and record herein establishes no adequate basis for reparation. Reasonable rates prescribed for future. Petroleum Oils Corp. v. A., T. & S. F., 120 I. C. C. 614.

(m) Complaint filed during pendency of a similar proceeding alleged that class E rate on clam shells from Dixon, Ill., to Fort Madison, Ia., was unreasonable, unduly prejudicial, and in violation of long-and-short-haul clause of section 4 of the act. The decision being adverse to its contentions, complainant now asks in effect that it be set aside on strength of its evidence in instant case. Evidence introduced here being similar to that presented in former case, wherein the class E rate was found not unreasonable, no good cause is shown for what would be tantamount to reversal of finding previously made after consideration of a more complete record. Accordingly, rate assailed found not unreasonable or other-

wise unlawful. Mississippi Pearl Button Co. v. I. C., 120 I. C. C. 647.

(n) Original report, finding that rates "are and for the future will be unreasonable," was reopened upon petition of carriers. Thereafter, complainants were permitted to amend their complaint with an allegation of damages. Report on further hearing reiterated the original finding and in addition awarded reparation. Upon contention that wording of commission's reports did not cover unreasonableness in past, HELD: While the word "were" was omitted from finding of unreasonableness in report awarding reparation, the question of past unreasonableness entered into the proceeding when amended complaint was filed. Evidence, upon which original report, later affirmed, was made, being presented some months prior to beginning of reparation period, and second report making provision for proof in affidavit form as to shipments moving subsequent to date of second hearing, shows inconsistency of any attempt to construe the finding as operative only on and after date of decision in second report. Nelson Fuel Co. v. C. & O., 120 I. C. C. 723.

(o) In 93 I. C. C. 65, the commission found that the rates attacked on crude oil from Irvine and Beattyville, Ky., to Blue Island, Ill., a point within the Chicago switching district, were unreasonable and awarded reparation, reversing the findings in 59 I. C. C. 689, in which report the complaint was dismissed. The average distance from the eastern Kentucky fields to Blue Island does not differ greatly from the specific distances from Irvine and Beattyville. It is understood that in publishing the rates in compliance with the order, the defendants included the 14 points named in the readjustment. HELD, reparation awarded. Barnett Oil & Gas Co. v. Director General, 122 I. C. C. 651.

(p) In arriving at the rates on cement prescribed in Western Cement Rates, 48 I. C. C. 201; 52 I. C. C. 225; 69 I. C. C. 644; and the related rates prescribed in various other cases, the commission has not been controlled by the general level of rates on other commodities, whether switching or line haul, but rates prescribed have been made with special regard to the conditions surrounding transportation and marketing of that particular commodity with the view to establishing, and securing the maintenance of, general levels of rates in and between the several scale territories not only reasonable per se as applied to that commodity but under which rates from competing producing points are related to each other with close regard to distance. Iola Cement Mills Traffic Asso. v. A., T. & S. F., 122 I. C. C. 337, 347.

(q) Rates on coal from Thompson, Utah, to destinations in Utah, Nevada, and California west of Castle Gate, Utah, during Federal control, found not unreasonable as compared with those from Castle Gate, and Rock Springs, Wyo., to same destinations, and from Montana points for comparable distances, except to destinations on Nevada Northern, Western Pacific, and Los Angeles & Salt Lake. The more favorable transportation conditions from Rock Springs was recognized in 89 I. C. C. 666, which tends to offset somewhat longer average distances from Castle Gate or Thompson; a differential of 10 cents in favor of Castle Gate can not be considered an unreasonable charge for the 94-mile haul from Thompson, and Montana coal rates are on a somewhat lower level than those in other western States. American Fuel Co. v. A., T. & S. F., 123 I. C. C. 101.

(r) Following 95 I. C. C. 181; 107 I. C. C. 182, rates on rig irons in straight car-loads should be about 15 per cent lower than the rates on oil-well supplies. Consolidated Southwestern Cases, 123 I. C. C. 203, 331.

(s) In support of its request for lower rating complainant relies upon fact that such rating is now in force over a considerable portion of territory involved having been established following a previous case. FOUND: That case was a suspension proceeding in which respondents' proposal to increase rates was found justified. However, it does not follow from that finding that rating assailed is unreasonable. Kalamazoo Vegetable Parchment Co. v. C. K. & S. 128 I. C. C. 675, 680.

(t) The basis for the action of the Commission in a particular case must, of course, be provided by the record therein. Western Texas Chamber of Commerce v. H. & T. C. Ry., 129 I. C. C. 546, 555.

§44½. Public Interest.

See Advanced Rates §14; Blanket

Rates §4; Panama Canal Act; Through Routes and Joint Rates II.

(a) It is the province of carriers to conduct commerce in channels demanded by the public. Public interest is not conserved by shutting out, through denial of a necessary transportation service, an important agricultural product from markets which it can reach over routes requiring less service than that over other routes primarily because one of the carriers on whose lines traffic originates which would give it a long haul. Montgomery Cotton Exchange v. S. A. L., 109 I. C. C. 579, 587.

(b) The public interest will not be served by solving a carrier's financial problem at sacrifice of efficiency and economy of operation. Restrictions in Routing over S. L. & U., 115 I. C. C. 357, 369.

§47. Rate Via Competing Route.

See Equalization of Rates §4 (2); Reasonableness of Rates §27½, §27¾; Reparation §11; Routing and Misrouting §4½, §5, §5½; Through Routes and Joint Rates §15½.

(a) Rate charged on sand from Petersburg, Va., to Bunyon, N. C., found unreasonable to extent it exceeded lower contemporaneous rate on like traffic over a route other than route of movement, which lower rate was subsequently established over route of movement. Reparation awarded. Raleigh Chamber of Commerce v. N. S., 109 I. C. C. 52.

(b) A shipper is not to be denied a reasonable rate merely because he could have secured a lower rate by the use of another route. Hodgson Davis Grain Co. v. C. B. & Q. R. R., 113 I. C. C. 234, 236.

(c) Existence of lower rates over other available routes does not of itself warrant a condemnation of rate charged over a specific route of movement. Zaring & Co. v. N. Y. C., 112 I. C. C. 621, 622.

(d) Reference to lower rates to common points of destination is not sufficient to establish undue preference and prejudice. South Carolina Penitentiary v. A. & R. Ry., 113 I. C. C. 584, 586.

(e) Fact that a certain rate is in effect between two points over one route is not of itself proof of unreasonableness of a higher rate over some other route especially where one route is substantially longer than the other. Gentile Bros. Co. v. S. Ry., 113 I. C. C. 670, 672.

(f) Accidents by which shipments move via either of two intermediate points, because like specific class rates are applicable over both routes, should not alone determine the measure of reasonable rates over two lines of same carrier between same points, where no differences in transportation conditions are shown, where difference in distance is slight, and where a lower combination is sometimes figured over the shorter route and sometimes over the longer route. Firestone Tire & Rubber Co. v. Director General, 113 I. C. C. 751, 755.

(g) The existence of a lower rate over routes other than a particular route of movement is not of itself sufficient to establish the unreasonableness of the rate charged. Traffic Bureau, Chamber of Commerce v. Georgia R. R., 115 I. C. C. 419, 420.

(h) The mere showing of the existence of lower rates over other routes, and comparisons based upon distance alone, are insufficient to establish the unreasonableness of the rate charged. Crerar Clinch Coal Co. v. A. A. R. R., 118 I. C. C. 171, 174.

(i) The fact that there was a lower rate over a competing line is not of itself proof that the rate charged was unreasonable, and the fact that after the shipment moved the rate was reduced to the level of the rate via the competing line raises no presumption that the former rate was unreasonable. Richfield Oil Co. v. A. T. & S. F. Ry., 118 I. C. C. 214, 215.

(jk) Although no presumption of unreasonableness attaches to a rate over a particular route because a lower rate applies over another route, a shipper is not to be denied a reasonable rate merely because he could have secured it by designating another route. Deere Plow Co. v. St. L., S. F. Ry., 120 I. C. C. 67, 68.

(l) Rate on bags, burlap, from Jersey City to Baltimore, found unreasonable to extent it exceeded lower rate contemporaneously in effect on burlap bagging from New York to Baltimore. Reparation awarded. Riegel Sack Co. v. C. R. R. Co. of N. J., 120 I. C. C. 405.

(m) The commission has repeatedly found that the existence of a lower rate over a competing route does not of itself

establish the unreasonableness of the rate charged. Newsome Feed & Grain Co. v. P. & L. E. R. R., 122 I. C. C. 329, 330.

(n) The fact that a lower rate was applicable over another route does not deprive a shipper of a reasonable rate over the route of movement. Spencer Co. v. A., T. & S. F. Ry., 122 I. C. C. 689, 690.

(o) No presumption of unreasonableness attaches to a joint through rate applicable over a particular route because of the fact that the intermediate rates via another route make a lower charge. Bell Bros. v. A. C. L. R. R., 123 I. C. C. 683, 684.

(p) Carriers participating in circuitous routes under similar circumstances and conditons may reasonably expect to charge higher rates than over the short route, but extent of such circuity which would justify a difference in rates may depend upon methods of construction. Where grouping is extensively employed at both origin and destination, and where reasons of sound public policy exist for treating rates and routes collectively rather than individually, substantial differences in distance over routes whose use public convenience and necessity require may reasonably be disregarded; but fact that rates are to be applicable over all such routes must be given due weight in fixing their level. Anthracite Coal Investigation, 122 I. C. C. 527, 536.

(q) Rate via route of movement can not be condemned merely because it was higher than the rate applicable over other routes. Dreer v. L. A. & S. L. R. R., 126 I. C. C. 130, 132.

(r) A shipper is not to be denied a reasonable rate merely because he could have secured a lower rate by the use of another route. California Packing Corp. v. S. P. Co., 128 I. C. C. 631, 632.

§47b. Rate Territories.

(a) Where transportation conditions throughout an extensive territory are substantially the same, commission is not disposed to allow rates on a particular commodity from limited section to control general basis of rates applicable throughout that territory in absence of a clear showing that such rates are too high. Harbauer Co. v. A. A. R. R., 115 I. C. C. 30, 32.

(b) The commission has in many cases recognized that usually transportation conditions in the Southwest warrant a somewhat higher basis of rates than in the Southeast, and that fact may be judicially noticed. United Fig and Date Co. v. A. C. L., 115 I. C. C. 643, 645.

(c) Fact that rates applicable under one distance scale in a particular section of territory are higher than rates under a similar scale applicable in contiguous territory does not establish unreasonableness of higher rates where both scales apply over extensive areas in which traffic, operating, and transportation conditions vary. Wichita Chamber of Commerce v. Am. Exp. Co., 115 I. C. C. 729, 731.

(d) Rates from Mississippi Valley to the Southeast are generally on a lower level than rates to the Southwest. Jackson Traffic Bureau v. A. & V., 118 I. C. C. 217, 219.

(e) Transportation conditions east of Mississippi are more favorable than those west and justify a lower level of rates. Teague Hardware Co. v. C., B. & Q., 118 I. C. C. 221, 225, 226.

(f) Generally speaking, rates in c. f. a. territory are on a lower basis than those in the southwest and the latter are on a lower basis than those in the Southeast. White Provision Co. v. A., B. & A., 118 I. C. C. 601, 603.

(g) The level of rates in Mississippi Valley territory is lower than in southeastern territory. See 87 I. C. C. 547. Florence Chamber of Commerce v. A., T. & S. F., 118 I. C. C. 710, 712.

(h) Traffic conditions are largely the same within Texas, Louisiana and Arkansas. Texas Co. v. K. C. S., 118 I. C. C. 713, 715.

(i) Transportation conditions in the Southeast do not warrant any higher basis of rates than in the Southwest. Capital Grain & Feed Co. v. I. C., 118 I. C. C. 732, 746.

(j) Transportation conditions throughout southern Missouri, Arkansas, western Louisiana, Oklahoma and Texas common point territory are so similar as to warrant substantially the same level of rates. Salt between Western and Southwestern Points, 120 I. C. C. 91, 108.

(k) The general level of rates is, and properly should be, higher in western trunk line territory than in central terri-

tory. Mayfield Chamber of Commerce v. A. & W. Ry., 120 I. C. C. 137, 140.

(l) In many cases the commission has found that traffic conditions east of the Missouri River justify a relatively lower level of rates. Anthony Produce Co. v. B. & A. R. R., 120 I. C. C. 224, 228.

(m) The commission has recognized that the rate level was and properly should be lower east than west of the Twin Cities and lower south of Sioux City than north and west of that point. Duluth Chamber of Commerce v. C. & N. W. Ry., 120 I. C. C. 683, 693.

(nop) The general rate level in territory west of Mississippi River is somewhat higher than in territory immediately east thereof. Russellville Compress Co. v. G., M. & N., 120 I. C. C. 481, 485.

(q) The general level of rates in the southwest is higher than in the southeast. Florence Chamber of Commerce v. L. & N. R. R., 122 I. C. C. 367, 369.

(r) A uniform scale of rates could with propriety be applied throughout Missouri, Oklahoma, Arkansas, Louisiana and common point territory in Texas. Standard Pipe Line Co. v. T. & P. Ry., 122 I. C. C. 463, 465.

(s) Arkansas and Oklahoma are a homogeneous rate region and transportation conditions would seem to indicate in general the observance therein of a uniform distance scale. Parkersburg Rig & Reel Co. v. C. R. I. & P. Ry., 123 I. C. C. 79, 84.

(t) A uniform scale of rates can with propriety be applied throughout southern Missouri, Oklahoma, Arkansas, Louisiana and common point territory in Texas. Consolidated Southwestern Cases, 123 I. C. C. 203, 217.

(u) In numerous previous cases the commission has recognized that rates in the southwest may properly be somewhat higher than in southern territory. Consolidated Southwestern Cases, 123 I. C. C. 203, 382.

(v) Trend of recent decisions has clearly been against combination rates between territories. See 100 I. C. C. 513, 663. Rates on combination basis over the Mississippi River have been condemned in 81 I. C. C. 33, 39; 102 I. C. C. 540, and other cited cases. Oklahoma Millers' League v. A. & M., 128 I. C. C. 523, 529, 530.

(w) Rates in the Southwest are on a higher level than those in the Southeast. Virginia Cellulose Co. v. N. & W., 129 I. C. C. 297, 299.

(x) Transportation conditions in Illinois are not materially different from those in the territory east of the Illinois-Indiana State line, and lower level of rates in Illinois than in c. f. a. territory generally is not justified. Soap and Soap Powder, 129 I. C. C. 392, 394.

(y) Heavier traffic density as well as competition between numerous carriers between the Missiouri and Mississippi Rivers have resulted in a generally lower basis of rates in that territory than west of the Missouri River. The effect which these influences has had upon the rate structure between the rivers and how it has affected rates from territory west of Missouri River are related in 14 I. C. C. 299 and other cited cases. Boston Wool Trade Asso. v. A., T. & S. F., 129 I. C. C. 681, 687.

§48½. Repair of Equipment.

See Cars and Car Supply §32⅓.

(a) Upon investigation by commission on its own motion, FOUND: That leasing of respondent's marine repair yard and floating equipment to a private concern; compensation paid such concern for lightering, towing, and shifting, including the furnishing of free coal for such transfer of its freight in New York Harbor; and expenditures under contracts with a private concern in violation of the Clayton Act, the officers of which concern are directly associated with respondent corporation, were not only in conflict with "honest, efficient, and economical management and reasonable expenditures for maintenance" and repugnant to sound business methods, but were also not in the interest of efficient and economical management as required by section 15a of the act. Construction and Repair of Railway Equipment, 128 I. C. C. 323.

§50. Return on Investment.

See Supra §36; Infra §51; Advanced Rates §6.

(a) Data pertaining to financial condition of carriers or an attempt to show that they are not earning a fair return affords neither justification of, nor excuse for, an existing improper rate basis on a particular commodity. South Dako-

ta R. R. Commrs. v. C. & N. W., 107 I. C. C. 35, 47.

(b) In readjusting an extensive rate structure over a vast classification territory the commission is under no obligation to maintain revenues at precisely their existing level, but its obligation is to prescribe rates which are reasonable and otherwise lawful. However, should a situation arise for any reason under which carriers are not earning a fair return prescribed by section 15a of the act, provisions of that section may be invoked. Southern Class Rate Investigation, 109 I. C. C. 300, 307.

§51. Revenue of Road.

See Supra §36, §50; Advanced Rates §5 (4), §6 (6), §7 (7), §15; Express Companies §24; Reasonableness of Rates §11, §30, §36; Through Routes and Joint Rates §13a (c).

(a) Data pertaining to financial condition of carriers or an attempt to show that they are not earning a fair return affords neither justification of, nor excuse for, an existing improper rate basis on a particular commodity. South Dakota R. R. Commrs. v. C. & N. W., 107 I. C. C. 35, 47.

(b) Based principally upon its weak financial condition and inability under present divisions to earn sufficient revenue to pay cost of operation, taxes, and a fair return on investment, and taking into consideration relative cost of service, fact that carrier is wholly an originating and delivering line, amounts of revenue required to pay operating expenses, taxes, and a fair return, and importance to the public of the transportation services afforded, existing divisions of joint interstate rates accorded the Minnesota Western R. R. found unreasonable and inequitable. Reasonable and equitable divisions prescribed. Minnesota Western R. R. v. A., T. & S. F., 109 I. C. C. 127.

(c) When other methods of increasing earnings or reducing operating costs have been examined without discovering required relief for a weak road it becomes necessary to consider preventing needed revenue from passing to more prosperous connections. Minnesota Western R. R. v. A., T. & S. F., 109 I. C. C. 127, 131.

(d) Shippers, in opposing a proposed revision in rates on an individual commodity, estimated the annual increase in revenue which would be produced thereby, and introduced evidence to show increased prosperity of carriers with a view to showing that they were not in need of this additional revenue. HELD: Such evidence is of little or no force in determining the propriety of rate level on an individual commodity. See 263 U. S. 456, 482. Bananas from Gulf Ports, 109 I. C. C. 211, 219.

(e) The unfavorable financial condition of a carrier is not justification for continuance of unreasonable rates on a particular commodity. Richmond Radiator Co. v. N. Y., N. H. & H., 109 I. C. C. 497, 500.

(f) For many years prior to 1918 the commission has regarded 5 mills per ton mile as approaching the minimum limit of revenue for carload freight traffic. Ex Lake Iron Ore from Chicago to Granite City, 120 I. C. C. 75, 81.

(g) The Commission is not unmindful of the requirement of the law that the carriers in the respective groups are collectively entitled to a rate basis which will yield as nearly as may be a reasonable return on their aggregate value. Lignite coal from North Dakota, 126 I. C. C. 243, 248.

(h) The fact that the defendants may be prosperous, as complainant contends, and that sand and gravel constitute a large part of the traffic transported over their lines, does not prove that complainant paid unreasonable charges on its shipment. The prosperity of a carrier is the result of many causes. Were the Commission to consider the earnings of the defendant carriers in passing on the measure of the rates on a single commodity between two points on their lines, there could be no uniformity in rates. In fact, rates between the same points would vary with the routes between those points. Roquemore Gravel Co. v. A. & W. O. R. R., 126 I. C. C. 575, 577.

(i) Fact that a carrier may be prosperous and that a particular commodity constitutes a large part of its traffic does not prove that rates on that commodity are unreasonable, as prosperity of a carrier is the result of many causes. If all earnings of a carrier were considered in passing on the measure of the rates on a single commodity between two points on its line, there could be no uniformity of rates. In fact, rates between the same points would vary with

the routes between those points. Roquemore Gravel Co. v. A. & W. P., 126 I. C. C. 575, 577.

(j) In attempting to rebut a reduction in rates the St. Louis, Brownsville and Mexico Ry. urged that its financial condition and traffic density in the Southwest does not permit of any reduction in rates. HELD: In 81 I. C. C. 703, similar data was introduced and commented upon to effect that, from standpoint of operating and financial conditions, this road compares favorably not only with other roads in differential territory but with many roads in common-point territory. Leonard, Crosset & Riley v. A., T. & S. F., 128 I. C. C. 225, 229.

(k) Unfavorable financial condition of carriers transporting traffic of every description is no justification for the maintenance of unreasonable rates on a particular commodity. Lehigh Portland Cement Co. v. B. F. & I. F. Ry., 132 I. C. C. 3, 12.

§52. Risk of Loss or Damage.

See Infra §61; Classification §9, §16; Reasonableness of Rates §32.

(a) The commission has recognized the greater transportation hazard of flaxseed and that shipments of flaxseed in bulk require a higher class of equipment than that required for the transportation of grain. Kellogg & Sons v. D. L. & W. R. R., 112 I. C. C. 629, 635.

(b) The commission has recognized greater transportation hazards of flaxseed and that shipments of flaxseed in bulk require a higher class of equipment than that required for transportation of grain. See 25 I. C. C. 337; 85 I. C. C. 217. Kellogg & Sons v. D., L. & W., 112 I. C. C. 629, 635.

(c) Factory cost of an article without addition of any profit, can not properly be compared with sales prices of other commodities in which a profit is included, regardless of basis upon which claims are filed against carriers for goods lost or damaged in transit, for it is well established that where an article which has been shipped for sale is lost or damaged in transit by carrier, the latter is liable not only for cost of production but also for reasonable and normal profits of the sale of which the vendor has been deprived. See 13 Fed. (2d) 459. Burroughs Adding Machine Co. v. M. C., 120 I. C. C. 19, 20.

(d) Loss and damage claims paid by c. f. a. territory lines on furniture are higher, tonnage considered, than on any other commodity except possibly fresh fruits and vegetables. Memphis Freight Bureau v. A. G. S., 128 I. C. C. 445, 451.

(e) Furniture is bulky, fragile, and susceptible to damage in transportation. It is a high grade commodity which, generally speaking, should move on class rates in less than carload quantities. Memphis Freight Bureau v. A. G. S. R. R., 128 I. C. C. 445, 456.

§55. Standard of Lines.

See Infra §56; Advanced Rates §15; Reasonableness of Rates.

(a) Expenses of one particular short line should not govern as to maximum expenses of another particular short line, unless some definite showing as to similarity of conditions is in evidence, but where a number of comparable short lnes have been selected with particular care such comparisons are of probative value. Divisions Received by B. R. R. & C. Co., 104 I. C. C. 415, 424, 425.

(b) Based principally upon its weak financial condition and inability under present divisions to earn sufficient revenue to pay cost of operation, taxes, and a fair return on investment, and taking into consideration relative cost of service, fact that carrier is wholly an originating and delivering line, amounts of revenue required to pay operating expenses, taxes, and a fair return, and importance to the public of the transportation service afforded, existing divisions of joint interstate rates accorded the Minnesota Western R. R. found unreasonable and inequitable. Reasonable and equitable divisions prescribed. Minnesota Western R. R. v. A., T. & S. F., 109 I. C. C. 127.

(c) When other methods of increasing earnings or reducing operating costs have been examined without discovering required relief for a weak road it becomes necessary to consider preventing needed revenue from passing to more prosperous conections. Minnesota Western R. R. v. A., T. & S. F., 109 I. C. C. 127, 131.

(d) Rates on crude mine-run fire clay from St. Louis and Clayton, Mo., to South Fort Smith and Van Buren, Ark., found unreasonable as compared with

rates prescribed for similar distances in Memphis Southwestern Investigation, 77 I. C. C. 473, and to extent they exceeded 16 cents on shipment moving over the Ft. Smith & Western and on other shipments 14 cents for single-line and 14.5 cents for joint-line hauls. The Ft. Smith & Western, designated as a weak line in cited case is shown to be in poor financial condition with an annual operation loss and participates in traffic under a rate of 12 cents in order to compete for this traffic despite the low earnings thereunder. Reparation awarded. Athletic Mining & Smelting Co. v. F. S. & W., 112 I. C. C. 497.

(e) Carrier in defending reasonableness of petroleum rates to destinations on the Missouri & North Arkansas Ry., stressed the poor financial condition of above-named road. HELD: That rate herein found reasonable as maximum includes the usual arbitrary for that carrier because of its poor financial status. Bear State Oil Co. v. A., T. & S. F., 120 I. C. C. 301, 303, 304.

(f) Sixth-class rate on textile machinery from Tallassee, Ala., located on the Birmingham & S. E. Ry., to Natchez, Miss., found not unreasonable as compared with lower rate prescribed for like distances in Southern Class Rate Investigation, 100 I. C. C. 513. In cited case the Birmingham & S. E. was designated as a weak line entitled to special-rate treatment, and it was found that joint rates between weak and standard lines should be somewhat higher than that prescribed for latter. The general class-rate revision can not properly be used as measure of reasonableness on shipments moving prior thereto. Moreover, general practice in southern territory is to apply to through movements the local rates of short lines to junction points plus standard-line rates beyond. The rate here charged compares favorably with numerous rates applicable from points in Alabama, Mississippi, and Tennessee for comparable distances, involving joint-line hauls, including one "relief" line. Cotton Mills Products Co. v. A. & V., 120 I. C. C. 473.

§56. Standard of Rates.

See Supra §55; Advanced Rates §15; Branch Lines §4; Discrimination §5, II; Reasonableness of Rates §32.

(a) Rates that may lawfully be required must in principle be high enough to cover all of the cost that may fairly be allocated to the service plus at least some margin of profit. See 236 U. S. 585; 236 U. S. 605. But is has always been recognized that the burden of transportation may reasonably be adjusted with some regard to the value of service, in other words, that the higher-grade, more valuable commodities may be required to pay a greater margin of profit than those that are of lower grade and less value. The substance of the Hoch-Smith resolution is that agricultural products affected by depression shall in this respect be included in the class of most favored commodities, to such extent, at least, as may be "compatible with the maintenance of adequate transportation service." Grain and Products, 122 I. C. C. 235, 264.

§57½. System Line Haul.

See Branch Lines §2, §3.

(a) Following 91 I. C. C. 299, and other cited cases, the Washington & Vandemere and Atlantic Coast Line railroads found to be carriers under same management and control. Entire capital stock of the Vandemere is owned by the Coast Line, and while operated separately, they have same tariff-publishing and other officials. Raleigh Freight Traffic Bureau v. A. C. L., 107 I. C. C. 156, 158, 159.

(b) For purpose of rate making, movements over two or more carriers under common ownership or control are treated generally as single-line rather than joint-line hauls. Raleigh Chamber of Commerce v. N. S., 109 I. C. C. 52, 54.

(c) Winston-Salem Southbound Ry., found not to be a separately operated railroad within meaning of commission's order entered in 56 I. C. C. 1. In defining the term "separately operated" the commission did not limit it to physical operation but it was given a broader meaning to include administration of the affairs of the carrier as well. The Winston-Salem has not a separate administrative organization and hence does not come within the classification of roads for which higher rates of mail pay were established. Railway-Mail Pay, 123 I. C. C. 33.

(d) Evidence of ownership by one carrier of shares of capital stock of another carrier, or of a majority of such shares, does not in and of itself warrant a finding that both carriers are under

common management and control. See 87 I. C. C. 654. Bragg & Millsaps Co. v. A. & W. P., 128 I. C. C. 238, 239.

(e) The Spokane, Portland & Seattle is considered a part of the Northern Pacific & Great Northern, for rate-making purposes. See 19 I. C. C. 265, 283. West Coast Lumbermen's Asso. v. C., M. & St. P., 129 I. C. C. 363, 364.

(f) Muscle Shoals, Birmingham & Pensacola Ry. is now a part of the St. Louis-San Francisco, a strong system, and need for special treatment, accorded in 100 I. C. C. 513, no longer exists and since it participates in traffic to Mobile and Pensacola may be held responsible for the undue prejudice to Mobile. Mobile Chamber of Commerce v. M. S., B. & P., 129 I. C. C. 419, 421, 422.

§58. Ton-mile Revenue.

See Supra §20, §36; Advanced Rates §18 (1); Comparative Rates; Evidence §13 (1) (a), §20; Reasonableness of Rates §36.

(a) Ton-mile earnings of 10.2 mills does not seem unduly low on such low-grade commodity as animal manure. Pacific Manure & Fertilizer Co. v. A. & R. R. R., 109 I. C. C. 615, 616.

(b) Ton mile earnings afford a better criterion in comparing the rates as between light loading and heavy loading commodities yet the earnings per car and per car mile are not entirely without probative force in considering rate structures in the present state of the law. Benson Produce Co. v. G. N. Ry., 113 I. C. C. 541, 546.

(c) Earnings of 5 mills per ton per mile prior to 1918 approaches the minimum limit of revenue for carload freight traffic. Romann & Bush Pig Iron & Coke Co. v. I. R. R., 113 I. C. C. 622, 623.

(de) The ton mile earnings are greater for the longer than for the shorter haul, but this is quite generally the case where the rate for the longer haul is made on or approaches the combination of locals. Cuthbert Stone Co. v. St. L. S. F. Ry., 118 I. C. C. 69, 74.

(f) That ton-mile earnings should decrease as distance increases is a generally recognized principle of rate making, but it may be offset by the principle that a higher level of rates is justified in a territory of relatively low traffic density. Nebraska Tire & Rubber Co. v. B. & O., 115 I. C. C. 99, 101, 102.

(g) Ton-mile earnings yielded by coal rates found reasonable by commission in a proceeding wherein the relationship was controlling factor, can not be accepted as criteria for coal rates in general. Fentress Coal Co. v. T. C. Ry., 115 I. C. C. 286, 287.

(h) The average ton-mile earnings for Class I railroads of the United States in 1924 was 11.16 mills. Lynchburg Chamber of Commerce v. P. R. R., 118 I. C. C. 11, 12.

(i) In many cases in which rates have been assailed as unreasonably high commission has called attention to the impracticability and impropriety of measuring rates on low-grade traffic by a comparison of ton-mile earnings thereunder with average earnings on all traffic. Ex-Lake Iron Ore from Chicago to Granite City, 120 I. C. C. 75, 81.

(j) Ton-mile earnings over a road traversing a mountainous territory where operating conditions are unusual and difficult, may well be somewhat higher than earnings for a haul over level country. Cameron, Joyce & Schneider v. D. & R. G. W., 120 I. C. C. 129, 130.

(k) Gross ton mile revenues reflect both the load and the relation of the load to the weight of the equipment used, and when these are qualified with reference to the empty haul incident to a particular variety of traffic, the Commission has a number of factors which make such comparisons more instructive than those based alone on the revenue per net ton mile. American National Livestock Asso. v. A. T. & S. F. Ry., 122 I. C. C. 609, 618.

(l) It is a generally well recognized principle of rate making that the rate per ton mile should decrease as distance increases. Freight rates combine two factors of cost—(1) terminal cost and (2) line haul cost. The first remains constant, whatever the length of haul. It is a generally accepted theory that the latter is somewhat higher for the shorter hauls than for the longer. Consolidated Southwestern Cases, 123 I. C. C. 203, 385.

(m) Commission condemned as unreasonably low a rate yielding 4.6 mills per ton mile for a haul of about 1,000

miles, and stated that for many years prior to 1918 it had regarded 5 mills per ton mile as approaching the minimum limit of revenue for carload freight. Ex Lake iron ore from Chicago to Granite City, 123 I. C. C. 503, 504.

(n) The Commission has recognized the infirmity of ton mile yields as a test of the profitableness of rates. There could be no better illustration than this of the fallacy of placing reliance upon ton mile earnings as a basis for rate making. As the Commission has heretofore found in many cases a much fairer basis is that found in the earnings per car mile and per train mile. Much of the profitable freight carried by the railroads and perhaps it might be made broader and it could be truthfully said that most of the freight which pays the carriers the best is that which yields the lowest rate per ton mile. This arises out of many facts which the traffic manager takes into consideration, the volume of the traffic, the heavy load per car, and the regularity of movement. Ex-Lake Iron Ore from Chicago to Granite City, 123 I. C. C. 503, 505.

(opqr) Operating costs do not increase in proportion with increase in car loading, as increase in cost on this accounts is in fact relatively small. While both ton-mile and car-mile yields merit consideration in determining reasonableness of rates, the latter are of more significance in case of heavy-loading commodities. Ex-Lake Iron Ore from Chicago to Granite City, 123 I. C. C. 503, 505.

(s) On short-haul traffic the ton-mile test has, as a rule, little evidential value. See 30 I. C. C. 71, 78. Car or car-mile revenues, particularly on heavy-loading commodities, are a more satisfactory test. Luten Bridge Co. v. A. C. L., 123 I. C. C. 612, 615.

(t) Usual rule is that ton-mile earnings decrease as distance increases, but rate of decrease generally is relatively small where long distances are involved. Chestnut & Smith Corp. v. A. & R. R., 123 I. C. C. 707, 714.

(u) Both ton mile and car mile earnings are entitled to consideration in rate comparisons. Memphis Freight Bureau v. A. G. S. R. R., 128 I. C. C. 445, 456.

§60½. Use of Commodity.

See Classification §10.

(a) The principal distinction between pressure pipe and pier tubing is the dissimilar use to which each is put, an element which is not controlling in the fixing of rates. Duluth Boiler Works v. A. T. & S. F. Ry., 118 I. C. C. 161, 163.

(b) Use to which an article is put does not alone determine its essential character or charges which may be legally exacted for its transportation, but it tends to distinguish its qualities from other closely analogous articles. McEwing & Thomas Co. v. C. & E. I., 118 I. C. C. 211, 213.

§61. Value of Commodity.

See Supra §31; Advanced Rates §18 (4), §18 (5); Classification §9, §10, §11, §17; Discrimination §5; Reasonableness of Rates. §30; Released Rates.

(a) Differences in value, and in value of services, are important elements in determining rates on finished or manufactured articles in relation to those on raw material or product from which they are derived. Morrell & Co. v. N. Y. C., 104 I. C. C. 104, 116.

(b) Copper is a high-priced, valuable commodity which, on the basis of long-established and well recognized principles of rate making, should bear a rate corresponding to its proper place in a classification of commodities. Brass, Bronze, and Copper Articles, 109 I. C. C. 351, 366.

(c) Sand, gravel, and crushed stone are among the lowest-graded commodities known to commerce. They do not and can not move great distances; therefore the freight rates have an important bearing on securing and developing markets. Western Indiana Gravel Co. v. N. Y., C. & St. L., 109 I. C. C. 727, 728, 729.

(d) The commission regards lime suitable for chemical or building purposes and lime having no value for such purposes, such as agricultural and fluxing lime, as different commodities. Therefore, a segregation of high-grade and low-grade lime should be made, but it should follow line of value rather than of physical appearance. Eastern Lime Mfrs. Traffic Bureau v. A. & B. B., 112 I. C. C. 7, 15.

(e) Refined-oil rate assessed on petroleum refined-oil distillate having a specific gravity in excess of 36° found to have been legally assessed. While the oil here shipped is much lower in value than that of various commodities

on which refined-oil rates apply, such as kerosene and gasoline, the tariffs did not define the various kinds of oil; an oil trade publication presented in evidence shows specific gravity of gas oil in various sections of the country to be not over 36° in practically every instance; and a ruling of the western classification committee provided that petroleum oil with a specific gravity in excess of 36° should be rated as refined oil. Sioux City Gas & Elec. Co. v. C., B. & Q., 112 I. C. C. 344.

(f) The oil-well outfits and supplies list includes many articles, of varying values and weights, which are given like rates to permit mixing. Fact that derricks are of lower value than some other commodities taking same rates, is not, in and of itself, a compelling reason for according them lower rates. Carter Oil Co. v. A., T. & S. F., 113 I. C. C. 757, 759.

(gh) Value of commodity should be given important consideration but is by no means a controlling factor in determining proper rates on individual commodities. Frohman Chemical Co. v. B. & O., 115 I. C. C. 322, 323.

(i) Value is an essential factor in determining the reasonableness of a rate, but is only one of the elements to be considered. Southern Mirror Co. v. S. Ry., 115 I. C. C. 590, 594.

(j) Factory cost of an article without addition of any profit can not properly be compared with sales prices of other commodities in which a profit is included, regardless of basis upon which claims are filed against carriers for goods lost or damaged in transit, for it is well established that where an article which has been shipped for sale is lost or damaged in transit by carrier, the latter is liable not only for cost of production but also for reasonable and normal profits of the sale of which the vendor has been deprived. See 13 Fed. (2d) 459. Burroughs Adding Machine Co. v. M. C., 120 I. C. C. 19, 20.

(k) Spelter is usually sold on the St. Louis, Mo., basis. Federated Metals Corp. v. P. R. R., 120 I. C. C. 181.

(l) Gravel is one of the lowest grade commodities known to commerce. Luten Bridge Co. v. A. C. L. R. R., 123 I. C. C. 612, 614.

(m) Carriers urge that printed paper because of its higher value should invariably be rated higher than unprinted paper of the same kind. However, if value is the sole consideration it seems rather obvious that such a rule strictly applied would result in many improper ratings because of difference in values of unprinted paper. Therefore, it can neither be said that printed paper should always be rated higher than the same paper unprinted nor that printed and unprinted paper should always be rated the same. Kalamazoo Vegetable Parchment Co. v. C., K. & S., 128 I. C. C. 675, 679.

(n) In fixing commodity rates slight differences between two articles in respect of their value, weight density, or other factors necessary to be considered, may be reflected in rate differences as narrow as may be desired; but in compiling a freight classification all articles, both in carloads and less, must be grouped into from 8 to 12 classes, and it is therefore manifest that commodities with somewhat different classification characteristics must often be assigned the same rating. Kalamazoo Vegetable Parchment Co. v. C., K. & S., 128 I. C. C. 675, 678, 679.

(o) Crushed stone and related articles are the lowest-grade commodities known to commerce. Because of their low value, the keen competition between them, fact that they do not move great distances, and because they may be procured almost anywhere, rates must of necessity be the lowest possible rates which will move the traffic at a profit. However, value of limestone is from two to three times that of ordinary crushed stone, and in consequence it is able to stand a greater share of the transportation burden. Colbert Limerock Asphalt Co. v. A. C., 129 I. C. C. 177, 184.

(p) Sugar is a heavily loading commodity whose transportation is not attended by any special difficulties, but its value is such that freight rates play comparatively small part in ultimate cost to consumer. It may, therefore, reasonably pay relatively high rates compared with many low-grade commodities. M'Clintock-Trunkey Co. v. McCormick S. S. Co., 129 I. C. C. 591, 598.

§62. Value of Service.

See Supra §45; Advanced Rates §6 (6); Reasonableness of Rates §39.

(a) Proposed revision of rates on fruits and vegetables between points in California and Oregon, Washington, Idaho, Utah, and Montana, resulting in both increases and reductions, former predominating, found not justified. While some of present rates, because of active water competition, may be lower than they might otherwise be, earnings produced do not show that they are unremunerative, and economic condition of deciduous-fruit industry is such that it can ill afford an increase in rates. Moreover, proposed revision was published without giving interested shippers a public hearing at which they might have had an opportunity to express their views. Fruits and Vegetables Between Pacific Coast States, 104 I. C. C. 66.

(b) Differences in value, and in value of services, are important elements in determining rates on finished or manufactured articles in relation to those on raw material or product from which they are derived. Morrell & Co., v. N. Y. C., 104 I. C. C. 104, 116.

(c) Fact that element of primary market competition does not exist to as great an extent on one commodity as on another does not justify rates based upon "what the traffic will bear" without regard to other transportation conditions. South Dakota R. R. Comm. v. C. & N. W., 107 I. C. C. 35, 43.

(d) Iron and steel traffic is able to bear a higher freight rate than may be applied to many low-grade commodities. Columbia Steel Co. v. B. & O., 109 I. C. C. 46, 48.

(e) In considering the reasonableness of rates the economic condition of any industry may be relevant as it bears on the value of the service to the industry, and as it may permanently or for a long period of time affect the ability of that industry to pay the rates attacked, but taken by itself it can not be accepted as controlling. Revenues in western district, 113 I. C. C. 3, 30.

(f) There are manifest limitations to the doctrine that burden of rail transportation should be distributed among the various kinds of freight with some regard for economic needs of the country. It may be conceded that commission has no power to fix rates upon any kind of freight which will fail to produce some margin over operating cost. Moreover the fact that certain carriers are largely dependent upon a particular form of traffic and have little opportunity to recoup a deficiency in profit upon such traffic by recourse to higher rates upon other kinds must be taken into consideration. Fertilizers between Southern Points, 113 I. C. C. 389, 420.

(g) Doctrine that burden of rail transportation should be distributed among the various kinds of freight with some regard for economic needs of the country has always had recognition, in one way or another, in the rate structure. The familiar principle of "charging what the traffic will bear," or, as some prefer to put it, of "not charging what the traffic will not bear," has had that result in some degree. The principle which has been quite generally recognized in public regulation, that the value as well as the cost of service is a factor entering into the determination of just and reasonable rates, has had a similar result. In another form the same thought seems to be predominant in the Hoch-Smith resolution. But the inevitable result of such a distribution of transportation burden must be that some kinds of traffic, under just and reasonable rates, will earn materially less for carriers than others. Fertilizers between Southern Points, 113 I. C. C. 389, 420.

(h) Complainant contends that the value of the commodity and the cost of the service should be given important consideration. They should, but these things are by no means controlling factors in determining proper rates on individual commodities. The public interest requires that the value of the service, or what the traffic can reasonably bear, be also given consideration. Silica sand is apparently shipped wherever it is needed, regardless of the freight rate. It goes to all sections of the country. The volume of the movement is heavy, and there is nothing to indicate that the traffic does not move freely. Frohman Chemical Co. v. B. & O. R. R., 115 I. C. C. 322, 323.

(i) The public interest requires that value of service, or what the traffic can reasonably bear, be given important consideration in determining proper rates on individual commodities. Frohman Chemical Co. v. B. & O., 115 I. C. C. 322, 323.

(j) Fertilizer, because of its beneficial effect on the land and its very immediate and great effect on traffic, should be kept on as low a level of

rates as transportation conditions will warrant. Consolidated Southwestern Cases, 123 I. C. C. 203, 269.

(k) The carriers also lay much stress upon the fact that cement has apparently moved freely under the existing rates. While, however, the circumstance that rates impede freedom of movement tends to show that they are unreasonable, as being in excess of the value of the service, it does not follow that rates which permit freedom of movement are necessarily reasonable. If this were true "what the traffic will bear" would be the standard of reasonableness. Southern Cement Rates, 132 I. C. C. 427, 446.

(l) If rates are such as to discourage any effort to compete, the lack of movement is no indication of their unreasonableness. To so find would be tantamount to saying that a rate is reasonable because it is prohibitive. Colorado Portland Cement Co. v. A. T. & S. F. Ry., 132 I. C. C. 671, 676.

(m) Sugar is a heavily loading commodity whose transportation is not attended by any special difficulties, but its value is such that freight rates play comparatively small part in ultimate cost to consumer. It may, therefore, reasonably pay relatively high rates compared with many low-grade commodities. M'Clintock-Trunkey Co. v. McCormick S. S. Co., 129 I. C. C. 591, 598.

§63. Volume of Traffic.

See Advanced Rates §5 (1½); §18 (3); Classification §1 (d), §4, §5; Commodity Rates §1 (b), §5 (m); Reasonableness of Rates §40.

(a) Fourth-class rate on flexible split leather from Waukegan, Ill., to Natick, Mass., found not unreasonable. In official, southern, and western classifications various kinds of leather, including flexible splits, are and have been for many years rated fourth class. While complainant instances commodity rates on leather to Boston and several other New England destinations from numerous States to show that exceptions to class basis have been made, and estimated that volume of its shipments will continue in future as in past at about one carload a week, it failed to show how that movement compares in volume with movement of leather generally under fourth-class rates. Griess-Pfleger Tanning Co. v. E., J. & E., 104 I. C. C. 464.

(b) Volume of movement is an important and not infrequently a determinative element in establishment of commodity rate, and when a request for such a rate from a particular point is predicated upon existence of a commodity rate from another point volume of movement from both points should be made known. Griess-Pfleger Tanning Co. v. E., J. & E., 104 I. C. C. 464, 466.

(c) While volume of movement is an important element to be considered in arriving at a reasonable rate, an excessive rate can not be justified merely on account of fact that movements thereunder are infrequent. Orford Soap Co. v. B. & M. R. R., 107 I. C. C. 338, 339.

(d) Volume of movement, present, or prospective, is one of the controlling factors in establishment of commodity rates. Western Paper Makers' Chem. Co. v. A. A. R. R., 109 I. C. C. 133, 135.

(e) Volume of traffic between points in official classification territory found not to warrant establishment of rates on returned empty iron or steel drums on other than class basis. On the contrary, class basis appears peculiarly appropriate for this traffic, involving as it does, shipments from numerous points scattered throughout this territory but with no considerable volume from any point. Western Paper Makers' Chem. Co. v. A. A. R. R., 109 I. C. C. 133, 136, 137, 138.

(f) While volume of movement is an important element to be considered in arriving at a reasonable rate, an excessive rate can not be justified merely on account of fact that movements thereunder are infrequent. Barr & Dougherty v. G. N., 109 I. C. C. 487, 489.

(g) Volume of movement is an important and not infrequently a determinative element in the establishment of a commodity rate. Chicago Hts. Mfrs. Asso. v. V. & O. R. R. Co., 109 I. C. C. 545, 547.

(h) Fertilizer is a low grade traffic, subject to no great risk in transit and requiring no special service for its transportation in the sense that special service is generally understood. Its free movement and use is an auxiliary tending to produce and furnish a larger volume of traffic and thus promote the prosperity of carriers and their patrons, so that considering both commercial and transportation conditions, it is entitled to comparatively low rates. Fertilizers

between Southern points, 113 I. C. C. 389, 420.

(i) In determining just and reasonable rates consideration must be given to density of traffic and yield of carriers in a sparsely populated section of the country, as well as to share of transportation charges borne by a particular commodity when compared with other commodities. Sames Moore & Co. v. A., T. & S. F., 113 I. C. C. 501, 506.

(j) That ton-mile earnings should decrease as distance increases is a generally recognized principle of rate making, but it may be offset by the principle that a higher level of rates is justified in a territory of relatively low traffic density. Nebraska Tire & Rubber Co. v. B. & O., 115 I. C. C. 99, 101, 102.

(k) Fact that but relatively few shipments of a commodity move between certain points is not sufficient grounds to deny shippers reasonable rates. Dame Furniture Co. v. C., N. O. & T. P., 115 I. C. C. 566, 568.

(lm) Upon contention of shipper that evidence tending to prove that traffic under proposed reduced rates will move in trainloads should be given no weight because it is the commission's policy not to permit establishment of rates applicable only to trainloads, HELD: Principle referred to does not apply to a case which deals with rates per carload. However, fact that traffic to which carload rate will apply will in all probability move in trainload quantities is pertinent in considering whether rate will burden other traffic. Ex-Lake Iron Ore from Chicago & Granite City, 120 I. C. C. 75, 81.

(n) Volume of movement is one of the elements which must be considered in comparing rates on analogous commodities, and failure to show such volume renders reference to such rates of little probative value in measuring reasonableness of rates. Memphis Furniture & Mfg. Co. v. L. & N., 120 I. C. C. 267, 269.

(o) It would be manifestly undesirable and impracticable, even were it in harmony with the act, to prescribe rates dependent upon the density of traffic on particular lines. Rather, the average conditions in each part of the country should prevail. Consolidated Southwestern Cases, 123 I. C. C. 203, 381.

(p) Fact that a shipper's plant is small and does not ship in large volume, as compared with plants of its competitors, is not convincing of unreasonableness of rates from smaller plant. If a shipper finds it difficult to meet competition of manufacturers at other points because of relatively higher freight rates from its plant, that in itself may be one of the contributing causes which prevent growth and enlargement of its plant. Fredonia Linseed Oil Works Co. v. A., T. & S. F., 123 I. C. C. 153, 156.

(q) It would be manifestly undesirable and impracticable, even were it in harmony with the act, to prescribe rates dependent upon density of traffic on particular lines. Rather, average conditions in each part of the country should prevail. Consolidated Southwestern Cases, 123 I. C. C. 203, 381.

(r) Fact that a specific form of traffic to which a carload rate will apply, will in all probability move largely in train-load quantities, is pertinent in considering whether rate thereon will cause gain or loss to carrier. See 22 I. C. C. 604 and other cited cases. Ex-Lake Iron Ore from Chicago to Granite City, 123 I. C. C. 503, 507.

(s) Although no further shipments are in contemplation, a shipper is entitled to have its traffic moved at a rate that is not unreasonable. Okmulgee County Commissioners v. M. K. T. Ry., 126 I. C. C. 1, 3.

(t) While the average traffic density is somewhat less in Texas as a whole than in Oklahoma and Kansas, such difference is not sufficient to warrant a level of rates on cement from the Kansas gas belt and Ada to points in eastern and central Texas substantially higher than in eastern Oklahoma. Oklahoma Portland Cement Co. v. D. & R. G. W., 128 I. C. C. 63, 70, 71.

(u) Volume of movement is an important factor in testing the reasonableness of a rate. Calif. Growers & Shippers Protective League v. S. P. Co., 129 I. C. C. 25, 41.

(v) While volume of movement is an important element to be considered in arriving at a reasonable rate an excessive rate can not be justified merely on account of the fact that the movement thereunder is light. Every shipper is entitled to a reasonable rate on his traffic and where he attacks the reasonableness of a rate, whether class or commodity, that issue must be decided upon its merits. Curtiss Aeroplane &

Motor Co., v. Pennsylvania R. R., 129 I. C. C. 174, 176.

(w) Volume of movement is not determinative of the right to a carload rating. Assuming a proper relation between carload and less than carload rates, the establishment of carload ratings whenever carload quantities are offered will meet the needs of new and growing lines of industry without discrimination. Nor, to entitle a commodity to carload rating must it be shown that increased movement in carload quantities would result. The movement in carloads result in economy of transportation facilities, and is therefore greatly to be desired in the interests of the public as well as of the carriers. A narrow spread between the carload and less than carload rates tends to the waste of transportation facilities without adequate compensating advantages to the general public and is not to be encouraged. Any quantity rates reduce the spread to nothing. Western Shade Cloth Co. v. A. & W. P. Ry., 132 I. C. C. 118, 121.

(x) Light or irregular movement will not ordinarily justify the collection of a higher basis of rates than that which generally applies on the same or comparable traffic moving in the same direction in the same general territory. Of course, in the absence of undue prejudice or preference, such a rule or principle could not be applied where the rates offered in comparison are not reasonable maximum rates. Armour & Co. v. N. P. Ry., 132 I. C. C. 123, 124.

(y) An isolated movement is entitled to a reasonable rate. MacBeth Evans Glass Co. v. P. R. R. Co., 132 I. C. C. 129, 131.

(z) Volume of movement is an element to be considered in arriving at a reasonable rate, but an excessive rate can not be justified merely because the movements thereunder are infrequent Eldorado Refining Co. v. A. T. & S. F. Ry., 132 I. C. C. 612, 614.

(aa) Deciduous-fruit shipments comprise the largest single item of transcontinental tonnage, as well as the greatest portion of the transcontinental movement of perishable traffic. California ships more plums and cherries than the remainder of the United States, but by far the heaviest movement from the State is of grapes. Calif. Growers' & Shippers' Protective League v. S. P., 129 I. C. C. 25, 27.

(bb) Movement of bananas from the Gulf ports to Pacific Coast States is substantial, but is not comparable with movement of deciduous fruits from California to the East. Calif. Growers' & Shippers' Protective League v. S. P. 129 I. C. C., 25, 27, 37.

§64. Voluntary or Subsequent Reduction of Rate.

See Absorption of Charges §2; Advanced Rates §8 (2); Commodity Rates §4; Reasonableness of Rates §32½; Reparation §12, §16.

(a) Fact that a rate was subsequently reduced in compliance with decisions of commission embracing general readjustments, involving both increases and reductions, does not of itself demonstrate unreasonableness of higher rates. Commission declines to give retroactive effect to such rates as a basis for an award of reparation. Cairo Cotton Oil Mill v. M. & O., 107 I. C. C. 299.

(b) Class D rate on manganese ore from Phillipsburg, Mont., to Portland, Oreg., found unreasonable to extent it exceeded lower commodity rate contemporaneous in effect to Tacoma, Wash., and subsequently established to Portland. Complainant was promised lower rate, but it could not be made available for these shipments because of delays incident to formality of tariff publications, complainant being required to move its traffic before such lower rate could be made effective. Reparation awarded. Humphreys v. Director General, 109 I. C. C. 157.

(c) Voluntary reductions do not prove that rates are unreasonable. Adams & Kelly Co. v. A., T. & S. F., 109 I. C. C. 241, 244.

(d) The voluntary reduction of a rate is not of itself sufficient to establish the unreasonableness of the former rate, and in the absence of proof of damage the fact that the carriers have charged a higher rate to an intermediate point than to a more distant point is not sufficient to entitle a shipper to an award of reparation for violation of section 4. Dees v. M. & O. R. R., 112 I. C. C. 397, 398.

(e) The unreasonableness of a rate is not established nor is it admitted by a

subsequent reduction. Bunte Bros. v. C. & N. W. Ry., 112 I. C. C. 557, 558.

(f) The subsequent reduction of a rate does not of itself establish unreasonableness. Dow Chemical Co. v. P. M. Ry., 112 I. C. C. 559, 560.

(g) The voluntary reduction of a rate by a carrier does not in itself constitute sufficient proof of the unreasonableness of the former rate. Alexandria Refining Co. v. M. P. R. R., 112 I. C. C. 613, 614.

(h) An offer of carriers to reduce a rate does not of itself establish that rates in effect were or are unreasonable. Standard Pipe Line Co. v. T. & P., 112 I. C. C. 186, 187.

(i) Where carriers voluntarily reduce a rate they do not thereby admit that rate formerly in effect was unreasonable. Bunte Bros. v. C. & N. W., 112 I. C. C. 557, 558.

(j) The voluntary reduction of a rate is not of itself evidence of the unreasonableness of the rate so reduced. Sames Moore & Co. v. A. T. & S. F. Ry., 113 I. C. C. 501, 507.

(k) Voluntary reduction of a rate does not show that the prior rate was unreasonable. Kay County Gas Co. v. G. C. & S. F. Ry., 115 I. C. C. 736, 737.

(l) The subsequent reduction of the rates attacked does not, of itself, carry the presumption that the rates assessed were unreasonable. Crook Son & Co. v. N. Y. C. R. R., 118 I. C. C. 512, 514.

(mn) Fact that rates on same commodity to two different destinations are not contemporaneously reduced does not alone render rate not reduced unreasonable or otherwise unlawful. Bailey v. O. S. L., 115 I. C. C. 745, 747.

(o) Class A rate applicable on a sporadic shipment of coffin material from Jackson, Miss., to New Orleans, La., found not unreasonable as compared with lower rate from Maryville, Tenn., to same destination, or with commodity rate established from Jackson subsequent to movement. The subsequently established rate was accorded with expectation of a regular movement which never developed, whereas it is shown that there is a free movement under the rate from Maryville. Considering the sporadic character of shipment here involved, coupled with a lack of evidence to indicate that coffin stock is improperly classified, the commission does not consider class A rate as unduly high. Jackson Traffic Bureau v. I. C., 118 I. C. C. 515.

(p) Complainant attacked rate charged on two cars of eggs shipped March 23, 1923, from Brownwood and Killeen, Tex., stopped in transit at Lampasas and Temple, Tex., to complete loading, and forwarded to Philadelphia as unreasonable, unjustly discriminatory and unduly prejudicial. Shipments moved G. C. & S. F. to Purcell, Okla., Santa Fe to Oklahoma City, M. K. T. to St. Louis, Mo., and B. & O., and connections to Philadelphia, 1,978 miles from Killeen and 2,085 from Brownwood. Charged $3.435. A rate of $2.205 was in effect from Killeen and Brownwood to Philadelphia over routes ranging in length from 1,875 miles to 2,247 miles, but was inapplicable over the route of movement because of routing restrictions. Effective July 9, 1925, in compliance with 96 I. C. C. 19, rates of $2 from Killeen and $2.01 from Brownwood to Philadelphia were established. HELD, rate attacked unreasonable to extent it exceeded $2.205, reparation awarded. Sheaffer & Marvel v. B. & O. R. R., 120 I. C. C. 673.

(q) Mere fact that rates charged reflect voluntary reductions is not sufficient in and of itself to indicate that prior rates were unreasonable. Jackson Traffic Bureau v. I. C., 120 I. C. C. 33, 36.

(r) The subsequent reduction of a rate or the disruption in a rate adjustment caused by general increases approved by the commission afford no basis for an award of reparation or finding of unreasonableness. Central Pennsylvania Lbr. Co. v. S. & N. Y., 120 I. C. C. 239, 240.

(s) The voluntary reduction of a rate is not proof that the prior rate was unreasonable. Riegel Sack Co. v. C. R. R. of N. J., 122 I. C. C. 78, 80.

(t) The Commission has said repeatedly that the voluntary reduction of a rate creates no presumption that the former rate was unreasonable. Newark Call Printing & Publishing Co. v. C. R. R. of N. J., 126 I. C. C. 569, 571.

(u) Upon contention that subsequent reduction of a rate is not indicative of the unreasonableness of the prior rate, HELD: While this contention is ordinarily correct it can not be sustained where rates assailed are higher than those on analogous articles which are higher rated, sold at higher prices, and

no more desirable from a transportation stand-point. Chicago Granatine Mfg. Co. v. I. C. R. R., 126 I. C. C. 572.

(v) The Commission has frequently found that the reduction of rates does not of itself justify the conclusion that the preexisting rates were unreasonable or afford a basis for reparation. Carriers may voluntarily equalize commercial or geographical disadvantages in many instances in which the Commission could not require such equalization. Gum Motor Co. v. A. T. & S. F. Ry., 128 I. C. C. 61, 62.

(w) The voluntary reduction of a rate is not of itself sufficient to justify an award of reparation on shipments moving prior to the reduction. Peaslee Gaulbert Co. v. C. & A. R. R., 128 I. C. C. 103, 104.

(x) The Commission has repeatedly stated that the subsequent reduction of a rate is not of itself sufficient to show that the prior rate was unreasonable. National Show Case Co. v. S. A. L. Ry., 128 I. C. C. 193, 197.

(y) The reduction of a rate does not prove that the rate formerly charged was unreasonable. Vickers Petroleum Co. v. M. P. R. R., 128 I. C. C. 205, 206.

(z) It is well settled that the subsequent reduction of a rate does not prove that the rate previously assessed was unreasonable. United States Potters Asso. v. A. C. & Y. Ry., 128 I. C. C. 249, 254.

(aa) The subsequent reduction of a rate does not, in itself establish the unreasonableness of the former rate. Bruce & Co. v. C. & N. W. Ry., 129 I. C. C. 435, 437.

(bb) The subsequent reduction in the rate is a fact which may be considered along with other proof. Cline & Bernheim v. C. & N. W. Ry., 132 I. C. C. 311, 312.

§64½. Wages.

See Reasonableness of Rates §40½.

(a) It is no part of commission's duty to canvas and compare wage scales of a particular industry with a view to adjusting the rate structure to them. Lake Cargo Coal Rates, 1925, 126 I. C. C. 309, 359.

§64⅞a. Water Mileage.

(a) Owing to difficulty of ascertaining accurate ratio of water miles to rail miles, it is difficult to compare ocean-rail rates with all-rail rates. Consolidated Southwestern Cases, 123 I. C. C. 203, 289, 290.

(b) There appears to be no generally accepted ratio of water to rail miles but carriers have frequently estimated the comparatively short water distances from north Atlantic to south Atlantic ports on basis of approximately 2.5 statute water miles to 1 rail mile. In 81 I. C. C. 312, in considering the ocean distance from New York to Galveston, the commission adopted a ratio of 3 miles of water haul to 1 mile of rail haul, and in an earlier case, 24 I. C. C. 570, a ratio of 6 to 1 was used between same points. Consolidated Southwestern Cases, 123 I. C. C. 203, 369.

(c) It is generally accepted that where water hauls are long the ratio of water miles to rail miles may properly be greater than where hauls are comparatively short. Consolidated Southwestern Cases, 123 I. C. C. 203, 370.

§65. Weight or Bulk of Shipment.

See Classification §4, §11½; Reasonableness of Rates §41; Weights and Weighing.

(a) Empty wooden barrels and kegs are light articles and generally move under class rates. Coco-Cola Co. v. A., T. & S. F., 104 I. C. C. 377, 379.

(b) Livestock loads lighter than almost all other kinds of carload traffic that move in substantial volume. American Nat'l. Live Stock Asso. v. A., T. & S. F., 122 I. C. C. 609, 617.

(c) Fact that a specific form of traffic to which a carload rate will apply, will in all probability move largely in trainload quantities, is pertinent in considering whether rate thereon will cause gain or loss to carriers. See 22 I. C. C. 604 and other cited cases. Ex-Lake Iron Ore from Chicago to Granite City, 123 I. C. C. 503, 507.

§66. Widespread Rate Adjustment.

See Advanced Rates §5 (2), §5 (7¼); Blanket Rates VIII, §20; Differentials; Discrimination §13; Equalization of Rates §8; Reasonableness of Rates §16, §28; Relative Rates; Reparation §12.

(a) Proposed revision of rates on fruits and vegetables between points in

California and Oregon, Washington, Idaho, Utah, and Montana, resulting in both increases and reductions, former predominating, found not justified. While some of present rates, because of active water competition, may be lower than they might otherwise be, earnings produced do not show that they are unremunerative, and economic condition of deciduous-fruit industry is such that it can ill afford an increase in rates. Moreover, proposed revision was published without giving interested shippers a public hearing at which they might have had an opportunity to express their views. Fruits and Vegetables between Pacific Coast States. 104 I. C. C. 66.

(b) Proposal to readjust interstate rates on flaxseed from Minnesota, South Dakota, and certain North Dakota points to western trunk-line destinations, resulting in both increases and decreases, and establishment of a different level of rates from specified points in the Dakotas than applies from other North Dakota points, found not justified. Proposed rates are admitted by all parties concerned to be unduly prejudicial to South Dakota shippers. South Dakota R. R. Commrs. v. C. & N. W., 107 I. C. C. 35.

(c) Proposed adjustment of rates on lumber and related articles from south Pacific coast origin groups to Canadian points, involving advances and reductions and designed for purpose of equalizing those rates with north Pacific coast points, found not justified as a whole. Carriers long maintained equal rates from this general territory but parity was disrupted when rates from north Pacific coast points were revised without concurrent revision from south Pacific coast points. While circumstances warranting higher rates from north Pacific coast points on one kind of lumber than on other kinds are not necessarily controlling as to rates from south Pacific Coast points, reductions proposed will restore former equalization, no reason appearing why the disparity should be continued or why equal rates should not obtain. The evidence, however, does not support a finding that change proposed in the minima, restriction proposed in the lumber list, or cancellation of transshipments or proportional rates is warranted. Lumber and Related Articles, 107 I. C. C. 57.

(d) Fact that similar adjustments may be necessary at other points is no ground for denying a reduction in rates between specific points where such reductions are shown by evidence of record as proper. Chicago Fire Brick Co. v. A. & W., 107 I. C. C. 399, 406.

(e) Proposed revision of rates on bananas from Gulf Ports to southeastern and Carolina territory found justified, except as to increased c. l. rates. A careful consideration of the record convinces commission that banana rates from such ports to the Ohio River, in so far as they apply over lines proposing increases, are upon less than a maximum reasonable basis. Rates proposed, however, are subject to criticism, for the elimination of which a distance scale of rates is herein suggested. Bananas from Gulf Ports, 109 I. C. C. 211.

(f) In readjusting an extensive rate structure over a vast classification territory the commission is under no obligation to maintain revenues at precisely their existing level, but its obligation is to prescribe rates which are reasonable and otherwise lawful. However, should a situation arise for any reason under which carriers are not earning fair return prescribed by section 15a of the act, provisions of that section may be invoked. Southern Class Rate Investigation, 109 I. C. C. 300, 307.

(g) Carriers should be permitted, even encouraged, to eliminate wasteful transportation, but in seeking to disrupt a rate adjustment of long standing they must show that the resulting rates will be reasonable, and will not result in other violations of the act. Grain and related articles, 113 I. C. C. 195, 199.

(h) Fact that additional adjustments may be necessary is no ground for denying relief shown by a record as proper. French Battery & Carbon Co. v. C. &. N. W., 112 I. C. C. 128, 131.

(i) Fact that reductions in rates from specific points would necessitate a readjustment of rates in contiguous territory is not sufficient reason for denying reasonable rates between points covered by a complaint. Arizona Corporation Commission v. A. E., 113 I. C. C. 52, 64.

(j) Carriers should be permitted, even encouraged, to eliminate wasteful transportation, but in seeking to disrupt a rate adjustment of long standing they must show that resulting rates will be reasonable, and will not result in other violations of the act. Grain and

Related Articles, 113 I. C. C. 195, 199.

(k) Although the Commission has repeatedly said that the prospect of other and resulting reductions will not deter it from reducing an unreasonable rate the fact remains that a showing that widespread and consistent changes, all downward, in rates to surrounding territory would follow the reduction of a rate to a single point tends to make it appear that the rates to the single point are on a normal and comparable level. El Dorado Refining Co. v. A. T. & S. F. Ry., 118 I. C. C. 51, 54.

(l) Taking into consideration the gradual change in conditions surrounding transportation and marketing of peanuts over a number of years and gradual downward revision of rate structure to meet those conditions, with apparently no dissatisfaction with general rate adjustment on part of those in the industry, FOUND: That it does not follow because commission's judgment and that of carriers as to what will be reasonable rates for the future differ, in relatively small degree, that rates found reasonable for future would have been maximum reasonable rates for a period extending back two years prior to filing of a complaint. Accordingly, and in the light of commission's findings in 20 I. C. C. 43, 50, rates on this commodity in the past found unreasonable only back to date of filing of complaint, and not for the full two-year period prior thereto. United Fig & Date Co. v. A. C. L., 115 I. C. C. 643, 648, 649.

(m) Prospect of other and resulting reductions will not deter commission from reducing an unreasonable rate, but a showing that widespread and consistent changes, all downward, in rates to surrounding territory would follow reduction of a rate to a single point, tends to make it appear that rates to the single point are on a normal and comparable level. El Dorado Refining Co. v. A., T. & S. F., 118 I. C. C. 51, 54, 55.

(n) Fact that a reduction in rates to a particular point will result in it being necessary to make corresponding reductions at other points in same general territory affords no ground for withholding from the particular point a proper adjustment of rates. Nashville Traffic Bureau v. L. & N., 118 I. C. C. 748, 753. Birmingham Traffic Bureau v. St. L., S. F., 118 I. C. C. 756, 760.

(o) It is not unusual for a general adjustment in rates to include increases as well as reductions in rates, but fact that spread in the rates resulting from the adjustment is not the same as formerly existed does not demonstrate that rates are unreasonable. New Jersey Lumbermen's Committee v. A. C. L., 120 I. C. C. 329, 334.

(p) Rates resulting from a general readjustment involving both increases and reductions may not properly be used as a measure of a reasonable rate for shipments moving prior thereto. Cotton Mills Products Co. v. A. & V., 120 I. C. C. 473, 474.

(q) The revision of the Mississippi cotton rates was part of a general readjustment. The mere fact that one incident of this readjustment was the reduction of the rate from one city does not prove that the former rate was unreasonable. Manget Bros. Co. v. Georgia R. R., 123 I. C. C. 532, 534.

(r) In changing from a system of rate making which has prevailed for many years to a new method, it is reasonable that consideration should be given, particularly in case of commodities moving in volume at relatively low rates, to the effect which an abrupt and radical change in rate level might have upon carrier revenues. Rates on Chert, Clay, Sand, and Gravel, 122 I. C. C. 133, 161.

(s) Where future rates are prescribed by the commission and such rates result in a widespread readjustment of rates of long standing, a reasonable time must elapse between the date of the decision and the date when rates established pursuant thereto become effective. In such cases reparation on shipments moving between the date of the decision and the effective date of the order will be denied. Van Dyke Motor Co. v. M. P., 122 I. C. C. 411, 412.

(t) Proper readjustment of rates on grain and products from Birmingham, Chattanooga, and Knoxville, to South Atlantic ports and certain intermediate points, to same basis as existing commodity rates from Nashville, found not justified. Grain rates from Birmingham are generally lower than from Nashville and carriers may not undermine this adjustment solely for purpose of removing fourth-section departures created by an

attempt to establish interstate class rates in accordance with distance scale of class rates prescribed by Georgia Railroad Commission between Georgia points, for to do so would unduly prejudice Birmingham and its milling interests, especially in view of its shorter haul to the ports. Grain and Products to Southeast, 123 I. C. C. 569.

(u) Neither is it a defense to say that revision of the rates attacked will necessitate revisions in the rates from or to other points and on other grain and grain products. It is well settled that the correction of one unlawful rate adjustment can not be defeated simply because it may necessitate changes in other rates. Southwestern Millers League v. A. T. & S. F. Ry., 126 I. C. C. 23, 30.

V. STARE DECISIS.

§69. In General.

See Cars and Car Supply §35; Previous Decisions of Commission; Procedure Before Commission §17; Reasonableness of Rates §26½; Reparation §13.

(a) Ton-mile earnings yielded by coal rates found reasonable by commission in a proceeding wherein the relationship was controlling factor, can not be accepted as criteria for coal rates in general. Fentress Coal Co. v. T. C. Ry., 115 I. C. C. 286, 287.

(b) When a given situation has been fully considered and deliberately passed upon, that decision ought not to be disregarded and the question kept open indefinitely unless good cause is shown for the adoption of a different course. Mississippi Pearl Button Co. v. I. C. R. R., 120 I. C. C. 647, 648.

(c) Complaint filed during pendency of a similar proceeding, alleged that class E rate on clam shells from Dixon, Ill., to Fort Madison, Iowa, was unreasonable, unduly prejudicial, and in violation of long-and-short-haul clause of section 4 of the act. The decision being adverse to its contentions, complainant now asks in effect that it be set aside on strength of its evidence in instant case. Evidence introduced here being similar to that presented in former case, wherein the class E rate was found not unreasonable, no good cause is shown for what would be tantamount to a reversal of finding previously made after consideration of a more complete record. Accordingly, rate assailed found not unreasonable or otherwise unlawful. Mississippi Pearl Button Co. v. I. C., 120 I. C. C. 647.

(d) Upon contention that a mere citation of a decision of commission in another proceeding is insufficient to warrant conclusion that similar rates brought in issue in a new case were unreasonable, HELD: When a given situation has been fully considered, and deliberately passed upon by commission, that decision ought not to be disregarded and the question kept open indefinitely unless good cause is shown for adoption of a different course. Accordingly, shippers may rely upon findings in former cases dealing with same subject. American Door & Mfg. Co. v. B. & O., 122 I. C. C. 471.

(e) The commission is not bound by any rule of stare decisis, although when a matter has been once fully considered and decided it should be regarded as settled unless it appears from new facts presented that commission was wrong. See 23 I. C. C. 684. International Paper Co. v. B. & M., 128 I. C. C. 466, 470.

(f) Conclusions reached on facts and conditions as developed on individual records do not necessarily constitute precedents against granting of relief if same rates were subsequently assailed with an adequate showing of changed and different conditions of fact, or in basic law applicable. Calif. Growers' & Shippers' Protective League v. S. P., 129 I. C. C. 25, 43, 44.

(g) Motion for further hearing on ground of two alleged errors in original report, 63 I. C. C. 6, viz, statement that departures from aggregate-of-intermediates provision were protected by applications heard but not determined, and statement that rates found unreasonable appeared not unduly high, denied. Question of whether departures were protected by applications was **res adjudicata** not because of commission's decision but that of Supreme Court in 269 U. S. 1. Even if question had not been **res adjudicata** and commission concluded that departures were not protected, complainants would not be entitled to reparation for violation of fourth section, since there was no proof that they suffered any special damage, and no such proof was submitted at further hearing. Hudson Mule Co. v. L. & N., 129 I. C. C. 365, 368, 369.

EX-LAKE RATES

(a) Ex lake rates are in the nature of proportional rates and are made lower than the local rates because they apply to portions of much longer total hauls. Ex Lake Iron Ore from Chicago to Granite City, 120 I. C. C. 75, 78.

(b) Proposed reduced rate on ex-lake iron ore from Chicago to Granite City, Ill., found justified. Carriers showed that they carry a large volume of coal from mines near Granite City to Chicago with a practically complete empty-return movement due to present rate proving too high to attract the ore traffic. The rate proposed, which is not less than a reasonable minimum, will enable a furnace at Granite City to share in ore movement by lake and enable it to increase its output in competition with rival plants located in Chicago district and elsewhere. Rail carriers will not be deprived of any important traffic and the extremely low all-rail rates now in effect offset the probability of a rate war. Moreover, the rail-lake-and-rail route to Granite City is a natural one possessed of marked economic advantages, and its increased utilization seems clearly in public interest. Ex-Lake Iron Ore from Chicago to Granite City, 120 I. C. C. 75.

(c) Fact that ex-lake differentials are constructed on quite a different basis from all-rail differentials negatives the idea that there is any close competition between the two. Maritime Asso., Boston Chamber of Commerce v. A. A. R. R., 126 I. C. C. 199, 208.

(d) Upon further hearing in 95 I. C. C. 539 carriers attempt to justice ex-lake differentials on grain and products from Buffalo to New York and Boston for export, over those Baltimore and Philadelphia, contending that most ex-lake comes from c. f. a. territory, that there are all-rail routes through Buffalo reflecting the full differential and that mere substitution of ake for rail movement should not deprive Baltimore and Philadelphia of their differentials. HELD: Record indicates that most ex-lake grain is not domestic but Canadian, and the differential adjustment of ex-lake grain rates to north Atlantic ports is an exception to general rule with respect to export rates from Buffalo, since both export class and commodity traffic moves therefrom to Boston, New York, Philadelphia, and Baltimore on identical rates. Maritime Asso. Boston Chamber of Commerce v. A. A. R. R. 126 I. C. C. 199, 208, 211.

(e) Upon further hearing in 95 I. C. C. 539, FOUND: That record does not permit prescription of maximum or minimum reasonable rates on ex-lake grain from Buffalo to New York, Philadelphia, Baltimore, and Boston, for export, since present rates have not been shown to be unreasonable or otherwise unlawful, but if such rates were to be prescribed, evidence warrants conclusion that line-haul rates to water-front elevators at New York, Philadelphia, and Baltimore should be identical, and that maintenance of same rates to water-front elevators at Boston would not be unlawful. Maritime Asso., Boston Chamber of Commerce v. A. A. R. R., 126 I. C. C. 199, 211, 216.

EXCLUSIVE CONTRACTS

See Special Contracts; Stock Yard Companies.

(a) Railroad company, so long as it thereby affords reasonable accommodation to public and violates no constitutional or statutory provisions, may grant exclusive privilege to one taxi-cab company to solicit patronage on railroad station grounds. Canary Taxicab Co., v. Terminal Ry. Ass'n of St. Louis, (Mo., 1927) 294 S. W. 88.

(b) Term "facilities," as used in Const. art. 12, § 23, and Rev. St. 1919, §§ 9975, 9985, relating to discrimination in charges or facilities in transportation, includes only such as are employed in transportation and which railroad company undertakes or is compelled to furnish in its capacity as common carrier. Canary Taxicab Co., v. Terminal Ry. Ass'n of St. Louis, (Mo., 1927) 294 S. W. 88.

EXPEDITED SERVICE

See Advanced Rates §2½ (h), §3 (a), §11½ (c) (d), §17 (nn); Baggage Car Service; Live Stock Shipments; Special Rates and Services.

(a) Characteristics surrounding transportation of newspapers in baggage cars are so varied as to weight and revenue per shipment, length of hauls, volume of tonnage, and methods of handling and diffusion, that it is impracticable to attempt to determine reasonableness of a flat charge by allocation of costs of

transportation. Newspapers in Baggage Cars, 104 I. C. C. 527, 533.

(b) The usual service required for milk and cream in baggage cars is so unlike that accorded newspapers in same kind of equipment, as to make a comparison of rates charged for two kinds of services lacking in probative value. Newspapers in Baggage Cars, 104 I. C. C. 527, 536.

(c) Request that baggage-car service and rates be prescribed on l. c. l. shipments of cream from Essex, N. Y., to Fair Haven, Vt., and Springfield, Mass., denied. The express service, is adequate and carriers should not be required to furnish baggage-car service, which would impose an additional expense upon them and more or less interfere with other baggage-car service. State of New York v. Am. Ry. Exp. Co., 109 I. C. C. 20, 24.

(d) Proposed increased distance rates on cream, and on milk, cream, and buttermilk, transported by railroads on passenger trains in the territory embracing points in Montana, North Dakota, Minnesota, and other northwestern States, found not justified. Such increases are designed as a revenue measure, in interest of uniformity, and to remove any existing discrimination between interstate and intrastate traffic. Competition in territory involved is keen between butter manufacturers who draw their cream mainly from distant points and local creamers who receive their cream from near-by points. Any substantial rate increase, if borne by the butter manufacturers, woud be detrimental to them and indirectly to farmers producing the cream. Moreover, under the Hoch-Smith resolution the commission is required to give particular consideration to establishment of a rate structure under which agricultural products shall freely move. Milk and Cream in Northwest, 115 I. C. C. 77.

(e) Proposed increased rates on cream and related articles, moving in baggage cars on passenger trains, between points on the C. & E. I., by cancelling present rates based on the so-called Beatrice scale, and putting into effect rates based on distance scale prescribed in 46 I. C. C. 601, for application generally in c. f. a. territory, found justified. Although a few carriers have voluntarily published cream rates lower than the c. f. a. scale, that is the basis of rates prevalent in this territory on interstate shipments and there is nothing of record to justify requiring carrier to maintain lower rates over its line than those found reasonable for application over other roads in this territory. Cream and Related Articles, 115 I. C. C. 447.

(f) Car-foot-mile formula for determining relative costs for transportation of milk is not, in its present form, adaptable to freight service. Character of milk traffic, expedited service given it, regularity of movement, with loaded cans in one direction and empty cans in return movement, constituting practically a "shuttle service," and other features, make it more nearly comparable with passenger-train service, and exclusion of operation expenses of freight service and limitation of cost study to passenger-train service, including passenger proper, express, mail, and milk, is not improper. Milk and Cream Between New England Points, 126 I. C. C. 38, 48.

(g) Theory that milk is an auxiliary service and might properly be charged only with out-of-pocket cost, with no charge for any portion of expenses which would be incurred whether milk services were rendered or not, found not tenable. The same theory might apply with equal force to mail or express and would result, if followed, in one or more "auxiliary" services becoming unduly preferred in so far as rates are concerned. See 74 I. C. C. 48, 71. Milk and Cream Between New England Points, 126 I. C. C. 38, 60.

(h) Combinations of single-line interstate distance rates on cream, in 10-gallon cans, in baggage cars in passenger and mixed-train service, from certain points in North Dakota and South Dakota, to Aberdeen, S. Dak., found not unduly prejudicial but unreasonable as compared with rates under the Beatrice, C. F. A.. and Kirschbaum scales prescribed in 15 I. C. C. 109; 46 I. C. C. 601; and 100 I. C. C. 28, respectively, and to extent they exceeded distance rates herein prescribed, with addition of drayage charges as herein provided. Reasonable rates prescribed for future and reparation awarded. Beatice Creamery Co. v. C., M. & St. P., 129 I. C. C. 375.

EXPLOSIVES AND DANGEROUS ARTICLES

See Class Rates §2 (a); Demurrage §2½.

(a) Rates on high explosives, c. l. and l. c. l., from Gibbstown and Thompson's Point, N. J., to Norton, Va., Powder, W. Va., and other stations in Virginias, found unreasonable to extent they exceeded first-class and double first-class, respectively, contemporaneously applicable from and to same points. Usual basis of rates on high explosives in this territory is first class c. l., and double first-class l. c. l., that basis having been prescribed as reasonable maximum in 35 I. C. C. 77 and 64 I. C. C. 10. Reparation awarded. Du Pont De Nemours & Co. v. W. J. & S., 104 I. C. C. 249.

(b) Complainant attacked commodity rate of $3 charged on 11 cars of high explosives from June 14 to Dec. 18, 1922 from Herpoco and Nitro, Calif., to Tonopah, Nev., as unjust and unreasonable to extent it exceeded first class rate of $2.60. Three which originated at Herpoco moved Santa Fe to Ludlow, Calif., T. &. T. to Beatty, Nev., B. G., to Goldfield, Nev., T. &. G.., beyond 761 miles. One from Nitro moved S. P., to Bay Point, thence over route described, 765 miles, the others over S. P., to Mina, Nev., R. &. G., beyond, 465 miles. Western classification provides no rating on high explosives, but refers to tariffs of individual lines. Prior to Jan. 30, 1922 high explosives from San Francisco Bay points to Tonopah took the first class rate, under an exception to the classification or a commodity rate the same in amount, $3.75. In order to meet parcel post competition on less carload traffic, the carriers, on that date, reduced the class rates to Tonopah from San Francisco and points taking the same rates, the first class rate becoming $2.60. They did not make this rate applicable on high explosives but published a commodity rate of $3. HELD: Rate attacked not unjust or unreasonable, complaint dismissed Stewart & Co. v. A. T. & S. F. Ry., 113 I. C. C. 275.

(c) Commodity rate on high explosives from Herpoco and Nitro, Calif., to Tonopah, Nev., found not unreasonable because in excess of class rate contemporaneously in effect. These rates were established for purpose of meeting parcel-post competition and were found not unreasonable in the Goldfield Cases, 34 I. C. C. 360 after a consideration of the unusual operating and transportation conditions, among other things, existing in this part of the country. Evidence submitted by complainant here does not justify what in effect would be a reversal of the commission's findings in the cited case. Stewart & Co. v. A., T. & S. F., 113 I. C. C. 275.

(d) Storage charges assessed on private cars of gasoline under storage rule providing for assessment of charges on dangerous articles requiring "inflammable" placards, held on railroad premises in excess of free time, found inapplicable. Under the rule the term "railroad premises" included private tracks constructed, maintained, or operated under written agreement, located inside carrier's right-of-way, yard, and terminals, reserving to carrier right of use. Here, tracks were constructed under contract, but were used exclusively as plant facilities, and could be used by carrier only when such use did not interfere with complainant's business. Moreover, in 66 I. C. C. 58, interpretation of term "railroad premises" made the written agreement the controlling factor rather than right of use. Complainant's tracks therefore could not under any circumstances be considered as railroad premises. Refund of charges directed. Kelly Oil Co. v. M.-K.-T., 123 I. C. C. 517.

(e) Special service is incident to the transportation of explosives between any two points. Du Pont De Nemours & Co. v. B. & O., 128 I. C. C. 705.

(f) Complainant attacked first class rates charged on black powder carloads minimum 20,000 pounds from Oriental Siding, Fairchance, Pa., to destinations on the Western Maryland as unreasonable and unjustly discriminatory and unduly prejudicial as compared with the second class rates charged from Youngstown, O., to the same destinations. Fairchance is on the B. & O. about 37 miles southeast of Jacobs Creek, Pa., a point on the border line between trunk line and central territories. First class rates are applicable while from Youngstown and Quaker Falls, Pa., to the same destinations second class rates apply. Specific-commodity rates lower than second class are in effect from the Atlantic seaboard to western trunk line termini and destinations in central territory. Practically all movements of black powder between points in trunk line territory and from trunk line to central territory, other than those shown, are on the first class basis. From Fairchance to destinations common to the B. & O. and W. M. the class rate level is the same. Special service is incident to the transportation of ex-

plosives between any two points. There appears to be no justification for maintaining a higher rating from Fairchance than from Youngstown. HELD, rates attacked not unreasonable but rates from Fairchance unduly prejudicial to extent they exceed rates second class basis from Youngstown, reparation denied. Du Pont de Nemours & Co. v. B. & O. R. R., 128 I. C. C. 705.

EXPORT RATES AND FACILITIES

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
§2. Establishment and construction.
II. BILLS OF LADING.
§3. Provisions in general.
III. DISCRIMINATION.
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VI. STORAGE, DEMURRAGE, AND SPECIAL CHARGES.
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VII. PAYMENT OF CHARGES.
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§9. In general.
IX. LONG AND SHORT HAULS.
§10. In general.

CROSS REFERENCES

See Coastwise Traffic; Express Companies §4; Foreign Commerce; Port Differentials.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission; Through Routes and Joint Rates §3.

(a) The commission has jurisdiction over intrastate rates on shipments movings from one point within a State to a port within same State for export. Thomas Traffic v. L. A. & S. L., 120 I. C. C. 671.

§2. Establishment and Construction.

(a) Upon contention that transshipment rates can not be justified as export rates, nor as proportional rates, since rates by water from the ports are not filed with the commission. FOUND: Under provisions of paragraph 13 (c) of section 6 of the act, commission is authorized to prescribe proportional rates to ports applicable to traffic moving beyond by water, and such rates may differ from corresponding local rates. They are not restricted to cases where rates beyond by water are filed with commission. Washington Coal Producers Asso. v. U. P., 129 I. C. C. 499, 500.

III. DISCRIMINATION.

See Discrimination.

§4. In General.

(a) Rates on steel tanks, k. d., from South Chicago, Ill., Indiana Harbor, Ind., and Youngstown, Ohio, to Galveston, Tex., for export to Mexico, fabricated in transit at Iola, Kans., found not unreasonable due to lower export rates between same origin and destination points with fabrication in transit at Kansas City, such lower through rates being subsequently established through Iola. Earnings under rates assailed are materially lower than those under numerous rates on same and analogous commodities from other iron and steel producing points for comparable distances, many of which were approved or prescribed by commission. United Iron Works v. Director General, 104 I. C. C. 449.

(b) Rates on gasoline and kerosene, from Gates to Port Arthur, Tex., for export, found not unreasonable as compared with rates on other commodities for similar distances in same territory, or with lower rates subsequently established over route of movement. in response to request made prior to shipments in issue. Texas Co. v. T. & P., 107 I. C. C. 147.

(c) Rate on crude petroleum from points in Arkansas to Texas City, Tex., for export, found not unreasonable or unduly prejudicial as compared with lower rate to other Gulf Ports, which lower rate was subsequently made applicable to Texas City. Rate charged

was in substance an emergency rate established to enable an overproduction of crude oil to be used, and its subsequent reduction does not establish that it was unreasonable prior thereto. Swiftsure Petroleum Co. v. M. P. 107 I. C. C. 637.

(d) Galveston, Tex.: Rates on cottonseed and vegetable cake and meal from points in Texas to, for export, differentially higher than rates on same commodities to Houston and other Gulf ports, found not unduly prejudicial to Galveston or unduly preferential of Houston and such other ports in their relation to distance scale of rates prescribed in Oklahoma case, 98 I. C. C. 183. Galveston Commercial Asso. v. A. & S. 109 I. C. C. 114.

(e) Respondents proposed to reduce the rates on car trucks without journal bearings, carloads, from central and trunk line territories to the Atlantic seaboard for export. Car trucks for export are generally assembled, at point of shipment in order that they may be as nearly complete as possible when delivered, and also because in that state they can be more conveniently and economically shipped by vessel. Present rate on car trucks without journal bearings from the Pittsburgh district to New York and points within the lighterage limits for export or domestic use, is fifth class rate of 34 c, proposed rate 25.5 c. HELD, proposed rate not unreasonable but the establishment of such rate, while maintaining a rate in excess of 7c, from Athenia and Lodi to New York unduly preferential. HELD, schedules not justified without prejudice to filing tariffs in accordance with the opinion. Car Trucks to Atlantic Seaboard, 112 I. C. C. 583.

(f) On the question of requiring the establishment of export rates lower than domestic rates for similar movements, the Commission said there is nothing inherent in export traffic that entitles it as such to take lower rates than domestic traffic. The fact that defendants, of their own volition, accord export rates lower than domestic rates on iron and steel articles and grain to New York is not unduly prejudicial to complainant. There is an important distinction between the voluntary act of a carrier in granting export rates lower than the domestic rates and an order from the Commission requiring such a difference to be observed. The former may freely be done so long as no violation of the act results, but the Commission may not require a difference in rates on the two classes of traffic unless there is a substantial variation in the service performed. Knight & Kennett v. L. & N. R. R., 115 I. C. C. 732, 735.

(g) Rates on petroleum and products in export and coastwise movement from southern Kansas, Oklahoma, and Texas to Galveston and other Texas ports taking same rates, and on grain and products from southern Kansas, same as to New Orleans and other Louisiana ports, found not unduly prejudicial, but like rates on various other commodities found unduly prejudicial to Texas ports, with certain exceptions. While parity of rates results in substantially greater service for same rate to Louisiana ports than to Texas ports between interior points from which the short-line distance to New Orleans exceeds that to Galveston by more than 25 per cent, it does not result in substantial injury except as designated. Findings in original report reversed in some respects and modified in others, and nonprejudicial basis of rates prescribed for future. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349.

(h) Suspended schedules filed in purported compliance with findings in original report 100 I. C. C. 110, wherein relationships between rates on certain commodities in export, import, and coastwise movement from points in Kansas, Oklahoma, and Texas to Galveston and New Orleans and ports taking same rates, were found unduly prejudicial and ordered removed by establishment of differentials prescribed, found not justified, without prejudice to filing of new schedules conforming with findings herein. Galveston Commercial Asso. v. G., H. & S. A. 128 I. C. C. 349, 392, 393.

(i) Rates on petroleum and products in export and coastwise movement from refining point in north-central Texas to New Orleans and Galveston and points taking same rates found not unreasonable as compared with those from extensive groups in various portions of Southwest for domestic and foreign consumption, nor unduly prejudicial as compared with those from Shreveport-El Dorado groups in northern Louisiana and southern Arkansas. Earnings under rates assailed are considerably below those under rates for similar distances from mid-continent groups to western trunk-line and Illinois destinations found

reasonable in 112 I. C. C. 421, and a reduction in rates from any one important group under present extensively grouped and highly competitive adjustment should be made cautiously and only for strongest reasons. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349, 393, 396.

(j) Complainant alleged that the rate of $5.25 per ton on modified mine run bituminous coal, in carloads, from the Castle Gate group of mines in Utah to Albina, East Portland and St. Johns, Ore., and Tacoma and Seattle, Wash., when for transshipment by water to Alaska, Hawaii or foreign countries, is unreasonably low and results in undue prejudice. The rate assailed applies only from points on the Utah Ry., a defendant. In Western Coal Rates, 80 I. C. C. 383, 89 I. C. C. 666, a rate of $6.80 on bituminous coal, all sizes, from the Castle Gate district to points north of Portland, such as Seattle was approved. To Portland and points grouped therewith, rates of $5.90, $5.40 and $5.15 on lump, nut, and slack, respectively, were approved. These are the present rates for local delivery. The rate assailed became effective June 25, 1925. The carriers originating the traffic from the mines in Washington are not defendants, do not serve the mines in Utah, and do not join in the rate assailed. Substantially all of complainants traffic moves through Seattle; and from the showing made it does not appear that any undue prejudice exists by reason of the transshipment rate to the other ports. HELD, rate assailed not unreasonably low or otherwise unlawful, complaint dismissed. Washington Coal Producers Asso. v. U. P. Ry., 129 I. C. C. 499.

§4a. Port Differentials.

See Port Differentials.

(a) Rates on cottonseed and vegetable cake and meal from points in Texas to Galveston, for export, differentially higher than rates on same commodities to Houston and other Gulf ports, found not unduly prejudicial to Galveston or unduly preferential of Houston and such other ports in their relation to distance scale of rates prescribed in Oklahoma case, 98 I. C. C. 183. Galveston Commercial Asso. v. A. & S., 109 I. C. C. 114.

(aa) Upon contention of carrier that rail rates on export and coastwise traffic are in essence proportional rates, constituting merely factor of aggregate through rates between interior points and foreign or coastwise destinations beyond, and that in determining matter of port equalization consideration should be given to both water and rail factors entering into these aggregates, FOUND: Similar contention advanced in 73 I. C. C. 384 was found without merit. Equalization of port rates on basis advocated would require consideration, in every instance of port relationship, of water rates not on file with commission and over which, except on coastwise traffic under certain circumstances, it has no jurisdiction. This does not mean, however, that because a port is not the origin or destination of traffic passing through it, such port is not entitled to consideration in countenancing greater disregard of distance in import, export, or coastwise rates than in corresponding domestic rates. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349, 379, 380.

(b) Complainant alleged that the rates, rules, regulations, and practices applicable to the transportation of cotton and cotton linters for export or coastwise movement from western Tennessee, western Kentucky, Mississippi, Arkansas, Missouri and Oklahoma via rail and barge routes to New Orleans, La., unduly prefer that port and subject Mobile, Ala., to undue prejudice and disadvantage. The points of origin are those from which the all rail export and coastwise rates on cotton and cotton linters are the same to both New Orleans and Mobile. Through routes and joint rail and barge rates, the same as those in effect from the same points to New Orleans by way of Memphis, Tenn., or Vicksburg, Miss., are asked on those commodities for export or coastwise movement from the points referred to by rail to upper Warrior river ports served by the barge line, and thence by water to Mobile. Rail and barge rates are now generally in effect from the origin territory west of the Mississippi river to New Orleans through Memphis. Complainants prayer would require an additional rail haul of 219 miles from Memphis to Cordova before the traffic would reach the barge line. The haul of the barge line from Cordova to Mobile is 439 miles as compared with the barge haul from Memphis to New Orleans of 746 miles. The all rail rate from Memphis is 76.5c to both ports, for distances of 394 miles to New Orleans and 385 miles to Mobile. The barge rate from

Memphis is 65c to both New Orleans and Mobile. At the time of the hearing a rail and barge rate of 65c also applied from Memphis to Mobile over the Frisco to Cordova and barge beyond. This rate has since been increased to 66c. At the time of the hearing no cotton had moved over the 65c rate to Mobile via either route. The barge line was not represented at the hearing, and no shippers appeared in support of the additional through routes and joint rates asked by complainant. There is nothing upon this record to indicate that there would be any movement under such rates from points west of the Mississippi river if they were established. HELD, assailed rates not unduly prejudicial. Mobile Chamber of Commerce v. A. & V. Ry., 129 I. C. C. 103.

IV. TARIFFS AND CONSTRUCTION.

See Tariffs.

§5. In General.

(a) Following 104 I. C. C. 48, domestic rate assessed on a shipment of coiled-steel wire rods moving on a domestic bill of lading from Acme, Ill., to San Francisco, intended for export and actually exported to China, found applicable. While a lower export rate was contemporaneously in effect, complainant failed to comply with all regulations and tariff requirements governing reservation of steamer space and prepayment or guaranteeing of transportation charges. American Trading Co. v. Director General, 115 I. C. C. 223.

(b) Complainant attacked export class A rate of $1.16 charged on rolling mill rolls on Jan. 24, 1925 from Joliet, Ill., to Laredo, Tex., for export to Mexico City, Mex., as inapplicable and unreasonable. Shipments moved C. & A., M. P., T. & P. and I. G. N. Contemporaneously there was published a commodity rate of 91c on machinery, carloads, as classified under designation of machinery and machines in western classification. Rolling mill rolls are specifically listed in the classification under the heading "rolls." HELD, rate attacked applicable, complaint dismissed. Brennan & Corrigan v. C. & A. R. R., 128 I. C. C. 643.

(c) Export class A rate was assessed on rolling-mill rolls. Upon contention that as rolling mills consist of housing, tables, and rolls, they are machines, and that rolling-mill rolls are machine parts and should take lower rate applicable on machine parts n. o. i. b. n., under the heading "Machinery and Machines," FOUND: Contention is untenable because rolling-mill rolls are specifically listed in the classification under the heading "Rolls." Rate assessed was therefore applicable. Brennan & Corrigan, Inc., v. C. & A., 128 I. C. C. 643.

(d) Where schedule of rates filed with Interstate Commerce Commission, applying from points within state to seaport, were general in terms, including all shipments between those points, and expressly excluding shipments made in intrastate commerce, shipments made from such ports for export, not being intrastate shipments, were subject to the general rates on file. Chandler v. Pennsylvania R. Co., 11 Fed. (2d) 39.

V. REASONABLENESS.

§6. In General.

See Advanced Rates §17 (c); Emergency Rates (b).

(a) Export shipments moved to a port, under necessary permits calling for reservation of vessel space, on domestic bills of lading which indicated final foreign destination and which were marked "for export." Charges were assessed at domestic rate, while tariff provided a lower export rate conditioned upon all charges being fully prepaid or guaranteed. It was not shown that ocean charges were fully prepaid or guaranteed, and for some reason complaint failed to exchange original domestic bills of lading for export bills as provided by tariff. FOUND: Since shipments did not comply with all tariff requirements, domestic rate assessed was applicable, and not unreasonable or otherwise unlawful. The rule relating to performance of transportation service under published tariffs was a part thereof and could not be waived. See Davis v. Henderson 266 U. S. 92, followed and applied in 95 I. C. C. 603. Dill-Crossett v. Director General, 104 I. C. C. 48.

(b) Charges assessed at Philadelphia for loading and unloading of export, import, and intercoastal traffic and rules, and regulations whereby such charges are absorbed by carriers when rail rate exceeds a fixed minimum, which arrangement is designed to place Philadelphia on a parity with Baltimore and on a substantial parity with New York, found not unreasonable or otherwise unlawful. Preponderance of traffic moves through port at fixed minimum rail rates or rates

in excess thereof, and traffic may move through various ports under substantially similar terms, with result that the port situation is in harmony in so far as handling charges are concerned. Philadelphia Commercial Traffic Managers v. B. & O., 104 I. C. C. 173.

(c) Rates on gasoline and kerosene, from Gates to Port Arthur, Tex., for export, found not unreasonable as compared with rates on other commodities for similar distances in same territory, or with lower rate subsequently established over route of movement in response to request made prior to shipments in issue. Texas Co. v. T. & P. 107 I. C. C. 147.

(d) Grain and products: Proposed cancellation of export rates on, from western Montana points to Seattle and other north Pacific coast ports, leaving in effect higher domestic rates, found not justified. The maintenance of export rates has been of great benefit to the Montana producer, and since export basis is open to millers in western Montana as well as on the Pacific coast, there can be no undue prejudice as between them if transit provisions of the tariff are properly applied. Export Rates on Wheat and Products, 107 I. C. C. 276.

(e) Domestic rates on grain and products from points in Montana to destinations in California, Oregon, Washington, Nebraska, Missouri, Iowa, Minnesota, Wisconsin, and Illinois, found not unreasonable or otherwise unlawful as compared with lower export rates from Montana to north Pacific coast ports for equal distances. Export Rates on Wheat and products, 107 I. C. C. 276.

(f) Contention that maintenance of export rates under which certain millers are afforded opportunity of utilizing grain originating at interior points for export, thereby releasing their local high-quality hard wheat for use in domestic markets, creates discrimination against millers who are unable to avail themselves of same privilege, not sustained. Contention is not based on any illegality connected with use of export rates, and while prejudice might be created as alleged, such prejudice can not be held in itself to be undue within meaning of the act. Export Rates on Wheat and Products 107 I. C. C. 276, 285.

(g) Equalization of prices of goods in foreign markets can not be accepted as a guide for determining whether certain interests in this country are given an unfair advantage by maintenance of export rates. Export Rates on Wheat and Products, 107 I. C. C. 276, 285, 286.

(h) Reasonable domestic rates do not necessarily afford exact measure for reasonable maximum export rates. See 13 I. C. C. 87, and 162 U. S. 197. Export Rates on Wheat and Products, 107 I. C. C. 276, 289.

(i) Upon contention that the commission may not require carriers to maintain rates on export traffic lower than reasonable domestic rates, HELD: Contention presupposes existence of that similarity of conditions affecting export and domestic traffic which carriers stated at orginal hearing did not exist. The burden of showing such similarity is upon carriers. They have not shown it, or even attempted to show it, and the testimony upon that subject is to the contrary. Export Rates on Wheat and Products, 107 I. C. C. 276, 289.

(j) Texas City, Tex.: Rate on crude petroleum from points in Arkansas to, for export, found not unreasonable as compared with lower rate to other Gulf ports, which lower rate was subsequently made applicable to Texas City. Movements to Texas City involved a longer haul and rate charged was not unreasonable when consideration is given to car mile revenues and fact that it was in substance an emergency rate established to enable an overproduction of crude oil to be used. Moreover, subsequent reduction does not establish that rate formerly in effect was unreasonable. Swiftsure Petroleum Co. v. M. P. 107 I. C. C. 637.

(k) Respondents proposed to increase the rates on export cotton to New Orleans, La., from $1.06 to $1.195 from stations Texico, N. M., to Corral, N. M. and from $1.065 to $1.195 from stations Hatch and Rincon, N. M., to Berino, N. M., inclusive. All of the origin points are local to the Santa Fe, first named group on respondents line south from Clovis to Pecos, Tex., and the others, except Hatch on its line south from Belen, N. M., to El Paso, Tex. Hatch is on the Silver City, N. M., branch of respondent, 5 miles west of Rincon. The first export joint rate from Roswell to New Orleans $1.325 became effective Oct. 18, 1920. Prior to that date the rate was the combination on Houston, which takes the same rate as Galveston, Tex. The rate of $1.325 was applicable

on both export and domestic shipments. On July 1, 1922 this rate was reduced 10% to $1.195. Effective May 1, 1923 a tariff note provided for the application to New Orleans, for export, of the rate contemporaneously applicable to Galveston for export, thereby making inapplicable the domestic rate of $1.195 to New Orleans and making applicable an export rate of $1.06. The proposal here is to eliminate that tariff note in its application to the origin stations here in issue, and to make the domestic rate of $1.195 apply also for export, ship side delivery. The situation from Rincon is substantially the same as that from Roswell. Respondent has its own line from Roswell and Rincon to Galveston, which is substantially shorter than the joint route in which it participates to New Orleans. So far as this record shows its rate to Galveston is not unreasonably high, and it must be presumed to be reasonable. No provision of the act requires respondent to participate in a joint rate to New Orleans on the same basis as its own local rate to Galveston. reasonable for the shorter haul. HELD, proposed schedules justified. Cotton from New Mexico, 112 I. C. C. 712.

(l) Proposal to increase to the domestic rate basis the rates on export cotton from certain New Mexico points on the A., T. & S. F. Ry., to New Orleans, La., found justified. The Santa Fe has its own line from these origin points to Galveston which is substantially shorter than a joint route in which it participates to New Orleans. Its rate to Galveston is not unreasonably high and must be presumed to be reasonable. Moreover, no provision of the act requires that carrier to participate in a joint rate to New Orleans on same basis as its own local rate to Galveston, reasonable for the short haul, nor can New Orleans be said to be unduly prejudiced by the Santa Fe voluntarily maintaining rates from New Mexico points on a basis the same as, or lower than, from Oklahoma, inasmuch as it maintains this equalization of origin points on shipments to New Orleans as well as to Galveston. Cotton from New Mexico, 112 I. C. C. 712.

(m) Complainant attacked commodity rate of 90c, minimum 80,000 pounds on carload of steel wire rods shipped June 24, 1918 from Acme, Ill., to San Francisco, Calif., for export as illegal and unreasonable. Shipment was forwarded on a domestic bill of lading consigned to order of Liberty Steel Products Co., San Francisco, notify American Trading Co., charged domestic rate of 90c. The shipment was intended for export to Shanghai, China as shown by the billing, and was in fact exported to that destination. At the time of shipment there was in effect a rate of 40c on steel wire rods when for export. It appears that complainant originally contracted for space on the Steamship Siberia Maru scheduled to sail July 15, 1918; that the permit issued in connection with this reservation called for a shipment of 50 tons of wire rods in coils to be shipped from New York between May 16 and 31, 1918; that a second reservation was apparently not made until after the car had reached Denver, Colo., or on or about July 9, 1918 which reservation was for steamship Shinyo Maru 2, scheduled to sail Aug. 14, 1918. The shipment arrived at San Francisco on or about July 22, 1918. The record is not clear whether or not the S. P. was justified in refusing to issue the export bill of lading. The other requirements seem not to have been fully complied with, applicable rate charged, not unreasonable or otherwise unlawful, complaint dismissed. American Trading Co. v. Director General, 115 I. C. C. 223.

(n) Complainant attacked combination rates charged on cattle and hogs, carloads, shipped between Nov. 29, 1920 and May 19, 1921 from National Stock Yards, East St. Louis, Ill., and from Louisville, Ky., to Key West, Fla., for export to Havana, Cuba, as unreasonable to extent that the factors to Jacksonville, Fla., exceeded the rates to Jacksonville, ship side, for export to Havana. Seven of the shipments were billed to Jacksonville under complainants instructions and subsequently rebilled to Key West over the F. E. C. The other shipments were billed through to Havana. All moved from points of origin over the L. & N. either through Nashville, Tenn., or Montgomery, Ala., and beyond those junctions they moved over different routes to Jacksonville, thence F. E. C. to Key West. The average distance from Louisville to Jacksonville over routes traversed was 862 miles. Distance from East St. Louis to Jacksonville is 992 miles. There were no joint rates in effect to Key West. Domestic rates were published to Jacksonville from East St. Louis and Louisville as

$213.50 and $169. From Jacksonville to Key West there was published a proportional rate of $84.50. During the entire period of this complaint the tariffs naming the factors up to Jacksonville made reference to the combination rule. HELD, rate attacked not unreasonable, complaint dismissed. Knight & Kennett v. L. & N. R. R., 115 I. C. C. 732.

(o) Proposed reduced proportional rates on grain and products from Kansas City, Mo., to Beaumont and Port Arthur, Tex., and New Orleans, La., and points taking New Orleans rates, for export, designed solely to augment traffic on line of Kansas City Southern Ry., found not justified. While proposed rates do not seem violative of either section 1 or 3 of the act, applying the usual standards, approval of the schedules will inevitably lead to a disruption of grain-rate structure, have marked effects upon distribution and marketing, the extent of which commission can not adequately foresee, and must of necessity impair the revenues of carriers and their ability to render satisfactory service. See also 69 I. C. C. 589, 611. Grain and Products, 115 I. C. C. 153.

(p) Combination rate based on Los Angeles, Calif., charged on petroleum refined oil from O'Donnell Spur, Calif., to Willmington, Calif., for export, found not unreasonable as compared with rates contemporaneously in effect on same commodity from and to various points in same general territory. Complainant contended that as each factor of a combination rate is designed to cover a local movement and two terminal services, and as there were but two terminal services on its shipments, through rate should be less than combination rate assessed. Carrier, however, showed that each factor of the combination charged was depressed by actual or potential truck, pipe-line, and rail competition, which made it impracticable to establish a through rate lower than the sum of locals. Thomas Traffic Co. v. L. A. & S. L., 120 I. C. C. 671.

(pa) Export rates yielding ton-mile earnings as low as 6.12 and 7.4 mills for hauls of 1,591 and 1,793 miles respectively, can not be accepted as proper measure of reasonable domestic rates. Chestnut & Smith Corp. v. A. & R. R. R., 123 I. C. C. 707, 713.

(q) Complainant attacked all rail, lake rail and rail lake and rail class and commodity rates on export and import traffic between Boston, Mass., and differential territory as unreasonable, unduly prejudicial to Boston and unduly preferential of Baltimore and Philadelphia. Previous decision in 95 I. C. C. 539. The establishment of joint rates from western territory to the Atlantic ports, suggested in the former report, may be regarded as eliminated from the case. Complainants agree with all other parties that the present method of constructing grain rates from western points of origin to the Atlantic ports is the best that has been devised better for the producers, the markets and the railroads than any method that has preceded. A different conclusion can not be reached on this record. Viewed either from the standpoint of history or that of the inherent nature of the traffic moving thereon, the ex-lake grain rates can not be considered an integral part of the system of port differentials as a whole or of the McGraham percentage adjustment. This conclusion is confirmed by the fact that port differentials do not exist in the case of the export class rates and many of the export commodity rates from Buffalo. If the Commission were to prescribe maximum or minimum reasonable export rates on ex-lake grain from Buffalo, it would in either case prescribe identical rates to New York, Philadelphia and Baltimore, confining such rates to the service ending with the spotting of the car at the water front elevator and requiring any further terminal service to be covered by a special charge or charges. It would further find that the same rate might lawfully be established and maintained to Boston. The record amply justifies such conclusion. But it has not been shown that the present rates are higher than maximum reasonable rates or lower than minimum reasonable rates, nor does the record enable it to determine what the maximum and minimum limits of reasonableness would be. The conclusion is inevitable that the present rates are not unlawful. HELD, rates attacked not unjust, unreasonable or unduly preferential or prejudicial, complaint dismissed. Maritime Asso. Boston Chamber of Commerce v. A. A. R. R., 126 I. C. C. 199.

(r) Complainant alleged that the rates charged on steel rails, angle bars, and similar articles, in carloads, shipped between June 15 and July 15, 1923 from O. N. Jct., near Palatka, Fla., to Jacksonville and Key West, Fla., for export

to Cuba, were unjust and unreasonable, discriminatory and prejudicial to the extent that they exceeded the rate from Palatka to Jacksonville and Key West to Cuba. O. N. Jct., is a point on the A. C. L., 1.6 miles west of Palatka and about 62 miles from Jacksonville. Francis, Fla., is the next station beyond O. N. Jct., and is about 5.3 miles from Palatka. Under an intermediate clause in the tariff O. N. Jct., takes the Francis rate. Applicable class M rate of $2.14 was charged on the shipment to Jacksonville and a combination rate of $5.40 to Key West, made up of class M rate of $1.80 to Palatka plus $3.60 beyond. From the record it appears that O. N. Jct. was beyond the limits of Palatka and that accordingly the applicable rates were charged. HELD, rates attacked unreasonable to extent the rate from O. N. Jct., exceeded $1.80 to Jacksonville and $3.93 per ton to Key West, reparation awarded. Hyman Michaels Co. v. A. C. L. R. R., 126 I. C. C. 547.

(s) Complainant attacked commodity rates charged on petroleum and its products, in carloads, from Hearne, Tex., to Baytown, Tex., for export, and for coast wise movement to destinations in the United States have been since Nov. 15, 1923 and are unreasonable, unjustly discriminatory and unduly prejudicial. Hearne is on the extreme southern rim of the north central Texas group. Baytown is on the Houston Ship Channel 17 miles by the channel route and 60 miles by rail south of Houston. Prior to the completion of the refinery at Hearne, complainant sought the establishment of a rate of 20.5c on refined petroleum from that point to Baytown, for export and coast wise movement. The rate sought was established, with which complainant expressed no dissatisfaction during the entire period the refinery was in operation. Defendants do not participate in the 15c rate from Shreveport to Louisiana ports, and Baytown they only form part of the route. The average distance from all points in the north central Texas group to Texas ports is 357 miles, and to Louisiana and Texas ports, 410 miles, as compared with 171 miles and 237 miles, respectively from Hearne. In establishing petroleum rates, both northbound to domestic territory and southbound to the ports, the grouping of origin and destination territories has been practiced for a number of years. Such groupings have been influenced almost entirely by the keen competition existing between refiners and producers, and the existence of pipe line and carrier competition. It follows, therefore, that distance as a factor in making petroleum rates has been largely disregarded, but if for comparative purposes ton mile earnings are considered material the average distance from the group is the only fair measure upon which such earnings should be computed. The north central Texas group of origins on export and coastwise petroleum traffic in which origin group Hearne is located, is no departure from the customary practice of grouping origins in connection with petroleum rates. Apparently complainant is willing to enjoy the advantages of group rates from the farther distant points, while requesting that from the less distant points distance be considered as the controlling factor in establishing rates. Conditions and circumstances peculiar to the transportation of petroleum oil and its products are so unique as to force the carriers to abandon most of the customarily employed elements or factors in establishing rates. Pipe line competition among refiners and producers and water competition are the elements chiefly responsible not only for subnormal or depressed rates, but have combined to force the forming of large groups of origins and destinations. HELD, rates attacked not unreasonable or unduly prejudicial, complaint dismissed. Humble Oil & Refining Co. v. B. S. L. & W. Ry., 126 I. C. C. 717.

(t) Upon further hearing in 95 I. C. C. 539, all-rail rates on grain and products from Illinois, Wisconsin, Minnesota, the Dakotas, Montana, Iowa, Nebraska, Kansas, Arkansas, and Oklahoma, to Boston and New York, for export, found not unreasonable or otherwise unlawful as compared with lower contemporaneous rates to Philadelphia and Baltimore. Complainants agree with all other parties that present method of constructing rates from western points to Atlantic ports is best that has been devised. Moreover, as larger portion of export grain now moves through Philadelphia and Baltimore, to require carriers to establish equal reshipping rates from primary markets on grain originating in Northwestern States, in accordance with recommendation in former report, would undoubtedly complicate the grain-rate

structure, and might create some difficulties in handling grain at primary markets. Maritime Asso., Boston Chamber of Commerce v. A. A. R. R., 126 I. C. C. 199.

(u) Upon further hearing in 95 I. C. C. 539, carriers attempt to justify ex-lake differentials on grain and products from Buffalo to New York and Boston for export, over those to Baltimore and Philadelphia, contending that most ex-lake grain comes from c. f. a. territory, that there are all-rail routes through Buffalo reflecting the full differential, and that mere substitution of lake for rail movement should not deprive Baltimore and Philadelphia of their differentials. HELD: Record indicates that most ex-lake grain is not domestic but Canadian, and the differential adjustment of ex-lake grain rates to north Atlantic ports is an exception to general rule with respect to export rates from Buffalo, since both export class and commodity traffic moves therefrom to Boston, New York, Philadelphia, and Baltimore on identical rates. Maritime Asso., Boston Chamber of Commerce v. A. A. R. R., 126 I. C. C. 199, 208, 211.

(v) It is desirable to confine line-haul rates to the ports strictly to service ending with spotting of cars and requiring all further terminal service to be covered by a special charge or charges. Such a plan would preserve to each port such advantages as inhere in facilities for convenient and economical loading of vessels and would also facilitate such comparison of special terminal services and charges therefor as may be deemed advisable in future. Maritime Asso., Boston Chamber of Commerce v. A. A. R. R., 126 I. C. C. 199, 213.

(w) Upon further hearing in 95 I. C. C. 539, FOUND: That record does not permit precription of maximum or minimum reasonable rates on ex-lake grain from Buffalo to New York, Philadelphia, Baltimore and Boston, for export since present rates have not been shown to be unreasonable or otherwise unlawful, but if such rates were to be prescribed, evidence warrants conclusion that line-haul rates to water-front elevators at New York, Philadelphia, and Baltimore should be identical, and that maintenance of same rates to water-front elevators at Boston would not be unlawful. Maritime Asso., Boston Chamber of Commerce v. A. A. R. R., 126 I. C. C. 199, 211, 216.

(x) Rates charged on steel rails, angle bars, and similar articles from O. N. Junction, Fla., a point situated beyond the switching limits of Palatka, Fla., to Jacksonville and Key West, Fla., for export to Cuba, found unreasonable to extent they exceeded rates maintained for comparable distances between other points in Florida. Reparation awarded. Hyman-Michaels Co. v. A. C. L. R. R., 126 I. C. C. 547.

(y) Rates on refined petroleum from Hearne, located on extreme southern rim of north-central Texas group, to Baytown, Tex., for export and for coastwise movement to points in the United States, found not unreasonable or unduly prejudicial as compared with rates from Shreveport, La. Carriers participating in rates from Shreveport do not participate in rates from Hearne, therefore the record does not sustain a finding of undue prejudice. Moreover, construction of the refinery at Hearne was a mistake of judgment resulting in financial loss for which complainant seeks reimbursement at carriers' expense. It can not be successfully argued that complainant did not know the group adjustment in the territory in which it operated, and the fact that it requested establishment of a rate from Hearne the same as applied from north-central Texas group, is prima facie evidence that it considered that point as being located in that group. Humble Oil & Rfg. Co. v. B., S. L. & W. Ry., 126 I. C. C. 717.

(z) Rate on gasoline from Potwin, Kans., to Westwego and St. Rose, La., for export, found not unreasonable as compared with lower rate contemporaneously in effect to same points from Arkansas City, and other Kansas producing points, and subsequently established from Potwin. Reduction of a rate does not prove that rate formerly charged was unreasonable. See 107 I. C. C. 147. Vickers Petroleum Co. v. M. P., 128 I. C. C. 205.

(aa) Complainant attacked commodity rate charged on 49 cars of gasoline shipped between Feb. 28 and March 18, 1924 from Potwin, Kan., to Westwego and St. Rose, La., for export, as unreasonable. Potwin is local to the M. P. Shipments moved over M. P. to destinations, Westwego, 957 miles, and to St. Rose over that line to Memphis, Tenn.,

thence Y. M. V. 1,036 miles. Charged 24.5c. A rate of 22c was in effect to the same points over the Frisco from Arkansas City, Kas., to Westwego, 985 miles, and to St. Rose, 1,007 miles. The rate of 22c was subsequently established from Potwin. HELD, rate attacked not unreasonable, complaint dismissed. Vickers Petroleum Co. v. M. P. R. R., 128 I. C. C. 205.

(bb) Upon contention of carrier that rail rates on export and coastwise traffic are in essence proportional rates, constituting merely factors of aggregate through rates between interior points and foreign or coastwise destinations beyond, and that in determining matter of port equalization consideration should be given to both water and rail factors entering into these aggregates, FOUND: Similar contention advanced in 73 I. C. C. 384 was found without merit. Equalization of port rates on basis advocated would require consideration, in every instance of port relationship, of water rates not on file with commission and over which, except on coastwise traffic under certain circumstances, it has no jurisdiction. This does not mean, however, that because a port is not the origin or destination of traffic passing through it, such port is not entitled to consideration in countenancing greater disregard of distance in import, export, or coastwise rates than in corresponding domestic rates. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349, 379, 380.

(cc) Rates on petroleum and products in export and coastwise movement from refining points in north-central Texas to New Orleans and Galveston and points taking same rates found not unreasonable as compared with those from extensive groups in various portions of Southwest for domestic and foreign consumption, nor unduly prejudicial as compared with those from Shreveport-El Dorado groups in northern Louisiana and southern Arkansas. Earnings under rates assailed are considerably below those under rates for similar distances from mid-continent groups to western trunkline and Illinois destinations found reasonable in 112 I. C. C. 421, and a reduction in rates from any one important group under present extensively grouped and highly competitive adjustment should be made cautiously and only for strongest reasons. Galveston Commercial Asso. v. G. H. & S. A., 128 I. C. C. 349, 393, 396.

(dd) Complainant alleged commodity rates on lumber, logs, crossties, piling and staves, carloads, from stations on the Muscle Shoals Ry. to Mobile, Ala., for export and coastwise movement, were and are unreasonable and unduly prejudicial. Muscle Shoals Ry. extends from Kimbrough, Ala., to Pensacola, Fla., 143 miles, connecting with the Southern at Kimbrough and L. & N. at Atmore, Ala., and Pensacola. Traffic from stations on the Muscle Shoals to Mobile is a joint line movement via Atmore, thence L. & N., distances from points of origin to Atmore range from 3 to 89 miles. Distance Atmore to Mobile 45 miles. Distances to Pensacola are in each instance 9 miles greater than to Mobile. There are no joint export or coastwise rates in effect on forest products from the points of origin to Mobile, being combinations on Atmore. The intrastate rates on these commodities are joint rates and are lower than the rates applicable on traffic for export or coastwise movement. Effective Jan. 5, 1925 Muscle Shoals published proportional rates on logs of 6c from Kimbrough, Stokes and Pekin, Ala., and 5.5c from all other stations on its lines to Atmore, Ala., applicable on shipments destined to Mobile, for export. These proportional rates, added to the L. & N. local rate of 4.5c from Atmore to Mobile, produced through combination rates of 10 and 10.5c. HELD, rates assailed unreasonable to extent they exceeded domestic rates on lumber, crossties and staves, and on logs unreasonable to extent they exceeded rates established Jan. 5, 1925, reparation awarded. Mobile Chamber of Commerce v. M. S. B. & P. Ry., 129 I. C. C. 419.

(ee) Complainant alleged commodity rate of 37.5c minimum 80,000 pounds charged on numerous carloads of colemanite from Lovell, Nev., San Pedro and Wilmington, Calif., for export, were and are unreasonable. Shipments moved L. A. & S. L., 371 and 370 miles. Colemanite is the raw material from which borax is made and has a market value of $25 a ton at Lovell. It is packed in sacks and does not contaminate the cars used, of which over 80% are refrigerator. These cars are furnished at defendants convenience and would generally move empty to the west coast if not loaded by complainant. Little risk of damage or loss is incurred. The shipments were exported to Europe and there sold in competition with colemanite from South Amer-

ica. HELD, rate assailed was, is, and will be unreasonable to extent it exceeded 25c, reparation awarded. West End Chemical Co. v. L. A. & S. L. R. R., 132 I. C. C. 686.

(ff) Complainant alleged export rates charged on 10 cars of mine props shipped from Caro, Milepost 134, Lacy and Mayotown, Tex., to Beaumont, Tex., for export between March 28 and April 11, 1924 were unreasonable and unduly prejudicial. Shipments were charged export lumber rates of 13.5c from Caro and Lacy and 12c from Milepost 134 and Mayotown. Intrastate rates were 8.5c from Caro and Mayotown and 8c from Milepost 134 and Lacy. Mine props are short lengths of pine wood with bark removed and cut to proper lengths. Their value is somewhat less than that of lumber. HELD, rates assailed unreasonable to extent they exceeded 12c from Caro, and 11c from Lacy and Milepost 134, reparation awarded; 12c from Mayotown not unreasonable. Tilford Hunt Lumber Co. v. H. E. & W. T. Ry., 132 I. C. C. 751.

(gg) Rates on cotton and linters for export or coastwise movement from points west of Mississippi River to Mobile, Ala., by rail to Alabama ports on Warrior River and barge beyond, found not unduly prejudicial as compared with rail-and-barge rates contemporaneously in effect from same points to New Orleans via Memphis, Tenn., or Vicksburg, Miss. Evidence submitted fails to show similar transportation costs over route sought via Cordova, Ala., or that traffic would move over that route if established. However, certain carriers have agreed and will be expected to publish rail-and-barge rates from western Tennessee, western Kentucky, and Mississippi through Cordova, or some other Warrior River port to Mobile, based on principles laid down in 77 I. C. C. 317; 100 I. C. C. 491. Mobile Chamber of Commerce v. A. & V., 129 I. C. C. 103.

(hh) Proposed increased proportional rates on grain and products inbound to Kansas City, Mo.-Kans., and Wichita, Kans., destined to Gulf ports for export, applicable only when movement beyond Kansas City or Wichita is over certain routes, found not justified. Previously rates over all lines consisted of locals to Kansas City plus standard proportionals beyond, but to meet lower through one-factor rates established by respondents, other lines published varying proportional rates beyond Kansas City. Contention that respondents are entitled to long haul on traffic which they originate, and that through routes do not exist over their lines in connectitn with varying proportional rates, not sustained, since implied arrangements are sufficient to constitute all these routes through routes. Moreover, mere desire to retain long haul is not sufficient to justify rates proposed. Grain and Products, 129 I. C. C. 261.

(ii) Export and coastwise rates on lumber, crossties, and staves, from points on Muscle Shoals, Birmingham & Pensacola Ry. to Mobile, Ala.; found unreasonable to extent they exceeded or may exceed domestic rates on same commodities to and from same points and prejudicial to extent they exceeded the contemporaneous export or coastwise rates on same commodities to Pensacola; coastwise rates on logs and export rates on logs, prior to January 5, 1925, found unreasonable to extent they exceeded export rates on logs established January 5, 1925; and prejudicial to extent they exceeded the contemporaneous export or coastwise rates on logs to Pensacola. Reasonable and nonprejudicial basis prescribed for future. Mobile Chamber of Commerce v. M. S., B. & P., 129 I. C. C. 419.

(jj) Upon contention that transshipment rates can not be justified as export rates, nor as proportional rates, since rates by water from the ports are not filed with the commission. FOUND: Under provisions of paragraph 13 (c) of section 6 of the act, commission is authorized to prescribe proportional rates to ports applicable to traffic moving beyond by water, and such rates may differ from corresponding local rates. They are not restricted to cases where rates beyond by water are filed with commission. Washington Coal Producers Asso. v. U. P., 129 I. C. C. 499, 500.

VI. STORAGE, DEMURRAGE, AND SPECIAL CHARGES.

§7. In General.

See Demurrage; Special Rates and Services; Storage.

(a) Charges assessed at Philadelphia for loading and unloading of export, import and intercoastal traffic, and rules

and regulations whereby such charges, are absorbed by carriers when rail rate exceeds a fixed minimum, which arrangement is designed to place Philadelphia on a parity with Baltimore and on a substantial parity with New York, found not unreasonable or otherwise unlawful. Preponderance of traffic moves through port at fixed minimum rail rates or rates in excess thereof, and traffic may move through various ports under substantially similar terms, with result that the port situation is in harmony in so far as handling charges are concerned. Philadelphia Commercial Traffic Managers v. B. & O., 104 I. C. C. 173.

(b) Refusal of carriers to permit blending in transit of petroleum products at interior Texas refining points while permitting such blending in transit at Texas and Louisiana port refineries under appropriate tariff rule, found not unduly prejudicial. Although the rule is designated at blending-in-transit provision nd is applicable to shipments in transit to an export or coastwise destination, shipment upon which it applies has in fact reached its destination, so far as rail carrier is concerned, upon delivery to coastal refiners. While blending rule is necessary in order to insure protection of export or coastwise rate, which protection appears proper because service performed in delivering to storage tank at ports is no greater than when delivered direct to vessels, such a transit arrangement at interior points would involve two separate and distinct movements, there is no necessity therefor such as exists at the ports, and it would in effect require carriers to perform inbound haul without charge. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349, 396, 398.

(c) Demurrage rules and charges applicable to shipments of cotton to Galveston, Tex., assessed under uniform demurrage code, found not unreasonable or otherwise unlawful as compared with lower charges on certain cotton traffic to New Orleans, nor with lower charges on shipments to Galveston moving on local bills of lading marked for export or coastwise movement under special demurrage rules. None of carriers participating in New Orleans tariff are defendants herein, and since complainants are unable to comply with provisions of special demurrage tariff, rules complained of can not be condemned because different rules are in force on traffic definitely destined for further water movement at time of arrival. Merchants & Planters Co. v. G., H. & H., 129 I. C. C. 477.

(d) Demurrage charges were assessed under demurrage code on cotton moving on domestic bills of lading. Contemporanously more free time and a lower demurrage charge applied to shipments on local bills of lading marked for export or coastwise movement, or provided consignee within 48 hours after arrival gave notice that traffic was intended for export or coastwise movement. Contention made that lower demurrage rates should have applied since water shipments were made known to carriers through their inspection bureau which secured this information from steamship offices for another purpose, but this fact found not sufficient to constitute a compliance with rules governing export or coastwise movement. Rates charged were therefore applicable. Merchants & Planters Co. v. G., H. & H., 129 I. C. C. 477, 478, 479.

(e) Differences between demurrage rules on domestic and export traffic have long been recognized as proper. Merchants & Planters Co. v. G., H. & H., 129 I. C. C. 477.

EXPRESS COMPANIES

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I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) The Commission recognizes the binding force of contracts reserving to rail carriers the right to carry on their business over their own rails and pointed out that to extend to the express companies rights with regard to traffic which were not contemplated by their contracts is not within power of the Commission. Hanford Produce Co. v. Amer. Ry. Ex. Co., 113 I. C. C. 523, 526.

(b) Upon contention of rail carrier that express shipments of fruit and vegetables from Pacific Northwest move from Jersey City to New York City piers by freight and that inasmuch as it does not hold itself out as an express carrier the commission is without authority to require it, over protest, to participate with the Express Company in a joint rate on express shipments, FOUND: This does not follow, particularly in a situation of this character. Section 3 (15) of the act empowers the commission, when it shall be deemed necessary or desirable in the public interest, to require establishment of through routes and point rates; and joint service and rates by an express company and a common carrier by railroad are not excepted. Amer. Fruit & Veg. Shippers Asso. v. Amer. Ry. Exp. Co., 128 I. C. C. 651, 659.

(c) Contention of carrier that commission can not require it to establish an express terminal at Piers 20 and 21, New York, which have been regarded as its freight terminal, not sustained. Evidence does not show that handling of express shipments through auction conducted on the piers differs in any respect from handling of freight shipments. Amer. Fruit & Veg. Shippers Asso. v. Amer. Ry. Exp. Co., 128 I. C. C. 651, 660.

II. FACILITIES.

See Facilities and Privileges.

§1¾. In General.

(a) The commission has heretofore considered the effect of various contractual provisions and has found that it is without authority to extend to defendant any rights with regard to traffic which were not contemplated by the contracts as executed. It is true that the railroads are primarily responsible for the proper transportation of all commodities offered to them and for the furnishing of adequate services. If the requirements of the traffic demand more expeditious service, it is the duty of the railroad either to furnish such reasonable service itself or to delegate that duty to an express company. Allen Co. v. B. C. & A. Ry., 122 I. C. C. 351, 356.

(b) Contention of carrier that commission can not require it to establish an express terminal at Piers 20 and 21, New York, which have been regarded as its freight terminal, not sustained. Evidence does not show that handling of express shipments through auction conducted on the piers differs in any respect from handling of freight shipments. American Fruit & Vegetable Shippers Assn. v. American Ry. Express Co., 128 I. C. C. 651, 660.

§6b. Baggage Car Service.

See Baggage Car Service.

(a) Complainants alleged that interstate rates exacted by defendants on milk and cream by express and by railroad in baggage cars in passenger train service are unreasonable, unduly prejudicial and unjustly discriminatory in violation of sections 1, 3 and 13 of the act. Territory involved North Pacific coast and intermountain territory. With a few exceptions the rates in question, in both the express and the railroad service, are based upon distance scales, the disparities in and between which, more particularly between the rates applicable to the short haul and to the long haul traffic, are the primary occasion for the complaint. No exclusive milk or cream trains are operated in the inter-mountain and Pacific coast regions, and but few cars are used exclusively for transporting cream. For the most part the commodity is transported in express or baggage cars with other traffic usually carried therein. At some of the larger points the carriers maintain special milk docks and provide special employees to handle milk and cream. Cream is a highly perishable commodity, moves daily in about the same volume, requires prompt handling at terminals, and is transported in passenger trains. It is produced in rural communities and shipped mostly from the smaller stations, and for its receipt and delivery the trains which carry it must make frequent stops. The Commission can concede no force to complainants contention that, inasmuch as cream is handled on through and local trains which carry express and baggage cars and are manned by crews which would be necessary in any event, the cream traffic should be considered as so much "surplus transportation" and therefore, as the Commission understands it, be accorded lower rates than would otherwise be prescribed. The traffic is within the contemplation of the Hoch Smith resolution, but the Commission can make no finding condemnatory of the rates assailed without the aid of competent evidence. Complainants case is virtually rested upon the diversity of the scales and the general testimony concerning competitive buying, leaving to mere inference any resulting undue prejudice to or unjust discrimination against its interstate commerce. Conspicuously is there lacking the basis for a corrective finding concerning the various interstate-intrastate relationships. There also is not found in the record such evidence of similarity of operating and traffic conditions in connection with shipments of cream as would afford a secure foundation for an order requiring an establishment of uniform interstate scale throughout the territory in question, particularly a scale to the level of which the alleged preferential intrastate rates should be brought. HELD, rates assailed not unreasonable or shown to be otherwise in violation of the act, complaints dismissed. Mutual Creamery Co. v. American Railway Express Co., 132 I. C. C. 208.

§7½a. Refrigeration.

See Refrigeration.

(a) Complainant attacked freight charges assessed by the defendants for the hauling of ice in bunkers from the ice plant to the loading point of perishable commodities and that the charges for refrigeration or icing protection collected by the American Railway Express Company, defendant, on perishable produce,

in carloads, shipped in refrigerator cars by express from points in Delaware, Maryland, and Virginia to destinations in United States east of the Mississippi and north of the Ohio and Potomac Rivers and in Canada are collected without tariff authority, and therefore are inapplicable and also unjust, unreasonable and unduly prejudicial. Generally speaking, ice is not available at points in the peninsula from which perishable produce is shipped, so that it is necessary to procure ice elsewhere and transport it to the loading point of the produce. Sometimes this is done by the shippers themselves or by truckmen in their employ, but more frequently the ice is frequently furnished and placed in the bunkers of refrigerator cars by large icing plants at such points as Salisbury, Md., and moved as freight by the rail carriers to the point of loading of the perishable produce. The instant case deals with shipments initially iced in this manner. In these instances the express shippers, such as the complainants in this case, are accustomed to furnish a written order for an iced refrigerator car to defendants agent at the point of loading of the perishable produce. The agent communicates this order to a route agent of defendant, who arranges with the rail carrier to furnish the car and with an ice company to furnish the initial icing. The ice company places the ice in the bunkers and ships it as freight to the point where the car is desired. Bills of lading covering this bunker ice are signed by the ice company and name as consignee the person ordering the car. The consignee pays the freight charges direct to the rail carrier, takes possession of the car, and loads it for forwarding by express. The ice company renders consignee a bill for the initial icing, which he pays directly to it. When the loaded car goes forward defendant arranges for the necessary reicing en route, pays the charges of the ice companies for the ice furnished for reicing and includes such amounts as advances in the charges which it collects at destination. It has already been noted that complainants settle directly with the ice company for the cost of the initial icing and with the rail carrier for transporting the ice in the bunkers from the ice plant to the points of loading of the perishable commodity, and that the charges for reicing which were collected by defendants upon these shipments are merely to cover reimbursement to defendant for advances to ice companies for ice furnished by them for shippers account. The regulation of the charges made by these private concerns for ice either initially or subsequently furnished is not within the jurisdiction of the commission. HELD, freight charges assailed for transportation of bunker ice not unlawful. Present rules 21 b and 22 b of Express Company governing diversion and reconsignment, respectively, of carload shipments from the Delaware-Maryland-Virginia peninsula to the destinations covered by this report are unreasonable in so far as they provide that orders for such diversion or reconsignment when given by shippers must be filed with the agent of the Express company at point of origin. Provisions of rule 16 j and l not unreasonable or otherwise unlawful. Allen & Co. v. B. C. & A. Ry., 122 I. C. C. 351.

(aa) Freight charges assessed by rail carriers for hauling ice in bunkers of express refrigerator cars from an ice plant to point of loading perishable produce for express shipment, found properly collected and not unlawful. Complainant contended that since it did not make out or authorize bills of lading, charges were illegally assessed; that carriers' tariff does not provide similar charge for ice in bunkers antecedent to movement of perishable produce by freight; and that charges were therefore unduly prejudicial to express shippers. However, carriers' failure to publish special rates for ice in bunkers can not impair the validity of customary rates which are published to apply on ice moving in any equipment. Moreover, fact that rules governing express refrigeration are not so favorable as freight-service rules does not constitute undue prejudice in view of difference in service afforded. Allen & Co. v. B., C. & A., 122 I. C. C. 351.

(b) Complainant contended that charges of American Ry. Express Co., for initial icing and for re-icing perishable produce for shipment by express are unreasonable and unduly prejudicial as compared with lower charges for ice provided in freight tariffs for icing and re-icing similar shipments. HELD: Charges for furnishing ice in connection with refrigeration or icing protection of shipments here in issue accrue for benefit of private ice companies over which the commission has no jurisdiction. Allen & Co. v. B., C. & A., 122 I. C. C. 351, 354.

(c) Express company's classification rule provides that when its refrigerator cars are not available, shipments will be accepted only when cars are furnished by shippers or railroad company and that such cars will be handled in trains designated by rail carriers. Upon contention that this provision restricts the number of express refrigerator cars available for shipments from territory in issue, HELD: Commission is without authority to extend to express company any rights not contemplated by its contracts with rail carriers. See 74 I. C. C. 427. While railroads are primarily responsible for transportation of all commodities offered to them, for the furnishing of adequate service, and if requirements demand more expeditious service, to furnish such reasonable service or delegate that duty to an express company, see 83 I. C. C. 160, 163, here the traffic by election of shippers was offered to express company and not to the railroads. Allen & Co. v. B., C. & A., 122 I. C. C. 351, 356, 357.

(d) Complainant contended that express company failed or refused to furnish information to shippers relative to icing and re-icing charges on express shipments, and showed in certain cases that expense bills rendered at destination were not properly itemized. HELD: While consignee is entitled to this information as a matter of right, there is no provision of law which obligates the express company to furnish it to a party other than the one paying express charges. Allen & Co. v. B., C. & A., 122 I. C. C. 351, 358.

IV. RATES.

§10. Reasonableness in General.

See Reasonableness of Rates.

(a) Proposal of American Ry. Express Co. to cancel express commodity rates, now named by block numbers, on fruits and vegetables between Mountain-Pacific and eastern and c. f. a. territories, and to establish specific rates from points from which past shipments have been made, found not justified. Proposed change is designed solely in interest of economy in publishing and distributing tariffs by eliminating necessity of filing copies at stations from which there is no likelihood of movement. However, tariffs now in effect are small as compared with those which would supersede them, and should many supplements become necessary, the aggregate printing would soon exceed present tariffs and entail even greater printing and distribution costs than present arrangement. Moreover, change would materially restrict application of rates, especially as to destinations. Express Rates on Fruits and Vegetables, 104 I. C. C. 739.

(b) Express rates, rules, and practices carried in express money classification and applicable to transportation of gold and silver coin, and bullion, paper currency, and securities, from, to, and between interstate points, found not unreasonable, discriminatory, or unduly prejudicial as compared with those carried in express freight classification and applicable to other valuable articles. The methods of handling money and merchandise are so dissimilar, due to necessary protection against loss or theft accorded former, that it is difficult to conceive that transportation charges thereon should be same on packages of equal weight. N. Y. Federal Reserve Bank v. Am. Ry. Exp. Co., 107 I. C. C. 4.

(c) Contention that rule of express classification under which gold and silver coin and bullion, paper currency, and securities are denied transportation at rates named therein unless value is declared by shipper and marked upon package, violates section 20 (11) of the act, such rates being released-value rates not authorized by commission, not sustained. Rule merely requires that shipper indicate actual value, which indication determines applicable rate. There is no provision for declared or agreed value limiting liability, nor does shipper have privilege of declaring a lesser value in consideration of a lower rate. Moreover, released rates and actual-value rates may be fairly and effectively differentiated and actual-value rates are not within prohibition of section 20 (11). See 100 I. C. C. 471. N. Y. Federal Reserve Bank v. Am. Ry. Exp. Co., 107 I. C. C. 4, 6.

(d) Express rates, rules, and practices, carried in express money classification and applicable to transportation of gold and silver coin and bullion, paper currency, and securities, found not unreasonable, discriminatory, or unduly prejudicial as compared with those applicable to transportation of same commodities by registered United States mail. Registered-mail charges do not afford a fair comparison with express rates because the Post Office Department is not required to produce return on

capital invested, but has been, and is, operated at a deficit. N. Y. Federal Reserve Bank v. Am. Ry. Exp. Co., 107 I. C. C. 4, 13.

(e) Express companies do not regard money, bullion, and securities as desirable traffic, and prefer that these articles be handled by other agencies. N. Y. Federal Reserve Bank v. Am. Ry. Exp. Co., 107 I. C. C. 4, 17.

(f) Upon complaint seeking establishment of released express rates on gold and silver coin and bullion, paper currency, and securities from, to, and between interstate points. FOUND: If such rates were established, it would still be necessary to provide same protective service against loss and theft at present accorded this traffic because some shipments would be made on basis of full valuation. Moreover, taking into account shipments that would be made at released rates, revenue would be far less than cost of maintaining service, and the handling of money in this manner would tend to lessen care now given by employees to prevent loss of packages through negligence or robbery. N. Y. Federal Reserve Bank v. Am. Ry. Exp. Co., 107 I. C. C. 4, 17.

(g) Colorado Points: Express rates on fresh fruits and vegetables from Farmington district in New Mexico to destinations in Colorado found not unreasonable as compared with express commodity rates on like traffic for corresponding distances between various interstate points in same general territory and with intrastate rates from points in Western Slope district of Colorado to same destinations. Hunter Bros. Mercantile Co. v. Am. Ry. Ex. Co., 107 I. C. C. 313.

(h) Express distance rates on l. c. l. shipments of cream in 10-gallon cans from Essex, N. Y., to Fair Haven, Vt., and Springfield, Mass., found not unreasonable in past but unreasonable for future. Reasonable rates prescribed and reparation denied. State of New York v. Am. Ry. Exp. Co., 109 I. C. C. 20.

(i) Request that baggage-car service and rates be prescribed on l. c. l. shipments of cream from Essex, N. Y., to Fair Haven, Vt., and Springfield, Mass., denied. The express service is adequate and carriers should not be required to furnish baggage-car service, which would impose an additional expense upon them and more or less interfere with other baggage-car service. State of New York v. Am. Ry. Exp. Co., 109 I. C. C. 20, 24.

(j) Present interstate commodity express rates on dressed poultry and dead rabbits, in straight and mixed carloads, and/or dressed poultry and/or dead rabbits in mixed carloads with butter, and/or eggs found unreasonable for future to extent that they may respectively exceed rates in effect on October 12, 1920. Nat'l. Poultry, Butter & Egg Asso. v. Am. Ry. Exp. Co., 109 I. C. C. 565.

(k) Second class express rate on milk and cream, l. c. l. from Fredericksburg, Va., to Rocky Mount, N. C., found unreasonable as compared with rates for greater distances contemporaneously in effect in c. f. a., and in same general territory, and to extent it exceeded lower rate subsequently established. Reparation awarded. Sirles v. Am. Ry. Exp. Co., 113 I. C. C. 736.

(l) Complainant attacked express rates charged on less carloads of milk and cream made prior to May 27, and April 30, 1924, from Fredericksburg, Va., to Rocky Mount, N. C., as unreasonable. Shipments were handled by R. F. & P., to Richmond, Va., and A. C. L. beyond, 186.5 miles, applicable rate second class $1.57. Effective May 27, and April 30, 1924, rate was reduced to 82.5c on milk and cream the basis to which reparation is sought. HELD, rate attacked unreasonable to extent it exceeded 82.5c reparation awarded. Sirles v. Amer. Ry. Express, 113 I. C. C. 736.

(m) Complainant attacked second class express rate charged on two cars of milk, in 10 gallon cans, shipped on Jan. 3, and 9, 1924, from Mason, Mich., to Chicago, Ill., as unreasonable and inapplicable. Shipment moved by express over M. C. in baggage cars charged $1.35, which rate is claimed unreasonable to extent it exceeded rate of 52c published by M. C. It appears that the express service performed was identical to that which the rail line ordinarily performs in baggage service on passenger trains under the commodity rate of 52c. HELD, rate applicable but unreasonable to extent it exceeded 52c, reparation awarded. Bowman Dairy Co. v. Am. Ry. Ex. Co., 118 I. C. C. 529.

(n) Distance express rates on milk and cream under the intermountain scale from New Mexico points to Wichita, Kans., found not unreasonable as com-

pared with rates from Texas points to same destination applicable under the Beatrice scale. Both scales apply over extensive territories in which traffic, operating and transportation conditions vary, and therefore, unreasonableness of one scale in a particular section is not established by a showing that it is higher than the other scale in contiguous territory. Wichita Chamber of Commerce v. Am. Exp. Co., 115 I. C. C. 729.

(o) Under existing system of express rates practically all articles except food products are charged first-class rates regardless of their bulk. Parlor Frame Mfrs. Asso. v. A. A. R. R., 118 I. C. C. 154, 155.

(p) Second-class express rate on milk in 10-gallon cans in baggage cars from Mason, Mich., to Chicago, Ill., found unreasonable to extent it exceeded lower mileage commodity rate contemporaneously maintained by the rail carrier over same route, express movement embracing identically the same service as performed by the rail line in baggage service on passenger trains. See 74 I. C. C. 763 and other cited cases. Reparation awarded. Bowman Dairy Co. v. Am. Ry. Exp., 118 I. C. C. 529.

(q) Aggregate of express rate to Jersey City, N. J., plus Erie Railroad's floatage charge beyond, applicable to shipments of fruits and vegetables n. o. s., from points in California, Washington, Oregon, and Idaho to Piers 20 and 21, New York, found unreasonable as compared with lower rates contemporaneously in effect to various Atlantic coast destinations and to extent it exceeded rate found reasonable in original report 81 I. C. C. 87, from California points. Rates from the Northwest and California were formerly the same, as floatage charges on shipments from both origin points were absorbed by the express company, and record does not justify increases resulting from cancellation of such absorptions. Reasonable rate prescribed for future and reparation awarded. Finding in original report above cited, affirmed. Amer. Fruit & Veg. Shippers Asso. v. Amer. Ry. Exp. Co., 128 I. C. C. 651.

(r) Fruits and vegetables, n.o.s. carloads, shipped by express from California, Washington, Oregon and Idaho to Erie Railroad Piers 20 and 21, North River, New York, N. Y., are transported by rail to Jersey City, N. J., and thence floated by defendant Erie, across the North river to the piers. For a considerable period prior to Feb. 28, 1921 the Express company absorbed all or part of the Eries charge out of the express rate to Jersey City and also permitted consignees to take delivery of their shipments of Piers 20 and 21. Effective on that date the absorption was canceled and consignees were thereafter required to accept delivery of their shipments from defendant at Jersey City, and take out new bills of lading at that point covering the Eries service across the river to Piers 20 and 21. Original report, American Fruit & Vegetable Shippers Asso. v. Amer. Ry. Exp. Co., 81 I. C. C. 87. HELD, rates charged for the through movement of express shipments of fruits and vegetables, n.o.s. in carloads from California to Piers 20 and 21, unreasonable to extent they exceeded $4.28 prior to June 21, 1924 and $3.83 subsequent thereto. Aggregate rate charged from Washington, Oregon and Idaho unreasonable to extent they exceeded $4.28 prior to June 21, 1924 and $3.83 subsequent; reparation awarded. American Fruit & Veg. Shippers Asso. v. Amer. Ry. Exp. Co., 128 I. C. C. 651.

§11. Specific Rates.

(2) Rates Based on Value.

See Comparative Rates; Released Rates.

(a) Contention that rule of express classification under which gold and silver coin and bullion, paper currency, and securities are denied transportation at rates named therein unless value is declared by shipped and marked upon package, violates section 20 (11) of the act, such rates being released-value rates not authorized by commission, not sustained. Rule merely requires that shipper indicate actual value, which indication determines applicable rate. There is no provision for declared or agreed value limiting liability, nor does shipper have privilege of declaring a lesser value in consideration of a lower rate. Moreover, released rates and actual-value rates may be fairly and effectively differentiated and actual-value rates are not within prohibition of section 20 (11). See I. C. C. 471. N. Y. Federal Reserve Bank v. Am. Ry. Exp. Co., 107 I. C. C. 4, 6.

(b) Upon complaint seeking estab-

lishment of released express rates on gold and silver coin and bullion, paper currency, and securities from, to, and between interstate points. FOUND: If such rates were established it would still be necessary to provide same protective service against loss and theft at present accorded this traffic, because some shipments would be made on basis of full valuation. Moreover, taking into account shipments that would be made at released rates, revenues would be far less than cost of maintaining service, and the handling of money in this manner would tend to lessen care now given by employees to prevent loss of packages through negligence or robbery. N. Y. Federal Reserve Bank v. Am. Ry. Exp. Co., 107 I. C. C. 4, 17.

§11(4). Block or Distance System.

(a) Express distance rates on l. c. l. shipments of cream in 10-gallon cans from Essex, N. Y., to Fair Haven, Vt., and Springfield, Mass., found not unreasonable in past, but unreasonable for future. Reasonable rates prescribed and reparation denied. State of New York v. Am. Ry. Exp. Co., 109 I. C. C. 20.

§11. (5) Live Stock.

See Live Stock Shipments.

(a) Rules governing free transportation of attendants with race horses, polo mounts, and show horses, in carloads, moving by express, found unreasonable to extent they accord transportation to fewer attendants than therein prescribed based on kind and number of horses per car. Express Company's proposal to restrict number of attendants to two per car in all instances, found not justified. Record indicates that race horses being nervous, temperamental, and highly susceptible to disease, require a greater number of attendants per car than either polo or show horses which are more tractable and of more even temperment. Moreover, as record shows that two and one attendants per aisle respectively are usually sent with and are necessary for proper care of race horses and other horses, this number should be transported without charge in addition to minimum rates per car. Reasonable rules prescribed for future. Horse Asso. of America v. Amer. Ry. Exp. Co., 126 I. C. C. 103.

§11a. Classification.

See Classification.

(a) Charge for return by express of empty canvas-jacket ice-cream containers, found unreasonable as compared with charge on ice-cream containers, in tubs, and to extent it exceeded return charge, including delivery service, on 10-gallon milk cans with which empty ice-cream cans in canvas jackets are fairly comparable in both weight and size. Average weight of a can of ice cream in canvas jacket is considerably less than when shipped in the tub container, requires less service than the old-style tub, and charge for its return should be somewhat less. Reasonable charge prescribed for future. Nat'l. Asso. Ice Cream Mfrs. v. Express Co., 128 I. C. C. 143.

(b) Complainant alleged that the charge of 16c for the interstate transportation by express of returned empty canvas jacket ice cream containers is unreasonable and discriminatory. Average weight 23 pounds. The uniform rate on returned ice cream containers, not exceeding 5 gallon capacity, is 16c, effective Sept. 10, 1918. For many years prior to that date the charge was 15c. When the rate on returned ice cream containers was established some 30 years ago, it applied almost exclusively to cans in tub containers which weighed about 45 pounds. As compared with the tub container the Commission believes that the charge for returning the canvas jacket container should be somewhat less. There is in effect a return charge of 15c, including delivery service, on 10 gallon milk cans weighing 23 pounds. HELD, charge of 16c unreasonable to extent it exceeds 15c. National Association Ice Cream Mfrs. v. Express Co., 128 I. C. C. 143.

(c) Complainant alleged that failure of American Railway Express Company and Southeastern Express Company to classify ice cream mix as condensed milk and to receive and transport interstate express shipments of this commodity on the same rates, rules, and regulations as other forms of condensed milk is discriminatory and results in the assessment of unjust, and unreasonable charges; that the failure of some defendant railroads to receive ice cream mix in baggage service is discriminatory. At present the second class rate is assessed on ice cream mix moving by express. Over railroads permitting shipments of ice cream mix to be moved in baggage cars, the same

commodity rates as apply on cream and condensed milk are generally charged. Some railroads refuse to accept ice cream mix for shipment in this manner and there are apparently no interline baggage shipments of this article. The evidence indicates that, so far as it extends, complainant is satisfied with the baggage car service wherever supplied by the rail lines, and that, except for what it considers unreasonably high rates, complainants would be satisfied with the facilities and service of the express companies for the socalled interline movements of this commodity. It seems fairly established that the product known commercially as ice cream mix has a well defined significance in trade, although there may be slight variations in the amounts of the various ingredients; and that its transportation and commercial characteristics so closely resemble those of the several varieties of skimmed milk and cream as to render any different treatment of the commodities both unreasonable and discriminatory. HELD, rates assailed on ice cream mix by express unreasonable and unjustly discriminatory to extent they exceeded express rates on condensed milk from and to the same points. Railroad defendants to apply same rates and service in baggage cars of ice cream mix as on condensed milk. Natl. Assn. of Ice Cream Mfrs. v. Amer. Ry. Exp., 132 I. C. C. 377.

VI. TARIFFS.

See Released Rates; Tariffs.

§13. Construction.

(a) Express shipments of fruits and vegetables, n. o. s., from Washington and Oregon points to New York City, assessed rates under tariff providing that "rates to Brooklyn and New York City, when routed via New Jersey Terminals do not include drayage service in Brooklyn or New York City except as provided," and subsequently changed to read "do not include drayage service in Brooklyn or New York City," plus terminal charge for floating across North River to piers, found overcharged. Tariff held out a rate to New York City; provision last quoted that rate did not include drayage within New York City can not be interpreted as requiring acceptance of delivery at Jersey City of shipments destined to New York City; and there was no tariff authority for exaction of the terminal charge. Refund of overcharges directed. Amer. Fruit & Veg. Shippers Assn. v. Amer. Ry. Exp. Co., 128 I. C. C. 651, 656, 657.

§16¾. Reconsignment.

See Reconsignment.

(a) Rules of American Ry. Express Co., governing reconsignment and diversion, as applied to shipments of perishable produce from the Delaware-Maryland-Virginia peninsula, to various destinations in United States and Canada, found unreasonable in so far as they provide that such orders when given by shippers must be filed with express company's agent " at points of origin." If the objectionable restrictions are eliminated it is difficult to see in what respect a satisfactory bond of indemnity would not be sufficient protection against possible liability. Allen & Co. v. B., C. & A., 122 I. C. C. 351, 357, 358.

X. RULES AND REGULATIONS.

§29. In General.

See Through Routes and Joint Rates.

(a) Contention that rule of express classification under which gold and silver coin and bullion, paper currency, and securities are denied transportation at rates named therein unless value is declared by shipper and marked upon package, violates section 20 (11) of the act, such rates being released-value rates not authorized by commission, not sustained. Rule merely requires that shipper indicate actual value, which indication determines applicable rate. There is no provision for declared or agreed value limiting liability, nor does shipper have privilege of declaring a lessser value in consideration of a lower rate. Moreover, released rates and actual-value rates may be fairly and effectively differentiated and actual-value rates are not within prohibition of section 20 (11). See 100 I. C. C. 471. N. Y. Federal Reserve Bank v. Am. Ry. Exp. Co., 107 I. C. C. 4, 6.

XI. THROUGH ROUTES AND JOINT RATES.

See Through Routes and Joint Rates.

§36. In General.

(a) Practice of Express Company of requiring consignees to accept delivery at Jersey City, N. J., of shipments of

fruits and vegetables, n. o. s., from points in Washington, Oregon, and Idaho, destined to Piers 20 and 21, New York, resulting from cancellation of absorption of Erie Railroad's floatage charges from Jersey City to the piers, found unreasonable as compared with through routes and service previously in effect, and with finding in 81 I. C. C. 87. Through route and service to piers ordered restored. Amer. Fruit & Veg. Shippers Asso. v. Amer. Ry. Exp. Co., 128 I. C. C.651.

(b) Aggregate of express rate to Jersey City, N. J. plus Erie Railroad's floatage charge beyond, applicable to shipments of fruits and vegetables, n. o. s., from points in California, Washington, Oregon, and Idaho to Piers 20 and 21, New York, found unreasonable as compared with lower rates contemporaneously in effect to various Atlantic coast destinations and to extent it exceeded rate found reasonable in original report, 81 I. C. C. 87, from California points. Rates from the Northwest and California were formerly the same, as floatage charges on shipments from both origin points were absorbed by the express company, and record does not justify increases resulting from cancellation of such absorptions. Reasonable rate prescribed for future and reparation awarded. Finding in original report above cited, affirmed. Amer. Fruit & Veg. Shippers Asso. v. Amer. Ry. Exp. Co., 128 I. C. C. 651.

(c) Upon contention of rail carrier that express shipments of fruits and vegetables from Pacific Northwest move from Jersey City to New York piers by freight and that inasmuch as it does not hold itself out as an express carrier the commission is without authority to require it, over protest, to participate with the Express Company in a joint rate on express shipments. FOUND: This does not follow, particularly in a situation of this character. Section 3 (15) of the act empowers the commission, when it shall be deemed necessary or desirable in the public interest, to require establishment of through routes and joint rates; and joint service and rates by an express company and a common carrier by railroad are not excepted. Amer. Fruit & Veg. Shippers Asso. v. Amer. Ry. Exp. Co., 128 I. C. C. 651, 659.

§37½. **Minimums.**

See Minimums.

(a) Estimated billing weights used in assessing charges on shipments of ice cream by express, and rates and charges resulting therefrom, found not unreasonable or unjustly discriminatory. Upon contention that a new style tub adopted by ice cream shippers is of less cubic capacity and of less weight when packed for shipment than old-style tub upon which present estimated billing weight was established, it was agreed by parties that a joint weighing test be made. Certified reports thereof show that average gross weight of shipments in new-style 5-gallon tubs exceeds that of the old-style, and that actual average gross weight of all shipments in 5-gallon tubs is greater than that upon which present estimated billing weight is based. Nat'l. Asso. of Ice Cream Mfrs. v. Amer. Ry. Exp. Co., 107 I. C. C. 267.

XIV. RELATION TO RAILROADS.

§40. **In General.**

(a) The principle is well settled that the rights and duties of the rail carriers and express companies are determined by the terms of their respective contracts, the terms of which the Commission is not authorized to change. National Asso. of Ice Cream Mfrs. v. Amer. Ry. Express Co., 132 I. C. C. 377, 383.

FABRICATION IN TRANSIT

See Facilities and Privileges §15.

FACILITIES AND PRIVILEGES

I. JURISDICTION OF COMMISSION.

§1. In general.

II. CARRIER'S DUTY TO FURNISH OR PERMIT.

§2. In general.
§2½. Bulkheads.
§3. Compression.
§4. Concentration.
§5. Cooperage and bailing.
§5½. Disinfecting and cleaning.
§6. Dumping and trimming.
§6½. Extension of lines.
§7. Back haul.
§7½. False floors, insulation, bedding and dunnage.
§8. Free storage.

§9. Grain doors.
§9¼. Inspection.
§9½. Milling, mixing and elevation.
§10. Loading, unloading, delivering, insulating, bracing, etc.
§10a. Policing.
§10½. Protective service.
§11. Notifying shipper or consignee.
§11½. Reshipping rates.
§11¾. Sacking and slatting.
§12. Scaleage deductions and shrinkage.
§12½. Spotting and special services.
§13. Staking and binding.
§14. Storing, grading and resacking.
§14½. Store-door delivery.
§14¾. Tailboard delivery.
§15. Transit.
§15a. Stoppage in transit.
§15½. Transshipment and transfer.
§16. Wharfage and dockage.
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III. PUBLICATION AND TARIFFS.
§16¾. In general.
§17. Obligation to publish.
§18. Reshipping under through rate.
§19. Retroactive application.
§20. Substitution of tonnage.

IV. DISCRIMINATION.
§21. In general.

V. REPARATION.
§22. In general.

VI. CHARGES.
§23. In general.

CROSS REFERENCES

See Allowances; Car Ferry: Cars and Car Supply; Drayage; Electric Lines V; Evidence §22; Express Companies II; Lease; Penalty Charges; Perishable Freight; Reconsignment; Refrigeration §4¼; Special Contracts; Special Rates and Services; Stock Yard Companies; Stoppage-in-Transit; Tap Lines; Telephone and Telegraph Companies II; Terminal Facilities §6; Through Routes and Joint Rates; Transportation; Water Carriers §4½; Weights and Weighing.

I. JURISDICTION OF COMMISSION.

See Interstate Commerce Commission I; Jurisdiction of Commission.

§1. In General.

(a) Upon contention that interchange of traffic situation at York, Pa., does not constitute a "practice," and that if undue prejudice is found an alternative order is only order legally permissable, since section 15 (1) of the act is procedural and does not enlarge duties or obligations of carriers. HELD: Section 15 (1) is adjective law as distinguished from substantive law, and while it casts no additional duties on carriers, it gives commission authority to deal with violations of substantive law. Considering definition of word "practice," and fact that arrangement at York is referred to as such in proceedings before commission and the courts, the situation discloses a practice "relating to or connected with receiving, storing, and delivery of property," and commission is empowered to determine and prescribe manner in which violations of the act in connection with such situation shall be removed. York Mfrs. Asso. v. P. R. R., 107 I. C. C. 219, 231, 232.

(b) Upon contention of carrier that it can not be required to establish transit arrangements at a point on its line applicable in connection with traffic originating on its rails on the ground that to do so would deprive it of the long haul in violation of section 15 (4) of the act. HELD, that section merely prohibits commission from requiring establishment of joint through routes and rates which will have the effect of short hauling carriers under circumstances there set forth. But where, as here, the situation is simply whether or not transit shall be permitted at a point on its rails in connection with through rates and routes already in effect, this is clearly a situation not covered by section 15 (4). Montgomery Cotton Exchange v. S. A. L., 109 I. C. C. 579, 584.

(c) The commission has power under section 1 of the act to require establishment of transit, 257 U. S. 247, 257, but has exercised that power rarely, its policy having been generally not to require the establishment of transit arrangements unless to remove unjust discrimination or undue prejudice. See 87 I. C. C. 425, 435. Montgomery Cotton Exch. v. L. & N., 112 I. C. C. 325, 332, 333.

(d) Commission can not fix freight rates or transit charges so as to preserve a fixed relationship between through charges by all-rail and rail-lake-rail routes. Birkett Mills v. D., L. & W., 123 I. C. C. 63, 67.

(e) The Commission clearly has power, under section 1 of the act to regulate commerce, as amended, to determine whether, in a particular case, a transit privilege should be granted or should be withdrawn. Transit arrangement on lumber, 129 I. C. C. 518, 520.

II. CARRIER'S DUTY TO FURNISH OR PERMIT.

See Allowances §10; Bills of Lading II; Branch Lines IV; Cars and Car Supply IV, V; Express Companies §1¾; Lighterage V; Reconsignment §3½; Refrigeration II; Terminal Facilities II, §3; Through Routes and Joint Rates VII; Transportation II.

§2. In general.

(a) In general the difficulties, abuses and errors to be encountered by carriers in the performance of the stop off service are not materially different from those met in the performance of their duties in connection with the general practice of milling grain in transit, the reconsignment of carload traffic and other transit services, generally recognized as commercial necessities. Ohio Farm Bureau Federation v. N. & W. Ry., 120 I. C. C. 305, 307.

(b) Connecting lines can not dictate to the road that alone serves the transit point the manner in which joint rates through that point shall be applied in conjunction with the transit arrangements, so long as they are not deprived of their long haul. Transit arrangement on lumber, 129 I. C. C. 518, 520.

(c) Under the rules of the commission governing the making, filing, and publishing of tariffs, privileges like creosoting in transit are treated as a matter local to the railroad on which transit point is situated. Whether the privilege shall be granted or withheld is determined by the local carrier. If granted, the local carrier determines the conditions; and these are set forth in the local tariff. Although a joint through route with joint rates is established by concurrent action of several carriers, the transit privilege may thus be granted by a carrier without the consent of, and without consulting, connecting carriers. Transit arrangement on lumber, 129 I. C. C. 518, 520.

(d) Connecting lines can not dictate to the road which serves the transit point the manner in which joint rates through that point shall be applied in conjunction with the transit arrangements, so long as they are not deprived of their long haul. Transit privileges on lumber, 132 I. C. C. 53, 55.

§3. Compression.

See Compress Companies and Charges.

(a) Numerous investigations made by the commission with respect to cotton rates and concentration arrangements throughout the South and Southwest bear out fact that concentration is a commercial necessity and that little cotton can or does move from particular origins to particular destinations when no adequate concentration and compressing in transit arrangements are in effect at commercially convenient points. Montgomery Cotton Exchange v. S. A. L., 109 I. C. C. 572, 585, 586.

(b) Any-quantity rates on cotton from stations south of Montgomery, Ala., concentrated and compressed at that point and reshipped to Mobile, Pensacola, and New Orleans, found not unreasonable under section 1 of the act. The transit service, voluntarily established by carriers, embraces a back haul from transit point, thus entailing a situation deprecated by the commission in former cases. While transit on cotton has been so long in effect and so widely accorded as to become practically an inherent incident in the transportation of that commodity, that fact does not lessen the application to it of the general observations that transit arrangements represent a departure from ordinary transportation service, involving as it does two separate and distinct local movements to and from the transit point with all the accompanying physical handling and the keeping of necessary records in connection therewith. Montgomery Cotton Exch. v. L. & N., 112 I. C. C. 325.

(c) On cotton moving to Montgomery, Ala., for concentration and compression and reshipment beyond, the interstate inbound locals were higher than intra-

state local rates, the matter of which rate should be used not being covered by tariff provision. Contention that lower intrastate rates were legally applicable on shipments originating at stations south of Montgomery, concentrated and compressed at that point and reshipped to Mobile, Pensacola, and New Orleans, not sustained following Conf. Ruling adopted March 15, 1921, wherein the rule is laid down that where interstate, proportional, or reshipping rates are named on shipments originating beyond reshipping or transit points, such rates are applicable only in case inbound charges are based on inbound interstate rates. Montgomery Cotton Exch. v. L. & N., 112 I. C. C. 325, 326, 327.

(d) Proposed increased rates on cotton, cotton linters, and regins, in any quantity, from stations south of Montgomery and Selma, Ala., concentrated and compressed at those points and reshipped to Mobile, Pensacola, and New Orleans, found not justified. The transit arrangement at Montgomery and Selma is of many years' standing, is a commercial necessity in handling the business, and should not be lightly disturbed. While necessity for back hauls may be regarded as a disability due to location of these transit points and may properly be reflected in some difference in rate as compared with points from which no back hauls are necessary, the disturbance of relations to extent that would be produced by proposed rates is not warranted and would result in undue prejudice to points from which increases are proposed. Montgomery Cotton Exch. v. L. & N., 112 I. C. C. 325, 333, 335.

(e) Carriers are not obliged to compress cotton in transit and whenever they do not elect to do so the shipper must assume that burden, if compression is desired. Cotton from Tennessee River Landings, 120 I. C. C. 51, 52, 53.

(f) Concentration arrangements on dairy products in effect in South Dakota and Nebraska on traffic moving to Chicago, while denying similar transit arrangements on like traffic moving to Duluth, found unduly preferential of former and unduly prejudicial to latter-named point. Undue prejudice ordered removed. Duluth Chamber of Commerce v. C. & N. W., 120 I. C. C. 683.

(g) In 98 I. C. C. 619 division 4 had under consideration defendants failure to absorb out of the applicable rates the entire compress charge on various shipments of cotton originating at and forwarded from Jonesboro, Pine Prairie, and Mamon, points on the Rock Island in Louisiana, compressed at Alexandria, La., and reshipped over the T. & P., to New Orleans. Division 4 found that the compression of these shipments was not at the expense of the carrier, and that as the outbound shipments were not delivered to the Rock Island in accordance with the applicable tariff provision, but were reshipped over the T. & P., the movements were separate and distinct transactions, on which the local rates were properly applied. On further hearing complainant developed the fact that after the cotton was compressed the Compress company took out Rock Island bills of lading and tendered the compressed cotton to the Rock Island for reshipment to New Orleans; that the bills of lading were executed by the Rock Island agent at New Orleans; that after the bills of lading were signed necessary equipment was ordered by that carrier and placed at the compress; and that the cotton was loaded under Rock Island supervision and sent out by it over the T. & P. rails. These shipments were entitled to the protection of the through rates. HELD, through rates less the published allowance for compression were applicable on complainants shipments, reparation awarded. Haas & Co. v. Director General, 123 I. C. C. 121.

(h) In original report, 98 I. C. C. 619, failure of carriers to absorb out of applicable rates the entire compress charge on cotton originating at and forwarded from Jonesboro, Pine Prairie, and Mamou, La., compressed at Alexandria, and reshipped to New Orleans, was not found unreasonable it being shown that compression was not " at the expense of the carrier" as provided by tariff. Upon further hearing, original report reversed as under terms of the tariff carrier extended to shipper the protection of the through rate, not only in event that compression was "by and at the expense of the carrier," but also when, as here after compression, it was redelivered to originating carrier, irrespective of whether compression was done by the carrier or some other agency. In either instance carrier would obtain entire haul from point of origin to destination, and transportation facil-

ities accorded would be identical. Reparation awarded. Haas & Co. v. Director General, 123 I. C. C. 121.

(i) Upon contention of port interests that as many interior shippers of cotton are stockholders in interior compress companies, profit from carriers' compression allowance gives them an unreasonable and unlawful advantage over port shippers and compress companies, and that such companies render service to interior shippers either free or at less than reasonable charges, HELD: Since selection of compress point rests entirely with carriers, shippers whether stockholders or not can secure no favor or advantage not accorded any other shipper. If they direct carriers to compress their cotton at a point beyond the first compress point in route, they must not only bear compression charge but are assessed a higher rate on the uncompressed cotton. Prior report 77 I. C. C. 388; 100 I. C. C. 159. Rates on Cotton to Gulf Ports, 123 I. C. C. 685, 700, 701.

(j) Port interests argue that it would be less expensive for carriers to transport cotton uncompressed than to bear cost of compression en route where hauls are 325 miles and less. HELD: As carriers do not know final destination of cotton when first offered for transportation, and as cost of movement of flat cotton increases with distance, it would be less economical for carriers to move it past interior compresses to port facilities for compression if it is to be forwarded to some other port for export or to eastern consuming points. See 46 I. C. C. 451. Rates on Cotton to Gulf Ports, 123 I. C. C. 685, 705.

(k) Complainant alleged that defendants have violated section 6 of the act by failing to pay the compression charges on cotton from points in North Carolina and South Carolina to destinations in Georgia and Alabama compressed at Augusta, Ga. During May, June and July 1925 complainants shipped, consigned to themselves on through bills of lading from points on the A. C. L. in North Carolina to Georgia and Alabama, 1,283 bales of cotton. A part or all of each shipment originated beyond the billing points and was warehoused in transit in noncompress warehouses at the billing points. Each bill of lading contained routing instructions and, on the same line therewith, the following notation: "Via Augusta Warehouse & Compress Company for compression." Augusta was the first compress point in the direct route of movement. When the shipments reached the plant of that company the agent of the A. C. L. at Augusta notified the compress that his company would not pay the cost of compression. The compress than took the matter up with complainants, with the result that the cotton was compressed and the cost of compression, $953.22, paid by complainants. Complainants contend that the A. C. L. exercised its privilege of compressing reserved to it by the tariff. The tariff shows that when the carriers exercise their privilege to compress at origin or in transit cotton delivered to them uncompressed, the cost of compression is included in the rate, but that when cotton for compression at a compress directly intermediate between point of origin and destination the cost of the compression will be at shippers expense. The only rates published in the tariff containing note 6 are those captioned, but merely because they are made subject to the carriers option to compress does not render them inapplicable on uncompressed shipments on which the carriers do not exercise their option. The fact that the agents issued through bills of lading and accepted prepayment of freight charges on the basis of the joint rates from the original points of shipment to the final destinations, does not afford a basis for finding that the applicable rates included the cost of compression. The record clearly shows that defendants did not exercise their privilege to compress. There is nothing in the applicable tariffs which requires the carriers to notify shippers when they desire to exercise their privilege to compress. It is true that when a shipment is delivered to the carrier for transportation to a designated point, there is no certainty that the railroad will or will not exercise its privilege to compress. This is unavoidably so because the condition of car supply and other elements that influence the carrier in the exercise of its option will not be known to the shipper in all instances. HELD, defendants failure to pay compression charges at Augusta, Ga., not unlawful, complaint dismissed. McFadden & Bros. Agency v. A. & R. R. R., 126 I. C. C. 519.

(l) The compression is not a transportation service for the shipper. No obligation rests upon the carrier to perform the service or to pay for it if it is performed by shippers. The rates apply

on uncompressed cotton with the understanding that if, for the carriers own purpose, namely, to economize transportation and car space, it sees fit to compress the cotton en route to destination it is authorized so to do at its own expense. McFadden & Bros., Agency v. A. & R. R. R., 126 I. C. C. 519, 523.

(m) Fact that carriers' agent issued through bills of lading from origin points to final destinations covering shipments of cotton, and accepted prepayment of freight charges on basis of joint rates in violation of tariff authority which provided for assessing local rates to transit points and through rates beyond, does not afford a basis for finding that applicable rates included cost of compression in transit. McFadden & Bros. Agency v. A. & R. R. R., 126 I. C. C. 519, 522.

(n) Upon contention that because carriers' agents executed bills of lading which showed that cotton had been compressed, and because they did not signify to complainants that they desired to handle cotton flat or uncompressed from compress point to final destinations, they must be considered as having exercised their privilege of compressing in transit and should therefore bear cost thereof, HELD: Contention is without merit. Nothing in tariff requires carriers to notify shippers when they desire to exercise their privilege to compress. Certainly they can not be considered as having exercised their privilege to compress because they exercised through bills of lading which showed that cotton previously had been compressed. McFadden & Bros. Agency v. A. & R. R. R., 126 I. C. C. 519, 522, 523.

(o) Complainant alleged that defendants refusal to publish and apply rules, regulations and rates on cotton, any quantity, shipped uncompressed to be compressed by and at carriers expense, from points of origin on the Santa Fe in southeastern New Mexico, Carlsbad to Corral, incl., destined to Texas Gulf ports and beyond, and moving Santa Fe to Pecos, thence T. & P. Sweetwater, Tex., and Santa Fe with option of concentration at Pecos is unreasonable; and that the present handling of such cotton over the Santa Fe system route via Clovis, N. M., and Sweetwater, with option of concentration at Roswell, N. M., results in delay and wasteful transportation. The traffic is cotton moving (a) on local bills of lading from country stations to compress points for concentration, which includes fumigating, marketing, storing, grading, assembling grades, conditioning, and marketing, before shipment; and (b) on through bills of lading from country stations to final destinations to be compressed in transit. Although there is some division among the shippers of the Pecos valley as to the necessity, desirability, and advantage of joint rates via Pecos and the T. & P. the evidence indicates that the weight of opinion is opposed to the establishment of such rates because of the probable effect it would have upon the industries and the carrier service in the valley. The Santa Fe's branch through the valley is the only rail line in southeastern New Mexico. Shippers along its entire length from Clovis to Pecos would be affected by the logical consequences of the change here sought. Industries in the valley are dependent upon that line for their progress and perhaps for their existence. Anything tending to bring about a reduction in the service over it, such as the lessening of the already light traffic density, would be detrimental to the best interests of the people of the valley. The evidence falls far short of establishing that the joint rates and concentration at Pecos sought are "necessary or desirable in the public interest". Neither does the evidence show that the route over the Santa Fe system is unreasonably long as compared with that via Pecos and the T. & P. or that movement over the former results in wasteful transportation. HELD, rates ruled not unreasonable, complaint dismissed. Smith Wilson & Co., v. A. T. & S. F. Ry., 129 I. C. C. 65.

(p) Complainant alleged that rates on uncompressed cotton from certain points in Mississippi and Tennessee to New Orleans and defendants practice of refusing to accept the shipments subject to the carriers privilege of compressing in transit were unreasonable, illegal and unduly prejudicial. The origin points involved are north of Newton, Miss., on the G. M. & N. and affiliated lines. These carriers do not serve New Orleans and the cotton reached its destination over their connections. The rates charged were first class, ranging from $1.285 to $1.455, which are claimed to be unreasonable to extent they exceeded the commodity rates from and to

the same points on compressed cotton, which were 76.5c, except from Jackson, Tenn., and a few nearby points, where the rate was 81c. On Sept. 12, 1927 these rates were made applicable on compressed cotton and also on uncompressed cotton, subject to the carriers right to compress in transit. The rates on the basis of which reparation is sought are substantially equal to those which applied to Gulf ports from points in Mississippi and Tennessee on lines of carriers other than defendants. Particularly I. C., M. & O. and others, including Mississippi class B carriers. They compare favorably with the rates made on the basis of a scale having rather general application in the southeast on cotton shipped uncompressed subject to the carriers privilege of compressing. HELD, rates assailed unreasonable to extent they exceeded rates on compressed cotton from and to the same points, reparation awarded. New Orleans Joint Traffic Bureau v. G. M. & N. R. R., 132 I. C. C. 586.

§4. Concentration.

See Concentrating Rates and Privileges.

(a) Considering, among other things, the direction of Congress in the Hoch-Smith resolution, Senate Resolution 107, failure of carriers to provide concentration and warehousing arrangements on cotton at Montgomery, Ala., found to constitute an unreasonable practice and to result in unreasonable rates and charges. Such arrangements are necessary and desirable in the public interest; their establishment at joint rates over direct routes has become common, due to voluntary act of carrier in recognition of peculiar circumstances surrounding marketing and handling of this traffic; and any shipper not accorded joint rates is at a substantial disadvantage which will confine his opportunities of sale to limited areas. Moreover, the general practice throughout the Cotton Belt is to permit such arrangements at first convenient compressing point en route to destination, and to require cotton produced in areas here involved to move long distances in an uncompressed condition constitutes wasteful transportation not in the interest of economical operation. Montgomery Cotton Exchange v. S. A. L., 109 I. C. C. 579.

(b) Under methods generally followed in marketing cotton the crops of many growers, composed usually of different grades and staples, are concentrated at one point so that enough bales can be accumulated to fill orders for the several grades and staples. Concentration points thus serve as markets for the cotton growers. Montgomery Cotton Exchange v. S. A. L., 109 I. C. C. 579, 581, 582.

(c) Concentration and compression are of benefit to carriers in the saving of equipment, movement into concentration ports being largely in l. c. l. lots and from the concentration points in carloads, compressed cotton occupying substantially less space than uncompressed cotton. Montgomery Cotton Exchange v. S. A. L., 109 I. C. C. 579, 582.

(d) If cotton originating on the L. & N. south and west of Montgomery is prohibited from moving to southeastern and Carolina destinations and forced to move via the Ohio River to the East or to Gulf ports for export, that carrier will receive a longer haul than if turned over to its connections at Montgomery. Upon contention that under above circumstances the L. & N. can not be required to establish concentration and warehousing arrangements at Montgomery on cotton originating on its line and destined to points in the Southeast and the Carolinas on ground that to do so would deprive it of long haul in violation of section 15 (4) of the act. FOUND: Situation presented is clearly not covered by provisions of the act relied upon. Montgomery Cotton Exchange v. S. A. L., 109 I. C. C. 579, 584.

(e) Numerous investigations made by the commission with respect to cotton rates and concentration arrangements throughout the South and Southwest bear out the fact that concentration is a commercial necessity and that little cotton can or does move from particular origins to particular destinations when no adequate concentration and compressing in transit arrangements are in effect at commercially convenient points. Montgomery Cotton Exchange v. S. A. L., 109 I. C. C. 579, 585, 586.

(f) To require cotton produced in a vast area to move long distances in an uncompressed condition constitutes wasteful transportation not in the interest of economical operation, it being general practice throughout the Cotton Belt to permit or require concentration and compression at first convenient compressing point en route to destination in

line of movement for traffic. Montgomery Cotton Exchange v. S. A. L., 109 I. C. C. 579, 586.

(g) Failure of carriers to establish transit arrangements at Montgomery, Ala., under which cotton originating at points on and west of the L. & N. between Decatur and Mobile, Ala., may be concentrated and stored and thence reshipped to South Atlantic ports and to southeastern and Carolina points, and via South Atlantic ports to New England mill points, while contemporaneously maintaining such arrangements at Atlanta, Ga., found not to result in undue prejudice. Originating carriers are not parties to the tariff under which transit is authorized at Atlanta, and mere fact that they participate as originating lines in joint rates in connection with which transit at Atlanta is allowed does not make them guilty of undue prejudice against Montgomery. See 257 U. S. 247. Montgomery Cotton Exchange v. S. A. L., 109 I. C. C. 579, 585, 587.

(h) On cotton moving from stations south of Montgomery, Ala., there concentrated and compressed and reshipped to Mobile, Pensacola, and New Orleans, locals to Montgomery and reshipping rates therefrom were assessed. Local factor published combination rule which provides a specific method for constructing through rates made on combination, but at no time were reshipping rates from Montgomery subject to a similar rule. HELD: Following principle laid down in 62 I. C. C. 643; 73 I. C. C. 551, reference to the rule in tariff containing one factor of combination, necessitated protection of a through rate arrived at by use of the rule in connection with both factors. Applicable rates were therefore those constructed in accordance with the rule. Former report 112 I. C. C. 325 reversed and refund of overcharges directed. Montgomery Cotton Exchange v. L. & N., 118 I. C. C. 157.

(i) Concentration arrangements on dairy products in effect in South Dakota and Nebraska on traffic moving to Chicago, while denying similar transit arrangements on like traffic moving to Duluth, found unduly preferential of former and unduly prejudicial to latter-named point. Undue prejudice ordered removed. Duluth Chamber of Commerce v. C. & N. W., 120 I. C. C. 683.

(j) Tariffs authorize one free stop in transit for concentration which may be taken either at interior points or at the port, but an additional charge for a second stop is made. Upon contention of warehouses located back from the water front at the ports that unless they are given a second free concentration they will be at a disadvantage as compared with warehouses located on the water front in handling cotton previously concentrated in transit at interior points, HELD: Advantage which water front facility has in handling cotton is a natural one derived from its location, and record will not support a conclusion that this advantage should be neutralized by granting second free concentration in transit at the port. Rates on Cotton to Gulf Ports, 123 I. C. C. 685, 695, 696.

(k) Concentration in transit, like compression in transit, reduces rather than increases carriers' expenses of transportation. Rates on Cotton to Gulf Ports, 123 I. C. C. 685, 702.

(l) Upon contention that because carriers' agents executed through bills of lading covering shipments of cotton, routed by shipper, carrying notation "Via Augusta Warehouse & Compress Company for compression," and showing prepaid charges on basis of joint rates from original to final destination, carriers thereby exercised their privilege of compressing reserved to them by tariff, and that compression charges assesed were inapplicable, HELD: Contention is without merit. Tariffs shows that when carriers exercise their privilege to compress, at origin or in transit, cotton delivered to them uncompressed, cost of compression is included in rate, but where, as here shippers direct stoppage of uncompressed cotton for compression at a compress point directly intermediate between point of origin and destination, cost of compression will be at shippers' expense. Fact that rates are made subject to carriers' option to compress does not render them inapplicable on uncompressed shipments on which carriers do not exercise their option. McFadden & Bros. Agency v. A. & R. R. R., 126 I. C. C. 519.

§7. Back Haul.

See Back Haul.

(a) Aggregate of inbound and outbound rates on rough rice from points in Louisiana to Lake Charles, reshipped as clean rice and products to various interstate destinations, where back-haul service was in excess of 40 miles, found not

unreasonable or otherwise unlawful. While a 200-mile free back-haul service under milling-in-transit arrangements was in effect at certain points in Texas during period of movement, and similar back-haul provision was established at Lake Charles after shipments in question moved, the peculiar character of evidence presented in 69 I. C. C. 508, which justified commission in requiring establishment of a 40-mile free back haul is not present in the instant case to justify as reasonable the establishment of a greater free back-haul service. Lake Charles Rice Milling Co. v. L. W., 109 I. C. C. 195.

(b) Although carriers may under certain conditions voluntarily establish a free back haul in connection with transit, commission will not under ordinary circumstances require them to do so, unless to remove undue prejudice. See 15 I. C. C. 138. Furthermore, a back haul is contrary to purpose of transit and generally should be permitted only to meet unusual situations. See 31 I. C. C. 150. Lake Charles Rice Milling Co. v. L. W., 109 I. C. C. 195, 196.

(c) Out-of-route charges collected on grain shipped from Ossian and Helmer, Ind., to Jonesville, Mich., there milled in transit and reshipped to other Michigan points, found illegal. Neither tariff publishing the joint through rates with provisions for milling in transit nor transit tariff carried any restrictions as to routing, and term "out-of-route" as carried in transit tariff is not defined. Rates between any given points, where no restrictions are made as to routing, apply over all routes of carriers parties to the tariff naming rates, where such routes are circuitous or not, if there be no back haul. Likewise transit arrangements applicable in connection with such rates, where no special restriction as to transit is contained in the tariff, are coextensive with routes over which the rates apply, provided routes are not employed which necessitate a back haul. Refund of overcharge directed. Jonesville Milling Co. v. N. Y. C., 109 I. C. C. 601.

(d) The commission has deprecated the establishment of transit involving back hauls. See 31 I. C. C. 150, 153, and other cited cases. Montgomery Cotton Exch. v. L. & N., 112 I. C. C. 325, 333.

(e) The commission has approved the assessment of out of line or back haul charges which are reasonable for the services rendered and not unduly prejudicial to the traffic affected. The carrier may for competitive reasons waive the maintenance of such charges if the traffic favored is not thereby unduly preferred, but they are not required to do so. Iron and Steel Fabricated in Transit, 120 I. C. C. 325, 327.

(f) Charge for out-of-line hauls of iron and steel articles fabricated in transit at Tulsa, Okla., proposed by the A., T. & S. F., when movement into Tulsa is via its line and outbound product is destined to points on its rails, the Gulf, Colorado & Santa Fe, or Pan Handle & Santa Fe, in Kansas, Oklahoma, Texas, or New Mexico, found justified. Proposed charge is at present in effect in connection with fabrication of iron and steel articles at various points in Kansas, Oklahoma, and Texas, for out-of-line hauls for comparable distances. Moreover, commission has approved out-of-line or back-haul charges which are reasonable for services rendered and not unduly prejudicial to the traffic affected. The out-of-line charge here proposed will not subject iron and steel traffic to a disadvantage that is undue. Iron and Steel Fabricated in Transit, 120 I. C. C. 325.

(g) Carriers may, for competitive reasons, waive maintenance of out-of-line or back-haul charges if the traffic favored is not thereby unduly preferred, but they are not required to do so. Iron and Steel Fabricated in Transit, 120 I. C. C. 325, 327.

(h) Charges on wheat from points west of Kansas City, Mo., milled in transit at Marshall, Mo., and the product, flour, forwarded to Oklahoma City, Okla., found inapplicable. Here, the movement involved a back haul through Kansas City, and charges assessed were based upon those published for out-of-direct-line routes. Tariff provision, however, related solely to charges where out-of-line haul exceeded 150 miles, such charges not to be based on the round trip but only for distance from point of origin to transit point. Distances from origin points to Marshall being less than 150 miles, charges assessed were therefore inapplicable. Applicable charges found to be those in effect via an unrestricted route through St. Louis. Victor Milling Co. v. M. P., 120 I. C. C. 335.

§7½. False Floors, Insulation, Bedding and Dunnage.

See Dunnage.

(a) Complainant alleged that the charges collected on several hundred cars of lumber shipped on and after Oct. 20, 1913, from North Carolina on the Black Mountain Ry., a short line connecting with C. C. & O. at Kona, N. C., to destinations in other states, were unreasonable, unduly prejudicial, and in excess of those legally applicable in that a dunnage allowance of 500 pounds provided for by the tariffs was not made. Complainant's evidence is incomplete and unsatisfactory. Defendants should ascertain whether dunnage was in fact used and no allowance made therefor in respect of the 21 shipments covered by freight bills submitted at the hearing, and any overcharges so disclosed should be forthwith refunded, with interest. HELD, complaint dismissed. Parry & Co. v. B. M. Ry., 118 I. C. C. 193.

(b) Charges for slatting stock cars for movement of watermelons from Texas points to St. Louis, Mo., found unreasonable, discriminatory and unduly prejudicial. In 78 I. C. C. 732, the commission found that assessment of similar charges was unreasonable and discriminatory but carriers failed to publish tariffs giving effect to conclusions reached in cited case until after shipments here involved had moved. Reparation awarded. Bernstein-Nehmen & Co. v. G., C. & S. F., 115 I. C. C. 691.

(c) Respondents proposed new rules, regulations and charges to govern the bedding of livestock cars at points in Central Freight Association and western trunk line territories which will be referred to as central and western rules. The proposed rules, particularly in central territory, materially increase the charges for bedding. The central rules require that cars must be bedded with certain specific kinds and amounts of materials, which in the carriers opinion will be sufficient to enable the animals to retain their footing. Under these rules, shippers may order more bedding than the rules say must be provided, but at additional charges. HELD, proposed suspended schedules not justified, subject to filing of schedules containing new rules as hereinafter set forth. The following rules, regulations and charges are found reasonable to govern the bedding of cars to be loaded with livestock in central and western trunk line territories: 1. Except as otherwise provided in these rules, the floors of cars into which livestock is to be loaded must be bedded with sand, hay, straw, or like suitable material: (a) when livestock is handled exclusively in switch movement, bedding will not be required where unbedded cars are ordered by the shipper in writing. (b) Cars to be loaded with hogs, sheep, or goats must not be bedded with cinders. 2. The shipper may order bedding in such amounts as he desires up to 1 inch of sand or two bales of hay or straw for each deck. If orders for specified amounts of bedding are not received from the shipper, the floors of cars into which livestock is to be loaded will be bedded by the carrier with one half inch of sand, or two bales of hay or straw per deck. 3. The charges for the materials and service designated in rule 2 will be as follows (a) When shipper furnishes the material and places it in the car, no charge. (b) When carrier furnishes the material and the shipper places it in the car, the charges for the material will be as follows: For single deck car $0.75, for double deck car $1.00. (c) When carrier furnishes the material and places it in the car, the charge will be as follows: For single deck car $1.00, for double deck car $1.50. 4. When the shipper desires bedding and orders material in writing from the carrier in excess of the quantities specified in the first sentence of rule 2, it will be furnished and placed in the car at additional cost, as follows, and must be paid for by the shipper, consignee, or owner: (a) When carrier furnishes the material and the shipper places it in the car: for each additional inch of sand or less, for single deck car $0.75, for double deck car $1.00, for each additional bale of hay or straw 0.50. (b) When carrier furnishes the material and places it in the car: For each additional inch of sand or less, for single deck car $1.00, for double deck car $1.50, for each additional bale of hay or straw $0.75. 5. (a) When a double deck car is ordered by the shipper, but the carrier at its convenience furnishes two single deck cars, the charge for bedding furnished will be the same as for the kind of car ordered. (b) When a single deck car is ordered by the shipper but the carrier at its convenience furnishes a double deck car, the both decks are

bedded and loaded, the charges applicable to a double deck car will apply. 6. When livestock is transferred en route at carriers convenience, sand, hay, straw, or material of a similar nature will be provided by the carrier and placed in the car, without charge. 7. When livestock is stopped in transit at the request of shipper, consignee, or owner, for the purpose of trying an intermediate market, to comply with quarantine regulations, or for grazing in transit and a newly bedded car is furnished, the provisions of rules 1, 2, 3 (a), 3 (c), and rules 4 and 5 will apply, except that when stopped in compliance with state or federal law for feed, water, or rest, no charge will be made. 8. When the shipper orders in writing an unbedded car for livestock handled exclusively in switch movement or when the carrier furnishes a car containing old bedding, and places no new bedding therein, no charge will be made. 9. (a) Charges for bedding when not paid by the shipper must be entered on livestock contract and waybilled as bedding charge. (b) When bedding in excess of the maximum amount specified in rule 2 is ordered, notation of the amount ordered must be entered on the waybill. 10. Nothing in these rules shall be construed as relieving a carrier from such liability as may rest upon it for actual loss, damage, or injury caused by it through failure to furnish suitably bedded cars. Bedding charges for livestock, 128 I. C. C. 167.

(d) Proposed rule governing the furnishing of suitable cars free of debris, oil spots, protruding nails, etc., for loading flour and other grain products, found justified. While protest is made against respondents' failure or refusal to provide in tariffs for weather-stripping cars around doors or furnishing material therefor, nearly all freight cars require weather-stripping when lading is grain products in sacks or cartons but carriers generally neither do weather-stripping nor furnish material therefor. Although common carriers must furnish suitable equipment for safe transportation, special safeguards desired by shipper should be furnished by him. See 14 I. C. C. 154 and other cited cases. Moreover, in 26 I. C. C. 245, carriers were not required to line and pad cars for flour movements and while that case dealt with protection on inside of car while instant case deals with protection on outside, principle is the same. Suitable Cars for Loading Flour, 128 I. C. C. 442.

§9½. Milling, Mixing and Elevation.

(a) The f. o. b. rates are local rates applying on both grain and products from the lake ports and do not include elevation or other services incident to transfer of lading from lake vessels to cars. Birkett Mills v. D., L. & W., 123 I. C. C. 63, 64.

§10. Loading, Unloading, Delivering, Insulating, Bracing, etc.

See Absorption of Charges §1 (a); Classification §13; Evidence §65; Express Companies §2; Facilities and Privileges §14; Loading and Unloading; Transportation §10.

(a) Denial by a common carrier subject to the act of the delivery lawfully designated in the bill of lading or reconsignment instructions in respect of shipments moving in interstate commerce is a matter which may change, affect, or determine the value of the service rendered to the complainant as consignee, and as such is within the jurisdiction of the Commission. Berger v. Pennsylvania R. R., 115 I. C. C. 697, 698.

(b) Charges for slatting stock cars for movement of watermelons from Texas points to St. Louis, Mo., found unreasonable, discriminatory and unduly prejudicial. In 78 I. C. C. 732, the commission found that assessment of similar charges was unreasonable and discriminatory but carriers failed to publish tariffs giving effect to conclusions reached in cited case until after shipments here involved had moved. Reparation awarded. Bernstein-Nehmen & Co. v. G., C. & S. F., 115 I. C. C. 691.

(c) Where special preparation is required to fit the car for the shipment of a particular commodity, the task of special preparation ordinarily devolves upon the shipper, and the reason for this is that the shipper can as a rule in case of carload freight where the loading is done by him and where the car is put into his possession for that purpose perform this work more economically and to better advantage than the carrier. The treatment which must be given these cars, namely the lining and the bedding, is not permanent. At the end of the

journey it must be removed and disposed of. The preparation must, therefore, as a practical matter be made at the station where the shipment occurs. Omaha Grain Exchange v. C. B. & Q. R. R., 120 I. C. C. 59, 62.

(d) Upon complaint that carriers, in respect of cars furnished at Omaha for loading flour and other grain products, in sacks, refuse to sweep cars, draw protruding nails, pad projections liable to tear sacks, and strip doors with waterproof paper, while contemporaneously performing those services in connection with like traffic at Kansas City, FOUND: (1) That carriers should furnish cars in good repair, free from contaminating materials and reasonably free from protruding nails and rough projections which might tear sacks, and (2) that performance of additional services in preparation of cars at Kansas City without charge in addition to line-haul rate, while contemporaneously refusing to perform like services at Omaha, is and for the future will be unduly prejudicial. Omaha Grain Exchange v. C., B. & Q., 120 I. C. C. 59.

(e) Complainant, Minnesota-Atlantic Transit Co., alleged that the practice of defendants of unloading cars at their own docks and refusing contemporaneously to perform the same service at the MacDougall dock is unreasonable under paragraph 4 of section 1, unjustly discriminatory under section 2, and unduly preferential of the Great Lakes Transit Co., and unduly prejudicial to complainant under section 3. What it really desires is to be granted additional compensation by defendants of 65 cents per ton for the unloading service which complainant itself performs, and which it desires to continue to perform. Dedendants unload freight for complainant, the same as they do for the Great Lakes Co., when it is routed over their docks. Complainant alleged no undue prejudice in respect of shipments over both lake lines handled over defendants docks. The Great Lakes Co. leases one of defendants docks, paying as rental 6% on a valuation of $75,000. The adequacy of this rental complainant does not question. At this leased dock defendants perform no unloading service. The same is true at private docks when no interchange with rail lines is made. Nor will any of the defendants unload a car which is, for the convenience of a shipper or steamship line, switched to its dock from another line haul carrier into Duluth. Complainant does not allege that defendants dock facilities are inadequate at Duluth. There seems to be no justification and no provision of law, however, for requiring defendants to unload and load freight at the MacDougall dock merely because they perform that service at their own docks, and so long as they do not discriminate between private docks. HELD, defendants were not guilty of any of the violations of law alleged, complaint dismissed. Minnesota-Atlantic Transit Co. v. C., St. P., M. & O. Ry., 123 I. C. C. 485.

(f) In Rates on Cotton to Gulf Ports, 100 I. C. C. 159, the commission found that the existing adjustment of rates on cotton from Oklahoma, Arkansas, Louisiana and Texas to the Texas ports, under which the ship side rates, exclusive of wharfage charges, are from the three states first mentioned 3 cents and from Texas 3.5 cents per 100 pounds higher than the city delivery rates, was unduly prejudicial to warehouses and compresses located at interior points and back from the water front at the ports and unduly preferential of warehouses and compresses located on the water front. The commission ordered the carriers to remove this prejudice and preference by establishing equal rates, exclusive of wharfage, for all deliveries within the usual switching limits of the Texas ports, which would include deliveries at back from the water front and water front warehouses and compresses and deliveries at the wharves and piers. Ship side rates should be made by adding wharfage charges to the rates so equalized. HELD, the relationships should be maintained, except that the ship side rates should exceed the city delivery rates to both New Orleans and the Texas ports but not to exceed 2 cents per 100 pounds. HELD, for the purposes of this case, a fair and reasonable basis for equalizing the city delivery and ship side rates will be to increase the city delivery rates 1 cent per 100 pounds and reduce the ship side rates, exclusive of wharf or pier terminal charges equivalent to 2 cents per 100 pounds, to the basis of the increased city delivery rates. This basis of equalization should be applied from all the states covered by the investigation to both the Texas and Louisiana ports, except that this finding should not be construed as condemning the practice of

the lines serving New Orleans of maintaining that port on a parity with Galveston and Houston in the matter of export rates on cotton from Oklahoma and northern Texas. The tariffs of respondents authorize one free stop in transit for concentration and this may be taken at an interior point or at the port. If a second stopping in transit for concentration takes place a charge of 3.5 cents per 100 pounds is assessed. The advantage which the water front facility has in the handling of this class of cotton is a natural one, derived from its location, and the present will not support a conclusion that this advantage should be neutralized by granting second free concentration in transit at the port. The commission referred to the fact that in order to conserve cars for line haul movements, and as an aid in preventing terminal congestion during periods of heavy traffic, respondents make allowances to shippers who, in lieu of switching, dray their cotton from the uptown warehouses and compresses to ship side, and said that it saw no reason for disturbing that practice. The allowances are made only on cotton which respondents are under obligation to transport to ship side under transit arrangements. The commission sees no reason for condemning reasonable allowances for drayage from the uptown facilities under the circumstances, such drayage being a substitute for rail transportation. But such allowances must not be more than reasonable, considering the benefit to respondents flowing from such substitute service, and must not be used as a cloak for unlawful practices to shippers furnishing such substitute service. But upon cotton delivered to ship side from and by water front warehouses or compresses over adjacent wharves or piers operated as a part of, or in conjunction with, such warehouses or compresses, a different condition exists. The hand or electric trucking, or movement by overhead trolley, from the part of the water front facility known as the warehouse or compress to that part known as the wharf is not a substitute for rail transportation, but is an intraplant movement just the same as the handling of cotton from the interior of an uptown warehouse to the railroad car or dray is an intraplant movement. No allowance may lawfully be made for these intraplant movements. The carriers in this territory, with few exceptions, authorize one concentration in transit without charge The services rendered by the carriers in the concentration of cotton are generally the same as on other traffic accorded transit. Concentration in transit, like compression in transit, unquestionably reduces rather than increases the carriers expenses of transportation. When concentration takes place at a compression point, there are scarcely any transportation services rendered by the carriers in addition to those rendered in connection with stopping cotton for compression. Interior concentration is an important factor in regulating the even flow of traffic, and may be likened somewhat to a series of reservoirs in supplying an even flow of water for the irrigation or other purposes. Without interior concentration, the cotton crop would have to be shipped during the gathering season, which is also the grain moving season, and the resultant car shortage in the interior and congestion at the ports, particularly as the mixed shipment platforms, might seriously disrupt transportation and general business activities throughout the entire cotton producing section. It does not appear that the giving of free first concentration has operated to the preference or prejudice of any shipper or concentrator of cotton. The record is clear, however, that since the so-called two rate plan was established, the percentage of cotton concentrated at interior points of the total handled at such points has steadily decreased, and that certain interior merchants, some of whom have interests, through stock ownership, in interior compress companies, have discontinued concentrating their cotton at points where such compress companies operate facilities and now concentrate it at the ports where they can take advantage of the lower city delivery rates under which they obtain water front delivery. In view of the small and varying amounts of cotton compressed for the carriers by certain interior compresses, there is little doubt but that, were it not for the fact that such compresses are able to obtain some revenue from concentration, their compress charges would be substantially higher than the allowances now made by the carriers. The record is clear that the cost of compression varies with the amount of cotton compressed, and this, to a great extent, accounts for the fact that the port facilities are able

to compress cotton for about 60 cents per bale while the interior facilities charge about 90 cents per bale. While the record is not specific as to all the elements of cost of compression at the port facilities, it appears that at least some of such facilities have not included in such costs anything for unloading the cotton from cars and reloading it in cars. This is an important item of cost in the operation of the interior compresses. HELD, carriers are justified in giving one concentration in transit on cotton without charge and that such concentration without charge does not unduly prefer or unjustly discriminate against any shipper or class of shippers or any compress or warehouse company. HELD, further, that the present allowance for compressing cotton in transit is not shown to be unreasonably high or unjustly discriminatory against or unduly preferential of any shipper or class of shippers or any compress or warehouse company. Rates on Cotton to Gulf Ports, 123 I. C. C. 685.

(g) Proposed cancellation of arrangement for stopping to partially unload interstate shipments of cranberries at points in Texas, found justified. Charges on such shipments are based upon original weight of load, subject to minimum weight and rate from point of origin to final destination, plus per-car stoppage charge. Therefore, in instances where rates from origin to stop-off point and to final destination are the same, carriers receive nothing for additional haul from stop-off point to final destination regardless of its length, except stoppage charge. Moreover, where distance from stop-off point to final destination is short and quantity which goes to final destination is small, carriers furnish two c. l. services for what are c. l. shipments to stop-off points and l. c. l. shipments beyond. Stop-over Transit Privilege, 122 I. C. C. 479.

(h) Complainant alleged that the charge of $2.70 per car assessed by defendants, in addition to the joint through rates, when coal is unloaded on team tracks at Ivanhoe, Norwood, and East Norwood, O., was and is unreasonable, unduly prejudicial, and in violation of the fourth section. Defendants are the C. & O., L. & N., N. & W. and Pennsylvania. The charge assailed represents a charge published by the Pennsylvania for the use of its team tracks and applies only at stations on the Lebanon district. Joint through rates apply over defendants lines from mines in Kentucky, Tennessee, and West Virginia to stations on the Pennsylvania within the switching district. The rates as published include delivery on all private tracks, and on team tracks at practically all main line points, but when delivery is taken on team tracks at stations on the Lebanon division the charge assailed is added to the rate. Defendants offered no evidence tending to show that conditions at Norwood and East Norwood are such as would warrant a different practice at those points than at main line points. No sound reason has been advanced why all stations within the Cincinnati switching district where the team tracks of the Pennsylvania are used should not be treated on the same basis. No substantial difference in service is shown to exist. HELD, practice of defendants of adding a team tracks charge to the joint rates on coal from points on defendants lines to Norwood and East Norwood when no similar charge is added for team track deliveries at other stations on the Pennsylvania within the Cincinnati switching district was, is, and for the future will be, unduly prejudicial, reparation denied. Cincinnati Coal Co., v. C. & O. Ry., 132 I. C. C. 97.

§10a. Policing.

(a) Policing charge assessed on shipments of denatured and wood alcohol at Chicago, Ill., designed to cover cost of protection against pilferage, found not applicable, since tariff rule in effect at time of shipment only provided for assessment of such charge on "intoxicating liquors (including alcohol.)" Reparation awarded. U. S. Industrial Alcohol Co. v. C. & N. W., 118 I. C. C. 674.

(b) Policing charge of $25 per car on shipments of ethyl alcohol, designed to cover cost of protection against pilferage, found not unreasonable. Carriers showed that pilferage of intoxicating liquors has greatly increased since national prohibition act became effective and that cost of furnishing protection now necessary for this commodity has radically changed; also that cost of furnishing this protection frequently exceeds transportation charges received. Moreover, in numerous cases commission has approved separately stated charges for special service rendered by carriers. See 61 I. C. C. 680 and other cited cases.

U. S. Industrial Alcohol Co. v. C. & N. W., 118 I. C. C. 674.

§10½. Protective Service.

See Heater Car Service; Protective Service.

(a) Complainant alleged charges for reicing two cars of vegetables at Potomac Yard, Va., were unreasonable and inapplicable. Complainants contend that charges apply under rule 225 C only when the shipper, owner or consignee orders the car stopped at a point intermediate to the final destination or held at the original or a diverted destination. They urge that Potomac Yard is not a point intermediate to the final destination, but that it was the destination of the shipments and that the shipments were not held at Potomac Yard on the order of complainants within the meaning of the rule. No notice of a change in the destination of either shipment was received by the carriers agent prior to the arrival of the shipments. It was therefore necessary for defendants to hold the cars for instructions. The rule clearly applies to cars held at the original destination and later forwarded. Carriers are required to furnish refrigeration service to shippers at a reasonable cost. Where shipments are billed for diversion cars are often detained at the billed destination and additional protective service is required until forwarding instructions are received. It is not unreasonable to make an additional charge for that service, and carriers are justified in providing reasonable rules for the application of such charges. Complainants could have avoided the charges complained of by billing the shipments through to final destination or by furnishing diversion orders prior to the arrival of the cars at Potomac Yard. HELD, reicing charges were applicable and not unreasonable, complaint dismissed. Dought v. A. C. L. R. R., 123 I. C. C. 522.

§11¾. Sacking and Slatting.

(a) Complainant attacked charge of $5 per car for slatting 39 stock cars for the transportation of watermelons from points in Texas to St. Louis, Mo., as unreasonable, unjustly discriminatory and unduly prejudicial. They also allege that they were overcharged $1.525 per car on 10 of the above shipments upon which freight charges were computed without allowance for the weight of the slatting material. On 29 of the shipments an allowance of 250 pounds per car, to cover the weight of slatting, was deducted from the net weight. On the remaining 10 cars no such allowances were made. Watermelons are perishable freight and well ventilated equipment is required for their transportation. For this purpose slatted stock cars are suitable and are largely used. In unslatted cars the melons frequently rot and are discolored by the elements, and are also subject to mutilation from the outside. Complainants ordered slatted stock cars for the movement of their freight, but as stock cars are not ordinarily slatted, this work was performed by defendants, for which a charge of $5 per car was assessed in addition to the applicable commodity rate. In 78 I. C. C. 732, the Commission said that the maintenance and collection by the respondents, among whom were these defendants, of a charge for slatting stock cars when furnished for the transportation of watermelons in carloads from points in Texas to points in other states were unreasonable and unjustly discriminatory. HELD, charge for slatting the cars unreasonable and assessment of additional charges on 10 of the cars for transportation of slatting material was without tariff authority, reparation awarded. Bernstein-Nehmen & Co. v. G. C. S. F. Ry., 115 I. C. C. 691.

§12½. Spotting and Special Services.

See Allowances §8 (5); Special Rates and Services; Spotting; Storage; Terminal Facilities §5 (b).

(a) The holding of cars at a place in a plant where loading is impossible is not spotting cars for loading, but if the plant requires empties to be placed in this manner for its convenience the additional move is a plant service. Divisions Received by B. R. R. & C. Co., 104 I. C. C. 415, 432.

(b) Complainant attacked charges assessed for spotting services at its plant, performed by them. In 60 I. C. C. 523 and 73 I. C. C. 100, commission found reparation should be awarded. Although the exact cost to complainants of performing the spotting service has not been established, the evidence is sufficient to enable the commission to determine reasonable charges or allowances as maxima to be paid by the Belt for that service. HELD: Following were reasonable al-

lowances for that service: $1.48 per car from Dec. 9 to Dec. 31, 1917, and $1.85 per car from March 1 to 26, 1920. Reparation awarded. United Chemical & Organic Products Co. v. Director General, 112 I. C. C. 687.

(c) Hand or electric trucking of cotton, or movement by overhead trolley from warehouse or compress to the wharf, is not a substitute for rail transportation but is an intraplant movement just the same as the handling of commodities from the interior of a warehouse to the railroad car or dray; and no allowance may lawfully be made therefor. Rates on Cotton to Gulf Ports, 123 I. C. C. 685, 696, 697.

§14. Storing, Grading and Resacking.

See Supra §10; Storage.

(a) Failure of carriers to provide storage in transit on iron and steel pipe and fittings shipped from points east of the Mississippi River to destinations in Kansas, Oklahoma, Texas, Louisiana, and Arkansas, while according transit on various other commodities, found not unreasonable or unduly prejudicial. Arrangements in effect on other commodities are not shown to unduly prejudice complainant in any manner, such other commodities being mostly articles of food which could not be used by complainant in place of those here considered. Moreover, the commission ordinarily will not require establishment of transit except to remove unjust discrimination or undue prejudice and carriers do not now provide storage in transit on these commodities at other points between the pipe producing and consuming fields and no compelling commercial necessity or general demand for its establishment has been shown. Western Petroleum Refiners Asso. v. St. L.-S. F. Ry., 113 I. C. C. 716.

(b) Complainant alleged that the rates on rosin, in carloads, from Alabama, Georgia, Louisiana and Mississippi to Ivorydale, Cincinnati, O., there graded and stored, and reshipped to Hamilton, Ont., Can., were unreasonable, and that the failure to provide transit arrangements on rosin at Ivorydale in connection with the through rates to Hamilton were unreasonable, unduly prejudicial and in violation of section four. Original report 112 I. C. C. 381. A joint rate of 42c applies on rosin, carloads, to Hamilton from the Gulf ports and points directly intermediate thereto. The L. & N. allows grading and storage in transit at Latonia and Central Covington, Ky., under this through rate. These Kentucky points are across the Ohio river from Cincinnati. On rosin graded and stored at Ivorydale, within the switching limits of Cincinnati, and reforwarded to Hamilton, the applicable rate is the combination of the rates to and from Cincinnati. This results in higher charges in the aggregate on rosin graded and stored at Ivorydale than on rosin graded and stored at Latonia or Central Covington. In this and other instances of record greater compensation in the aggregate is charged for the transportation of like property for a shorter than for a longer distance over the same route in the same direction, the shorter being included within the longer distance. This is in contravention of section four of the act. This is so notwithstanding that the 42c rate and the factor of the combination rate from Cincinnati to Hamilton are joint rates from points within the United States to a point in Canada. HELD, defendants will be expected promptly to remove the fourth section violations that exist. Procter & Gamble Co., v. A. & V. R. R. 129 I. C. C. 385.

§15. Transit.

See Infra §18, §19, §20; Supra §10; Advanced Rates §8½a (c), §17 (e); Bills of Lading §4; Cars and Car Supply §11; Compress Companies and Charges; Concentrating Rates and Privileges; Dressing In Transit; Export Rates and Facilities §7 (b); Facilities and Privileges §1 (b) (c) (d); Panama Canal Act; Penalty Charges; Routing and Misrouting §8½; Stoppage-In-Transit; Storage; Through Routes and Joint Rates §18, §19, §20; Transfer; Transit; Yardage.

(a) Proposed transit charge at points in Florida, Kentucky, and Ohio on rosin and turpentine originating in Southeast and reforwarded to destinations on or beyond Ohio River, found not justified in so far as it conflicts with charges under diversion and reconsignment tariff. Rates here in issue were generally prescribed or approved by commission without contemplation of transit, and evidence in justification of proposed charge

centers about additional service required on shipments handled through storage yards or warehouses. However, as published, it would apply for all services embraced in definition of transit, including those on shipments which transit tariff now provides will be handled at through rates plus diversion or reconsignment charges. Transit Privilege on Rosin, 104 I. C. C. 437.

(b) Fabrication: Rates on steel tanks, k. d., from South Chicago, Ill., Indiana Harbor, Ind., and Youngstown, Ohio, to Galveston, Tex., for export to Mexico, fabricated in transit at Iola, Kans., found not unreasonable due to lower export rates between same origin and destination points with fabrication in transit at Kansas City, such lower through rates being subsequently established through Iola. Earnings under rates assailed are materially lower than those under numerous rates on same and analogous commodities from other iron and steel producing points for comparable distances, many of which were approved or prescribed by commission. United Iron Works v. Director General, 104 I. C. C. 449.

(c) Transit privileges rest upon the fiction that incoming and outgoing transportation services, which are in fact distinct, constitute a continuous shipment of identical articles from point of origin to final destination. See 257 U. S. 247. The commission has consistently applied same principle in its decisions dealing with transit. North Packing & Provision Co. v. Director General, 104 I. C. C. 607, 613.

(d) Proposed reduction in time limit for storage in transit of tea, matting, grass, matting and grass articles, and rattan furniture, at Minnesota Transfer, Minneapolis, St. Paul, and Duluth, Minn., from 18 to 12 months, found justified, except on tea. Established trade practices require a minimum storage of 18 months on tea, importers requiring benefit of such a time limit at mid-western points in order to be able to distribute therefrom in competition with importers at New York and Boston who can store tea indefinitely at ports of entry. Moreover, 18-month limit has not been abused and no reason appears for depriving transcontinental carriers of opportunity to compete for this traffic. Conference ruling of July 25, 1913, affirmed. Storage in Transit on import Traffic, 104 I. C. C. 755.

(e) A line which participates in a joint trade is not guilty of undue prejudice in failing to accord transit service at a point on its line merely because another carrier party to same joint rate does accord transit service. See 257 U. S. 247. Federal Products Co. v. I. C. R. R., 107 I. C. C. 271, 275.

(f) Knowledge, on part of carrier's agent, of shipper's intention to store commodity in transit does not relieve shipper from strict compliance with transit rules. Nor does ignorance of tariff provisions excuse shipper from noncompliance with such provisions. See 62 I. C. C. 110; 242 U. S. 448. While shipper is not presumed to know with what representative of carrier he is to record freight bills in order to secure through rates on shipments accorded transit privileges, if he desires transit it is his duty to make inquiry of carrier and thus inform himself. Beatrice Creamery Co. v. C., B. & Q., 107 I. C. C. 568, 570.

(g) Granting by carriers of a transit arrangement at Sioux City, Iowa, whereby livestock originating at stations north and west of that city and billed through to stations on and east of Mississippi River, may be stopped and unloaded at that point for purposes of testing the market without additional charge, while denying a similar arrangement at Sioux Falls, S. Dak., found unduly preferential of the former and prejudicial to the latter. Sioux Falls Live Stock Exchange v. A., T. & S. F., 109 I. C. C. 501, 513.

(h) Tariff provision restricting application of joint rates and providing local or combination rates on iron and steel articles shipped from Pennsylvania and Ohio points, fabricated in transit at Parkersburg, W. Va., and reshipped to Kentucky points and to New Orleans, for export, found unreasonable and unduly prejudicial to extent they exceeded contemporaneous joint rates plus prevailing transit charges. Transit arrangements on joint rates tend to avoid maladjustments, and connecting lines can not dictate to the road that alone serves transit point the manner in which joint rates through that point shall be applied in conjunction with transit arrangements as long as they are not deprived of their long haul, especially where, as here, they perform no greater service on shipments fabricated in transit than they do on shipments not so handled. Reasonable and nonprejudicial rates prescribed and reparation awarded. Parkersburg Rig

& Reel Co. v. B. & O., 109 I. C. C. 569.

(i) Transit arrangements on joint rates tend to avoid maladjustments. Connecting lines can not dictate to the road that alone serves transit point the manner in which joint rates through that point shall be applied in conjunction with transit arrangements as long as they are not deprived of their long haul, especially where they perform no greater service on shipments accorded transit than they do on shipments not so handled. See 83 I. C. C. 18 and other cited cases. Parkersburg Rig & Reel Co. v. B. & O., 109 I. C. C. 569, 575.

(j) The fabrication in transit of iron and steel articles is common and has been in effect in different territories for many years. Its convenience to the fabricator of these products makes it practically a commercial necessity. Parkersburg Rig & Reel Co. v. B. & O., 109 I. C. C. 569, 575.

(k) Upon contention of carrier that it can not be required to establish transit arrangements at a point on its line aplicable in connection with traffic originating on its rails on the ground that to do so would deprive it of the long haul in violation of section 15 (4) of the act. HELD: That section merely prohibits commission from requiring establishment of joint through routes and rates which will have the effect of short hauling carriers under circumstances there set forth. But where, as here, the situation is simply whether or not transit shall be permitted at a point on its rails in connection with through rates and routes already in effect, this is clearly a situation not covered by section 15 (4). Montgomery Cotton Exchange v. S. A. L., 109 I. C. C. 579, 584.

(l) There is nothing to prevent carriers performing a movement into a transit point from being adequately compensated for all expenses in connection with such service through a proper apportionment of through charges in division between respective carriers forming through route. Montgomery Cotton Exchange v. S. A. L., 109 I. C. C. 579, 584.

(m) If cotton originating on the L. &. N. south and west of Montgomery is prohibited from moving to southeastern and Carolina destinations and forced to move via the Ohio River to the East or to Gulf ports for export, that carrier will receive a longer haul than if turned over to its connections at Montgomery. Upon contention that under above circumstances the L. & N. can not be required to establish concentration and warehousing arrangements at Montgomery on cotton originating on its line and destined to points in the Southeast and the Carolinas on ground that to do so would deprive it of long haul in violation of section 15 (4) of the act. FOUND: Situation presented is clearly not covered by provision of the act relied upon. Montgomery Cotton Exchange v. S. A. L., 109 I. C. C. 579, 584.

(n) Failure of carriers to establish transit arrangements at Montgomery, Ala., under which cotton originating at points on and west of the L. & N. between Decatur and Mobile, Ala., may be concentrated and stored and thence reshipped to south Atlantic ports and to southeastern and Carolina points, and via South Atlantic ports to New England mill points, while contemporaneously maintaining such arrangements at Atlanta, Ga., found not to result in undue prejudice. Originating carriers are not parties to the tariff under which transit is authorized at Atlanta, and mere fact that they participate as originating lines in joint rates in connection with which transit at Atlanta is allowed does not make them guilty of undue prejudice against Montgomery. See 257 U. S. 247. Montgomery Cotton Exchange v. S. A. L., 109 I. C. C. 579, 585, 587.

(opq) Respondent, Burlington, proposed to withdraw transit arrangements at Denver, Colo., at joint rates on grain and grain products originating on connecting lines, particularly in Nebraska, to destinations in California and other western states, when such traffic is received by respondent at Missouri River junctions, by making the joint rates subject to this rule: will not apply in connection with commodities that have had a previous transit at the Missouri River. The proposed schedules would not restrict the transit arrangement either at the Missouri River or at Denver except that transit would not be permitted at both points under the joint rates. Neither is there a transit limitation proposed at Denver on grain which originates at points on respondent's line in Nebraska and pays inbound rates to Omaha equal to those from points on the U. P. Situations of this character should be met by provisions for increasing revenues to a reasonable level for existing services rather than by curtailment of such ser-

vices. Transit privileges on grain, 113 I. C. C. 374.

(r) On cotton moving to Montgomery, Ala., for concentration and compression and reshipment beyond, the interstate inbound locals were higher than intrastate local rates, the matter of which rate should be used not being covered by tariff provision. Contention that lower intrastate rates were legally applicable on shipments originating at stations south of Montgomery, concentrated and compressed at that point and reshipped to Mobile, Pensacola, and New Orleans, not sustained following Conf. Ruling adopted March 15, 1921, wherein the rule is laid down that where interstate, proportional, or reshipping rates are named on shipments originating beyond reshipping or transit points such rates are applicable only in case inbound charges are based on inbound interstate rates. Montgomery Cotton Exch. v. L. & N., 112 I. C. C. 325, 326, 327.

(s) Where a transit arrangement is voluntarily established for benefit of a particular community and is of marked advantage to that point, and represents one of the few exceptions to the general practice of carriers to decline to permit transit where back hauls are necessitated, and attempt to obtain a lower basis than that ostensibly provided for application in connection with the transit arrangement should be closely scrutinized, and commission should not permit such a result unless it is clearly necessitated under a reasonable construction of the terms of the tariffs. Montgomery Cotton Exch. v. L. & N., 112 I. C. C. 325, 329.

(t) Transit arrangements represent a departure from ordinary transportation service, under which shippers are accorded a more favorable basis of rates than would obtain if inbound and outbound movements were treated as separate shipments. Montgomery Cotton Exch. v. L. & N., 112 I. C. C. 325, 329.

(u) Local rates into transit point were made subject to tariff carrying the combination rule "except as otherwise indicated," and transit tariff provided that transit service would be available when "the lawful tariff rate to the transit point has been paid thereon." Upon contention that on cotton moving to Montgomery, for concentration and compression and reshipment beyond, the through charges based on local rates to Montgomery and reshipping rates beyond were subject to combination rule, HELD: Since payment of the lawful inbound rate was a condition precedent to transit service and use of reshipping rate outbound, the full combination of the two was basis for through charges to be used in connection with transit arrangement. This basis for construction combinations was sufficiently "otherwise indicated" within meaning of the exception to render combination rule inoperative. Montgomery Cotton Exchange v. L. & N., 112 I. C. C. 325, 327, 329.

(v) Transit is necessarily founded on the assumption that two separate and distinct local movements to and from transit point constitute an interrupted through movement. Notwithstanding the assumption on which it is based, the fact remains that it involves two distinct movements and two separate and complete terminal services at transit point, with all the accompanying physical handling and keeping of the necessary records in connection therewith. Montgomery Cotton Exch. v. L. & N., 112 I. C. C. 325, 332.

(w) The commission has deprecated establishment of transit involving back hauls. See 31 I. C. C. 150, 153, and other cited cases. Montgomery Cotton Exch. v. L. & N., 112 I. C. C. 325, 333.

(x) The commission has power under section 1 of the act to require establishment of transit, 257, U. S. 247, 257, but has exercised that power rarely, its policy having been generally not to require the establishment of transit arrangements unless to remove unjust discrimination or undue prejudice. See 87 I. C. C. 425, 435. Montgomery Cotton Exch. v. L. & N., 112 I. C. C. 325, 332, 333.

(y) Rates on rosin from points in the South and Southeast to Hamilton, Ontario, Canada, and failure of carriers to provide transit arrangements thereon at Ivorydale (Cincinnati), Ohio, found not unreasonable, unduly prejudicial, or otherwise unlawful as compared with rates to Buffalo, N. Y. Ordinarily commission does not require establishment of transit arrangements except to remove unjust discrimination or undue prejudice, neither of which is here shown. Moreover, present rates on this traffic resulted from relatively low rates established following the decision in

Naval Stores from Southern Points, 87 I. C. C. 740, and 89 I. C. C. 634, and there is nothing of record to show that rate factors to or beyond either Cincinnati or Buffalo are unreasonable. Procter & Gamble Co. v. A. & V., 112 I. C. C. 381.

(z) Ordinarily the commission does not require establishment of transit arrangements except to remove unjust discrimination or undue prejudice. Procter & Gamble Co. v. A. & V., 112 I. C. C. 381, 385.

(aa) Transit is optional, and when charges made by the use of transit are higher than charges at full local rate from transit station to final destination the shipper can elect to pay lower charges. Lindsley Bros. v. G. N. Ry., 113 I. C. C. 166, 167.

(bb) The commission has repeatedly criticized policing arrangements which are dependent on knowledge or information a carrier's agent received through investigation, and has consistently held that tariffs authorizing transit services and arrangements which do not contain clear and definite policing provisions to insure collection of correct charges are in violation of section 6 of the act. Drayage Absorptions by S. W. M., 113 I. C. C. 179, 182.

(cc) Proposal of C., B. & Q. to withdraw transit arrangements at Denver, Colo., on grain and products originating on connecting lines, when previous transit has been accorded at Missouri River junctions and traffic is delivered to it for transportation to far western States under joint rates, found not justified. Under present divisional arrangements inbound carriers to river junctions retain their full locals, whereas for movement therefrom to Denver the Burlington is required to perform transportation at a deficit. Record affords no convincing reasons why revenue on traffic accorded a through status by virtue of transit arrangements should not be divided in same way as that on through traffic moving without interruption. Moreover, Missouri River and Nebraska grain markets have long enjoyed present arrangements, curtailment of transit would seriously affect their interests, and situations of character here disclosed should be met by increasing revenues to a reasonable level for existing services rather than by curtailment of services. Transit Privileges on Grain, 113 I. C. C. 374.

(dd) Complainant attacked commodity rates on carloads of rough stone and stone sawed on four sides or less shipped during the two years prior to July 1, 1924 from Bedford, Bloomington, and Clear Creek, Ind., Carthage and Phoenix, Mo., and Silverdale, Kas., to Tulsa, Okla., as unreasonable and unduly prejudicial. Prior to Oct. 25, 1924 the rate on rough or dressed stone, in carloads, from Bedford, to Tulsa, was 44c, at which time, because of a combination rate to Oklahoma City, Okla., based on Little Rock, Ark., it was reduced to 41.5c and made applicable to a large blanket destination territory. The rates from Carthage, Phoenix and Silverdale to Tulsa are 11c, 12c and 13.5c, respectively. A transit service whereby the through rate might be used from Bedford through Tulsa to ultimate destination would doubtless be an advantage to complainants, but transit on stone is not a general practice and is not granted by defendants. HELD, rates attacked from Bedford, Bloomington and Clear Creek to Tulsa unreasonable to extent they exceeded 37.5c on dressed stone and 35.5c on rough stone, reparation awarded. Consolidated Cut Stone Co. v. A. T. & S. F. Ry., 113 I. C. C. 480.

(ee) Refusal of carriers to accord transit on rough stone shipped from various points to Tulsa, Okla., there dressed and reshipped to destinations in Kansas, Arkansas, western Louisiana, and Texas, found not unlawful as compared with transit services accorded competitors in Texas on like traffic moving between points in latter named State. These transit services intrastate in Texas were established primarily to move a Texas stone which is suitable for use in Texas climate and are not shown to result in unjust discrimination against complainant. While a transit service whereby through rates might be used from the Bedford district through Tulsa to ultimate destination would doubtless be an advantage to complainants, transit on stone is not a general practice and it is not commission's policy to require carrier's to extend transit service to new points or to additional commodities except to remove violations of the act. Consolidated Cut Stone Co. v. A., T. & S. F., 113 I. C. C. 480.

(ff) It is not the policy of the Commission to require carriers to extend

transit service to new points or to additional commodities except to remove violations of the act. Consolidated Cut Stone Co. v. A. T. & S. F. Ry., 113 I. C. C. 480, 485.

(gg) Complainant attacked commodity rates charged from point on the C. & E. I., to Louisville, Ky., applying through Indianapolis, Ind., on grain and grain products, carloads, destined to points in the southeast, and the transit arrangements applying in connection therewith at Indianapolis as unreasonable, unjustly discriminatory and unduly prejudicial. Rates attacked are joint rates applying over the C. & E. I., as far as Terre Haute, Ind., or junctions north thereof and thence Big Four or Pennsylvania through Indianapolis. They are the same on traffic going beyond Louisville as on traffic destined to Louisville proper. There are no proportional rates over these routes lower than the locals. Under existing rates transit is accorded at Indianapolis. There is no evidence that these arrangements are unreasonable or otherwise unlawful as used in connection with existing rates. Evansville was formerly the gateway on this traffic, but under the proportional rates the C. & E. I., by delivering the traffic to the Southern at Princeton, avoids hauling it all the way to Evansville, and the Southern, by receiving it at Princeton, saves some of the expense which would be incurred by it in hauling the traffic from Evansville. There is no sufficient showing here of the need for such proportional rates through Indianapolis. From some points the routes through Indianapolis are more direct, but in no instance can the routes through Princeton be said to be unduly circuitous. HELD, rates and transit arrangements not unreasonable or otherwise unlawful complaint dismissed. Indianapolis Board of Trade v. L. & N. Ry., 113 I. C. C. 508.

(hh) Rates on grain and products from C. & E. I. R. R. stations, through Indianapolis, to Louisville, on the traffic destined to southeastern points, and transit arrangements in connection therewith at Indianapolis, found not unreasonable or otherwise unlawful as compared with lower proportionals over same carrier to Princeton, Ind., and thence in connection with the Southern Ry., beyond. The proportionals are part of an equalization scheme whereby Louisville and Evansville, as gateways, are kept on a parity, were established primarily in interest of economical operation, and do not constitute a proper measure for rates through Indianapolis. Their cancellation would not benefit Indianapolis interests, whereas their publication through that point would deprive the C. & E. I. of its long haul, which, in absence of a convincing showing of public interest and necessity, should not be required. Moreover, carriers show that rates assailed are low as compared with those from same origin points to destinations in Ohio and Michigan for similar distances. Indianapolis Board of Trade v. L. & N., 113 I. C. C. 508.

(ii) Failure of carriers to provide storage in transit on iron and steel pipe and fittings shipped from points east of the Mississippi River to destinations in Kansas, Oklahoma, Texas, Louisiana, and Arkansas, while according transit on various other commodities, found not unreasonable or unduly prejudicial. Arrangements in effect on other commodities are not shown to unduly prejudice complainant in any manner, such other commodities being mostly articles of food which could not be used by complainant in place of those here considered. Moreover, the commission ordinarily will not require establishment of transit except to remove unjust discrimination or undue prejudice and carriers do not now provide storage in transit on these commodities at other points between the pipe producing and consuming fields and no compelling commercial necessity or general demand for its establishment has been shown. Western Petroleum Refiners Asso. v. St. L.-S. F. Ry., 113 I. C. C. 716.

(jj) Ordinarily commission will not require establishment of transit except to remove unjust discrimination or undue prejudice. Western Petroleum Refiners Asso. v. St. L.-S. F., 113 I. C. C. 716, 719.

(kk) Respondent, Frisco, proposed to cancel from its tariff governing transit at Kansas City, Mo, reference to the UP tariff publishing joint rates on grain and grain products, carloads, from certain points in Kansas on the UP to Pittsburgh, Kas., Joplin and Springfield, Mo., and Fort Smith, Ark., and intermediate points on the Frisco. The joint rates described are subject to the Frisco tariff governing transit at Kansas City. The latter specifically refers

to the UP tariff containing the joint rates. It is that reference which is sought to be canceled, thereby withdrawing any transit at Kansas City on the Frisco under such joint rates. No justification has been offered for any increased rates which would result from the proposed cancellation, other than that the Frisco would receive little or no revenue for its hauls beyond Kansas City under its erroneous interpretation of its Kansas City transit tariff. Its local wheat rates beyond Kansas City, lawfully applicable on wheat milled into flour at Kansas City when subject to its transit tariff greatly exceed its divisions of the joint flour rates. HELD, schedules not justified. Transit on grain and grain products, 115 I. C. C. 621.

(ll) Complainant attacked practice of defendants in according to intrastate traffic in Missouri the privilege of stopping shipments of grain and grain products in transit for partial unloading and the withholding of such privilege from complainants shipments subjected the complainant and interstate commerce to unjust and unreasonable rates. Defendants admit that discrimination and prejudice exists and do not deny that it is unjust and unreasonable. The stopping in transit privilege to partly unload or load is in effect in western trunk line territory on various commodities but not on grain and grain products. HELD, Missouri tariff rule reasonable rule for application on interstate traffic. Southwestern Milling Co. v. A. T. & S. F. Ry., 118 I. C. C. 61.

(mmnn) Complainant alleges that its members mill grain in transit from Minnesota, North Dakota and South Dakota to points in western trunk line, central trunk line and other territories in competition with millers located at Duluth, Minneapolis and Superior that on this grain milled in transit at complainants mills defendants make certain charges for the transit service in addition to the line haul rates, whereas no additional charge for transit is assessed at other milling points. Respondents proposed to make certain charges in addition to the line haul rates on grain from Minnesota, Montana, North Dakota and South Dakota when milled or otherwise treated in transit at points west of Minneapolis. The interior millers are seeking the elimination of the transit charge at their mills so that they will be on a parity over all routes with mills at Minneapolis, Duluth and points south and east thereof. At interior mills directly intermediate to final destination the transit charge for milling is generally 1.5c, but at certain milling points the charge is 2.5c, dependent upon the origin of the grain or the destination of the products. The all rail rates to Chicago on grain from the origin territory here considered are generally made up of the local rates to Minneapolis or Duluth and proportional rates of 13c on wheat and 11.5c on coarse grains beyond. Evidence shows that the average cost to defendants of rendering the transit services at interior mills is at least 2.5c per 100 pounds. There is no indication upon this record that a charge of 2.5c would be unreasonable per se for this transit service. The Commission has said several times that when practicable rates through important grain markets should break into definitely known inbound and outbound components and these rates to Chicago and points east thereof may not be condemned simply because they are the same as the Minneapolis combination. The G. N. and N. P. can not be held guilty of undue prejudice because their connections at their eastern terminals elect to grant free transit while they make a charge therefor at points on their lines west of those terminals. This is not true of the Milwaukee which serves points in the territories east and west of the Twin Cities. HELD, suspended schedules proposing to restore transit charges at points on the G. N. and N. P. justified, but proposal of Milwaukee and Soo line, unduly prejudicial in that they propose to charge for transit west of Minneapolis and not south and east thereof. Minnesota Dakota Transit Millers v. A. A. R. R., 118 I. C. C. 585.

(oo) Proposal of St. L.-S. F. Ry., to cancel from its tariff governing transit at Kansas City, Mo.-Kans., reference to the Union Pacific tariff publishing joint rates on grain and products from certain points in Kansas on latter carrier's line to Pittsburg, Kans., Joplin and Springfield, Mo., and Ft. Smith, Ark., and intermediate points on the Frisco, found not justified. Proposed cancellation is outgrowth of a dispute between the two carriers as to correct interpretation of transit tariff. If suspended schedules are permitted to become effective, the Kansas City combination rates will apply, which are substantially higher

than present joint rates. However, no justification was offered for any increased rates, other than that the Frisco would receive little or no revenue for its hauls beyond Kansas City under its erroneous interpretation of its transit tariff. Transit on Grain and Products, 115 I. C. C. 621.

(pp) Milling-in-transit rates on alfalfa meal from points in Idaho to Memphis, Tenn., found not unreasonable or unduly prejudicial as compared with lower rates from Colorado points to same destination. Earnings under rates attacked compare favorably, distance considered, with those from Colorado points and are considerably lower than those on other agricultural products from and to same and other points. Fact that rate assailed was not contemporaneously reduced with corresponding rate to St. Louis, does not alone establish unreasonableness or unlawfulness of rate to Memphis. Bailey v. O. S. L., 115 I. C. C. 745.

(qq) Tariff rule published in compliance with a legislative enactment of the State of Missouri under which c. l. shipments of grain and products moving intrastate from Kansas City and St. Joseph, Mo., to other points in Missouri are permitted to be stopped in transit for purpose of partly unloading found reasonable for interstate application on shipments from Kansas City, Kans., to points in Missouri, and failure of carriers to apply said tariff rule to such interstate shipments found unduly prejudicial. Removal of undue prejudice ordered. Southwestern Milling Co. v. A., T. & S. F., 118 I. C. C. 61.

(rr) Upon further hearing, transit rules, regulations, and practices in their application to cottonseed meal shipped from Arkansas, the Mississippi Valley, and the Southeast to Lancaster and York, Pa., there manufactured into mixed feed, and the mixed feed shipped to destinations in New England and trunk-line territories and to points in Maryland, Virginia, and the Carolinas, found unreasonable and unduly prejudicial to extent they exceeded transit rules, regulations, and practices in effect in c. f. a. territory. Reparation awarded and reasonable rates prescribed for future. Former reports 87 I. C. C. 285; 85 I. C. C. 578. Eshelman & Sons v. Director General, 118 I. C. C. 441.

(ss) Transit charges at points on the Great Northern and Northern Pacific railroads in addition to rates on grain and products from Minnesota and the Dakotas, and products shipped to Chicago, Milwaukee, St. Louis, and points east thereof, found not unreasonable or unduly prejudicial. While free transit is accorded by lines east of Minneapolis the prejudice here alleged can not be removed by the Great Northern or Northern Pacific's own action. Grain moving into Minneapolis over either of these carriers moves on local rate to that point, which carries with it delivery to consignee and after grain is delivered the service of the inbound carrier is ended. However, if grain or products therefrom is later shipped to Chicago it moves at a proportional rate over which inbound lines have no control. In respect of situations of this kind the above-named carriers can not be held guilty of undue prejudice. See 257 U. S. 247. Minnesota-Dakota Transit Millers v. A. A. R. R., 118 I. C. C. 585.

(tt) Proposed restoration of transit charges at points on the Great Northern and Northern Pacific railroads west of Minneapolis on grain from Montana, the Dakotas, and Minnesota, and products shipped to Chicago, Milwaukee, St. Louis, and points east thereof, found justified. Proposed additional transit charges at points west of Minneapolis on the C., M. & St. P. Ry., while similar transit services are performed by that carrier on grain from same origin territory and products thereof shipped to same destination territory without additional charge at points on its lines east or south of Minneapolis, and which would result in undue prejudice found not justified. Minnesota-Dakota Transit Millers v. A. A. R. R., 118 I. C. C. 585.

(uu) Transit charges at points on the Soo Line in addition to rates on grain and products from Minnesota and the Dakotas, and products shipped to Chicago, Milwaukee, St. Louis, and points east thereof, found not unreasonable, but unduly prejudicial in favor of competitors at other points on its lines west, east and south of Minneapolis or Duluth accorded such services free. While policy of the Soo Line both east and west of the Twin Cities is said to be dictated largely by policy of its competitors, where a carrier elects to meet commercial or carrier competition it must not cause undue prejudice. See 43 I. C. C. 458, 465. Minnesota-Dakota Transit Millers v. A. A. R. R., 118 I. C. C. 585.

(vv) Proposed additional transit charges at points west of Minneapolis on the C., M. & St. P. Ry., on grain from Montana, the Dakotas, and Minnesota, and products thereof shipped to Chicago, Milwaukee, St. Louis, and points east thereof, while similar services are performed by that carrier on grain from same origin territory and products thereof shipped to same destination territory without additional charge at points on its lines east or south of Minneapolis, found not justified, since undue prejudice would result against persons located at points west of Minneapolis and undue preference would be accorded competitors at points east or south of that point. Minnesota-Dakota Transit Millers v. A. A. R. R., 118 I. C. C. 585.

(ww) A transit privilege is something offered to shipper in addition to transportation service for which a reasonable charge may properly be made. See 98 I. C. C. 679, 684. Minnesota-Dakota Transit Millers v. A. A. R. R., 118 I. C. C. 585, 594

(xx) Santa Fe, respondent, proposed to eliminate a portion of a rule for the fabrication in transit of iron and steel articles at Tulsa, Okla. It is proposed to remove any exception against the application of the 5 cents out of line charge on iron and steel articles handled in the manner outlined in the rule. Prior to June 28, 1926 the M. K. T. maintained rules under which iron and steel moving over its rails could be fabricated in transit at Tulsa and shipped via Kansas City to destinations on the Santa Fe in Texas and New Mexico without charge for out of line service. At the same time respondents charge for the out of line haul of like traffic over its line via Tulsa was 5 cents. This charge was withdrawn, effective July 1, 1926, for the purpose of meeting the competition of the M. K. T. The latter line published a charge of 15 cents, effective June 28, 1926, for out of line service on shipments destined to Kansas City or to points beyond, and respondent thereupon published a rule providing for a 5 cents charge. It does not appear that the proposed charge for the out of line haul of iron and steel articles over the line of respondent via Tulsa would subject such traffic to a disadvantage that is undue. HELD, schedule justified. Iron and Steel Fabricated in Transit, 120 I. C. C. 325.

(yy) A shipment is entitled to transit service only when it meets the conditions attached to such service. Victor Milling Co. v. M. P. R. R., 120 I. C. C. 335, 338.

(zz-3b) Transit arrangements, in their most common form, are susceptible of defense only upon the theory that the inbound and outbound movements are in fact parts of a single continuous transaction. While the freight is delayed at the transit point the shipment is merely suspended temporarily, the present intention of the shipper being to forward the goods to their ultimate destination. Once let it be said that the inbound and outbound movements are separate and distinct and the impropriety of applying any rates other than the regularly established locals would be self-evident. Sioux City Livestock Exchange v. C. & N. W. Ry., 122 I. C. C. 177, 185.

(3c) Complainant alleged that transit rules at Jackson, Miss., in connection with the proportional rates on grain from primary markets on the Mississippi River and west thereof are unduly prejudicial in that they do not permit the same mixtures as are permitted at competitive points such as Meridian, Miss., and Memphis, Tenn.; that the rates on grain from said primary markets to points on the G. & S. I., are unreasonable and in violation of the fourth section; and that the failure of defendants to provide rules whereby grain from said primary markets may be shipped to Jackson, there manufactured into feed, and the feed reshipped to the southeast over the A. & V. to Meridian and connecting lines beyond to points on the G. M. & N., and to points on the L. & N., via Gulfport, Miss., is unreasonable and unduly prejudicial. Since the hearing the I. C. has revised its transit rules at Jackson so as to permit the feed mixtures sought by complainant. By fourth section order 7026, of Nov. 30, 1917 the Ship Island was and is permitted to meet the rates of its trunk line competitors at junction points and to maintain higher rates to intermediate points. It is manifest that as the relief granted the Ship Island because of financial necessities is no longer justified in respect of commodity rates, and the latter should be adjusted at the same time the class rates are. It appears that Jackson is now given transit to all of southeastern territory to which the I. C. has working arrangements via Jackson, and that the failure to accord it transit on traffic to Birmingham and points south thereof is

due to the unwillingness of the Southern system lines to forego the long haul for a much shorter haul in connection with a more circuitous route. The I. C. is willing to establish transit at Jackson under joint rates from the primary markets to points on the G. M. & N., but the latter is not, as it desires to retain the long haul via its northern junctions. It does not serve Jackson and accordingly has not the same incentive to participate in joint rates with transit at Jackson as it has to participate in joint rates over the same route with transit at Laurel. The I. C. is willing to accord transit at Jackson on traffic to points on the L. & N., but the latter is unwilling to join in a more favorable basis with transit at Jackson than now applies via New Orleans with transit at that point. The latter rates are 4 cents over the rates to New Orleans. HELD, rates attacked to points on the Ship Island not unreasonable or otherwise unlawful; that failure of defendants to accord transit at Jackson on grain and grain products destined to points on the G. M. & N., and to points in the southeast which it is not now accorded is not unreasonable or otherwise unlawful and that the failure of defendants to accord transit at Jackson on grain and grain products destined to points on the L. & N., extending from New Orleans to Mobile and moving over the I. C., to Jackson and the Ship Island beyond to Gulfport is unreasonable and unduly prejudicial. Jackson Traffic Bureau v. A. & V. Ry., 122 I. C. C. 387.

(3d) Complainant alleged transit charge of 1.25 cents maintained at points in New York in connection with the so-called f. o. b. rates on grain and grain products from Erie, Pa., and Buffalo and Oswego, N. Y., to eastern destinations and defendants failure to permit transit in conection with the so-called at and east rates on grain from those ports to the same destinations were unreasonable and unduly prejudicial. The so-called f. o. b. rates are the local rates from and to lake ports and do not include elevation or other services incident to the transfer of the lading from the lake vessels to the cars. They apply both on grain and grain products. The so-called at and east rates are proportional rates from the lake ports. They apply only on grain which is moved to the lake ports by water and include a charge of 1 cent a bushel for elevation and transfer of the lading to the cars. Under the f. o. b. rates milling in transit is permitted at points in trunk line territory including those at which complainants are located, at a charge of 1.25 cents. Transit is not permitted under the at and east rates, as such rates do not apply on grain products and the transit rules provide that on grain milled in transit the rate on grain products shall apply from the point of origin of the grain to the destination of the products. Under the all rates on grain products from central and western territories, transit is accorded at mills in central territory and at complainants mills at a charge of 0.5 cents. Transit is also accorded at mills in central territory and at complainants mills under the ex-lake rates on grain products from central territory ports at a charge of 0.5 cents. Generally at all points in western territory no transit charge is assessed. The all rail rates on grain products from central and western territories and the ex-lake rates on grain products from central territory ports are 0.5 cents higher than the corresponding rates on grain. The record herein affords no ground for a conclusion different than 33 I. C. C. 133 on defendants failure to permit milling in transit under the at and east rates on grain. In the same case the commission found the 1.25 cent charge not unreasonable. Commission believes that the complainant's position is sound and that as the differing transit charges are for the same transit services at the same points by the same carriers, unjust discrimination under section 2 of the act exists. Different transit charges are assessed dependent wholly upon whether the traffic comes to trunk line territory all rail or over the lakes. If over the lakes, the charge of 1.25 cents applies, if all rail, it is 0.5 cents. It is clear that the different transit charges at the same milling points are unduly prejudicial to the ex-lake traffic and unduly preferential of the all rail traffic. HELD, defendants failure to accord transit under the at and east rates on grain from Erie, Buffalo and Oswego not unreasonable, unjustly discriminatory or unduly prejudicial. Transit charge of 1.25 cents not unreasonable but unduly prejudicial and unjustly discriminatory and should be removed by establishing the same charge on ex-lake grain as all rail grain, reparation denied. Birkett Mills v. D. L. & W. R. R., 123 I. C. C. 63.

(3e) A transit charge is a local charge for which the carrier establishing it is alone responsible. Birkett Mills v. D. L. & W. R. R., 123 I. C. C. 63, 65.

(3f) While defendants may, for competitive reasons, establish a lower transit charge on particular traffic than they otherwise would, they may not lawfully do so if they thereby unduly prejudice other traffic. Birkett Mills v. D. L. & W. R. R., 123 I. C. C. 63, 66.

(3g) Manifestly the commission can not fix freight rates or transit charges so as to preserve a fixed relationship between the through charges by all rail and rail-lake-rail routes. Birkett Mills v. D. L. & W. R. R., 123 I. C. C. 63, 67.

(3h) Maintenance by the C. B. & Q. R. R. of transit arrangements whereby livestock originating at stations on its line west of Sioux City, Iowa, and billed through to destinations beyond Missouri River markets my be stopped in transit at Omaha, for purpose of testing the market, while denying a similar arrangement at Soiux City, found unduly prejudicial. Sioux City Live Stock Exchange v. C. & N. W., 122 I. C. C. 177.

(3i) Collection of reconsignment charges in addition to rates to and from Sioux City, Iowa, or Omaha, Nebr., on livestock originating north and west of Sioux City, stopped in transit to try the market, and subsequently reforwarded to destinations beyond, either by original shipper or by a different owner, found unreasonable. A change in ownership alone does not justify application of combination of locals instead of through rate. In 89 I. C. C. 236 and other cases, the commission found that assessment in addition to the rates to and from original destination, of any reconsignment charge was unreasonable. Moreover, reconsignment rules for general application providing for a change in name of consignor were approved in the Reconsignment Case, 47 I. C. C. 590, and there is no reason for granting the privilege of a change in ownership under the reconsignment rules and withholding it under the transit arrangements. Sioux City Live Stock Exchange v. C. & N. W., 122 I. C. C. 177.

(3j) The responsibility for transit arrangements rests solely with the carrier on whose lines they apply. Sioux City Live Stock Exchange v. C. & N. W., 122 I. C. C. 177, 186.

(3k) Failure of carriers to permit milling in transit at Jackson, Miss., on grain and products from Mississippi River gateways and points west thereof to destinations on the Gulf, Mobile & Northern and in the Southeast, found not unreasonable or otherwise unlawful. While Illinois Central is willing to establish transit at Jackson under joint rates from origin points to destinations on the Gulf, latter is not, as it is more desirous of participating in rates with transit at points on its own lines involving longer hauls. However, failure to accord transit at Jackson on shipments destined to points on the L. & N., extending from New Orleans to Mobile and moving over Illinois Central to Jackson and Ship Island beyond to Gulfport, is unreasonable and unduly prejudicial in that transit is accorded other competitive points for similar hauls. Jackson Traffic Bureau v. A. & V., 122 I. C. C. 387.

(3l) Combination rates assessed on structural iron and steel from Indiana Harbor, Ind., to Casper, Wyo., fabricated in transit at Muskogee, Okla., found overcharged. Contemporaneously a lower joint rate was in effect from Chicago to same destination. Rates from Indiana Harbor are the same as rates from Chicago and transit tariff provided for application of joint rates from points of origin to destinations wherever applicable via the transit point. Refund of overcharges directed. Tulsa Rig, Reel & Mfg. Co. v. M.-K.-T. R. R., 122 I. C. C. 405, 406.

(3m) Stopping to partially unload interstate shipments of cranberries at points in Texas is, at least so far as this commodity is concerned, peculiar to Texas, applying nowhere else in the Southwest, or possibly in the United States. Stop-over Transit Privilege, 122 I. C. C. 479, 481.

(3n) Refusal of Southern Pacific Co. to permit creosoting or storage in transit at Oakland, Calif., on red-cedar poles and piling, originating in Oregon and Washington, destined to points on its line in California, while maintaining such arrangements at Springfield and East Milwaukee, Oreg., found not unreasonable or unduly prejudicial. Record indicates a dissimilarity of conditions at Oakland as compared with the Oregon points. Latter are directly intermediate to destinations on carriers's line, whereas route through Oakland necessitates

an additional road haul and switching movement. Moreover, establishment of transit at Oakland would give complainant an advantage over its Oregon competitors because receipt of a large volume of poles and piling by steamer would enable it to use its transit credits to greater advantage than would be possible if all shipments came in by rail. Baxter & Co. v. S. P., 122 I. C. C. 498.

(3o) The universal application of transit privileges in connection with rates on grain has resulted from the policy of equalizing various mills, whether located near points of production or in consuming territories. Ogden Grain Exchange v. A. & S., 122 I. C. C. 691, 706.

(3p) Transit charge maintained at New York points in trunk-line territory on ex-lake traffic, in connection with so-called f. o. b. rates on grain and products from Erie, Pa., and Buffalo and Oswego, N. Y., to eastern destinations, found not unreasonable, but unjustly discriminatory and unduly prejudicial in favor of millers, dealers, and elevator companies handling ex-lake grain from c. f. a. territory ports and of all-rail grain traffic from points in c. f. a. and trunk-line territories. Birkett Mills v. D., L. & W., 123 I. C. C. 63.

(3q) Failure of carriers to permit transit under at-and-east rates on grain and products from Erie, Pa., and Buffalo and Oswego, N. Y., to eastern destinations, found not unreasonable, discriminatory, or unduly prejudicial. In 33 I. C. C. 133, the commission found it not unreasonable to refuse to permit transit under these rates, and record herein affords no ground for a different conclusion. Birkett Mills v. D., L. & W., 123 I. C. C. 63.

(3r) A transit charge is a local charge for which carrier establishing it is alone responsible. See 257 U. S. 247. Different transit charges for same service at same points by same carriers, constitute unjust discrimination under section 2 of the act. Birkett Mills v. D., L. & W., 123 I. C. C. 63, 65.

(3s) While carriers may, for competitive reasons, establish a lower transit charge on particular traffic than they otherwise would, they may not lawfully do so if they thereby unduly prejudice other traffic. Birkett Mills v. D., L. & W., 123 I. C. C. 63, 66.

(3t) Commission can not fix freight rates or transit charges so as to preserve a fixed relationship between through charges by all-rail and rail-lake-rail routes. Birkett Mills v. D., L. & W., 123 I. C. C. 63, 67.

(3u) Charges assessed on wheat, reforwarded under proportional rates from Kansas City, Mo., to various interstate destinations and accorded transit at Leavenworth, Kans., and Sweet Springs, Mo., found applicable and not unreasonable or otherwise unlawful. Under transit tariff, proportional rates applied with transit at points in direct line of shipment, but since movement to Leavenworth necessitated an out-of-line haul, transit at that point and Sweet Springs was not authorized. Moreover, in 91 I. C. C. 58; 100 I. C. C. 303, contention that carrier's tariff authorized protection of proportional rates from Kansas City with transit at Leavenworth and Sweet Springs was not sustained, and record in instant case does not warrant a different conclusion. Moore Lawless Grain Co. v. M. P., 123 I. C. C. 647.

(3v) Tariffs authorize one free stop in transit for concentration which may be taken either at interior points or at the port, but an additional charge for a second stop is made. Upon contention of warehouses located back from the water front at the ports that unless they are given a second free concentration they will be at a disadvantage as compared with warehouses located on the water front in handling cotton previously concentrated in transit at interior points, HELD: Advantage which water-front facility has in handling cotton is a natural one derived from its location, and record will not support a conclusion that this advantage should be neutralized by granting second free concentration in transit at the port. Rates on Cotton to Gulf Ports, 123 I. C. C. 685, 695, 696.

(3w) Respondent, Louisville & Nashville, proposed certain restrictions of its recently established transit arrangement involving at Nashville, Tenn., on interstate shipments of mixed feed. Blackstrap molasses is shipped from New Orleans, La., Mobile, Ala., and Pensacola, Fla., to Nashville, and there used in the manufacture of feeds which are distributed to various southeastern destinations. Under respondents present transit arrangement through rates from destination is applied on the weight of the grain product ingredients in the feed,

and the through rate on feeds from New Orleans, Mobile, or Pensacola to final destination is applied on the weight of the molasses in the feed, regardless of any out of line or back hauls. Respondent sought to modify the arrangement in several respects, but protest is made only against that which would cancel the present arrangement on traffic to Florida destinations, leaving in effect the local rate to Nashville on the blackstrap and the mixed feed rate beyond on the weight added to the mixture by the use of the molasses. The record contains no evidence that the proposed restricted transit arrangement, if it goes into effect, would be unduly prejudicial to Jacksonville or Florida interests. Respondent is not a party to the present transit arrangement at Memphis, and it is not clear that any undue prejudice to Nashville would result, or how any could result, if the suspended schedules became operative. HELD, proposed schedules justified. Transit on mixed feed at Nashville, Tenn., 126 I. C. C. 283.

(3x) Respondents proposed to cancel certain exceptions to rule authorizing milling or manufacturing in transit arrangements on lumber and articles taking lumber rates from north Pacific coast territory to destinations in western trunk line, southwestern, central and eastern trunk line territories. All of the tariffs also contain the socalled omnibus clause making the rates subject to such transit arrangements and charges as are published by individual lines parties to those tariffs and lawfully on file with the Commission. If the proposed cancellation were permitted the transit schedule would still remain in effect in the northwest by virtue of the omnibus clause shown in the tariffs carrying the transportation rates but would open the way to permit western trunk line carriers, for example, to publish transit arrangements on this traffic in western trunk line territory. The cancellation of the restrictive schedule as proposed, would not result directly in granting a transit arrangement whereby doors and sash in which protestants are interested, could be manufactured in transit in western trunk line territory, but with this tariff restriction eliminated the western trunk line carriers would be free to establish transit arrangements now prohibited by the restrictive clause under consideration. The record fails to show that any increases would result from the proposed schedules. The protest is mainly lodged against the way being opened to permit eastern competitors to apply to the carriers for a transit arrangement. The record does not disclose that any undue prejudice would result from the proposed schedules. If other transit schedules are subsequently filed by individual carriers parties to the transcontinental tariffs which may result in undue prejudice protestants interests may be amply protected by filing protests or making the issue the subject of a formal complaint. HELD, schedules justified. Transit privileges on lumber, 126 I. C. C. 285.

(3y) Respondents proposed to withdraw certain transit arrangements on lumber and articles taking lumber rates, in carloads, at Terre Haute, Ind., on the St. Paul, on traffic originating on the B. & N. W., G. M. & N., J. & E., M. & W., M. E. R. R., and T. C. The only carrier named in the order is the St. Paul, which publishes the tariff, but the real parties in interest are the originating carriers. The G. M. & N. assumed the burden. At present the tariff provides that lumber, ties, piling, poles, paving blocks and timber, in carloads, may be stopped at Terre Haute for the purpose of preservatively treating, or first cutting into shape, treating, and then forwarding to final destination, on the basis of the through rate and minimum applicable from point of origin to final destination, plus a transit charge of $3.60 per car. Protestants only objection to the proposed cancellation grows out of a contract into which it had entered with the St. Paul to furnish that carrier with crossties for company use. At the time of hearing none of the ties which protestant expected to originate on the lines of the G. M. & N. had moved, because of difficulty in procuring them, and protestant was unable to say when it would be able to fulfill the contract. Protestant admitted that, except for the contract, no protest against the proposed schedules would have been made. The suspension is requested only until such time as protestant is able to make delivery of the ties under the contract. Shipments originating at points on respondents line and creosoted at Mobile, Louisville and Meridian may be shipped through to destination under the joint rate, where applicable, plus a transit charge of 2.5c per 100 pounds. The possible imposition of a temporary burden upon a single shipper by the pro-

posed cancellation is not such a circumstance as will overcome the justification advanced by respondent for the withdrawal of the transit arrangement. In any event, whatever hardship may result to protestant is due primarily to its contract requiring creosoting at Terre Haute only. A modification of its terms is clearly beyond the scope of the authority of the Commission. HELD, proposed schedules justified. Transit privileges on lumber and ties, 126 I. C. C. 433.

(3z) Proposed restricted transit arrangement at Nashville, Tenn., on blackstrap molasses content of shipments of mixed feed, so as not to apply on shipments to Florida destinations, found justified. Under present arrangement molasses moves from New Orleans, Mobile, or Pensacola; is mixed at Nashville with grain ingredients, and the product shipped to Jacksonville, the molasses content moving from New Orleans to Jacksonville over a "hair-pin" route at the through rate which would apply on the feed over a direct route. While a similar arrangement is maintained at Memphis on shipments moving to Florida destination which protestants urge will make competition at Nashville difficult, record contains no evidence that proposed arrangement would be unduly prejudicial to Florida interests or to Nashville as respondent is not a party to arrangements at Memphis. Transit on Mixed Feed at Nashville, 126 I. C. C. 283.

(4a) Proposed cancellation of certain exceptions to the rule authorizing milling or manufacturing in transit arrangements on lumber and articles taking lumber rates from north Pacific coast territory to destinations in western trunk-line, southwestern, c. f. a., and eastern trunk-line territories, found justified. Shippers of north Pacific coast lumber must meet competition of lumber from California, and the proposed schedules will clarify the transit rules and open the way so the transit rules may be established to enable north Pacific coast lumber to reach eastern destinations under same advantages of transit as is accorded lumber from California. Transit Privileges on Lumber, 126 I. C. C. 285.

(4b) Proposed cancellation of transit arrangement at Terre Haute, Ind., on lumber and ties originating on the Gulf, Mobile & Northern and certain of its short-line connections and the Tennessee Central R. R., found justified. Protestant's objection is based upon ground that its contract for crossties with the C., M. & St. P. calls for creosoting at Terre Haute and that withdrawal of transit arrangement before fulfillment of the contract will subject it to hardship. Respondent showed, however, that transit was established without its consent and that to permit it at less charge than obtains on their own lines would result in injury to creosoting plants directly served by them. Record indicates that other plants are conveniently situated to take care of protestant. Moreover, imposition of a temporary burden upon a single shipper does not overcome justification advanced for withdrawal of the arrangement. Whatever hardship may result to protestant is due primarily to its contract, a modification of which is beyond scope of commission's authority. Transit Privilege on Lumber, 126 I. C. C. 433.

(4c) Failure of C. & N. W. and Illinois Central railroads to join with other carriers in according transit on grain at Chicago on basis of through by-product rates from west-bank Mississippi River points in Iowa and Missouri and from points in Illinois where such rates in effect, found not unreasonable or otherwise unlawful in comparison with rates charged competitors located at points from which one-factor through rates on grain products or by-products apply, or with the combination basis of grain rates to Chicago plus grain-products rates beyond. Arcady Farms Milling Co. v. A., C. & Y. Ry., 126 I. C. C. 449.

(4d) Grain from west-bank Mississippi River points and from Illinois, mixed into feed at Chicago, and product forwarded to c. f. a. destinations was assessed grain rates to Chicago and proportional or reshipping grain-products rates beyond. Tariff provided that when shipment originated at point from which no joint through rate to final destination applied via the transit point, rates would be the reshipping or proportional rates, except when commodity consisted of grain, in which event rate on outbound shipment would be that applicable to grain products. Here through grain-products rates but no through by-products rates were published. HELD: Words "no joint through rate" refer to grain products. If carriers intended that the rule refer to through-grain rates, tariff should have been so worded.

Accordingly through one-factor rates on grain products from origins to final destinations, in effect when the grain originated, were applicable. Refund of overcharges directed. Arcady Farms Milling Co. v. A., C. & Y. Ry., 126 I. C. C. 449.

(4e) Shipments of grain from westbank Mississippi River points and from Illinois, mixed into feed at Chicago, and products forwarded to c. f. a. destinations, were assessed grain rates to Chicago and proportional or reshipping rates on grain products beyond. Tariff provided that "through rates on commodity forwarded from transit station" will be applied from origin to ultimate destination on shipments originating on specified lines. HELD: Since shipments here involved originated on lines named, the one-factor through rates on by-products were applicable. Refund of overcharges directed. Arcady Farms Milling Co. v. A., C. & Y. Ry., 126 I. C. C. 449.

(4f) Complainant attacked rates charged on six cars of lumber from Roach and Springdale, Fla., and Scott, Ga., to Harrison and Jersey City, N. J., and Great Works, Me., based on the Norfolk, Va., combination as reasonable. In McClave & Son v. A. C. L. R. R., 100 I. C. C. 405 the Commission found the rates attacked unreasonable and awarded reparation. Roach and Springdale are on the L. O. P. & G., Scott is on the C. of Ga. The shipments were accorded transit at Portsmouth, Va., by the A. C. L. at the joint rates from points of origin to final destination plus a transit charge of $2.50 per car. It was subsequently discovered that the transit tariff was applicable only to shipments originating on the A. C. L., and additional charges were collected at the Norfolk combination. Lower combinations existed, based on Live Oak, Fla., from Roach and Springdale, and on Savannah, Ga., from Scott and the rates charged were found unreasonable to extent they exceeded such combinations, plus a transit charge. HELD, rates applicable unreasonable to extent indicated, plus a transit charge of $2.50 per car for stoppage at Portsmouth, Va., reparation awarded. McClave & Son v. A. C. L. R. R. 128 I. C. C. 1.

(4g) Shipment of oats from Porum, Okla., to Oakland, Calif., there stored and subsequently reconsigned to McCloud, Calif., found to have been improperly billed from the transit point and charges not collected in accordance with complainant's instructions, thereby depriving him of a portion of inbound rate provided by tariff. Tariff rule provided that if dealer desires consignee to pay rate from transit point to destination refund of proportion of charges to transit point would be made. Carrier's agent at Oakland was instructed to collect charges from consignee at McCloud on basis of full local rate from Oakland to McCloud. Instead charges were collected on basis of division of the through rate from Porum to McCloud, which was contrary to instructions and served to defeat the rule. Reparation awarded. Albers Bros. Milling Co. v. A. T. & S. F., 128 I. C. C. 53.

(4h) Refusal of carriers to permit blending in transit of petroleum products at interior Texas refining points while permitting such blending in transit at Texas and Louisiana port refineries under appropriate tariff rule, found not unduly prejudicial. Although the rule is designated as blending-in-transit provision and is applicable to shipments in transit to an export or coastwise destination, shipment upon which it applies has in fact reached its destination, so far as rail carrier is concerned, upon delivery to coastal refiner. While blending rule is necessary in order to insure protection of export or coastwise rate, which protection appears proper because service performed in delivering to storage tank at ports is no greater than when delivered direct to vessels, such a transit arrangement at interior points would involve two separate and distinct movements, there is no necessity therefor such as exists at the ports, and it would in effect require carriers to perform inbound haul without charge. Galveston Commercial Asso. v. G., H. & S. A. 128 I. C. C. 349, 396, 398.

(4i) Grading of transit charges dependent upon length of inbound haul and time allowed in connection with transit service, found unreasonable as applied to milling of lumber into match blocks at Spokane, Wash. While transit charges varying according to length of haul to transit point appear to be not uncommon in Pacific Northwest in connection with lumber traffic, there would seem to be little justification for maintenance of such charges in instant case, although record is insufficient for determination of reasonable flat transit charge. Carriers, however, do not op-

pose extension of period of transit service in view of circumstances surrounding the curing of lumber essential in manufacture of matches. Reasonable period of transit prescribed for future and carriers directed to establish reasonable flat transit charges. Federal Match Corp. v. G. N., 128 I. C. C. 415.

(4j) Charges for transit are presumably assessed to cover the extra cost to the carrier permitting the transit arrangement, including the expense of clerical hire, delay to cars, policing, etc., and where no out of line haul is involved the general practice is to assess a flat charge. Federal Match Corp. v. G. N. Ry., 128 I. C. C. 415, 418.

(4k) Complainant alleged that rates charged on cottonseed cake and meal, in carloads, from southwest and Mississippi valley to destinations in central, trunk line and New England territories were unreasonable and unduly prejudicial; that the transit rules applied at York and Lancaster, Pa., were unreasonable and unduly prejudicial and that the transit rules at Buffalo, N. Y., are unreasonable and unduly prejudicial. Under the present transit rules at Buffalo, established effective Oct. 30, 1925 which are similar to those applicable at Chicago, the rate on the meal is assessed from point of origin to final destination. Rates are sought for the future from points in the southwest and the Mississippi valley to destinations in the central territory, and reasonable transit rules at Lancaster and York. Complainants are not seeking rates for the future from Texas common points to trunk line and New England destinations, because joint rates were published, effective Sept. 26, 1924, but reparation is sought to the basis of the rates then established which are the same as were the joint rates to the socalled basing points in effect during the period of movement. The socalled Chicago transit rule was published for application at York and Lancaster effective Jan. 2, 1927, in purported compliance with Eshelman & Sons v. Director General, 118 I. C. C. 441. HELD, reparation awarded based on transit rules and rates established in pursuance to Eshelman & Sons, supra, reparation awarded. American Feed Mfrs. Asso. v. A. & S. Ry., 129 I. C. C. 157.

(4l) Complainant alleged that failure and refusal of defendants to establish a smelting in transit arrangement at East Helena, Mont., on lead ore and concentrates, in carloads, shipped from Bradley and Kellogg to Chicago, Ill., and the other eastern destinations, subjects it to payment of rates which were and are unduly prejudicial. East Helena is on the N. P., Kellogg and Bradley on the O. W. R. R. & N., about 11 and 13 miles, west of Wallace, Ida., its junction with the N. P. Kellogg is 270 miles west of East Helena. N. P. published a tariff August 1, 1922, permitting smelting in transit at East Helena on ores originating at all points in the Couer d Alene districts on its own rails and at Bradley, Kellogg-Wardner and Osborne on the O. R. & N. The rates on smelter products were at that time blanketed from all points in the Couer d Alene district to the east and to East Helena. Effective August 31, 1922, N. P. eliminated all origin points on the O. W. R. R. & N. To be undue in violation of section 3, preference and prejudice must result in injury to the prejudiced party. Here it is not shown that complainant would ship ore to the smelter at East Helena even if the provisions of the smelting in transit tariff were extended to Kellogg and Bradley, as origin smelting points. Nor is it shown that complainant would in any way be benefited if the preference and prejudice were removed by the withdrawal of the smelting in transit arrangement from the origin points on the N. P. HELD, no unjust discrimination or undue prejudice, complaint dismissed. Bunker Hill & Sullivan Mining & Concentrating Co. v. N. P. Ry., 129 I. C. C. 242.

(4m) Respondents proposed to withdraw certain transit arrangements on lumber, in carloads, at points on the Wabash, on traffic originating on the rails of the B. & N. W., G. M. & N., the J. & E., M. & W., and Miss. Export. At present the tariff provides that lumber, paving blocks, piling, poles, posts, ties and timber may be stopped at points on the Wabash for the purpose of preservatively treating or first cutting into shape and then treating, and forwarding to final destination on the basis of the through rate and minimum applicable from point of origin to final destination, or to transit point, whichever is higher, plus a transit charge of $1.80 per car. If the transit rate is withdrawn, combinations of rates to and beyond the transit point will apply which are consider-

ably higher than the present joint rates. The existence of the transit arrangements at points on the line of respondent is evidence tending to show that the withdrawal of similar arrangements at points where protestants plants are located would be unreasonable. HELD, schedules not justified. Transit arrangement on lumber, 129 I. C. C. 518.

(4n) Respondent, Burlington, proposed to cancel certain transit arrangements at Chicago, Ill., on lumber and related articles, in carloads when the traffic originates on or moves over the M. O., Frisco, St. L. S. W. or Southern. Rules permitting the transit of lumber at Chicago without restriction against movement from or over the lines of the four carriers named have been maintained by respondent since 1921. If the suspended schedules are permitted to become effective the transit arrangement will not be available on the basis of joint rates for shipments moving over the lines of the four carriers named, and increased rates based on combination will result. Respondent asserts that the four carriers named therein declined to join in joint rates and divisions to destinations beyond the transit point. Respondent admits that the sole question presented is one of divisions and states that it seeks relief from the performance of a substantial transportation service for little or no revenue. If respondent and its connections are unable to agree upon their divisions of the joint rates they may petition the Commission to determine that issue in an appropriate proceeding. HELD, suspended schedules not justified. Restriction of transit on lumber, 129 I. C. C. 669.

(4o) Complainant alleged that rates on grain and grain products in carloads from Indiana and Illinois to Indianapolis, Ind., and through Indianapolis to Louisville, Ky., and points in eastern trunk line and New England territories, including western termini of eastern trunk lines and points taking the same rates based thereon are unreasonable, discriminatory and unduly prejudicial. Nonprejudicial joint rates with transit at points beyond the rails of the Wabash are sought. Points of origin are on the Wabash Shadeland, Ind., to Cerro Gordo, Ill., inclusive including the branches extending to Covington, Ind., and Champaign, Ill., and Reddick, Ill., to Effingham and Altamont, Ill., inclusive. From points on the Wabash to and via Indianapolis sixth class rates apply on grain, which are substantially higher than either the commodity rates to and via that point from cross country and other competitive points on other lines or the commodity rates applicable from points on the Wabash, to the east via Chicago, Toledo, O., and other junctions with eastern lines, and to Louisville via East St. Louis, Ill., and the L. & N. and Southern or in connection with the B. & O. also via Lafayette, Ind., and C. I. & L. Commodity rates lower than the rates on grain apply on grain products from certain Wabash stations to Indianapolis and to Louisville via Indianapolis. It is not here evident that the absence of joint rates, through Indianapolis, restricts shippers located on the Wabash in disposing of their grain at eastern markets, or that the available routes to those points are unreasonably long. The Commission is not convinced that there has been such a showing of public interest as to warrant requiring the Wabash to short haul itself on grain through Indianapolis to the territory here involved or that this record justifies a finding that the rates assailed are unduly prejudicial. While the Commission has in many cases prescribed rates on grain the same as on grain products, the showing here made that the rates differ on the two commodities may indicate that the rates on the grain products are too low just as much as that the rates on grain are too high. HELD, complaint dismissed. Indianapolis Board of Trade v. B. & O. R. R., 129 I. C. C. 675.

(4p) Complainant alleged that rates on scrap copper and copper alloys, carloads, from official territory to Pittsburgh, Pa., and rates on copper ingots from Pittsburgh to destinations in official territory are unreasonable and unduly prejudicial. Complainants grievance is with respect to the transit arrangements which are accorded by the B. & O. and Pennsylvania to complainants competitor, at Baltimore, Md. Although there are general statements in the record to the effect that "cake" copper moves to Baltimore for refining in transit, there is no evidence that this copper originates in any of the states named in the complaint that are "west of Pittsburgh" or "south and west of Baltimore". There is no evidence,

therefore, that complainants competitor at Baltimore has been given an unreasonable or undue advantage over complainant by reason of the refining in transit arrangements that are in effect at that point. The law does not permit the Commission to make such an inference, and the burden of proof is upon complainant. HELD, rates assailed not unreasonable or otherwise unlawful, and refining in transit at Baltimore while refusing to provide refining in transit at Pittsburgh on carload shipments of copper similarly destined is not shown in this record to be unreasonable or unduly prejudicial, complaint dismissed. Federated Metals Corp. v. Pennsylvania R. R., 132 I. C. C. 14.

(4q) Respondent, Burlington, proposed to withdraw certain transit arrangements on lumber, in carloads, at East St. Louis, Galesburg, Granite City, Madison, and Metropolis, Ill., on traffic originating on the N. O. G. N. If the transit arrangements are withdrawn, combinations of rates to and beyond the transit points, which are higher than the present joint through rates, will apply. HELD, suspended schedules not justified. Transit privileges on lumber, 132 I. C. C. 53.

(4r) Complainant alleged that the transit charges collected on middlings and peanut hull meal, in carloads, shipped between May 1, 1923, and April 30, 1925 from Indiana, Maryland, Ohio, Pennsylvania and West Virginia and cleaned in transit at Pittsburgh, Pa., were unreasonable, unjustly discriminatory and unduly prejudicial. The record shows that middlings and peanut hull meal are used by tin mills in official territory as an absorbent or palm oil from the polished surface of new tin. Prior to August 15, 1921 after having been used for this purpose, these articles were considered waste material. On that date, responsive to shippers request, defendants established a charge of 2c for stopping shipments of these commodities in transit at complainants plant in Pittsburgh, where they were cleaned of metal fragments and then reshipped to destinations in official territory as feed for livestock. On May 1, 1925 the charge was reduced to 0.5c, minimum $3.60. HELD, the assailed charge unreasonable to extent it exceeded 0.5c, minimum $3.60 reparation awarded. Newsome Feed & Grain Co., v. Pennsylvania R. R., 132 I. C. C. 743.

(4s) Failure to provide for stopping in transit to partially unload shipments of Portland cement and wall plaster, in straight or mixed carloads, from Hanover and Trident, Mont., to western and central portions of North Dakota and South Dakota while contemporaneously according this privilege to competitors at Steelton, Duluth, and Minneapolis, Minn., Mason City, Iowa, and Piedmont and Black Hawk, S. Dak., found unduly prejudicial. No order entered by carriers expected to provide for transit privilege in revising rates in accordance with findings herein. Three Forks Portland Cement Co. v. C., B. & Q., 129 I. C. C. 107, 118, 119.

(4t) Following 118 I. C. C. 441, transit rules, regulations, and practices as applied to shipments of cottonseed cake and meal from points in the Southwest and Mississippi Valley to York and Lancaster, Pa., and Buffalo, N. Y., there mixed into feed and the feed forwarded to c. f. a., trunk-line, and New England destinations, found unreasonable and unduly prejudicial to extent that charges thereunder exceeded those which would have accrued from application of transit rules contemporaneously in effect at Chicago and subsequently published in above-cited case for application at York and Lancaster. Reparation awarded. American Feed Mfrs. Asso. v. A. & S., 129 I. C. C. 157.

(4u) Failure of Illinois Central to maintain the same through rates via Memphis, Tenn., with transit arrangements thereat as it contemporaneously maintains via East St. Louis and Cairo, Ill., with transit at those points, on grain and products from points in Iowa, Illinois, Minnesota, and Wisconsin to destinations on its lines in Arkansas and Texas south of Brinkley, Ark., found unduly prejudicial. Distances and rates via the three markets are substantially the same from Omaha, Nebr., and various other points. Undue prejudice ordered removed. American Grain and Hay Co. v. I. C., 129 I. C. C. 225.

(4v) Failure and refusal of Northern Pacific to establish smelting-in-transit arrangement at East Helena, Mont., on lead, ore and concentrates from Kellogg and Bradley, Idaho, on O.-W. R. & N.

lines, to eastern destinations, while contemporaneously maintaining such transit arrangements on ore from other points on its own lines in same district, found not discriminatory or unduly prejudicial. Complainant is desirous of smelting all ores it can obtain at its own plant at Bradley and it is therefore not likely that it would ship ore to East Helena smelter even if transit tariff were extended to Kellogg and Bradley. Nor is it shown that it would be benefited if preference and prejudice were removed by withdrawal of transit arrangements from other points in the district. Bunker Hill & Sullivan M. & C. Co. v. N. P., 129 I. C. C. 242.

(4w) Proposed withdrawal of transit arrangements at points on Wabash Railway, thus allowing higher combinations of rates to and from transit point to become effective on lumber from points on Gulf, Mobile & Northern and its short-line connections, found not justified. Since carrier maintains transit privileges at other points on its lines withdrawal of similar arrangements at points where protestants' plants are located would be unreasonable. Transit Arrangement on Lumber, 129 I. C. C. 518.

(4x) Proposed cancellation by the C., B. & Q., of transit arrangements at Chicago. Ill., on lumber and related articles originating on or moving over the Missouri Pacific; St. Louis-San Francisco; St. Louis Southwestern; **or Southern,** and destined beyond Chicago, found not justified. Respondents attempted to justify proposed cancellation only by comparison of divisions, and commission has consistently held that disagreements among participating carriers over division of joint rates furnishes no justification for increased rates. Moreover, transit arrangements here considered have been used by shippers for a number of years and are similar to arrangements extended at Chicago by other lines. Restriction of Transit on Lumber, 129 I. C. C. 669.

§15a. Stoppage in Transit.

See Stoppage-In-Transit.

(a) Upon further consideration, elimination of arrangement for stopping to partially unload interstate shipments of cranberries at points in Texas, found not justified. While respondents urged that to haul a partially loaded car from stop-off point to final destinations was a waste of transportation and that stop-off charge was not sufficient to take care of additional service rendered, it is obvious that where part of the load has been removed, less service would be performed beyond the stop-off point to final destination than on through shipments. Moreover, stop charge appears sufficient to cover additional services rendered and the transit service is highly beneficial to protestants in the sale and distribution of cranberries and yet is not unduly burdensome to respondents. Previous report 122 I. C. C. 479, reversed. Stop-Over in Transit Privilege, 128 I. C. C. 425.

(b) In Stop-over in transit on cranberries at points in Texas, 122 I. C. C. 479, division 3 found that the respondents had justified their proposal to cancel the arrangement under which interstate carload shipments of cranberries were stopped at Texas points for partial unloading. Charges on shipments stopped to partially unload were computed on the weight of the original load, subject to the minimum, at the rate from point or origin to final destination plus $6.30 for each stop. Only three stops were permitted and they could be made only at points directly intermediate from shipping point to final destination. There was no restriction as to the quantity of cranberries which was to be unloaded at any stop off point or to be sent to final destination. The record is not clear as to the additional service performed on traffic stopped to partially unload, but it is obvious that where part of the load has been removed, the respondents would perform less service beyond the stop off point to final destination than they would on shipments moving through the same stop off point to the same final destination without being partially unloaded. For this lesser service beyond the stop off point the carriers would receive the same rate as where no stop is made, plus $6.30 for each stop. While stopping to partially unload, no doubt, requires additional service of the respondents, it is fair to assume, in the absence of a showing to the contrary, that the stop charge is sufficient to cover those services. HELD, schedules not justified. Stop over in transit on cranberries in Texas, 128 I. C. C. 425.

§15½. Transshipment and Transfer.

See Transfer.

(a) The transfer of l. c. l. freight from car to car is not confined to joint-line hauls. It also happens in many single-line hauls and is frequently performed at special transfer stations designed for the purpose as an aid to the economical and expeditious handling of freight. Southern Class Rate Investigation, 113 I. C. C. 200, 205.

(b) Practice whereby east-side lines require west-side lines to bear expense of transferring across the river from East St. Louis, Ill., to St. Louis, Mo., interstate westbound freight moving under combination rates which are same on St. Louis as on East St. Louis, found unreasonable. Usual practice among rail carriers throughout the country is to divide switching expenses when services of an intermediate carrier are utilized in effecting an interchange of traffic, the switching charges being absorbed by carrier that delivers traffic to its connection. Moreover, there is a generally recognized obligation on part of all carriers on through traffic to make delivery on rails of connections, either direct or by bearing charges of intermediate switching line. Reasonable practice prescribed for future and reparation denied. C.. R. I. & P. v. B. & O., 113 I. C. C. 681.

(c) Rates on anthracite silt from Scranton and other Pennsylvania mines to Buffalo, N. Y., and Erie, Pa., for transshipment by lake to interstate destinations, found unreasonable. Washed silt is of extremely low value at the mines and although used to some extent for other purposes, it has value as a domestic fuel only when manufactured into briquets. Furthermore, transshipment rates which contemplate a movement beyond ports may reasonably be somewhat lower than those applicable on local traffic. Reasonable rate prescribed for future and reparation awarded. Stott Briquet Co. v. P. R. R., 113 I. C. C. 693.

(d) Rates on coal from Clinchfield, Dante, and Clinchco, Va., to Toledo and Toledo Dock, Ohio, for transshipment by vessel, found unduly prejudicial to extent rate from Clinchco exceeds rate contemporaneously maintained on lake-cargo coal from Big Sandy district to same destinations, and those from Dante and Clinchfield exceed a differential of 15 cents over the Clinchco rate. Nonprejudicial rate relationship prescribed for future. Clinchfield Coal Corp. v. C., C. & O., 118 I. C. C. 79.

(e) Upon a consideration of unusually favorable circumstances and conditions surrounding movement of lake-cargo coal; the relatively lower rates from southern districts; the decided change in relative tonnage shipped from Pittsburgh and Ohio districts and the southern districts, respectively; the present depressed condition of coal-mining industry in Pittsburgh and Ohio districts; the changed conditions since decision regarding those rates issued in 101 I. C. C. 513; and fact that cost of the service warrants a substantial rate reduction, HELD: That bituminous-coal rates from mines in Pennsylvania, Ohio, and West Virginia, in the Pittsburgh, Ohio No. 8, and Cambridge districts to lower Lake Erie ports for transshipment by vessel are unreasonable but not unduly prejudicial. Rates on like traffic from mines in the Fairmont district of West Virginia found not unreasonable or unduly prejudicial. Reasonable rates prescribed for future and former report, 101 I. C. C. 513, modified in part. Lake Cargo Coal Rates, 1925, 126 I. C. C. 309.

(f) Upon contention that commission has no jurisdiction over rates on traffic moving to Lake Erie ports for transshipment by vessel, upon theory that because of lack of control over the water carriers which handle traffic beyond the ports commission has no authority to deal with or prescribe proportional rates on traffic over which it does not have jurisdiction for the entire movement from point of original shipment to point of ultimate destination, HELD: Where transportation to the port is interstate or foreign in character, it is subject to commission's jurisdiction under general provisions of section 1 of the act, irrespective of the mode of transportation beyond the port. Lake Cargo Coal Rates, 1925, 126 I. C. C. 309, 313, 314.

(g) Rate on bituminous coal from mines in Clearfield, Meyersdale, and Cumberland-Piedmont districts of Pennsylvania, Maryland, and West Virginia, to Black Tom Pier, Jersey City, N. J., found not unreasonable but unduly prejudicial, except as maintained by the Pennsylvania, to extent it exceeded lower transshipment rates contemporaneously in effect to its competitors oper-

ating from piers on both sides of complainant. While latter is clearly at a rate disadvantage it does not follow that transshipment rate is reasonable maximum or that rate assailed is more than reasonable maximum. However, same rate to complainant applicable under substantially similar transportation circumstances and conditions can not be withheld merely because volume of business handled does not overtax piers on which its competitors operate, for complainant is entitled to share in the business on an equal basis. Undue prejudice ordered removed. Harbor Coaling Corp. v. B. & O., 128 I. C. C. 747.

§16. Wharfage and Dockage.

See Dockage; Wharfage.

(a) Proposed reduced charge for handling, storage, and wharfage of imported fertilizer and fertilizer materials at Pensacola, Fla., and Mobile, Ala., in order to meet charge on potash salts at Pensacola and on all fertilizer materials at Gulfpost, Miss., found not justified. While the situation presents a maladjustment injurious to Mobile commission can not permit its partial correction even for a temporary period by establishment of a charge which record clearly shows to be below a reasonable minimum. Handling, Storage, and Wharfage of Fertilizer, 109 I. C. C. 609.

III. PUBLICATION AND TARIFFS.

§16¾. In General.

See Tariffs.

(a) Knowledge, on part of carrier's agent, of shippers' intention to store commodity in transit does not relieve shipper from strict compliance with transit rules. Nor does ignorance of tariff provisions excuse a shipper from noncompliance with such provisions. See 62 I. C. C. 110; 242 U. S. 448. While shipper is not presumed to know with what representative of carrier he is to record freight bills in order to secure through rates of shipment accorded transit privileges, if he desires transit it is his duty to make inquiry of carrier and thus inform himself. Beatrice Creamery Co. v. C., B. & Q., 107 I. C. C. 568, 570.

(b) Commission has repeatedly criticized policing arrangements which are dependent on knowledge or information a carrier's agent received through investigation, and has consistently held that tariffs authorizing transit services and arrangements which do not contain clear and definite policing provisions to insure collection of correct charges are in violation of section 6 of the act. Drayage Absorptions by S. W. M., 113 I. C. C. 179, 182.

(c) Complainant alleged that the rates charged on carloads of wheat from Kansas City, accorded transit at Leavenworth, Kans., and Sweet Springs, Mo., and product forwarded to Bald Knob, Searcy, Helena, and Forrest City, Ark., New Orleans, La., Charleston, Mo., Philadelphia, Pa., and New York, were unreasonable and unduly prejudicial. Grain shipped to Kansas City moves out to the destinations here considered under proportional rates. The points at which transit was accorded are on the M. P., and under its transit tariff proportional rates applied with transit at points in direct line of shipment. Two stops in transit were allowed. Leavenworth is 26 miles northwest of Kansas City so that there was an out of line haul of 52 miles through the latter point. Charged proportional rate of 4 cents from Kansas City to Leavenworth plus the proportional rates from Leavenworth to final destination. HELD, governing tariffs did not authorize transit at Leavenworth and Sweet Springs on grain from beyond, and applicable rates not unreasonable or otherwise unlawful, complaint dismissed. Moore-Lawless Grain Co. v. M. P. R. R., 123 I. C. C. 647.

(d) Circulars issued by inspection bureaus to inspectors for purpose of assisting them in determining proper ratings to be applied, not being incorporated in tariffs or on file with commission, found to have no legal status or effect in so far as they might be used in any manner to change rates applicable on a particular commodity or commodities. Fraser v. A. C. L., 122 I. C. C. 520, 523.

(e) Where a carrier elects to perform service of gathering coal from mines located on private or plant-facility tracks, it should publish tariffs to cover such service, section 1 (3) of the act providing that "the term 'transportation' shall include * * * all services in connection with receipt * * * of property transported," and section 6 providing that no carrier shall engage in transportation as defined in the act unless rates, fares, and charges shall have been

filed and published. American Fuel Co. v. A., T. & S. F., 123 I. C. C. 101, 123.

(f) Complainant alleged violation of section 6 in that on a carload of oats from Porum, Okla., to McCloud, Calif., stored in transit at Oakland, defendants failed to collect charges from the consignee at the local rate from Oakland to McCloud thereby depriving complainant of a refund authorized by the applicable tariff. Shipment arrived at Oakland over the Santa Fe and was placed in storage. Charged 67c to Oakland. Shipment reconsigned Oct., 21, 1922 to McCloud, moving Santa Fe and S. P. to Sisson and McCloud River R. R. beyond. Complainant gave instructions to the agent of the Santa Fe at Oakland for collection of charges from the consignee at McCloud on basis of rate from Oakland to McCloud. Applicable interstate rate from Oakland to McCloud was 29.5c. Had complainants instructions been complied with, the charges would have been $177, complainant to be refunded $132. Defendant Santa Fe admitted that complainant is entitled to refund if the delivering carrier will collect charges upon basis of 29.5c. But it is the Santa Fe that held out in its tariff that refund would be made in the difference between the local rate and the 7.5c actually collected. HELD, reparation awarded to $132. Albers Bros. Milling Co., v. A. T. & S. F. Ry., 128 I. C. C. 53.

(g) Complainant alleged that charges collected on 15 cars of alfalfa meal from Colorado to Dyersburg, Tenn., during Jan., Feb. and March, 1920, were unreasonable, and that it was overcharged on outbound shipments of mixed feeds from Dyersburg to various destinations. The case only involves misrouting and tariff interpretation. Those shipments which moved during Jan. and Feb., 1920, are barred by the statute of limitations in so far as the allegation of misrouting is concerned inasmuch as the complaint was not filed within one year after the termination of federal control. The record is void of proof that either the shippers or defendants had any information that these shipments were to be milled or mixed in transit or that Dyersburg was other than the ultimate destination. Neither does it satisfactorily establish that the agents of the initial line unlawfully refused to issue bills of lading with the routing desired, the evidence merely indicating that the shipper requested routing via East St. Louis, and that the carrier suggested that the routing be left open. The carrier having issued and the shipper having accepted unrouted bills of lading the carrier was lawfully bound to move the shipments over the lowest rated route, which in this case was via Memphis, the rate to Dyersburg via that route being 2c lower than the rate through East St. Louis. The term "transit ingredients" as used in the tariff comprehends only such shipments of alfalfa meal as may be transited under the provisions of the tariff, and that complainants shipments do not come within this category. HELD, complaint dismissed. Dyersburg Milling Co., v. Director General, 129 I. C. C. 739.

§17. Obligation to Publish.

See Tariffs §4.

(a) Complainant alleges demurrage, reconsignment, and so-called back haul charges collected by defendants on 127 cars of bituminous coal shipped between April 4 and 19, 1918, from Chandler, O., to Akron, O., and subsequently reconsigned to Cleveland and Lorain, O., as unjust and unreasonable. These shipments made during the period of federal control were part of a larger number shipped on account of a contract between complainant and the Philadelphia Rubber Works, Akron. The cars were forwarded by the P. & W. Va., being billed from its Smithfield, O., agency because it has no agent at Chandler. They were consigned to "Coal Shippers Terminal Pool Association, Pool No. 141, account of Philadelphia Rubber Works, Akron, O.," and routed by the shipper "W. & L. E." The shipments moved over the P. & W. Va., W. & L. E., to Mogadore, O., and thence A. C. & Y., to destination 95.6 miles. It was developed at the hearing that the reconsignment charges of $615 were collected without lawful authority. The A. C. & Y., had no tariff provision for such a charge at that time. Demurrage charges not unreasonable, reconsignment charges should be refunded, reparation awarded. Superior Coal Co. v. Director General, 115 I. C. C. 710.

(b) Where a carrier elects to perform service of gathering coal from mines located on private or plant-facility tracks it should publish tariffs to cover

such service, section 1 (3) of the act providing that "the term 'transportation' shall include * * * all services in connection with receipt * * * of property transported," and section 6 providing that no carrier shall engage in transportation as defined in the act unless rates, fares, and charges shall have been filed and published. American Fuel Co. v. A., T. & S. F., 123 I. C. C. 101, 113.

§18. Reshipping Under Through Rate.

See Absorption of Charges §1½ (a); Proportional Rates; Through Routes and Joint Rates §18, §19, §20.

(a) Shipments of apples moved to transit point, were stored, and later reshipped to ultimate destinations. Charges were collected at rates applicable to and from transit point while lower through rates contemporaneously applied from points of origin to final destinations conditioned upon inbound freight bills being recorded with carrier within a specified time after storage, which shipper failed to do. FOUND: Rates assessed were applicable and not unreasonable. Beatrice Creamery Co. v. C., B. & Q., 107 I. C. C. 568.

(b) Aggregate of inbound and outbound rates on rough rice from points in Louisiana to Lake Charles, reshipped as clean rice and products to various interstate destinations, where back-haul service was in excess of 40 miles, found not unreasonable or otherwise unlawful. While a 200-mile free back-haul service under milling-in-transit arrangements was in effect at certain points in Texas during period of movement, and similar back-haul provision was established at Lake Charles after shipments in question moved, the peculiar character of evidence presented in 69 I. C. C. 508, which justified commission in requiring establishment of a 40-mile free back haul is not present in the instant case to justify as reasonable the establishment of a greater free back-haul service. Lake Charles Rice Milling Co. v. L. W., 109 I. C. C. 195.

(c) Complainant attacked commodity rates charged on rosin, carloads, shipped since Feb. 1, 1923, from Alabama, Florida, Georgia, Louisiana and Mississippi to Cincinnati, O., there graded and stored and reshipped to Hamilton, Ont., Canada, as unreasonable, and that failure of defendants to provide transit arrangement on rosin at Ivorydale (Cincinnati) in connection with the through rates to Hamilton as unjust, unreasonable, unduly prejudicial and in violation of section 4. Hamilton is 60 miles northwest of Buffalo, N. Y., on the T. H. & B., C. P., and C. N. From July 1, 1922, to Aug. 20, 1924, a joint commodity rate of 41c applied on rosin from the Gulf and south Atlantic ports to Buffalo, N. Y. The same rate applied from the Gulf ports to Hamilton, but from the south Atlantic ports to Hamilton a combination rate of 55.5c applied, composed of a commodity rate of 27c to Cincinnati and sixth class of 28.5c beyond. From interior points in the Mississippi Valley and the southeast the rates were also combinations of commodity rates to Cincinnati and the sixth class rate beyond, and were higher than the rates from the ports. In 87 I. C. C. 740 and 89 I. C. C. 634 the commission prescribed rates on naval stores from southeast and Mississippi Valley to this territory and rates became 33c to Cincinnati and 42c to Buffalo. The latter rate was not made applicable to Hamilton except from the Gulf ports. On shipments graded and stored at Ivorydale and reshipped to Hamilton rates were those to and from Cincinnati, except that since Aug. 20, 1924, the Southern system had allowed transit under the through rates on shipments brought to Cincinnati by it. Rates attacked have been combinations of the rates to and from Buffalo since Aug. 20, 1924. The rates to Buffalo are relatively low. The 15.5c rate beyond Buffalo is for transportation mostly in Canada. This record does not warrant a finding that the rates to Buffalo should be less than 42c on traffic destined to Hamilton or that the rate of 15.5c beyond is unreasonable on traffic from these origin points. Even if undue prejudice were shown the commission could only require the United States lines to withdraw from participation in the preferred rates. This could only result in increased rates to Hamilton and would afford complainant no relief. HELD: Rates attacked and defendant's failure to provide transit at Cincinnati not unreasonable, unduly prejudicial or otherwise unlawful, complaint dismissed. Procter & Gamble Co. v. A. & V. R. R., 112 I. C. C. 381.

(d) Complainant attacked combination rate charged on a car of poles shipped from Minneapolis, Minn., to Zwingle, Ia., on June 25, 1924, originally shipped from Colville, Wash., was unjust, unreasonable, unjustly discrimi-

natory and unduly prejudicial. Two cars of poles were shipped from Colville to Minneapolis over G. N., on Dec. 29, 1923, and were stored at Minneapolis. On June 25, 1924, complainant shipped a car of poles, from Minneapolis to Zwingle over C. M. & St. P. The bill of lading bore the endorsement "these poles take proportional rate. Surrendered herewith tonnage as per the attached." Attached was a tonnage credit from the Western Weighing Bureau, representing the shipment of poles from Colville, and opposite the printed term "transit operation or proportional" was inserted the word "proportional." Transit is optional, and when the charges made by the use of transit are higher than the charges at the full local rate from transit station to final destination the shipper can elect to pay the lower charges. In this case it elected to take advantage of transit and therefore the rates attacked were applicable. C. M. & St. P. published a proportional rate of 15.5c from Minneapolis to Zwingle on poles, but it applied only on continuous shipments over routes over which no joint rates were in effect. The same carrier also published a rate of 15.5c from Minnesota Transfer and Cologne, Minn., to Zwingle on poles originally shipped from points west of the Montana-Dakota state line and unloaded and stored at Minnesota Transfer or Cologne and reshipped from those points within a year from the date of the freight bill covering the inbound shipment. When defendants learned of the situation at Minneapolis, they made the proportional rate of 15.5c applicable in the same manner. HELD: Rate attacked of 18.5c not unreasonable but unduly prejudicial to extent it exceeded 15.5c, reparation denied, complaint dismissed. Lindsley Bros. Co. v. G. N. Ry., 113 I. C. C. 166.

(e) Complainant attacked combination charge assessed on a double carload of structural steel, which originated at Chicago, Ill., and, after fabrication in transit at Red Oak, Ia., was shipped about Aug. 3, 1923, to Bloomfield, Neb., as unjust and unreasonable and inapplicable to extent it exceeded 65.5c plus a fabrication charge of 2c. On May 15, May 26 and June 26, 1923, the structural steel embraced in this shipment was moved from Chicago by the Burlington to Red Oak, where the local rate, 37c, was paid thereon. After fabrication in transit it was billed out to Bloomfield at 75,000 pounds, and at Bloomfield a joint rate of 65.5c from Chicago to Bloomfield plus 2c for fabrication in transit, less 37c already paid at Red Oak, was collected. Effective during the period covered by this transportation there was a local, joint, and proportional freight tariff issued under C. & N. W. I. C. C. 9040. This tariff was issued by and for the Northwestern and was participated in by the Burlington, C. St. P. M. & O. and other carriers. It carried joint rates between Chicago and other points of origin and stations on the Omaha and on other lines in Nebraska and other states. On Page 162 of this tariff, in item 285 a specific commodity rate of 65.5c was published to apply from Chicago to Bloomfield on iron and steel articles as described on page 37. These tariffs would apply, on the facts shown in this case, had the shipments originated at a station, team track or industry served by the Burlington, and had they been switched by the Burlington to the Northwestern for a line haul outbound from Chicago toward either Red Oak or Bloomfield. But Red Oak is a local station on the Burlington line, and Northwestern tariff names no rates at all to that point. These shipments did not move to Bloomfield direct, but only after transit at Red Oak. Chicago, as served by the Burlington, is not named therein. Rates named in this tariff apply from Chicago only when the line haul is by the Northwestern. Only through rate was 69c now claimed by defendants. HELD: 69c rate not unjust or unreasonable, complaint dismissesd. Western Bridge & Construction Co. v. C. B. & Q. R. R., 113 I. C. C. 192.

(f) On cotton moving to Montgomery, Ala., for concentration and compression and reshipment beyond, the interstate inbound locals were higher than intrastate local rates, the matter of which rate should be used not being covered by tariff provision. Contention that lower intrastate rates were legally applicable on shipments originating at stations south of Montgomery, concentrated and compressed at that point and reshipped to Mobile, Pensacola, and New Orleans, not sustained following Conf. Ruling, adopted March 15, 1921, wherein the rule is laid down that where interstate, proportional, or reshipping rates are named on shipments originating beyond reshipping or transit points, such rates are applicable only in case inbound charges are based on inbound

interstate rates. Montgomery Cotton Exch. v. L. & N., 112 I. C. C. 325, 326, 327.

(g) Local rates into transit point were made subject to tariff carrying the combination rule "except as otherwise indicated," and transit tariff provided that transit service would be available when "the lawful tariff rate to the transit point has been paid thereon." Upon contention that on cotton moving to Montgomery, for concentration and compression and reshipment beyond, the through charges based on local rates to Montgomery and reshipping rates beyond were subject to combination rule, HELD: Since payment of the lawful inbound rate was a condition precedent to transit service and use of reshipping rate outbound, the full combination of the two was basis for through charges to be used in connection with transit arrangement. This basis for construction combinations was sufficiently "otherwise indicated" within meaning of the exception to render combination rule inoperative. Montgomery Cotton Exchange v. L. & N., 112 I. C. C. 325, 327, 329.

(h) Combination rates to and from Newton, Miss., collected on shipments of cotton delivered to initial carrier for transportation in compressed bales at Philadelphia, Miss., for movement to Columbus, Aragon, and Social Circle, Ga., found inapplicable. Lower combination applied over routes of movement based on Meridian, Miss., tariff carrying the local Philadelphia-Meridian rate providing for its application on "cotton in bales" whether delivered to carrier compressed, uncompressed, or with carrier's privilege of compression. Factors beyond Meridian applied on cotton, carrier's privilege of compression, and as this was the original character of the shipments this rate was applicable beyond Meridian via routes of movement. Reparation awarded. Threefoot Bros. & Co. v. G., M. & N., 112 I. C. C. 657.

(i) Rates charged on one car of poles originally shipped from Colville, Wash., to Minneapolis, Minn., there stored and subsequently reforwarded to Zwingle, Iowa, found not unreasonable, discriminatory, or unduly prejudicial; except that the local rate from Minneapolis to Zwingle was unduly prejudicial to extent it exceeded a lower proportional contemporaneously in effect on similar traffic shipped from territory west of the Montana-Dakota State line to Minnesota Transfer and Cologne, Minn., for storage and reforwarding to the same ultimate destination. Lindsley Bros. Co. v. G. N. Ry., 113 I. C. C. 166.

(j) B. & O., respondent, proposed to make certain charges, in addition to the through rate and transit charge, for out of line hauls on iron and steel articles fabricated in transit at Parkersburg, Va. Parkersburg is on the Ohio river division of respondents line between Wheeling and Kenova, W. Va., at the intersection of the main line from Cincinnati, O., to Cumberland, Md. Respondents present tariff authorizes the stopping in transit of iron and steel articles at Parkersburg, Huntington, Point Pleasant, and Wheeling, W. Va., Akron, Barberton, Canton, Martins Ferry, Massillon, Newton Falls, O., for the purposes usually included in the term "fabrication" and reforwarding in an unfinished state, knocked down, to points of destination in the same direction to which through rates are in effect from original point of shipment to final destination. The present tariff carries no provision for additional charges to be assessed for out of line or excess hauls to and from the transit point in instances where the transit point is not on the direct line between points of origin and destination. The iron and steel articles entering into transit at Parkersburg originate at points in Pennsylvania and Ohio in what is known as the Pittsburgh district, and adjacent territory, all within central territory. Generally speaking, rates applying on these articles between points in central territory are not restricted as to routing so that a shipment originating at Pittsburgh, destined to Cincinnati, for example, may be transited at Wheeling, at the through rate from Pitsburgh to final destination plus a transit charge of 3c, and there is no provision preventing its movement through Parkersburg. On a similar shipment transited at Parkersburg, protestant would, under the proposed schedules, be compelled to pay, in addition to the through rate and transit charge, an out of line haul charge of 4c, although the Parkersburg route is less than 10% less than the direct route. It does not appear that carriers in central territory publish any charges for out of line service in connection with fabrication in transit on their lines. While as a general rule the assessment

of charges for out of line excess hauls is proper, and consistent with the principle that carriers should be compensated for services rendered, respondents proposal to apply the charges hereinbefore stated on iron and steel articles fabricated in transit at Parkersburg while waiving such charges at other fabricating points on its lines, and from which points in many instances like articles may be reshipped via Parkersburg to final destination under open routes in the tariffs, would result in undue prejudice to Parkersburg and its traffic. HELD, suspended schedules not justified. Transit on iron and steel, 115 I. C. C. 381.

(k) Complainant alleged illegal charges were collected on 13 cars of barley shipped from South Dakota to Minneapolis, Minn., during federal control and reconsigned to Milwaukee, Wis. Charged at varying rates ranging from 10.5c to 21.5c to Minneapolis and 12.5c to Milwaukee. Concurrently joint commodity rates were in effect, varying from 10 to 30.5c from the original shipping points to Milwaukee, which applied only via Winona, Minn., and Wyeville, Wis., via the shortest available route. Shipments did not move through the points specified and the joint rates would not have been applicable on through shipments via Minneapolis. Effective Feb. 28, 1919, subsequent to these movements the transit tariff was amended so as to apply through rates on similar shipments stopped but not unloaded at Minneapolis, but this amendment can not be applied retroactively and the statute has barred considerations of any questions other than those raised under section 6. HELD, charges attacked not illegal, complaint dismissed. Zimmerman v. Director General, 115 I. C. C. 407.

(l) Complainant attacked rates charged on compressed cotton which moved from Opelousas and Bunkie, La., between Nov. 1, 1922 and May 1, 1924 and from Jan. 6, 1923 to May 1, 1924 to destinations in New England and New York as unjust, unreasonable and unduly prejudicial as compared with rates from Shreveport, La., and other Louisiana points of origin. These shipments moved from Opelousas and from Bunkie upon through bills of lading via the rail, water and rail route through the ports of New Orleans and New York. Rates applied on cotton, compressed, any quantity. The tariffs were subject to rule 77. In these tariffs lower rates were published from Alexandria, La., than from Opelousas, the latter on movements to New Orleans being intermediate. Effective Nov. 19, 1924 rates were published from Opelousas on the Alexandria basis to Boston but not to the interior points. Bunkie is a local point on the T. & P., 31 miles east of Alexandria and between the latter point and New Orleans. HELD, rates attacked from Opelousas and Bunkie unreasonable to extent they exceeded the rates from Alexandria, reparation awarded. Magnet Bros. Co. v. A. C. R. R. Co., 118 I. C. C. 85.

(m) Complainant attacked through rates charged and rules and practices applicable on shipments of cottonseed meal and cake from Mississippi valley and the southeast to Lancaster and York, Pa., there manufactured into mixed feed under a transit arrangement, and shipped to destinations in New England and trunk line territories as unreasonable, unduly prejudicial and in violation of the fourth section. Territory of origin is Tennessee, Mississippi, Alabama and Arkansas. Destination territory, in addition to New England states, includes New York, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, North Carolina and South Carolina. Since the shipment from the transit point in the instant proceedings was in every case mixed feed, defendants under the tariff assessed the mixed feed rate from point of origin to final destination. As no commodity rates on mixed feed were or are published from the origin territory, the joint class D rates were charged on the through movement. The record shows that the commodity which actually moves for the greater part of the distance is cottonseed meal; and defendants by their transit rules move voluntarily accorded the cottonseed meal basis to Chicago, Peoria, Milwaukee, and Hammond, competing points. Mixed feed and cottonseed meal compete with each other as animal food. They load about the same, the cottonseed meal being the heavier, are subject to the same carload minima, are of about the same value, and require substantially the substantially similar equipment and service. HELD, complainants should have been

charged the contemporaneous commodity rates on grain or grain products from point of origin or rate basing point to final destination, depending on which commodity moved inbound to the transit point. If both grain and grain products moved inbound in the same shipments, the grain products rate would apply. Past shipments should be adjusted on this basis. HELD, transit rule attacked unreasonable and defendants should establish the same rule as now applicable in central territory, reparation awarded. Eshelman & Sons v. Director General, 118 I. C. C. 441.

(n) Upon contention that inbound rates on logs to mills should be lower than outbound rates on the manufactured articles, because of revenue derived by carriers on outbound products. HELD: This is not necessarily correct as circumstances surrounding inbound movement may warrant a higher rate. See also 89 I. C. C. 47. Liberty Cooperage & Lbr. Co. v. P. R. R., 118 I. C. C. 505, 506.

(o) It would be manifestly impossible to adjust inbound and outbound rates from and to all market points so that combination of rates to any destination would be same through all markets. Nashville Traffic Bureau v. L. & N., 118 I. C. C. 748, 753.

(p) Complainant attacked rates charged on structural and merchant steel, in carloads, shipped since April 17, 1923, from St. Louis, Mo., Chicago, Ill., Indiana Harbor, Ind., Bethlehem, Pa., and points taking same rates to Casper, Illco and Salt Creek, Wyo., when fabricated at Muskogee, Okla., as unreasonable and illegal. Shipments moved over various routes into St. Louis, thence M. K. T., for fabrication. From Muskogee the shipments again moved over M. K. T., some via Wichita Falls and others via Fort Worth, Ft. W. & D. C., C. & S., to Wendover, Wyo., C., B. & Q., to Casper and Illco and N. & S., beyond destined to Salt Creek. Some shipments were delivered to the C. & N. W., at Orin, Wyo. There were no joint rates from origin to destination and combinations were assessed. Transit charges were assessed of 2 cents. The transit tariff provided for application of the joint rate from points of origin to destinations wherever applicable via the transit points. Distance over route of movement through Wichita Falls gateway from St. Louis to Casper was 1,818 miles and over direct routes 1,045 miles. In other words, the distances over the route of movement from St. Louis were about 80% greater than the distances over the direct routes. On shipments originating at Chicago the percentage of circuity is much greater. When the shipments moved there were joint rates from these points of origin to Casper and Illco in connection with the Burlington and Northwestern with the local factor of the N. & S. added, to Salt Creek. These rates were restricted to apply over the Burlington and Northwestern direct, or in connection with these lines at Missouri River crossings, and were not applicable via Muskogee. The rates from Bethlehem over the direct routes were constructed on the St. Louis combination. There were also in effect joint rates from all points of origin to Great Falls, Mont., and Spokane, Wash. The tariff publishing the rates to Great Falls was restricted to apply to destinations in Montana, and also to destinations in Wyoming "when specifically provided in individual rate items." No rates were published therein as applying to Casper, Illco or Salt Creek nor were there points listed in the tariff. There are specific rates to Casper and Illco although not applicable over the route of movement of these shipments, in view of which the Great Falls rate can not be applied to these destinations. Salt Creek is on an independent short line, is not intermediate to Great Falls, and consequently is not subject to the intermediate application rule. Complainant directed the movement of the shipments over routes that were extremely circuitous, involving an out of line haul of 800 miles or more. If the shipments had been forwarded over the direct routes lower rates could have been secured and wasteful transportation been avoided. HELD, rates from Indiana Harbor unlawful to extent they exceeded rates from Chicago; rates from other points of origin not unreasonable, complaint dismissed. Tulsa Rig, Reel & Mfg. Co. v. M. K. T. R. R., 122 I. C. C. 405.

(q) Complainant attacked commodity rate charged on two cars of flour forwarded Nov. 26, 1921 and Jan. 6, 1922 from Anthony, Kans., to Denver, Colo., as unduly prejudicial. Flour was milled in transit at Anthony from wheat originating at Hunnewell, Kans. Entire movement was over Santa Fe, charged

44.5 cents from Hunnewell to Denver. Complainant shows that a rate of 42 cents was contemporaneously applicable on flour, carloads, to Denver from Missouri River territory and southeastern and northern Kansas. Subsequent to the movement the 44.5 cent rate charged and the 42 cent rate instanced were reduced to 36 cents. Aside from the foregoing no evidence of probative value was introduced bearing upon the question of undue prejudice. HELD, rates attacked not unduly prejudicial, complaint dismissed. Kansas Flour Mills Co. v. A., T. & S. F. Ry., 123 I. C. C. 19.

(r) Commodity rate to Denver, Colo., on flour milled in transit at Anthony, from wheat originating at Hunnewell, Kans., found not unduly prejudicial. Aside from the showing of lower rates from other points of origin in Missouri territory and subsequent reduction, no evidence was adduced by complainant. Preference and prejudice under section 3 of the act, to be undue and unlawful, must be such that it is a source of advantage to the party alleged to be favored and disadvantage to the other party, and a competitive relation between the parties must ordinarily exist. Kansas Flous Mills Co. v. A. T. & S. F., 123 I. C. C. 19.

(s) In original report, 98 I. C. C. 619, the assessment of inbound and outbound rates on shipments of cotton from Jonesboro, Pine Prairie, and Mamou, La., compressed at Alexandria, La., and reshipped to New Orleans, was found proper because shipments were not redelivered for outbound movement after compression to same carrier performing the inbound haul in accordance with applicable tariff. Upon further hearing, it being shown that such shipments were so delivered, original report reversed and through rates, less published allowance for compression, found applicable. Reparation awarded. Haas & Co. v. Director General, 123 I. C. C. 121.

(t) Rates on anthracite coal from Lehigh, Schuylkill, and Wyoming regions in Pennsylvania, to complainant's siding within corporate limits of Providence, R. I., found inapplicable. Charges were collected based on rate to Auburn, R. I., a point intermediate to Providence. However, as tariffs did not define the switching limits of Providence or indicate that the Auburn rate applied on shipments delivered on complainant's siding the logical interpretation of tariffs was that the Providence rate applied to all points within corporate limits of that city and was therefore applicable to complainant's shipment. See 63 I. C. C. 392; 73 I. C. C. 143. Refund of overcharges directed. City Coal Co. v. N. Y., N. H. & H., 123 I. C. C. 609.

(u) Charges assessed on wheat, reforwarded under proportional rates from Kansas City, Mo., to various interstate destinations and accorded transit at Leavenworth, Kans., and Sweet Springs, Mo., found applicable and not unreasonable or otherwise unlawful. Under transit tariff, proportional rates applied with transit at points in direct line of shipment, but since movement to Leavenworth necessitated an out-of-line haul, transit at that point and Sweet Springs was not authorized. Moreover, in 91 I. C. C. 58; 100 I. C. C. 303, contention that carrier's tariff authorized protection of proportional rates from Kansas City with transit at Leavenworth and Sweet Springs was not sustained, and record in instant case does not warrant a different conclusion. Moore Lawless Grain Co. v. M. P., 123 I. C. C. 647.

(v) Rates on sulphur from Bryanmound, Tex., refined in transit at Freeport, Tex., thence reforwarded to Fresno, Livny, and Los Angeles, Calif., found unreasonable to extent they exceeded lower rates prescribed in 74 I. C. C. 641, for application on sulphur from Bryanmound and origin points in same general territory to south Pacific coast points when accorded transit at Lake Charles, La. and Texarkana, which rates were subsequently made applicable on traffic accorded transit at Freeport. Reparation awarded. Stauffer Chemical Co. v. H. & B. V., 123 I. C. C. 657.

(w) Complainant alleged that the combination rates charged on numerous cars of grain shipped since Jan. 24, 1923 from west bank Mississippi river points in Iowa and Missouri and from points in Illinois accorded transit at Chicago, and the product forwarded to destinations in central territory were and are unreasonable, unduly prejudicial and unduly preferential. Complainants shipments of grain by-products, consisted mostly of poultry feed and some mixed livestock feed, manufactured by it at Chicago from grain chiefly corn. Fully 99% of this poultry feed is made from the various kinds of grain taking the grain rates, and the remainder from nontransit articles such as sunflower seed, millet seed and

peas. On these inbound and outbound shipments combination rates are charged, made up of the rates on grain to Chicago, and the reshipping or proportional rates on grain products beyond. The Boyd tariff contains a specific statement that "the through rates named in tariff on the commodity forwarded from the transit station" will be applied from points of origin to ultimate destination. It seems to be the practice of western carriers to provide in their tariffs for application of through rates on grain products or by-products where there are no through rates on grain. HELD, failure of C. & N. W. and I. C. to join with the other defendants in according transit at Chicago on the basis of the through by-products rates from points where such rates were in effect did not and does not result in charges which were or are unreasonable or otherwise unlawful. HELD, combination rates attacked on shipments originating at points on the lines of defendants named in the item in the Boyd tariff, from which points one factor through rates on by-products on were in effect, were not applicable; and that the applicable rates on those shipments were the one factor through rates from points of origin to final destination on by-products in effect when the shipment of grain originated. HELD, combination rates attacked not applicable, applicable rates were and are the one factor rates on grain products in effect from the points of origin to the final destinations, effective when shipments of grain originated. Complaint dismissed, defendants to refund overcharges. Arcady Farms Milling Co. v. A. C. & Y. Ry., 126 I. C. C. 449.

(x) Failure of C. & N. W. and Illinois Central railroads to join with other carriers in according transit on grain at Chicago on basis of through by-product rates from west-bank Mississippi River points in Iowa and Missouri and from points in Illinois where such rates were in effect, found not unreasonable or otherwise unlawful in comparison with rates charged competitors located at points from which one-factor through rates on grain products or by-products apply, or with the combination basis of grain rates to Chicago plus grain-products rates beyond. Arcady Farms Milling Co. v. A., C. & Y. Ry., 126 I. C. C. 449.

(y) Grain from west-bank Mississippi River points and from Illinois, mixed into feed at Chicago, and product forwarded to c. f. a. destinations was assessed grain rates to Chicago and proportional or reshipping grain-products rates beyond. Tariff provided that when shipment originated at point from which no joint through rate to final destination applied via the transit point, rates would be the reshipping or proportional rates, except when commodity consisted of grain, in which event rate on out-bound shipment would be that applicable to grain products. Here through grain-products rates but no through by-products rates were published. HELD: Words "no joint through rate" refer to grain products. If carriers intended that the rule refer to through grain rates, tariff should have been so worded. Accordingly through one-factor rates on grain products from origins to final destinations, in effect when the grain originated, were applicable. Refund of overcharges directed. Arcady Farms Milling Co. v. A., C. & Y. Ry., 126 I. C. C. 449.

(z) Shipments of grain from west-bank Mississippi River points and from Illinois, mixed into feed at Chicago, and products forwarded to c. f. a. destinations, were assessed grain rates to Chicago and proportional or reshipping rates on grain products beyond. Tariff provided that "through rates on commodity forwarded from transit station" will be applied from origin to ultimate destination on shipments originating on specified lines. HELD: Since shipments here involved originated on lines named, the one-factor through rates on by-products were applicable. Refund of overcharges directed. Arcady Farms Milling Co. v. A., C. & Y. Ry., 126 I. C. C. 449.

(aa) Fact that carriers' agents issued through bills of lading from origin points to final destinations covering shipments of cotton, and accepted prepayment of freight charges on basis of joint rates in violation of tariff authority which provided for assessing local rates to transit points and through rates beyond, does not afford a basis for finding that applicable rates included cost of compression in transit. McFadden & Bros. Agency v. A. & R. R. R., 126 I. C. C. 519, 522.

(bb) Shipment of oats from Porum, Okla., to Oakland, Calif., there stored and subsequently reconsigned to McCloud, Calif., found to have been improperly billed from the transit point and charges not collected in accordance with complainant's instructions, thereby depriving him of a portion of inbound

rate provided by tariff. Tariff rule provided that if dealer desired consignee to pay rate from transit point to destination, refund of proportion of charges to transit point would be made. Carrier's agent at Oakland was instructed to collect charges from consignee at McCloud on basis of full local rate from Oakland to McCloud. Instead charges were collected on basis of division of the through rate from Porum to McCloud, which was contrary to instructions and served to defeat the rule. Reparation awarded. Albers Bros. Milling Co., v. A., T. & S. F., 128 I. C. C. 53.

(cc) Complainant assailed combination rates charged on beans, carloads, from Clifford, Pigeon, Owendale, Cass City, and Bad Axe, Mich., to Fenton, Mich., there picked and reshipped to various interstate destinations, as unreasonable. Inbound shipments to Fenton moved between Dec. 1922 and Feb. 1924, from stations on the P. O. & N. and D. & H. Charges were assessed on most of the shipments upon the basis of 50% of the local rates to the transit point, Fenton, and the through rates from original shipping points to final destinations. These shipments were overcharged, defendants only contending that the proper basis would have been 50% of the inbound local rates plus the rates from Fenton to final destinations. A finding of unreasonableness can not be made upon the evidence in this case. HELD, charges applicable on basis of 50% of the rates from the original points of shipment to Fenton plus rate on the outbound article from Fenton to the final destinations, refunds ordered, complaint dismissed. Michigan Bean Co., v. D. G. T. & M. Ry., 128 I. C. C. 207.

(dd) Rates on beans, shipped from certain Michigan points to Fenton, Mich., for picking-in-transit, and reshipped to various destinations found not unreasonable, but inapplicable. Applicable transit tariff provided under Rule 4 (a) that if transit point was on direct route, through rates from origin to destination would apply, but under Rule 4 (b) that if transit point was not on direct line, "thereby involving an out-of-route or back-haul movement," charges would be computed on basis of 50 per cent of inbound rate plus outbound rate from transit point to final destination. Fenton was not on direct route as thus defined in tariff, although routes were otherwise unrestricted, and item 4 (b) was applicable. Charges having been erroneously collected on basis of through rates plus 50 per cent of local inbound, refund directed. Michigan Bean Co. v. D., G. H. & M., 128 I. C. C. 207.

(ee) Complainant attacked charges collected on a car of apples shipped June 29, 1925 from Wenatchee, Wash., billed to New York, N. Y. and diverted in transit to Philadelphia, Pa., as inapplicable and unreasonable. A portion of the shipment originated at Wagnersburg, Wash., on Dec. 6, 1924, and moved to Wenatchee where it was stored in transit until June 29, 1925. On that date this portion together with the balance was shipped from Wenatchee to New York. Orders were given to divert the shipment to Philadelphia for B. & O. delivery first at Chicago, Ill., and then at several Ohio points, and if diversion was not effected at Ohio points to divert to the same destination at Jersey City, N. J. Shipment moved to Jersey City and was switched by the Staten Island Rapid Transit to the Reading, which line delivered it at Philadelphia to the B. & O. for movement to Pier 22. Complainant contends that the charge of $72.97 assessed for the movement beyond Jersey City was inapplicable, because the joint commodity rate of $1.50 applied from Wagnersburg to final destination. There was no provision in the applicable tariffs that would have prevented routing of shipment through Jersey City if originally consigned to Philadelphia, and the $1.50 rate would have been applicable. This route was available and, with the meaning of the tariff, the movement from Jersey City to Philadelphia over the lines of parties to the transcontinental tariff is not an out of route movement. HELD, complainant was overcharged $110.17, to be refunded, complaint dismissed. Northwestern Fruit Exchange v. G. N. Ry., 128 I. C. C. 538.

(ff) Charges collected on caterpillar tractors and parts from Stockton, Calif., to Dallas, Tex., based on rate from Stockton to Dallas, plus reconsignment charge at San Antonio and stop-over charge at Houston, where shipment was partially unloaded, found inapplicable. While governing tariff authorized reconsignment at San Antonio, it did not authorize stop-over at Houston, and

movement therefrom must be treated as a reshipment. Refund of overcharges directed. Holt Co., of Texas v. S. P. 128 I. C. C. 555.

(gg) Upon reconsideration, maintenance of combination rates on rosin from points in the South and Southeast to Hamilton, Ontario, Canada, accorded transit at Ivorydale (Cincinnati), Ohio, higher than joint rates from more distant points over the same route, in the same direction, the shorter being included within the longer distance, when shipments are accorded transit at Latonia or Central Covington, Ky., found to contravene the long-and-short-haul provision of section 4 of the act. See 35 I. C. C. 27, and other cited cases. Moreover, such rates contravene the fourth section notwithstanding fact that such rates are joint rates from points within United States to Canadian destinations. See Conf. Ruling 447; 66 I. C. C. 627, and other cited cases. Former report 112 I. C. C. 381. Procter & Gamble Co. v. A. & V., 129 I. C. C. 385.

(hh) Connecting lines can not dictate to the road that alone serves the transit point the manner in which joint rates through that point shall be applied in conjunction with the transit arrangements, so long as they are not deprived of their long haul. See 83 I. C. C. 18; 83 I. C. C. 60. Transit Arrangement on Lumber, 129 I. C. C. 518, 520.

(ii) Alfalfa meal from Colorado to Dyersburg, Tenn., moved under combination rates via Memphis. Via East St. Louis, factor from that point to Dyersburg accorded transit on alfalfa meal mixed into feed at Dyersburg, except where outbound shipment consisted of more than 30 per cent nontransit materials when local rates would apply to entire shipment. No transit was accorded via Memphis. Upon contention that, as tariff specified alfalfa meal as a "transit ingredient," that regardless of how it reached Dyersburg it should not be considered in computing the 30 per cent of nontransit material in ascertaining whether remainder of outbound shipment is entitled to transit privileges. FOUND: Term "transit ingredient" comprehends only such shipments as may be transited under tariff provisions, and since nontransit material exceeded 30 per cent, meal moving via Memphis was nontransit material. Dyersburg Milling Co. v. Director General, 129 I. C. C. 739.

§19. Retroactive Application.

See Reconsignment.

(a) Reconsignment arrangements can not be applied retroactively. See 83 I. C. C. 388. Providence Fruit & Produce Exchange v. B. & M., 115 I. C. C. 135, 136.

(b) Transit provisions of tariff can not be applied retroactively. Zimmerman v. Director General, 115 I. C. C. 407, 408.

(c) Ordinarily the Commission does not sanction the retroactive application of transit privileges, except upon a showing of unreasonableness or of damage arising out of undue prejudice or discrimination. But this rule does not necessarily govern cases where the nonapplication of an existing transit arrangement arises from some restriction in connection with the line haul rates. In such cases the Commission has frequently found the applicable combinations of rates on transit points unreasonable to the extent that they exceeded lower bases contemporaneously in effect on other traffic or subsequently established. Decker & Sons Co. v. C. & N. W. Ry., 126 I. C. C. 551, 553.

(d) Ordinarily the retroactive application of transit privileges is not sanctioned by the commission except upon showing of unreasonableness or of damage arising out of undue prejudice or discrimination. See 39 I. C. C. 337. But this rule does not necessarily govern cases where the nonapplication of an existing transit arrangement arises from some restriction in connection with the line-haul rates. In such cases commission has found the applicable combinations of rates on transit points unreasonable to extent they exceeded lower bases contemporaneously in effect on other traffic or subsequently established. Decker & Sons v. C. & N. W. Ry., 126 I. C. C. 551, 553.

§20. Substitution of Tonnage.

See Substitution of Tonnage.

(a) Complainant alleged that the ratio of 3 pounds of logs inbound to 1 pound outbound of lumber manufactured from the logs, and the local rates on logs, in carloads, to Dreyfus, Miss., resulting from the application of that ratio were unreasonable and unduly prejudicial. Dreyfus is 2.5 miles from

Hattiesburg, Miss., and is served by the Miss. Cent. and G. & S. I. Defendant maintains an arrangement at mills on its line under which for each pound of lumber shipped outbound over its line during the year in which the logs are received, 3 pounds of logs inbound over its line are given the benefit of a transit rate to the mill which is lower than the local rate. The tariff publishing that arrangement contains a provision that where a shipper gives a satisfactory bond he may pay the transit rate in the first distance. In the absence of a bond the local rate must be paid, in which event the defendant refunds the difference between that rate and the transit rate on logs entitled to the latter. Complainant had furnished the necessary bond and paid the transit rate on its shipments. No evidence was presented in support of the allegation of undue prejudice and none was presented as to the reasonableness of the local rates to Dreyfus. HELD, ratio attacked and rates not unreasonable or unduly prejudicial as applied to interstate commerce, complaint dismissed. Brookhaven Lumber & Mfg. Co. v. M. C. R. R., 132 I. C. C. 241.

IV. DISCRIMINATION.

See Supra §15; Discrimination; Passenger Fares and Facilities III, §9.

§21. In General.

(a) Through charges on blackstrap molasses from New Orleans and points taking same rates to Cincinnati, there converted into denatured alcohol, and reshipped as such to interstate destinations, found not unduly prejudicial or otherwise unlawful as compared with through rates contemporaneously maintained from same points to and from Pekin, Ill. Transit arrangements are maintained at Pekin but not at Cincinnati, and since carrier which serves Pekin does not serve Cincinnati it is powerless to remove alleged undue prejudice by establishment of a similar arrangement at latter point. Federal Products Co. v. I. C. R. R., 107 I. C. C. 271.

(b) A line which participates in a joint rate is not guilty of undue prejudice in failing to accord transit service at a point on its line merely because another carrier party to same joint rate does accord transit service. See 257 U. S. 247. Federal Products Co. v. I. C. R. R., 107 I. C. C. 271, 275.

(c) It is proper to find a violation of the second or third section of the act where trunk lines unlawfully discriminate in their practices toward different industries, but an adverse finding under section 1 should not rest upon an artificial ground. Pressed Steel Car Co. v. Director General, 109 I. C. C. 75, 78.

(d) A carrier can not be charged with undue prejudice because of conditions not within its control. Transit Privileges on Grain, 113 I. C. C. 374.

(e) Following 88 I. C. C. 99, refusal of carriers to accord north Pacific terminal rates on grain and products from points in transcontinental Groups F and G and other points east of Pasco and Spokane, Wash., to destinations north of Centralia, to and including Seattle, Tacoma, and Everett, Wash., with milling and cleaning in transit at Portland, Oreg., while according such arrangements at Puget Sound milling points on shipments from said points of origin destined to Portland, found unduly prejudicial to Portand and preferential of competitors on Puget Sound. Crown Mills v. N. P. Ry., 115 I. C. C. 15.

(f) Proposed charges, in addition to through rate and transit charge, for out-of-line hauls on iron and steel articles fabricated in transit at Parkersburg, W. Va., found not justified. While, as a general rule, the assessment of charges for out-of-line or excess hauls is proper and consistent with principle that carriers should be compensated for services rendered, proposal to apply additional charges at Parkersburg, while waiving such charges at other fabricating points on lines of carrier, from which points, in many instances, like articles may be reshipped via Parkersburg to final destination under open routes in tariffs, would result in undue prejudice to Parkersburg. Transit on Iron and Steel, 115 I. C. C. 381.

(g) Maintenance of penalty charge for out-of-line haul on grain from points on A., T. & S. F., milled in transit at Dallas, Tex., and destined to points north or west of Fort Worth, while failing to exact such charges on similar traffic at Fort Worth, found not unreasonable or unduly prejudicial. The out-of-line haul when traffic moves through Dallas is substantially greater than distance through Fort Worth, the penalty charge here as-

sailed not being shown unreasonable for extra service performed. Moreover, failure of other carriers to maintain similar penalty charges at Dallas does not establish unlawfulness of those here assailed. Pearlstone Mill & Elevator Co. v. A., T. & S. F., 115 I. C. C. 551.

(h) Upon investigation by the commission on its own motion, FOUND: That through use of its right of way, tracks, and other facilities, in furnishing transportation and car service to the Bromide Crushed Rock Co., and refusing similar service and enjoyment of these or similar facilities to Dolese Bros., upon request, both these companies being located in vicinity of Bromide, Okla., the Kansas, Oklahoma & Gulf Ry. Co., subjects latter company to undue prejudice and gives to former an undue preference, in violation of section 3 of the act. Service on K., O. & G. Ry., 118 I. C. C. 412.

(i) Finding of undue prejudice can not be made merely because a point served by one carrier does not receive the same transit privileges as another point served by other and different carriers; nor can it be said that existence of transit at a point on a direct route and absence of transit at another point on a circuitous route results in undue prejudice to the latter point. Jackson Traffic Bureau v. A. & V., 122 I. C. C. 387, 390, 391.

(j) Transit charge maintained at New York points in trunk-line territory on ex-lake traffic, in connection with so-called f. o. b. rates on grain and products from Erie, Pa., and Buffalo and Oswego, N. Y., to eastern destinations, found not unreasonable, but unjustly discriminatory and unduly prejudicial in favor of millers, dealers, and elevator companies handling ex-lake grain from c. f. a. territory ports and of all-rail grain traffic from points in c. f. a. and trunk-line territories. Birkett Mills v. D., L. & W., 123 I. C. C. 63.

(k) A transit charge is a local charge for which carrier establishing it is alone responsible. See 257 U. S. 247. Different transit charges for same service at same points by same carriers, constitute unjust discrimination under section 2 of the act. Birkett Mills v. D., L. & W., 123 I. C. C. 63, 65.

(l) Refusal of carriers to pay interest on complainant's investment in a privately owned or plant-facility track does not constitute a violation of the act. No such interest is paid to owners of other private lines in same district, and fact that carriers have purchased and now own certain branch lines which formerly had a similar status is not sufficient to bring this phase of the complaint within the purview of the laws administered by commission. American Fuel Co. v. A., T. & S. F., 123 I. C. C. 101, 113.

(m) Upon rehearing, relationship between interstate rates on cotton for city deliveries and ship-side deliveries at Texas and Louisiana ports, found unduly preferential of warehouses and compresses located on the water front at such ports, and shippers using such facilities, and unduly prejudicial to warehouses and compresses located at interior points and back from the water front at the ports, and shippers using such facilities. Basis for equalizing city-delivery and ship-side rates prescribed. Prior reports 77 I. C. C. 388; 100 I. C. C. 159. Rates on Cotton to Gulf Ports, 123 I. C. C. 685.

(n) Refusal of carriers to permit blending in transit of petroleum products at interior Texas refining points while permitting such blending in transit at Texas and Louisiana port refineries under appropriate tariff rule, found not unduly prejudicial. Although the rule is designated as blending-in-transit provision and is applicable to shipments in transit to an export of coastwise destination, shipment upon which it applies has in fact reached its destination, so far as rail carrier is concerned, upon delivery to coastal refiner. While blending rule is necessary in order to insure protection of export or coastwise rate, which protection appears proper because service preformed in delivering to storage tank at ports is no greater than when delivered direct to vessels, such a transit arrangement at interior point would involve two separate and distinct movements, there is no necessity therefor such as exists at the ports, and it would in effect require carriers to perform inbound haul without charge. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349, 396, 398.

(o) In justifying its rates carrier contended that in order to reach its own pier it must use tracks of another line and in return for that user is required to maintain transshipment rates

to piers on that line not accorded to piers on another line. FOUND: While this explains it does not excuse difference in treatment, because preference and prejudice as between deliveries to piers on both lines under like and similar circumstances of transportation are not rendered the less "undue" in so far as a complainant's right to equality of treatment is concerned, by proof of fact that with one of those lines there exists a contractual relation or condition of barter and trade which is absent as to the other. See 272 U. S. 658, 664, 665. Harbor Coaling Corp. v. B. & O., 128 I. C. C. 747, 750, 751.

(p) Complainant alleged commodity rates on lead smelter products, in carloads, shipped since March 15, 1924, from Bradley and Kellogg, Ida., to Atlantic seaboard territory are unduly prejudicial. Complainants shipments consist of refined lead in marketable form, whereas from the other lead smelters the product, in the form of lead bullion, must be shipped elsewhere for refining before it can be marketed. In the making of rates defendants do not distinguish between the products of the smelter and those of the refinery. Nor is it customary to make any distinction between the various metals composing the list of smelter prdoucts, viz., copper, lead and zinc. Competition in the marketing of smelter products is exceedingly keen, the difference of a fraction of a cent per pound frequently being sufficient to divert a sale. HELD, the maintenance of rates on lead smelter products, in carloads, from Bradley and Kellogg to Atlantic seaboard territory higher than those applied on similar products from East Helena, Mont., and Utah lead smelting points to the same territory unduly perferentialy of East Helena and Utah smelting points and unduly prejudicial to Bradley and Kellogg, reparation denied. Bunker Hill & Sullivan Co. v. O. W. R. R. & N., 132 I. C. C. 266.

(q) Combination rates on cottonseed cake and meal from points in the Southwest and Mississippi Valley to York and Lancaster, Pa., and Buffalo, N. Y., there mixed in transit and product feed forwarded to trunk-line and New England destinations, found unreasonable and unduly prejudicial to extent they exceeded the contemporaneous joint rates from same origin territory to basing points with which destinations named are usually grouped. While rates assailed to c. f. a. destinations are not on proper basis record is inadequate to make finding as to their reasonableness, partly due to fact that no basing points have been established in connection with cake and meal to that territory and further that existing joint commodity rates were published to destinations to which there was a known movement. Reparation awarded. American Feed Mfrs. Asso. v. A. &. S., 129 I. C. C. 157.

(r) Following 118 I. C. C. 441, transit rules, regulations, and practices as applied to shipments of cottonseed cake and meal from points in the Southwest and Mississippi Valley to York and Lancaster, Pa., and Buffalo, N. Y., there mixed into feed and the feed forwarded to c. f. a., trunk-line, and New England destinations found unreasonable and unduly prejudicial to extent that charges thereunder exceeded those which would have accrued from application of transit rules contemporaneously in effect at Chicago and subsequently published in above-cited case for application at York and Lancaster. Reparation awarded. American Feed Mfrs. Asso. v. A. & S., 129 I. C. C. 157.

VI. CHARGES.

See Reasonableness of Rates.

§23. In General.

(a) Complainant alleged a policing charge of $25 per car and assessed on two cars of nonbeverage alcohol and 23 cars of denatured and wood alcohol shipped from various points to Chicago between July 31 and Nov. 25, 1922 were unreasonable. A charge of $25 was published to apply at point of origin and a charge in the same amount at point of destination, applicable to shipments of intoxicating liquors and alcohol, other than denatured and wood alcohol, on the rails of defendant. Defendant concedes that the charge as published in that tariff was not at any time applicable on denatured and wood alcohol. This leaves for consideration the question of the reasonableness of the charge as applied on ethyl alcohol. Application of the charge has been justified. HELD, charge attacked not applicable on denatured and wood alcohol, reparation awarded. Charge on ethyl alcohol not unreasonable. U. S. Industrial Alcohol v. C. & N. W. Ry., 118 I. C. C. 674.

FERRY CARS AND CHARGES

See Allowanes §12 (2) (a); Trap Cars.

(a) A town cannot grant an exclusive franchise to operate a ferry from such town to point in other state, in view of effect on interstate commerce. McNeely v. Mayor and Board of Aldermen of Town of Vidalia, 6 Fed. (2d) 21.

(b) Where ferry operator had used certain point within town as landing place for more than 20 years and had acquired riparian rights under the state law, the town could not exclude his right to use of such frontage for such purpose by granting to another the right to operate ferry at such point with restriction on the right of the others to approach nearer than 150 feet thereto. McNeely v. Mayor and Board of Aldermen of Town of Vidalia, 6 Fed. (2d) 21.

(c) While a town has the right ordinarily to police its river front and to adopt such regulations as are in accord with safety in assigning landing places for those engaged in operation of interstate ferries, it has not the right to discriminate and put a ferry operator out of business. McNeely v. Mayor and Board of Aldermen of Town of Vidalia, 6 Fed. (2d) 21.

(d) Ordinarily, municipal corporation within boundaries of which ferries are to operate have power to fix a status for the continued operation of ferries, and courts should not interfere with the exercise of such power except in cases of unfair discrimination or abuse of power. McNeely v. Mayor and Board of Aldermen of Town of Vidalia, 6 Fed. (2d) 21.

(e) Ferry operator, who had used certain frontage as landing place for more than 20 years and had acquired riparian rights therein, HELD entitled to relief against action of town in granting exclusive right to use such particular frontage for such purpose to other operator despite exhorbitant charges previously exacted from public. McNeely v. Mayor and Board of Aldermen of Town of Vidalia, 6 Fed. (2d) 21, 22.

(f) Village ordinance, exacting license fee for operation of ferry across river from one state to another on penalty of prosecution and fine for failure to procure license, HELD invalid as putting unreasonable burden on interstate commerce, in violation of commerce clause of federal constitution. Scott v. Village of Thebes, Ill., 17 Fed. (2d) 410.

FINANCE DOCKETS

I. CONTROL AND REGULATION.
§1. In general.
§1a. Constitutionality or construction of act.
II. LOANS AND GUARANTIES.
§2. In general.
III. EXTENSION, ACQUISITION, OR CONSOLIDATION.
§3. In general.
IV. ABANDONMENT OF SERVICE.
§4. In general.
V. STOCKS AND CAPITAL ISSUES.
§5. In general.
VI. GOVERNMENT GUARANTY AND RECAPTURE.
§6. In general.
§7. Return on investment.
VII. PHYSICAL VALUATION.
§8. In general.
VIII. FINANCIAL OPERATION.
§9. In general.
IX. ACTIONS AT LAW.
§10. In general.

CROSS REFERENCES

See Common Carrier §5; Consolidation of Carriers; Evidence §7, §17; Express Companies §27; Panama Canal Act.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. In General.

(a) Fact that a State commission has declared in a proceeding commenced subsequent to termination of so-called guaranty period following Federal control that certain intrastate rates collected during that period were unreasonable, and that commission is asked merely to approve that finding, does not enlarge limited jurisdiction conferred upon it by section 208 (a) of the transportation act, 1920, to review rates reduced by State commissions prior to termination of guaranty period, since commission's direct jurisdiction over reductions in intrastate rates was limited to action taken prior to such period. Under no provisions of transportation act or of interstate commerce act is commission given authority to review and approve a finding of

a State commission made subsequent to said period, and to order award of reparation based thereon. Armour & Co. v. G. N., 104 I. C. C. 34, 36.

(b) The provision in section 15a directing commission to initiate, modify, establish, or adjust rates so that carriers may earn a fair return, does not relieve carriers from the primary duty of initiating rates. That function belongs to management and not to regulation. It is the right and duty of carriers to take steps necessary to correct improper rate relations as they may be found to exist, and to supply revenue deficiences by initiating suitable rates. Revenues in Western District, 113 I. C. C. 3, 38.

(c) Under the Interstate Commerce Act, §5, pars. 2, 8, and Transportation Act 1920, §§407, 408, Interstate Commerce Commission alone has power preliminarily to authorize leases of railroad lines between railroads engaged in interstate commerce, and, until it has acted on application or such a lease, courts are without jurisdiction to determine the issues thus presented to Commission. State of Louisiana v. Morgan's Loiusiana & T. R. & S. S. Co., 18 Fed. (2d) 645. Same v. Franklin & A. Ry. Co., 18 Fed. (2d) 645. Same v. Lake Charles & N. R. Co., 18 Fed. (2d) 645. State of Louisiana v. Louisiana Western R. Co., 18 Fed. (2d) 645.

(d) A state court has no jurisdiction of suit to restrain one railway from building certain road and another from acquiring it where Interstate Commerce Commission authorized such acts, state court being without jurisdiction to entertain suits to annul orders of Commission, even though they are permissive and not mandatory. People v. Illinois Cent. R. Co., (Ill., 1927) 155 N. E. 841.

III. EXTENSION, ACQUISITION, OR CONSOLIDATION.

See Consolidation of Carriers.

§3. In General.

(a) Interstate Commerce Act, § 1, pars. 18, 21, as amended by Transportation Act 1920, § 402 (U. S. Comp. St. § 8563), prohibiting railroad carriers subject to the act from extending their lines or constructing new lines without first obtaining certificate of public convenience and necessity from Interstate Commerce Commission, and relating to car service facilities, HELD not to affect right of Transit Commission to order elimination of grade crossings for safety of public under Railroad Law N. Y. §§ 91 (as amended by Laws N. Y. 1921, c. 698, § 2), 94, 95, Const. N. Y. art. 7, § 14, and Laws N. Y. 1926, c. 510, §§ 1, 3. Bay St. Crossing of Staten Island Rapid Transit Ry. Co. 221 N. Y. S. 129. Bilair Road Crossing of Staten Island Rapid Transit Ry. Co. 221 N. Y. S. 129.

(b) Congress' power to regulate interstate commerce, given by Const. U. S. art. 1, § 8, cl. 3, extends to rates, issuance of securities, control of one railroad by another and construction and extension of new lines, and under it franchises may be granted to railroad additional to those enjoyed under charter. People v. Illinois Cent. R. Co., (Ill., 1927) 155 N. E. 841.

(c) Railroads may build and acquire road running between points in two states after Interstate Commerce Commission found that public convenience and necessity required it, without seeking further authority, in view of Interstate Commerce Act (U. S. Comp. St. § 8563 et seq.). People v. Illinois Cent. R. Co., (Ill., 1927) 155 N. E. 841.

(d) Carrier does not admit new tracks constitute extension by applying for certificate of public convenience and necessity. Texas & P. Ry. Co. v. Gulf, C. & S. F. Ry. Co., 46 Sup. Ct. 263.

(e) Party in interest, opposed to railroad's construction of new tracks, is not authorized to initiate proceedings before Interstate Commerce Commission concerning project. Texas & P. Ry. Co. v. Gulf, C. & S. F. Ry. Co., 46 Sup. Ct. 263.

(f) Railroad, protesting to both state and federal commission on learning of competing railroad's construction of an alleged extension without the certificate of public convenience and necessity required by Transportation Act Feb. 28, 1920, §402, par. 18 (Comp. St. Ann. Supp. 1923, § 8563), and which later before construction contract was let, instituted injunction suit under paragraph 20, HELD not guilty of laches, barring relief. Texas & P. Ry. Co. v. Gulf, C. & S. F. Ry. Co., 46 Sup. Ct. 263.

(g) Railroad line 7½ miles long, built from point on main line to serve an industrial district already adequately served, but not theretofore reached by lines of that company, HELD an "exten-

sion" of its line, within Transportation Act Feb. 28, 1920, § 402, par. 18 (Comp. St. Ann. Supp. 1923, § 8563), construction of which without a certificate of public convenience was prohibited, rather than an industrial track, within paragraph 22, though service to be rendered was that ordinarily rendered by industrial or spur tracks. Texas & P. Ry. Co. v. Gulf, C. & S. F. Ry. Co., 46 Sup. Ct. 263.

IV. ABANDONMENT OF SERVICE.

§4. In General.

(a) Upon investigation by commission on its own motion into and concerning a proposal of the Northern Pacific Ry. Co., to discontinue daily mixed-train service on a branch line extending between Beach, N. Dak., and Ollie, Mont., and to establish in lieu thereof a triweekly service, HELD: That the commission has authority to regulate supply of trains for transportation of property; that revenues derived from the line are not sufficient to defray expense of present service; and that the proposed curtailment in service will result in substantial savings, will furnish adequate service to the communities served, and can be made effective without impairing service rendered to an extent that will be unjust or unreasonable. Train Service on Northern Pacific, 112 I. C. C. 191.

(b) Where a railroad can show that its life is dependent upon a particular source of traffic and that it must be abandoned once that source is exhausted, and that such exhaustion can be predicated with a reasonable degree of accuracy, then entire property of that railroad may be classed as depreciable. Depreciation due to this particular factor, however, should be handled through a special amortization account rather than through the depreciation reserve, and equipment which is movable, and upon abandonment of a particular railroad can be used elsewhere, should be excluded from this treatment. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 366, 367.

(c) Under Interstate Commerce Act § 1, par. 18-20, as amended by Transportation act 1920, § 402 (Comp. St. Ann. Supp. 1923, §8563), authority to issue certificate authorizing abandonment of branch line located wholly within state is not conditioned on a finding that operation will prejudice interstate or foreign commerce, or that railroad will be prevented from earning fair return on its properties as a whole, or that entire intrastate business in state involved will not earn a fair return on property used therein; sole test being whether abandonment is consistent with public necessity and convenience. State of Colorado v. United States, 46 Sup. Ct. 452.

(d) Under Interstate Commerce Act, § 1, pars. 18-20, as amended by Transportation Act 1920, § 402 (Comp. St. Ann. Supp. 1923, § 8563), Interstate Commerce Commission has power to authorize railroad chartered by a state and engaged in both interstate and intrastate commerce to abandon a branch line located wholly within state, which cannot be operated, except at loss. State of Colorado v. United States, 46 Sup. Ct. 452.

V. STOCKS AND CAPITAL ISSUES.

§5. In General.

(a) Unquestionably railroad stockholders should give close attention and study to all questions of management of policy for which their ratification is asked, but even in such matters they must, of necessity, place great reliance in the judgement of their elected officials who are in closer touch with the railroad's problems. Denver & Rio Grande Investigation, 113 I. C. C. 75, 157.

(b) Unfair treatment of railroad in the conduct of its affairs by majority stockholder held not shown in minority stockholder's action, either by agreement against increase of stock before payment of secured debt, or by having it join in guaranty of third company's bonds, or in division of business. Continental Securities Co. v. Michigan Central R. Co., 16 Fed. (2d) 378.

VI. GOVERNMENT GUARANTY AND RECAPTURE.

See Interstate Commerce Commission §9½.

§6. In General.

(a) Upon contention that commission is without jurisdiction to require an adjustment of divisions on past shipments because one-half of the carrier's excess income for some years having been recaptured under section 15a, the earnings on value of railway property held for and used in service of transportation for those years have been "established

by law;" and that excess earnings for other years are being held in abeyance to be recovered by and paid to proper authority whenever net railway operating incomes based upon value of property, have been finally determined. FOUND: Contentions are not well founded, recapture payments having been the result of tentative computations based upon carrier's figures and not upon a finding by commission. Divisions Received by B. R. R. & C. Co., 104 I. C. C. 415, 434.

(b) The act specifically provides that rate of return determined by commission to be fair "shall be uniform for all rate groups or territories which may be designated by the commission." Paragraph (3) of section 15a. Before the commission changes its findings as to the fair rate of return, general announcement should be given of the intention to consider that subject at hearings. Revenues in Western District, 113 I. C. C. 3, 19.

(c) If carriers in certain portions of any rate group designated under section 15a of the act are in a more prosperous condition than those in remainder, this fact may be considered in determining relative levels in different portions of same rate group. Revenues in Western District, 113 I. C. C. 3, 27.

(d) The commission is required under section 15a of the act only to adjust rates by groups to produce as nearly as may be a fair return for carriers as a whole in such rate groups. But it is evident that the principal purpose of that section was to afford the public adequate transportation service, and this end would clearly not be as adequately served by general increases throughout such a large rate group as the western district, applying alike to weak and strong lines, as by increases confined so far as possible to areas where rates appear to be on the lowest level and where the weakest roads are located. Revenues in Western District, 113 I. C. C. 3, 29, 30.

(e) The need for depreciation accounting is emphasized by provisions of section 15a of the act relative to recapture by the Government of excess income and by existing situation with respect to public regulation of both steam railroad and telephone companies. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 318, 319.

(f) "Transportation Act, § 208 (a) being U. S. Comp. St. Ann. Supp. 1923, § 10071¼d, providing that all rates in effect February 29, 1920, on lines of carriers subject to the Interstate Commerce Act, shall continue in force and effect until changed by state or federal authority, respectively; prior to September 1, 1920, no such rate * * * shall be reduced, * * * unless such reduction is approved by the Interstate Commerce Commission —does not require prior conditional approval by Interstate Commerce Commission to enable the Corporation Commission to entertain a complaint of an intrastate rate during the six months' guaranty period ending September 1, 1920, but the federal commission acts as a reviewing body on the determination by the state commission, and must approve it to make it effective." Missouri, K. & T. Ry. Co. v. Dewey Portland Cement Co., (Okla., 1925) 242 Pac. 257.

(g) Section 208(a) of the Transportation Act (U. S. Comp. St. Ann. Supp. 1923, § 10071¼d) gives the state authority to propose or initiate a reduced rate on intrastate shipments during the guaranty period, but all such changes before becoming effective are subject to review by the Interstate Commerce Commission, and, unless the same are approved by such commission, are invalid. Missouri, K. & T. Ry. Co. v. Dewey Portland Cement Co., (Okla., 1925) 242 Pac. 257.

(h) The act of Congress of February 28, 1920, known as Transportation Act 1920, created a "guaranty period" of six months from February 29th, during which time the states were prohibited by commission orders, or other legislative methods, from changing or affecting any "rates, fares and charges," "classifications, regulations and practices," or determining "the value of the service rendered" by any carrier subject to the Interstate Commerce Act, except with the approval of the Interstate Commerce Commission. But this prohibition did not preclude the exercise of judicial power by the state in determining which of two effective rates was applicable during the "guaranty period" for a particular service within the state. St. Louis & S. F. Ry. Co. v. State, (Okla., 1926) 244 Pac. 440.

§7. Return on Investment.

(a) The act specifically provides that rate of return determined by commission

to be fair "shall be uniform for all rate groups or territories which may be designated by the commission." Paragraph (3) of section 15a. Before the commission changes its finding as to the fair rate of return, general announcement should be given of the intention to consider that subject at hearings. Revenues in Western District, 113 I. C. C. 3, 19.

(b) Speaking generally, rate groups under section 15a should be designated having two tests in mind, (a) the practicability of determining the rate of return of the carriers constituting the group, and (b) the suitability of the territory for grouping for rate-making purposes. Revenues in Western District, 113 I. C. C. 3, 26.

(c) The commission is required under section 15a of the act only to adjust rates by rate groups to produce as nearly as may be a fair return for carriers as a whole in such rate groups. But it is evident that the principal purpose of that section was to afford the public adequate transportation service, and this end would clearly not be as adequately served by general increases throughout such a large rate group as the western district applying alike to weak and strong lines, as by increases confined so far as possible to areas where rates appear to be on the level and where the weakest roads are located. Revenues in Western District, 113 I. C. C. 3, 29, 30.

(d) Rates of return on capital investment based on current selling values of land and improvements cannot be compared with rates of return on book value or some smaller value used in stating railroad net earnings. Revenues in Western District, 113 I. C. C. 3, 33.

(e) The provision in section 15a directing commission to initiate, modify, establish, or adjust rates so that carriers may earn a fair return, does not relieve carriers from the primary duty of initiating rates. That function belongs to management and not to regulation. It is the right and duty of carriers to take steps necessary to correct improper rate relations as they may be found to exist, and to supply revenue deficiences by initiating suitable rates. Revenues in Western District, 113 I. C. C. 3, 38.

(f) A showing that one carrier is earning less than what the commission has fixed under section 15a of the act as a fair return to carriers as a whole with which it is grouped for rate-making purposes, is entitled to little or no weight in determining propriety of the rate level on two commodities. Various Commodities between New England Points, 113 I. C. C. 44, 47.

VII. PHYSICAL VALUATION.

See Physical Valuation.

§8. In General.

(a) In its reproduction estimates the commission applies unit prices based on a 5-year, and in some cases, 10-year span, ending June 30, 1914. Lake Superior & Ishpeming Ry., 116 I. C. C. 1, 8.

(b) Under paragraph (1) of section 19a of the act the commission is required to receive and consider evidence in support of protests before its tentative valuations are made final, but the act does not contemplate that the commission should require evidence in support of its tentative conclusions, and certainly not prior to submission by a protestant of evidence tending to show that its conclusions are erroneous. Delaware & Hudson Co., 116 I. C. C. 611, 613.

(c) Relying upon decision in 266 U. S. 438, carriers contended that the burden of proof and proceeding with evidence on protest to a tentative valuation is upon the commission. HELD: Hearing on protest is a proceeding preliminary to issuance of a final valuation, and is for purpose of affording protestants opportunity to bring to commission's attention facts or circumstances which they deem warrant a modification of the tentative valuation. Parties to valuation cases are permitted to inspect, in advance of hearings, the preliminary data upon which conclusions in tentative valuations are founded, but which on account of their bulk are not embraced in the tentative report, and are thus afforded a fair and reasonable opportunity to prepare themselves to point out at hearings any errors which may exist. Tentative valuations represent the commission's tentative conclusions and are subject to modification upon proper proof of error by carriers or other interested parties. Delaware & Hudson Co., 116 I. C. C. 611, 612, 613.

(d) Under Interstate Commerce Act, § 19a, as added by Act March 1, 1913, and amended by Act June 7, 1922 (Comp. St. Ann. Supp. 1923, § 8591), providing for valuation by Interstate Commerce

Commission of property of carriers as of June 30, 1914, and in view of section 15a, par. 4, as added by Act Feb. 28 1920, § 422 (Comp. St. Ann. Supp. 1923, § 8583a), declaring that for "rate-making purposes" Commission shall give due consideration to all elements of value recognized by the law of the land, Commission errs when, in making valuation, it proceeds on theory that railroad property has more than one kind of value, and where from Commission's report and final valuation, made after considering new evidence introduced in suit to set aside a prior valuation and certified to it by court, as required by statute, it is obvious that it has given no effect to such evidence, but has arrived at a valuation greatly less than true actual value of property, injunction should issue against enforcement of order. Los Angeles & S. L. R. Co. v. United States, (Interstate Commerce Commission Intervenors), 8 Fed. (2d) 747.

VIII. FINANCIAL OPERATION.

§9. In General.

(a) On July 11, 1921 the commission instituted on its own motion a proceeding of inquiry and investigation into and concerning the history, financial operations, accounts, and practices of the Western Pacific Ry. Co., Denver & Rio Grande R. R. Co., Western Pacific Railroad Co., and Denver & Rio Grande Western Ry Co., their respective relations with one another, and any and all other matters pertaining thereto. The proceeding was for the purpose of determining the manner and method in which the business of these companies had or was being conducted, with a view to the making of a report and such order or orders as might be proper in connection with their accounts and practices and the issuance by them of securities. The record discloses no evidence that the insolvencies of the W. P., and New Denver were brought about for the personal profit of the officials of those companies or of the bankers. Such co-operation as was given to the trustee by the New Denver in the California proceeding for the foreclosure of the W. P., mortgage was obviously induced by its desire to avoid adjudication of its own contract obligations in that suit. Furthermore the prior foreclosure of W. P. properties was necessary to and a part of the defense that was to be offered in the New York suit in avoidance of the New Denver's contract obligations. This investigation has not disclosed any ground which the New Denver could have pleaded with any probability of success in avoidance of its contract obligations other than those urged by its counsel in the New York damage suit. The essential facts developed by the investigation may be summarized as follows: The New Denver, successor to the Denver Companies, was committed by its officials to an undertaking beyond its financial strength; the resulting demands over a period of years exhausted its financial and physical vitality; facing insolvency, it made determined and prolonged, but unsuccessful, attempts through negotiations with its creditors and in court proceedings to evade the obligations to which it had been committed. In so far as the commission is concerned with the efforts of New Denver officials to relieve their company of its contract obligations, it may be definitely stated that these efforts were clearly directed toward the protection of the interests of the company's security holders. In fact, the only moral justification for the various means used by these officials in their attempt to free the company from its obligations is that, in the positions of trust occupied by them with relation to such security holders, they deemed it their duty to use all means available to avert the company's pending disaster. The initial action by which the New Denver was committed to an unsound speculation, undertaken to provide a Pacific coast outlet for a large railroad system of which the New Denver was a minor unit, is the action for which the company's officials may be justly criticized. That committment caused the diversion to the support of another railroad of many millions of dollars which normally would have been used for the improvement of the New Denver's own service and for the maintenance of a sound financial position. Deprived of an efficient and modern railroad service, the agricultural and industrial growth of the country tributary to New Denver lines was retarded, and entire communities were thereby subjected to heavy losses. Finally the obligations under that commitment brought about the New Denver's insolvency and the resulting enormous losses to its security holders. Without in any way intending to minimize the losses to the communities served by the New Denver caused by the inadequate service furnished them, it must be emphasized that the chief sufferers from

the speculative undertaking to which the New Denver was committed are its security holders. Each step taken by the trustee to enforce the rights of Western Pacific first mortgage bondholders, whether taken against the Western Pacific, whose stock was chiefly owned by the New Denver, or taken directly against the New Denver, tended to deplete the assets of the New Denver. The fact that these disastrous happenings are directly attributable to a single inequitable and economically wrong committment forcefully illustrates the need which existed for the above mentioned new provisions of the interstate commerce act directed to the curtailment of opportunities for the making of such wasteful committments. Denver & Rio Grande Investigation, 113 I. C. C. 75.

(b) Investigation instituted by commission on its own motion into and concerning the history, financial operations, accounts, and practices of the Western Pacific Ry. Co., Denver & Rio Grande R. R. Co., Western Pacific R. R. Co., and the Denver & Rio Grande Western Ry. Co., and their respective relations with one another, for purpose of determining the manner and method in which the business of these companies had been or was being conducted, with a view to the making of findings as might be proper in connection with their accounts and practices and the issuance by them of securities. Denver & Rio Grande Investigation, 113 I. C. C. 75.

(c) Unquestionably railroad stockholders should give close attention and study to all questions of management of policy for which their ratification is asked, but even in such matters they must, of necessity, place great reliance in the judgement of their elected officials who are in close touch with the railroad's problems. Denver & Rio Grande Investigation, 113 I. C. C. 75, 157.

(d) The opportunities for bringing about inequitable situations formerly possible within a railroad system controlled through interlocking directorates have been materially lessened by new provisions of the interstate commerce act under which same individual may not be an officer or director of more than one railroad without commission's consent and whereby railroads are required to obtain commission's authority before undertaking construction or acquisition of additional lines and before issuing securities or assuming obligation in respect of securities of other corporations or persons. Denver & Rio Grande Investigation, 113 I. C. C. 75, 158.

IX. ACTIONS AT LAW.

See Actions at Law.

§10. In General.

(a) Suit to enjoin enforcement and set aside in part order of Interstate Commerce Commission authorizing abandonment of operation in intrastate traffic is appropriate remedy. State of Colorado v. United States, 46 Sup. Ct. 452.

FLOATAGE

See Car Ferry; Lighterage; Towage.

(a) In Hulsey Bessent Co., v. Pennsylvania R. R., 112 I. C. C. 317, Commission found rates on potatoes, carloads, to Jacksonville, Fla., unreasonable to extent they exceeded 63c, plus 4.5c per package, from Capeville, Va., and 63c from Pocomoke, Md., and certain points in Virginia and awarded reparation. In Nooney & Co., v. Pennsylvania R. R., 115 I. C. C. 547, Commission found the minimum of 36,000 pounds, applicable on potatoes, not unreasonable, unjustly discriminatory or unduly prejudicial and that the rates were and would be unreasonable to extent they exceeded 55c, and awarded reparation. The transportation of all the shipments involved a 36 mile float service from Cape Charles to Norfolk across Chesapeake Bay and Hampton Roads. HELD, on reconsideration rates assailed were, are, and for future will be unreasonable to extent they exceed 55c per 100 pounds plus 4.5c per package from Capeville and 55c from the other origin points, reparation awarded. Nooney & Co. v. Pennsylvania R. R., 132 I. C. C. 405.

FOLLOW LOT SHIPMENTS

See Classification §21.

FOREIGN COMMERCE

I. CONTROL AND REGULATION.

§½. In general.
§1. Jurisdiction of Commission.
§2. Determination of Status.

II. LIABILITY OF CARRIER.

§3. In general.

CROSS REFERENCES

See Adjacent Foreign Country; Alaska; Canada; Export Rates and Facilities; Mexico.

I. CONTROL AND REGULATION.

See Control and Regulatoin.

§½. In General.

(a) Act Pa. July 17, 1919 (P. L. 1003), freight is made from foreign country into United States, payments thereon are controlled by law of place where contract is to be performed, and any question with relation to character of money in which payments are to be made, if not specified must be in currency of country where contract is to be fulfilled, regardless of fact that contract was entered into in foreign country. New York & Pennsylvania Co. v. Davis, Director General of Railroads, 8 Fed. (2d) 662.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) Contention that commission is without jurisdiction over shipments of commodities arriving from foreign ports and stored at ports of entry to await shipment to interior points located within same State as port of entry on ground that transportation is intrastate, not sustained. Temporary storage at ports does not divest such traffic of its foreign character acquired at time it begins its journey from foreign port, and movement to port of entry is only a step in its transportation to interior destinations. Alexander Grocery Co. v. B., S. L. & W., 104 I. C. C. 155, 156.

(b) Commission has no jurisdiction over transportation of shipments moving in bond from points in adjacent foreign countries through United States to foreign destinations or Porto Rico. Fernandez & Co. v. S. P., 104 I. C. C. 193.

(c) Jurisdiction of Interstate Commerce Commission over transportation to and from a foreign country is limited to that part of the shipment which takes place in the United States. New York & Pennsylvania Co. v. Davis, Director General of Railroads, 8 Fed. (2d) 662.

(d) Commission is without power to prescribe reasonable rates for future on shipments originating in a foreign country. Duplex Printing Press Co., v. B. C. E. 128 I. C. C. 692, 693.

(e) Under Transportation Act 1920, § 400(2), carrier must file with the Interstate Commerce Commission schedule of rates covering transportation in commerce with foreign countries as well as between several states. Chandler v. Pennsylvania R. Co., 11 Fed. (2d) 39.

§2. Determination of Status.

See Common Carrier.

(a) Act Pa. July 1, 1919 (P. L. 1003), as amended by Act May 20, 1921 (P. L. 997; Pa. St. Supp. 1924, § 20197), requiring license to sell steamship tickets or orders for transportation to or from foreign countries, HELD invalid, as constituting a direct burden on foreign commerce, as applying to agent of steamship companies authorized to sell tickets and transportation orders on steamships operating between United States and Europe. Di Santo v. Commonwealth of Pennsylvania, 47 Sup. Ct. 267.

(b) State law, which by necessary operation directly interferes with or burdens foreign commerce, is a prohibited regulation, and invalid regardless of purpose for which it was passed. Di Santo v. Commonwealth of Pennsylvania, 47 Sup. Ct. 267.

(c) Business conducted in United States of soliciting passengers and selling steamship tickets and orders for passage between the United States and Europe constitutes a well-recognized part of "foreign commerce." Di Santo v. Commonwealth of Pennsylvania, 47 Sup. Ct. 267.

FREE TIME

See Demurrage §12, §15.

FREE TRANSPORTATION

See Caretakers; Crimes III; Express Companies §5; Passenger Fares and Facilities §12; Personal Injuries; Reduced Rates; Transportation §5½.

FREIGHT CHARGES

See Credit Account; Demurrage VI; Export Rates and Facilities; Overcharges; Sale of Freight; Special Rates and Services (c); Transportation §4; Undercharges.

(a) Shipment originated on nonfederally controlled line and moved to point on a line under Federal control, illegal charges being collected by director general who forwarded voucher covering his portion of overcharges to initial carrier, who failed to refund them to shipper. Contention by director general that payment of the voucher to initial carrier was payment to complainant inasmuch as complainant, by letter, conferred authority upon initial carrier to act as its agent, not accepted. Having filed an overcharge claim with initial line, the letter in question is considered only as a statement of basis of settlement which was then acceptable to complainant. Bowers & Co. v. Director General, 107 I. C. C. 305, 307.

(b) It is delivering carrier's duty to collect applicable rates on prepaid shipments and to correct any errors that may have been made by agent of initial carrier in billing or in collection by it of prepaid charges. See 25 I. C. C. 442, 475; Conf. Ruling 16, 156, and 314. Continental File Corp. v. Director General, 109 I. C. C. 403, 404.

(c) Under section 2 of the act payment can not be made for a service not obligatory on the part of the carrier as a necessary part of the carriage or transportation service. Drayage absorptions of S. W. M. R. R., 113 I. C. C. 179, 184.

(d) Arrangement whereby shipper does not pay definite and stated charges to carriers for transportation services rendered, but such compensation is received by carriers under terms of contracts covering rental of track materials, found contrary to principles of the act. See also 12 I. C. C. 503. Service on K., O. & G. Ry., 118 I. C. C. 412, 415.

(e) Complainant paid and bore freight charges as such, and if the rates were unreasonable, no further proof of damage is necessary. Caruso Rinella, Battaglia Co. v. N. S. R. R., 126 I. C. C. 555, 560.

(f) Carrier's refusal to accept shipment of watermelons for transportation, charges collect, found not discriminatory or otherwise unlawful. Governing tariff specified that watermelons would be accepted freight "collect" only where carriers were protected by surety bond guaranteeing payment of freight charges. Complainant's telegram and certain bills of lading covering similar shipments from another point, were only evidence offered by shipper as authority to ship on complainant's bond and agent considered this insufficient authority to cover shipment tendered. Moreover, determination of what constitutes sufficient evidence of authority must necessarily be left to discretion of agents, and it was not an abuse of such discretion to refuse to accept the telegram as general authority to ship on complainant's bond. Edgerton & Beers v. A. C. L., 126 I. C. C. 422.

(g) Carriers have the right to demand prepayment of freight charges. Edgerton & Beers v. A. C. L., 126 I. C. C. 422, 423.

(h) Shipper at time of shipping may protect himself against liability by providing that consignee or owner pay the freight. St. Louis-San Francisco Ry. Co. v. Republic Box Co., 12 Fed. (2d.) 441.

(i) In any case warranting court in finding that railroad looked to consignee, and not shipper, for payment of freight, it is competent for court to hold either that shipper is not liable at all, or is liable only secondarily and in event of adequate proof that proper steps have been taken against consignee in vain. St. Louis-San Francisco Ry. Co. v. Republic Box Co., 12 Fed. (2d) 441.

(j) Where bill of lading provided that owner or consignee should pay freight, and railroad company had on delivery collected freight from consignee, shipper is not liable to railroad company for difference between rate charged and higher legal rate. St. Louis-San Francisco Ry. Co. v. Republic Box Co., 12 Fed. (2d) 441.

(k) Railroad company HELD entitled to recover freight from the owner of a shipment not received by the consignee, though no formal notice was sent to defendant, because the shipment was billed by another and defendant's address was not shown by the bill of lading, but it otherwise obtained knowledge of the situation. Gulf, C. & S. F. Ry. Co. v. Beatty Brokerage Co., 13 Fed. (2d) 951.

(l) Railroad, which delivered sugar shipment to warehouse company, to whom consignor had indorsed and delivered shipper's order bill of lading, reciting that charges had been prepaid, can collect unpaid charges from warehouse company, since by accepting such

shipment it became liable for carrier's lawful charges, in view of Interstate Commerce Act (Comp. St. § 8563 et seq.). Chicago, R. I. & P. Ry. Co. v. Central Warehouse Co., 14 Fed. (2d) 123.

(m) Action for freight on carload shipments, not instituted for approximately three years, HELD barred by limitations. Houston & T. C. R. v. Lee County Produce Co., 14 Fed. (2d) 145.

(n) Carrier, accepting shipment of eggs on which freight was to be paid by purchaser presenting assigned bill of lading, HELD not entitled, after permission of shipment by purchaser, and failure to collect freight of ultimate consignee, to recover freight of original shipper. Houston & T. C. R. v. Lee Produce Co., 14 Fed. (2d) 145.

(o) Railroad, which in violation of Interstate Commerce Act, § 1, subd. 3 (Comp. St. § 8563), continued to collect freight at rates which Interstate Commerce Commission had declared were unjust and unreasonable, HELD to hold the portion of such freight unlawfully exacted as trustee ex maleficio for shippers, nor were such rates validated by their continued publication, required by section 6 (Comp. St. § 8569). Spiller v. St. Louis & S. F. R. Co., 14 Fed (2d) 284.

(p) Railroad's cause of action for recovery of overpayment on refunding freight overcharge HELD to have accured on date of such refund, and not on date of delivery of shipment, and action therefor may be maintained under Interstate Commerce Act, § 16, par. 3, as amended by Act June 7, 1924 (Comp. St. § 8584), within three years thereafter, since obligation to repay did not arise out of contract for transportation, but out of implied contract for repayment thereof. Michigan Cent. R. Co. v. I. M. Partridge Lumber Co., 17 Fed. (2d) 657.

(q) In action to recover transportation and storage charges on refused merchandise, defenses and counterclaim, alleging that carrier unreasonably allowed charges to accumulate in excessive amount, HELD to present no issue; carrier being under no duty to sue for its charges or to enfore its lien, in absence of allegations showing that failure to sell goods until after expiration of year was unreasonable, or that defendant did not know property was being held by carrier subject to storage charges, or of other allegations excusing defendant from protecting its property. Erie R. Co. v. F. Kieser & Son Co., 215 N. Y. S. 576, 577.

(r) Carrier's right to recover transportation and storage charges depends on whether charges correspond with schedules filed with Interstate Commerce Commission. Erie R. Co. v. F. Kieser & Son Co., 215 N. Y. S. 576.

(s) Where complaint alleged that consignee failed to pay freight as required by bill of lading, consignee's answer admitting allegations of complaint, except that it denied knowledge or information sufficient to form belief as to whether part of freight was paid, and admitting that consignee had not paid it, HELD to raise no issues, and complaint in connection with admissions of answer made prima facie case for plaintiff, entitling it to judgment on pleadings. Transmarine Corporation v. Delaware & Hudson Co., 216 N. Y. S. 623.

(t) Consignee's acceptance of goods under bills of lading requiring payment of freight on delivery implies promise by consignee to pay freight, and no agreement between consignor and consignee, of which carrier has no knowledge, is binding on carrier, and carrier is not bound to inform consignee of consignor's failure to pay freight. Transmarine Corporation v. Delaware & Hudson Co., 216 N. Y. S. 623, 624.

(u) Defendant took from the railway company, at Oswego, nine carloads of lambs which had been shipped from California. He declined to pay the freight charges on the excuse that his private contract with the consignor provided that the latter would pay the carrier's charges. Later, out of affected consideration for the plaintiff, whose position as the railway station agent was imperiled by the noncollection of the freight charges, defendant affected a compromise and settlement with plaintiff whereby each agreed to and did contribute one-half of the amount due the railway company. HELD, the compromise and settlement were void, and the plaintiff, having satisfied the railway company's charges in full, is entitled to reimbursement from defendant. Farrar v. Perkins, (Kan., 1926) 251 Pac. 440.

(v) One who accepts a shipment of property from a railway carrier in assumption of ownership and of right thereto cannot escape the responsibilities

of a consignee merely because he was not so designated in the bills of lading or because of the want of a bill of lading altogether. Farrar v. Perkins, (Kan., 1926) 251 Pac. 440.

(w) Section 424 of the federal Transportation Act of February 28, 1920 (U. S. Comp. St. Ann. Supp. 1923, § 8584), providing that all actions at law by carriers for recovery of their charges shall be begun within three years from the time the cause of action accrues, and not after, is retroactive, in that it applies to all suits at law by such carriers, the cause of action of which accrued less than three years before the act became effective; provided always that the time remaining for the action on the claim is a reasonable time. New York Cent. R. Co. v. Wheeling Can Co., (W. Va., 1925) 130 S. E. 288.

(x) In action by carrier against shipper to recover freight charges which consignee failed to pay, question whether express contract existed by which consignor was exonerated from paying freight charges HELD for jury. Davis, Director General of Railroads v. Ford, (N. C. 1927) 137 S. E. 328.

(y) Stipulation in bill of lading that goods are to be delivered to consignee, "he or they paying freight," does not release consignor from liability where consignee fails to pay freight charges, in absence of stipulation amounting to express agreement by which consignor is to be exonerated. Davis, Director General of Railroads v. Ford, (N. C., 1927) 137 S. E. 328.

(z) One who receives from a carrier an interstate shipment on a uniform bill of lading, freight collect, assigned to and held by him, becomes liable for the carrier's lawful charges, known or unknown, supposed to be paid or otherwise, and is not relieved from liability because of an erroneous representation by the carrier's employee that the charges have been prepaid. Norfolk & W. Ry., Co., v. Williamson Grocery Co., (W. Va., 1927) 138 S. E. 102.

(aa) Action by interstate carrier to recover difference between published schedule of rates filed with interstate commerce commission and rates provided for in contract of shipment, such scheduled rates forming part of contract of shipment by operation of law, is an action founded on contract in writing, governed by five-year statute of limitations (Crawford & Moses' Dig. § 6955), and not by three-year statute of limitations (section 6950). Missouri Pac. R. Co., v. Pfeiffer Stone Co., (Ark., 1924) 266 S. W. 82.

(bb) Stipulations in bill of lading that goods are to be delivered to consignee, "he paying freight," or any similar provision, are for benefit of carrier, and delivery to consignee without collection of freight will not release consignor from liability therefor, in absence of special stipulation to contrary. Missouri Pac. R. Co., v. Pfeiffer Stone Co., (Ark., 1924) 266 S. W. 82.

(cc) Carrier, contracting with shipper to transport goods, has right to look to consignor for payment of freight, and may waive its lien on goods by delivering them to consignee, and still hold consignor liable on contract of shipment. Missouri Pac. R. Co., v. Pfeiffer Stone Co., (Ark., 1924) 266 S. W. 82.

(dd) Consignee, who accepts goods, or expressly or impliedly contracts to do so, is liable for freightage, if contract between parties so provides. Chicago, B. & Q. R. Co., v. Evans, (Mo., 1926) 288 S. W. 73.

(ee) Consignor, rather than consignee, is primarily liable for freightage. Chicago, B. & Q. R. Co. v. Evans, (Mo., 1926) 288 S. W. 73.

(ff) Consignee, who is owner of goods, and has directed transportation, is liable for freightage. Chicago, B. & Q. R. Co., v. Evans, (Mo., 1926) 288 S. W. 73.

(gg) Buyer and consignee of potatoes to be shipped f. o. b. seller's station HELD not party to contract of shipment, so as to be liable for freightage, where bill of lading showed such contract was with consignor. Chicago, B. & Q. R. Co., v. Evans, (Mo., 1926) 288 S. W. 73.

(hh) Existence of relationship of carrier and consignee creates no liability of consignee to pay freightage, in absence of agreement, express or implied. Chicago, B. & Q. R. Co., v. Evans, (Mo., 1926) 288 S. W. 73, 74.

(ii) In action by carrier against consignee for freight charges, admission of letter from plaintiff's servant to consignor showing belief that only consignor was liable for such freight HELD not re-

versible error, where trial was to court. Chicago, B. & Q. R. Co., v. Evans, (Mo., 1927) 288 S. W. 73, 74.

(jj) That seller prevailed in action against buyer for purchase price of potatoes to be shipped f. o. b. seller's station, some of which buyer refused to accept, HELD not to preclude finding, in action by carrier against buyer for freight, that title did not pass till buyer accepted goods. Chicago, B. & Q. R. Co., v. Evans, 1926) 288 S. W. 73, 74.

(kk) Ownership of property shipped is not test of liability for freightage. Chicago, B. & Q. R. Co., v. Evans, (Mo., 1926) 288 S. W. 73, 74.

(ll) Although ordinarily consignor of goods has primary obligation to pay the freight charges, the parties may agree that the consignee will be looked to for payment of freight, and it is permissible to so contract. Gulf, M. & N. R. Co., v. Riverside Brick & Mfg. Co., (Miss., 1926) 107 So. 193.

(mm) In action by delivering railroad to recover transportation charges on interstate shipment finding that railroad and consignor intended that consignee rather than consignor should be liable for transportation charges would be warranted if consignor had no interest in subject matter of shipment, but was merely employed to load it, and acted as agent of the consignee, and it was intended that consignor should not be liable for charges and receiving railroad knew facts. T. S. Faulk & Co. v. Chicago, I. & L. Ry. Co., (Ala., 1926) 111 So. 196.

(nn) Where shipment is interstate, recourse must be had to Interstate Commerce Act (U. S. Comp. St. § 8563 et seq.), and the decisions of the federal Supreme Court construing it, in order to determine whether consignor is liable for transportation charges. T. S. Faulk & Co. v. Chicago, I. & L. Ry. Co., (Ala., 1926) 111 So. 196.

(oo) In action by railroad to recover transportation charges on an interstate shipment, whether the shipment was delivered to the railroad by the defendant or by agent of the consignee HELD a question for the jury. T. S. Faulk & Co., v. Chicago, I. & L. Ry. Co., (Ala., 1926) 111 So. 196.

(pp) In action by railroad to recover transportation charges on interstate shipment, whether consignor had any interest in subject-matter of shipment and whether he was merely employed to load it and acted as agent of consignee HELD questions for the jury. T. S. Faulk & Co. v. Chicago, I. & L. Ry. Co., (Ala., 1926) 111 So. 196.

(qq) In action by railroad to recover transportation charges on interstate shipment, whether consignor and consignee intended that consignor should not be liable for charges HELD questions for the jury. T. S. Faulk & Co., v. Chicago, I. & L. Ry Co., (Ala., 1926) 111 So. 196.

(rr) In action by delivering railroad to recover transportation charges on interstate shipment, whether receiving railroad knew, if facts, that consignor had no interest in subject-matter of shipment and acted as agent of consignee and intended that consignor should not be liable for the charges HELD questions for the jury. T. S. Faulk & Co. v. Chicago, I. & L. Ry. Co. (Ala., 1926) 111 So. 196.

(ss) Actions by carriers against government, for payment for transportation services, commenced more than three years after enactment of Transportation Act Feb. 28, 1920 (Comp. St. Ann. Supp. 1923, § 10071¼ et seq.), but within six years from time cause of action accrued, HELD not barred by section 16, par. 3, of Interstate Commerce Act, as amended by Act. Feb. 28, 1920 (Comp. St. Ann. Supp. 1923, § 8584), or by Act June 7, 1924 (Comp. St. Supp. 1925, § 8584.) United States v. St. Louis, S. H. & T. Ry. Co., Same v. Wabash R. Co., 46 Sup. Ct. 182.

(tt) That compensation for transportation service comprises two items, one designated rental, does not make it illegal as matter of law. J. C. Famechon Co. v. Northern Pac., 11 Fed. (2d.) 312.

(uu) In action by railroad to recover transportation charges on an interstate shipment brought against defendant as consignor, whether bill of lading was properly made out and whether railroad agent was authorized to sign defendant's name to it held questions for the jury. T. S. Faulk & Co. v. Chicago, I. & L. Ry. Co., (Ala., 1926) 111 So. 196.

FROZEN SHIPMENTS

See Demurrage §19.

GAS AND ELECTRIC COMPANIES

See Interstate Commerce.

(a) A foreign corporation engaged in interstate commerce supplies gas to a distributing company within the state which it controls, even though it is engaged in interstate commerce, and subject to local state regulation of rates. Gallatin Natural Gas Co. v. Public Service Commission, (Mont., 1927) 256 Pac. 373.

(b) Provision in oil and gas lease, requiring lessee to deliver to credit of lessor in pipe line one-eighth of oil produced and saved, HELD a reservation of title in lessor, and not a mere covenant to pay rent in kind, as affecting lessor's right to recover against lessee's vendee for conversion. Shreveport-El Dorado Pipe Line Co., Inc., v. Bennett, (Ark., 1927) 290 S. W. 929.

(c) Where part of gas in pipe line was moving in interstate and part in intrastate commerce, state court's finding that there was sufficient gas moving in intrastate commerce to enable gas company owning it to comply with order of state Public Service Commission HELD not to interfere with or affect interstate commerce. People's Natural Gas Co., v. Public Service Commission of Pennsylvania, 46 Sup. Ct. 371.

(d) Natural gas, produced in Pennsylvania and piped to consumers within that state, moves in intrastate commerce only, though in pipe line it is commingled with a definitely known quantity of gas moving in interstate commerce. People's Natural Gas Co. v. Public Service Commission of Pennsylvania, 46 Sup. Ct. 371.

(e) Natural gas, continuously moving in pipe line from West Virginia to consumers in Pennsylvania, is in interstate commerce throughout such movement, though custody and title to it changes at state boundary, where it passes through meter. People's Natural Gas Co. v. Public Service Commission of Pennsylvania, 46 Sup. Ct. 371.

(f) Courts of District of Columbia have no jurisdiction of proceeding by consumers of gas purchased from Maryland company an alleged subsidiary of company within District of Columbia, from which it obtained its whole supply of gas, to compel public utilities commission of District to fix reasonable rates on gas supplied to Maryland company, since commission itself has no jurisdiction to establish rates on gas sold outside District; such matter being one of interstate commerce, in view of Interstate Commerce Act, § 1. Galloway v. Bell, 11 Fed. (2d.) 558.

(g) Transmission of gas by pipe line from one state to another, or from District of Columbia to a state, being interstate commerce, it is beyond power of state to impose any burden thereon. Galloway v. Bell, 11 Fed. (2d.) 558.

GOVERNMENT CONTROL

See Advanced Rates §7 (9); Evidence §25.

(a) Under Federal Control Act, § 10 (Comp. St. 1918, Comp. St. Ann. Supp. 1919, § 3115¾j), and General Order 50-A, the federal agent appointed, under Transportation Act 1920, § 206(a), being Comp. St. Ann. Supp. 1923, § 10071¼cc, is not liable for negligent operation generally, as operator of all railroads, regardless of relation of various lines to one another, but only with reference to the particular transportation system out of whose operations the liability in question arose. Davis, Agent, etc., v. Alexander, 46 Sup. Ct. 34.

GOVERNMENT GUARANTY

See Finance Dockets VI, §6; Interstate Commerce Commission §9½.

GOVERNMENT MATERIAL

See Reduced Rates §4.

GRADE CROSSINGS

(a) Under Interstate Commerce Act, § 15a, par. 5, as added by Transportation Act 1920, §422 (U. S. Comp. St. § 8583a), federal government's interest in railroad's net revenues in excess of 6 per cent. of value of railroad's property, which is payable to Interstate Commerce Commission, is merely that of trustee thereof, and is in no way affected by state requirements for elimination of grade crossings. Bay St. Crossing of Staten Island Rapid Transit Ry. Co. 221 N. Y. S. 129. Belair Road Crossing of Staten

Island Rapid Transit Ry. Co., 221 N. Y. S. 129.

(b) Order of Transit Commission, requiring railroad to eliminate grade crossings under Railroad Law N. Y. §§ 91 (as amended by laws 1921, c. 698, § 2), 94, 95, Const. N. Y. art. 7, § 14, and laws, N. Y. 1926, c. 510, §§ 1, 3, HELD not invalid as interfering with powers of Interstate Commerce Commission under Interstate Commerce Act, § 20a, as added by Transportation Act. 1920, § 439 (U. S. Comp. St. 8592a), prohibiting railroads subject to the act from issuing securities without first obtaining authority from Interstate Commerce Commission. Bay St. Crossing of Staten Island Rapid Transit Ry. Co., 221 N. Y. S. 129. Belair Road Crossing of Staten Island Rapid Transit Ry. Co., 221 N. Y. S. 129.

(c) Transportation Act (U. S. Comp. St. Ann. Supp. 1923, § 10071¼ et seq.) does not expressly or by implication give Interstate Commerce Commission power to eliminate grade crossings nor prohibit state authorities from so doing. State Wabash Ry. Co., v. Public Service Commission, (Mo., 1924) 267 S. W. 102, 103.

(d) Interstate Commerce Act, §20a (as added by Transportation Act [U. S. Comp. St. Ann. Supp. 1923, § 8592a]), preventing interstate carriers from issuing securities or extending their lines without approval of the Interstate Commerce Commission, HELD inapplicable in proceedings to compel railroad separation of grade crossing where it was not alleged nor did evidence show that expense thereof was so great as to require an issue of securities by railroads affected, or that their main lines would be required to be extended. State Wabash Ry. Co., v. Public Service Commission, (Mo., 1924) 267 S. W. 102, 103.

(e) Expenses of installing interlocking device at railroad grade crossing is not imposed by Rev. St. 1911, art. 6702, solely upon company whose line was last built, notwithstanding reference in that article to such railroad company by singular number, which, under article 5502, must be construed to include the plural. International-Great Northern R. Co., v. Railroad Commission of Texas, (Tex., 1926) 281 S. W. 1084.

(f) Although state may not regulate interstate commerce, or unduly burden it, requiring installation and operation of interlocking devices at railroad grade crossings is reasonable exercise of police power, for protection of public and railroad employes, and right is not ousted by Interstate Commerce Act, § 26, as added by Transportation Act. Feb. 28, 1920, § 441 (U. S. Comp. St. Ann. Supp. 1923, § 859 b), nor any act of Interstate Commerce Commission pursuant to its enforcement. International-Great Northern R. Co. v. Railroad Commission of Texas, (Tex., 1926) 281 S. W. 1084.

GRADED RATES

See Blanket Rates §9; Distance Rates.

GRAIN FUTURES

(a) Grain Futures Act (Comp. St. Ann. §§ 8747 4/5 to 8747 4/5), passed in pursuance of commerce power of Congress, HELD to supersede and displace statutes conflicting therewith. Chamber of Commerce of Minneapolis v. Federal Trade Commission, 13 Fed. (2d) 673.

HAWAII

(a) Respondent, Hawaii Consolidated Ry., operates a single track railroad on the island of Hawaii. It proposed to increase all class and commodity rates and switching charges 15% except that no change was proposed in the present commodity rates on sugar cane, and on breakwater rock moving to Kuhio Bay Terminal, and in the present class and commodity rates applicable to shipments moving between Hilo, Waiakea, or Kuhio Bay and Wainaky and Honolii. It also proposed to increase the loading and unloading charges on sugar moving under carload rates, from 35c to 59c per ton, when unloaded from its cars to warehouse and reloaded from warehouse to lighters, or shipside at Kuhio wharf, and to increase all passenger fares 10%. Respondent is the only common carrier railroad which serves the island of Hawaii. A return of 6% will constitute a fair return on the value of the property devoted to public service. HELD, fair value of respondents property devoted to common carrier purposes, including materials and supplies and working capital, may be taken as about $6,000,000. HELD, proposed increases in class and commodity rates justified. Necessity of increase in loading and unloading charges on sugar moving under carload rates, for handling at Kuhio wharf, has

been established, but amount of increase not justified. Carrier to file tariffs increasing the charge of 5c per ton. Rates on Hawaii Consolidated Ry., 118 I. C. C. 489.

(b) Proposal of the Hawaii Consolidated Ry., Ltd., on the island of Hawaii, to increase loading and unloading charges on sugar, from 35 to 50 cents per net ton when unloaded from cars to warehouse and reloaded from warehouse to lighters, or ship's side at Kuhio wharf, found not justified. Kuhio wharf is a Government-owned structure, portions of which are leased by the carrier. The carrier has no money invested therein but collects from those making use of these facilities amounts sufficient to pay all expenses incident to service performed. However, it is entitled to a fair profit for its services and a study of expenses attached thereto indicates that an increase of 5 cents per net ton is ample for this purpose. Rates on Hawaii Consolidated Ry., 118 I. C. C. 489.

(c) Upon a consideration of revenues and expenses as compared with its value, proposed increase of 15 per cent in class and commodity rates between points on the Hawaii Consolidated Ry., Ltd., on the island of Hawaii, found justified. Rates on Hawaii Consolidated Ry., 118 I. C. C. 489.

(d) The Territory of Hawaii does not come within provisions of paragraph (3) of section 15a of the act. Rates on Hawaii Consolidated Ry., 118 I. C. C. 489, 492.

(e) The financial and economic conditions existing in the Hawaiian Islands are somewhat different from those existing on the mainland. Public utilities in the islands have for some years past been granted a return of 8 or 9 per cent upon fair value of their property devoted to public service. There are essential differences between a public utility and a common carrier such as a railroad, so that returns on the two classes of property are not necessarily to be the same. Accordingly, a return of 6 per cent found to constitute a fair return on value of property of the Hawaii Consolidated Ry., devoted to public service, for rate-making purposes. Rates on Hawaii Consolidated Ry., 118 I. C. C. 489, 492.

(f) Abandonment by carriers of alternative application clause of tariffs pending suit HELD not implied admission that such clause made tariff on shipments to Hawaiian Islands applicable to other shipments. Southern Pac. Co., v. Lathrop, 15 Fed. (2d) 486. Spokane P. & S. Ry. Co. v. Same, 15 Fed. (2d) 486. Oregon-Washington R. & Nav. Co. v. Same, 15 Fed. (2d) 486.

(g) Section of tariff relating to goods shipped to Hawaiian Islands, and containing alternative application clause to effect that lower rate of any section should be applied, HELD not applicable to domestic shipments. Southern Pac. Co. v. Lathrop, 15 Fed. (2d) 486. Spokane P. & S. Ry. Co. v. Same, 15 Fed. (2d) 486. Oregon-Washington R. and Nav. Co. v. Same, 15 Fed. (2d) 486.

(h) Where each section of tariff provided that lower rate in any other section should apply, though title of one section provided it should only apply to traffic consigned through to Hawaiian Islands, held, that such section had alternative operation with previous sections, where rates covered transportation to seaboard only. Lothrop v. Spokane, P. & S. Ry. Co., 10 Fed. (2d.) 225. Same v. Oregon-Washington R. & Nav. Co., 10 Fed. (2d.) 225. Same v. Southern Pac. Co., 10 Fed. (2d.) 225.

HEATER SERVICE

See Cars and Car Supply §9½; Demurrage §5½; Facilities and Privileges §9⅛; Protective Service; Special Rates and Services.

(a) Complainant attacked as unreasonable two rules in perishable protective tariff I. C. C. 1, in their application to shipments of potatoes from and to W. T. L., and c. f. a. territory. One of the rules provides no instructions for manipulation of side door will be accepted. The other rule complained of governs the assessment of heater charges on refrigerator cars held at intermediate points for reconsignment. Complainant seeks the establishment of a rule which would make it mandatory upon the carriers to see to it that the side doors are to be closed at an outside temperature of 34 degrees above zero and opened not less than two feet and be securely blocked, cleated, or otherwise fastened at a temperature of 38 degrees above zero. It is clear from the record that up to Oct. 15, shipments of potatoes in box cars generally should and do leave points of origin with the doors open. Generally speaking the movement is to milder climes. Com-

plainant concedes that there would be comparately few cars on which there should be any actual service of changing the position of the doors. After Oct. 15, the protective service against cold is inaugurated. In the final analysis the only point which could be reasonably urged in support of complainants proposed rule would be that greater protection to the lading might possibly result. But if the defendants prefer to run the risk, if any, entailed by refraining from manipulating the doors in transit and expressly disavow any attempt to evade their common law liability in so doing, it is not seen how the present rule could result in ultimate damage. HELD, rule providing for the carriers refusal to accept instructions as to the manipulation of side doors of box cars, containing shipments of potatoes, in transit is not unreasonable. The $2 per 24 hour charge or fraction thereof becomes applicable at hold points immediately upon arrival of the car at such point and runs until the car is released by shippers orders. Shippers may avoid imposition of the charge either by placing reconsigning instructions prior to the arrival of the cars at the hold points or by availing themselves of the shippers protective service. The evidence lacks that degree of conviction which should appear before the Commission attempts to disrupt a uniform and widespread practice. HELD, heater charge attacked unreasonable, complaint dismissed. Northern Potato Traffic Asso. v. B. & O. R. R., 113 I. C. C. 511.

HOCH-SMITH RESOLUTION

See Advanced Rates §17 (kk); Facilities and Privileges §4 (a); Live Stock Shipments.

(a) Considering among other things, the direction of Congress in the Hoch-Smith resolution, Senate Resolution 107, failure of carriers to provide concentration and warehousing arrangements on cotton at Montgomery, Ala., found to constitute an unreasonable practice. Such arrangements are necessary and desirable in the public interest; their establishment at joint rates over direct routes has become common, due to voluntary act of characters in recognition of peculiar circumstances surrounding marketing and handling of this traffic; and any shipper not accorded joint rates is at a substantial disadvantage which will confine his opportunities of sale to limited areas. Moreover, the general practice throughout the Cotton Belt is to permit such arrangements at first convenient compressing point en route to destination, and to require cotton produced in area here involved to move long distances in an uncompressed condition constitutes wasteful transportation not in the interest of economical operation. Montgomery Cotton Exchange v. A. S. L., 109 I. C. C. 579.

(b) Consideration given to the Hoch-Smith resolution, Senate Joint Resolution 107, in finding that failure of carriers to provide concentration and compression arrangements on cotton at Montgomery, Ala., constituted an unreasonable practice. Montgomery Cotton Exchange v. S. A. L., 109 I. C. C. 579, 586.

(c) By joint resolution of the Congress, being Public Resolution No. 46, 68th Congress, approved Jan. 30, 1925, usually referred to as the Hoch-Smith Resolution, the commission was authorized and directed to make a thorough investigation of the rate structure of common carriers subject to the act. Pursuant to that resolution the commission instituted on March 12, 1925, upon its own motion a general investigation of the character contemplated by the resolution, No. 17000, Rate Structure Investigation. Subsequent to the issuance of the order in 17000, petitions seeking an increase in revenues were filed with the commission on behalf of the principal common carriers by steam railroad in the western district, comprising the western group and the mountain-Pacific group as defined in Ex Parte 74, Increased Rates, 1920, 58 I. C. C. 220. In 68 I. C. C. 676, 734, the commission found that on and after March 1, 1922, a fair return upon the aggregate value of the railway property of the carriers defined in section 15a of the act, determined as therein provided, would be 5.75% of such aggregate property value as a uniform percentage for all rate groups or territories designated by the commission. By supplemental petition filed Nov. 19, 1925, and docketed as Ex Parte 87 Sub. No. 1, Western Trunk Line Class Rates, an increase in revenue is sought by means of an upward revision and readjustment of the class rates in western trunk line territory. That supplemental petition will be heard and disposed of separately. Respondents are negotiating with shipper in the territory in question with a view to possible agreement upon a mutually satisfactory basis

of rates. Both shippers and carriers for this reason have indicated to the commission that they do not desire hearing before fall. It is provided by the resolution that the commission shall prescribe on products of agriculture so affected by depression, including livestock, the lowest possible lawful rates. It is contended, therefore, that the present rates thereon may not be increased unless they are found to be confiscatory. While confiscatory rates are unlawful, it does not follow that all rates which escape confiscation are lawful. As the commission construes the resolution, it does not prevent increases of rates on all livestock or on all products of agriculture which are above the point of confiscation. The railroad facilities of the country have proved capable of handling the increased traffic without appreciable car shortages and with greater expedition and reliability than in previous years. While the commission is not prepared to say how many routes should be maintained at the direct line rate, it is evident that reasonable restrictions on routing are desirable in the interest of efficient operation. PASSENGER TRAFFIC SITUATION. The record indicates that the passenger service of the western carriers is not paying as great a rate of return on the property devoted thereto as is the freight service. Whatever is contributed by the passenger business may reduce correspondingly the burden which the freight traffic would otherwise bear. The Commission does not subscribe to the proposition that where freight rates are producing, on the property devoted to freight service, the rate of return which has been fixed as fair, it can as a matter of law authorize no increases in such rates to correct deficiencies in aggegate earnings growing out of the inability of the passenger business to meet its full share of the revenue burden. The freight and the passenger services are both essential and both may be subjected to reasonable rates and charges to produce the fair aggregate return, authorized by the law even though thereby a higher rate of return may be exacted from the one than from the other. The growing use of the private automobile and the autobus and truck, which has come with the improvement of the public highways, has injected a disturbing economic influence into the railroad situation both as to freight and passenger business. Although this influence has been relatively more adverse in the case of passenger traffic, the loss in passenger revenue growing out of this new competition has, to an extent at least, been offset by augmented freight revenues derived from the carriage of materials for and products of automobile manufactories, and in the carriage of fuel and lubricants used in the operation of the automobile. What has been said should not be construed as indicating that the passenger business may be excused from contributing the greatest possible earnings consonant with adequate service and reasonable charges. On the contrary a public duty rests upon the managements of the carriers, individually and collectively, carefully to survey the passenger situation and to exert every legitimate effort to place this branch of their operations on a more compensatory basis. DIVISIONS. While in numerous cases the commission has recognized the rate pro rate basis as an approximate means of dividing rates in accordance with the amount and cost of the service rendered, it is evident that computations made solely on the basis of the respective first class rates are not convincing. Different classifications apply in official and western territories. The rates on the lower classes bear considerably different percentage relationships to first class in the east from those in the west. Much traffic between official and western territories moves on combinations of local or proportional factors to and from Chicago or Mississippi river gateways. Divisions between eastern and western roads affect traffic moving on combination rates little if at all. Many facts essential to the determination of divisions of joint rates between eastern and western carriers are not in this record. Obviously a conclusion that the divisions between the eastern and western roads were unfair to the latter should be made upon a proper record, with all the parties actively before the Commission, and upon a consideration of all the matters which the law requires to be taken into account. CREATION OF NEW GROUPS. Speaking generally, rate groups under section 15a should be designated having two tests in mind, (a) the practicability of determining the rate of return of the carriers constituting the group and (b) the suitability of the territory for grouping for rate making purposes. To a considerable extent the proposed southwestern group is a homogenous group from a rate construction standpoint, but the designation of such a

group would add materially to the difficulties of ascertaining group returns in the western district. The proposed mountain-Pacific-southern group meets neither of these tests. RATES IN WESTERN TRUNK LINE TERRITORY. Although average ton-mile earnings fall far short of constituting an exact measure of the relative levels of rates in different territories, being affected by various other factors, including the character of the traffic handled, the average length of haul, and divisions between carriers, the evidence of record tends to show that rates in western trunk line territory generally are on a materially lower level than rates in other sections of western territory, including the southwest. Within western trunk line territory itself numerous discrepancies and inconsistencies in both class and commodity rates exist. The level west of the Missouri river and the Twin Cities is materially higher than that in the area east thereof, and many individual rates in each portion of the territory are inconsistent with other rates on the same or competing articles in the same territory. On the record the commission is unable to determine the precise extent to which the rates in western trunk line territory, whether considered as a whole or as comprising only the area east of the Missouri river, are lower than those in the southwest or in the remainder of the western district. It is clear that rate increases in that territory, particularly the portion east of the Missouri river, will tend both to produce a more uniform level of rates throughout the west and to benefit directly many of the weakest carriers in the western district. The commission is required under section 15a only to adjust rates by rate groups to produce as nearly as may be a fair return for carriers as a whole in such groups. But it is evident that the principal purpose of that section was to afford the public adequate transportation service. This end would clearly not be as adequately served by general increases throughout such a large rate group as the western district, applying alike to weak and strong lines, as by increases confined as far as possible to areas where the rates appear to be on the lowest level and where the weakest roads are located. CONDITION OF AGRICULTURE. It is plain from the record that there has been substantial recovery from the postwar depression, but the effects thereof are still in evidence. CONCLUSIONS. As to Ex Parte 87 it is quite clear from the evidence that so far as the major portion of the western district is concerned no financial emergency exists. In this portion the carriers appear to be both financially and physically sound. In the northwestern region and in western trunk line territory the revenues of certain of the important carriers have not yielded 5.75% upon any rate basis than can reasonably be adopted in advance of a final determination of present values for rate making purposes. The least favorable conditions in the district, so far as carrier revenues are concerned, appear to exist in western trunk line territory. It is, however, to be noted that both in the northwestern region and in western trunk line territory, as well as in the western district as a whole, conditions have recently shown an improving tendency. Furthermore, having regard to what has been already said as to the terms of the resolution concerning the inequalities and discriminations in existing freight rate structures, the commission can not find on this record that such an emergency exists in western trunk line territory as would warrant it in prescribing a general percentage increase in freight rates in that territory. While the commission has power to prescribe such changes, it can properly prescribe them only upon clear evidence of urgent necessity. No such evidence is at present before it. The petitions of the carriers in western district and of the security holders with reference to western trunk line territory will therefore be denied. The conclusions are without prejudice to the determination of the issues in No. 17000 and No. 15686 upon the consolidated record. Revenues in western district, 113 I. C. C. 3.

(d) Both section 15a and Hoch-Smith resolution must be given a construction which makes them practicable and workable. Revenues in western district, 113 I. C. C. 3, 11.

(e) Upon a consideration, among other things, of the requirements of the Hoch-Smith Resolution (S. J. Res. 107), application of carriers in the western district for an increase in freight rates, generally averaging 5 per cent, with exceptions as to certain commodities, predicated on the alleged existence of a financial emergency in that district, denied, no such emergency existing in that territory as a whole as would warrant the commission prescribing a general

percentage increase in freight rates therein. Revenues in Western District, 113 I. C. C. 3.

(f) Upon contention that under existing conditions the Hoch-Smith Resolution (S. J. Res. 107) in effect debars commission from granting carriers a general increase in rates pending completion of its investigation instituted under that resolution, HELD: Commission is not debarred by that resolution from affording carriers relief through the medium of a general increase in rates prior to completion of investigation, if need for such action arises upon a clear showing of necessity. Both section 15a and the resolution must be given a construction which makes them practicable and workable. See 261 U. S. 184, 197. Revenues in Western District, 113 I. C. C. 3, 11.

(g) Contention that the Hoch-Smith Resolution (S. J. Res. 107) constitutes a legislative finding that a depression exists in agriculture, which raises an indisputable presumption in all investigations held under its provisions or commenced subsequent thereto that such depression does in fact exist, and that such presumption will remain until commission reports the results of its investigation held under direction and authority of that resolution, or until Congress repeals it, thereby precluding any action for a general increase in rates under paragraph (2) of section 15a of the act, not sustained. Revenues in Western District, 113 I. C. C. 3, 12.

(h) The Hoch-Smith Resolution (S. J. Res. 107) in its first paragraph makes the basic declaration that in adjusting rates commission shall consider conditions which at any given time prevail in the several industries, to the end that commodities may freely move. This declaration is inconsistent with the construction that a depressed condition in agriculture must be conclusively presumed to continue until Congress again speaks. Revenues in Western District, 113 I. C. C. 3, 12.

(i) Upon contention that the Hoch-Smith Resolution (S. J. Res. 107) repeals those portions of section 15a of the act dealing with the fixing of a fair return on property of carriers held for and used in the service of transportation, HELD: The resolution has force and effect of an act of Congress. In it there is no specific repeal of any provision of existing law, and there is no reason for holding that the resolution by implication repealed or suspended the provisions of section 15a. Revenues in Western District, 113 I. C. C. 3, 11, 12.

(j) The Hoch-Smith Resolution (S. J. Res. 107) clearly points out that in making any change in accordance with its provisions, commission shall give due regard "to the maintenance of an adequate system of transportation," and that the fixation of the "lowest possible lawful rates on products of agriculture, including livestock," shall be "compatible with the maintenance of adequate transportation service." These are expressions somewhat similar to those used by the Supreme Court in decisions rendered prior to adoption of the resolution, specifically referring to provisions of section 15a wherein Congress indicated that in determining what would be a fair return consideration should be given, among other things, to transportation needs of the country and necessity of enlarging such facilities in order to provide the people with adequate transportation. See 257 U. S. 563, 585, and other cited cases. Congress could not have intended to repeal or suspend by indirection so important a provision of the law as section 15a. Revenues in Western District, 113 I. C. C. 3, 12.

(k) Last paragraph of the Hoch-Smith Resolution (S. J. Res. 107) "in view of the existing depression in agriculture," directs that with the least practicable delay commission shall make rate changes which will promote the freedom of movement of products of agriculture affected by that depression, including livestock. Language quoted is in nature of a preamble, and resolution indicates that not all products of agriculture, including livestock, may be affected by that depression, and calls for a determination by the commission as to what products are so affected. Revenues in Western District, 113 I. C. C. 3, 12.

(l) The Hoch-Smith Resolution (S. J. Res. 107) directs that the investigation shall be thorough and shall cover entire rate structure of common carriers subject to the act. Such an investigation must inevitably consume a long period of time. To construe the resolution as requiring commission to conclusively presume the existence of depression in connection with all products of agriculture, including all kinds of livestock, and to accord to all such relief as

is contemplated in last paragraph of the resolution would, to extent that some of them are not affected by the depression, constitute undue preference and cast undue burdens and give undue advantage as between various classes and kinds of commodities in violation of second paragraph of the resolution and section 3 of interstate commerce act, and would compel commission to ignore first paragraph of the resolution. Revenues in Western District, 113 I. C. C. 3, 13.

(m) If certain products of agriculture or certain kinds of livestock are not "affected by depression" they do not come within the direction of last paragraph of the Hoch-Smith Resolution (S. J. Res. 107). A primary purpose of that paragraph was that because of the then existing depression in agriculture the products of agriculture affected by that depression should receive expedited consideration. It would not be a reasonable construction of the resolution to hold that it conclusively, presumes existence of depression in all products of agriculture, including livestock, until commission reports the result of its investigation held under direction and authority of said resolution. Revenues in Western District, 113 I. C. C. 3, 13.

(n) Upon contention that since the Hock-Smith Resolution (S. J. Res. 107) provides that commission shall prescribe on products of agriculture affected by depression, including livestock, the lowest possible lawful rates, therefore, the present rates thereon may not be increased unless they are found to be confiscatory, HELD: While confiscatory rates are unlawful, it does not follow that all rates which escape confiscation are unlawful. As the commission construes the resolution, it does not prevent increases of rates on all livestock or on all products of agriculture which are above the point of confiscation. Revenues in Western District, 113 I. C. C. 3, 13.

(o) An index of so-called relative purchasing power is not to be taken as an accurate measure of changes in the farmers' well-being, and an index of wholesale prices of nonagricultural commodities is not necessarily representative of what the farmer purchases. Furthermore, a change in price level itself brings readjustments in consumption and a shifting of activities. Nevertheless, such an index is a convenient way of stating the difference in price trend for farm and other products, and deserves considerable weight in judging of the condition of agriculture. Revenues in Western District, 113 I. C. C. 3, 31.

(p) Doctrine that burden of rail transportation should be distributed among various kinds of freight with some regard for economic needs of the country has always had recognition, in one way or another, in the rate structure. Fertilizers between Southern Points, 113 I. C. C. 389, 420.

(q) The Hoch-Smith resolution, under which the commission is required to give particular consideration to the establishment of a rate structure under which agricultural products shall freely move, given consideration in denying proposed increase in distance rates on cream, and on milk, cream, and buttermilk, transported by railroads on passenger trains in the territory embracing points in Montana, North Dakota, Minnesota, and other northwestern States. Milk and Cream in Northwest, 115 I. C. C. 77.

(r) Certain coal producers testified that many of their mines are closed or operating at less than capacity and urge that under policy of Congress laid down in the Hoch-Smith resolution the commission should consider such contingencies in determining propriety of their rates. FOUND: That in a time of depression in the coal industry it is self-evident that mines producing a less desirable product at a higher cost will first feel effect of depression and be forced to close down or restrict their operations. Indiana State Chamber of Commerce v. A. A. R. R., 115 I. C. C. 650, 656.

(s) In view of evident purpose of the Hoch-Smith resolution the commission is loath to permit any increases in transportation burden placed upon products of agriculture such as grain, except for reasons clear and explicit and where it appears that resulting charges will not be unreasonable. Minnesota-Dakota Transit Millers v. A. A. R. R., 118 I. C. C. 585, 596.

(t) The Hoch-Smith resolution, enjoined upon the commission to fix the lowest possible rates that might lawfully be required, compatible with the maintenance of adequate transportation service. It set no new standard of lawfulness, but said, in effect, that to the extent that there are flexible limits to

discretion of the commission it should fix the lowest rates falling within those limits. In the past the commission has had occasion to consider at times what may be called "out of pocket" cost, but while it has been contended that the carriers might voluntarily, in certain situations, establish rates covering only such cost, it has never been seriously contended that the commission could require this to be done. Rates that the commission may lawfully require must in principle be high enough to cover all the cost that may fairly be allocated to the service plus at least some margin of profit. We say "in principle" because only rarely is definite information available as to such cost, and in practice rates must often be fixed largely by comparison with other rates. Of course, the other sections of the act must also be borne in mind in determining the lowest lawful rates in a particular situation. American National Livestock Asso. v. A., T. & S. F. Ry., 122 I. C. C. 609, 617.

(u) The intent of the Hoch-Smith resolution is that products of agriculture affected by depression shall move at the "lowest possible lawful rates compatible with the maintenance of adequate transportation service." It sets no new standard of lawfulness, but provides, in effect, that to the extent that there are flexible limits to the commission's discretion, it shall require maintenance of the lowest rates falling within those flexible limits. Grain and products, 122 I. C. C. 235, 264.

(v) Rates that may lawfully be required must in principle be high enough to cover all of the cost that may fairly be allocated to the service plus at least some margin of profit. See 236 U. S. 585; 236 U. S. 605. But it has always been recognized that the burden of transportation may reasonably be adjusted with some regard to the value of service; in other words, that the higher grade, more valuable commodities may be required to pay a greater margin of profit than those that are of lower grade and less value. The substance of the Hoch-Smith resolution is that agricultural products affected by depression shall in this respect be included in the class of most favored commodities, to such extent, at least, as may be "compatible with the maintenance of adequate transportation service." Grain and Products, 122 I. C. C. 235, 264.

(w) Contention that Congress, by the Hoch-Smith resolution, has declared the existence of a depression in agriculture, and that therefore that fact is not open to dispute, not sustained. See 113 I. C. C. 3, 12. American Nat'l Live Stock Asso. v. A., T. & S. F., 122 I. C. C. 609, 612.

(x) The Hoch-Smith resolution enjoined upon commission to fix the lowest possible rates on livestock that might lawfully be required, compatible with maintenance of adequate transportation service. It set no new standard of lawfulness, but said, in effect, that to the extent that there are flexible limits to commission's discretion it should fix the lowest rates falling within those limits. American Nat'l Live Stock Asso. v. A., T. & S. F., 122 I. C. C. 609, 617.

(y) The Commission does not understand that the Hoch-Smith resolution is designed to perpetuate violations of the law or that it can be invoked to justify advantages given tobacco producers of one section over nearby and competing tobacco producers. Unmanufactured tobacco from Kentucky, 126 I. C. C. 93, 96.

(z) In removing undue prejudice involving rates on agricultural products, carriers importuned to take cognizance of principles announced in 113 I. C. C. 3; 122 I. C. C. 235, in construing Hoch-Smith resolution with regard to advancing rates to rectify such inequalities. Southwestern Millers' League v. A., T. & S. F., 126 I. C. C. 23, 33, 34.

(aa) Respondents' contention that milk and cream are not products of agriculture and that provisions of Hoch-Smith resolution do not apply in determining whether proposed increases in rates thereon may be established, not sustained. Milk and cream are agricultural products and come within class of products with which the resolution specifically deals, and in adjusting freight rates in accordance with its provisions "the conditions which at any given time prevail in the several industries to the end that commodities may freely move, and especially the effect upon agricultural products," must be considered and rates for movement of such commodities reduced to lowest lawful level consistent with maintenance of adequate service. Milk and Cream Between New England Points, 126 I. C. C. 38, 68, 69.

(bb) Rates that may lawfully be required under the Hoch-Smith Resolution

must, in principle, be high enough to cover all costs that may fairly be allocated to the service, plus at least some margin of profit. See 236 U. S. 585; 236 U. S. 605. However, it has always been recognized that burden of transportation may reasonably be adjusted with some regard to value of service, in other words, that higher grade, more valuable commodities may be required to pay a greater margin of profit than those of lower grade and less value. Substance of above resolution is that agricultural products affected by depression shall in this respect be included in the class of most favored commodities, to such extent, at least, as may be "compatible with the maintenance of adequate transportation service." See also 122 I. C. C. 235. Milk and Cream Between New England Points., 126 I. C. C. 38, 69.

(cc) The Hoch-Smith resolution is not designed to perpetuate violations of the law nor can it be invoked to justify advantages heretofore enjoyed by producers over their competitors. Unmanufactured Tobacco from Kentucky, 126 I. C. C. 93, 96.

(dd) The commission can not materially reduce carrier revenues from commodities which are able to bear present rates, if relief is to be accorded agriculture and other industries in distress, as contemplated by the Hoch-Smith resolution. United Zinc Smelting Corp. v. B. & O., 126 I. C. C. 677, 695, 696.

(ee) Complainant assailed the carload rate of $1.62 per 100 pounds, minimum 26,000 pounds on fresh deciduous fruits, other than apples, carloads, from California points to destinations in Group J, and rate of $1.73 to the other eastern transcontinental groups A to M, inclusive, as being unreasonable and unduly prejudicial. The instant proceeding presents substantially the same issues as those passed upon by division 1 in Calif. Growers & Shippers Protective League v. S. P. Co., 100 I. C. C. 79. Deciduous fruit shipments comprise the largest single item of transcontinental tonnage, as well as the greatest portion of the transcontinental movement of perishable traffic. California ships more plums and cherries than the remainder of the United States, but by far the heaviest movement from the State is of grapes. The principal originating trunk lines are the S. P., Santa Fe, and Western Pacific. Deciduous fruits usually move in refrigerator cars, must be stopped en route for reicing at various points, and expedited schedules are maintained. A natural disadvantage of the industry is its distance from consuming markets. Not more than 5% of the production of fresh fruits in California is consumed there, and the product must of necessity move to the large consuming territory east of the Missouri river and extending to the Atlantic Seaboard. When prices of fruit are high, growers are not particularly concerned about the level of their rates. This was true in 1920, when both rates and prices were at their peak. But when prices are low, transportation charges become an important item of expense in the production and marketing of fruit. That is the present condition of the industry, and in complainants view the markets must be brought nearer by means of rate reductions. Fluctuations in market price during the season sometimes equal or exceed the freight rate. While undoubtedly overproduction and distributing practices are factors in the situation, the essential fact still remains that the industry is in serious financial straits. Land values have declined to a point where most if not all of the war time inflation has been removed, and while some branches show a profit many more are run at a loss or have been taken over by banks. Complainant has established that this industry, for the past five years, has been undergoing a period of deflation and depression, and that the years 1925 and 1926 were more unfavorable than the year preceding. It does not follow that the earnings on citrus fruit traffic will prevent any readjustment of the deciduous fruit rates if present rates on the latter are not the lowest possible lawful rates compatible with the maintenance of adequate transportation service. Under the Hoch Smith resolution the relative prosperity of an industry over a period of years may be considered as well as its relative adversity. Considering the relative rates on and earnings of the deciduous fruit traffic in the light of the condition of the industry and of the service performed by the carriers, and giving due weight to the cost study presented by defendants, the Commission is of the view that the present rates are in excess of the lowest possible lawful rates. The heavy increase

in the volume of movement, the heavier loading of grapes, coupled with the increase in minimum to 30,000 pounds, and the other matters detailed herein, point to the conclusion that, in the light of the principles that must govern, the present rates are too high. Traffic and transportation conditions with respect to deciduous fruits, but more especially to grapes, have undergone a material change in the past 10 years, and many of these changes have been to the carriers advantage. Defendants have granted a voluntary reduction in rates to the citrus fruit industry, based upon the increase in the carload minimum and on a movement while large is not nearly as large as the transcontinental movement of deciduous fruits. The citrus fruit industry is shown to be in a condition of relative prosperity. The deciduous fruit industry on the other hand is in serious financial straits. This record would support a somewhat greater reduction in the rates on grapes than on deciduous tree fruits. But the growing of grapes is but a part of the basic deciduous fruit industry in California. Grapes and the other deciduous fruits are close enough in their transportation characteristics to bear a comparable relation as a classification matter. HELD, rate assailed of $1.73 unreasonable to extent it exceeds $1.60, rate of $1.60 attacked unreasonable to extent it exceeds $1.50. Calif., Growers & Shippers Protective League v. S. P. Co., 129 I. C. C. 25.

(ff) The lowest possible lawful rates which the Commission may prescribe under the Hoch Smith resolution or any given agricultural traffic as to which depression has been shown must be somewhere within the zone of reasonableness permitted by the flexible limits of discretion reposed in the Commission, and such rates must be put as near the lowest limit or level of that zone as is compatible with the maintenance of adequate transportation service. Calif., Growers & Shippers Protective League v. S. P. Co., 129 I. C. C. 25, 34.

(gg) In California Growers & Shippers Protective League v. S. P. Co., 129 I. C. C. 25, Commission found unreasonable rates of $1.73 on fresh deciduous fruits from California to transcontinental groups A to M, inclusive, and $1.62 to Group J, and prescribed rates not to exceed $1.60 and $1.50, minimum weight of grapes to be increased from 26,000 to 30,000 pounds. HELD, upon reconsideration, the present rates are unreasonable and the Commission is not convinced that the rates prescribed are below what are necessary to afford complainants the lowest possible lawful rates compatible with the maintenance of adequate transportation service. California Growers & Shippers Protective League v. S. P. Co., 132 I. C. C. 582.

(hh) Rates on fresh deciduous fruits, other than apples, from California to destinations in transcontinental Groups A to M, inclusive, found unreasonable to extent they exceed lowest possible lawful rates compatible with maintenance of adequate transportation service under terms of Hoch-Smith resolution. Record establishes fact that California deciduous-fruit industry has undergone a period of deflation and depression such that economic situation prevailing clearly falls within terms of the resolution. Rates herein prescribed appear to be compatible with terms thereof and necessary to promote freedom of movement of agricultural products affected by the depression. Reasonable rates prescribed for future. Calif. Growers' & Shippers Protective League v. S. P., 129 I. C. C. 25.

(ii) Upon contention that a showing merely of price levels from 1917 to date is insufficient, because it is limited to the decline from war-time peaks, and that such a showing will not enable us to "give due regard to the general and comparative levels in market value * * * as indicated over a reasonable period, of years" as required by the Hoch-Smith resolution. FOUND: While prices were generally inflated during and following the period of the World War, freight rates likewise reached their peak at about the same time. One of grounds of complaint is that freight rates have not changed in face of changed conditions in the industry. Calif. Growers' & Shippers' Protective League v. S. P., 129 I. C. C. 25, 30, 31.

(jj) Upon carriers' contention that if present rates have been justified under sections 1 and 3 of the act, nothing in the Hoch-Smith resolution or developed of record will provide lawful warrant for reduction thereof. FOUND: The resolution is in effect a direction to com-

mission to give agricultural commodities affected by depression the lowest rates possible without running counter to provisions of the act and carriers' rights under the Constitution. Therefore, the "lowest possible lawful rates" which may be prescribed under the resolution on any given agricultural traffic as to which depression has been shown, must be somewhere within the zone of reasonableness permitted by flexible limits of discretion reposed in commission, and must be put as near the lowest limit or level of that zone as is compatible with maintenance of adequate transportation service. See also 122 I. C. C. 235, 264, and other cited cases. Calif. Growers' & Shippers' Protective League v. S. P., 129 I. C. C. 32, 34.

(kk) In view of the relatively prosperous condition of the California citrus-fruit industry, rates on citrus fruit do not appear too high as compared with those from Florida to same destinations. However, it does not follow that earnings on former traffic will prevent any readjustment of California deciduous-fruit rates if latter rates are not the lowest possible lowful rates compatible with maintenance of adequate transportation service, as under the Hoch-Smith resolution the relative prosperity of an industry over a period of years may be considered as well as its relative adversity. Calif. Growers' & Shippers' Protective League v. S. P., 129 I. C. C. 25, 44.

HOLD CHARGES

(a) "Hold Charges" assessed on shipments of lumber at East St. Louis, Ill., found illegal. Applicable tariff provided for assessment of such charges only when cars were held at request of shipper, and carrier here admits that no such advice was received from complainant. Reparation awarded. Milne Lbr. Co. v. B. & O., 113 I. C. C. 739.

(b) Complainant attacked charges collected on four cars of lumber shipped in Sept. 1923 from Arkansas, Texas and Mississippi to Illinois as illegal to extent they included $10.80 assessed for holding the cars at East St. Louis, Ill. Shipments were consigned to complainant at Breese, Ill., a point on defendants line east of East St. Louis. They were stopped in transit by defendant at East St. Louis, from which place complainant reconsigned them, and they moved to final destinations in Illinois. In addition to the applicable rate and demurrage and reconsigning charges a hold charge of $2.70 on each car at East St. Louis was assessed. The applicable tariff provided for assessment of hold charges only when cars were held at request of shipper. Defendant admitted at the hearing that complainant did not request holding of the cars at East St. Louis and that the charges complained of were without tariff authority. HELD, charges illegal to extent they included $10.80 for holding the cars at East St. Louis. Reparation awarded. Milne Lumber Co. v. B. & O. R. R., 113 I. C. C. 739.

IMPORT TRAFFIC

I. DETERMINATION OF STATUS.
§1. In general.
II. REASONABLENESS OF RATES AND DISCRIMINATION.
§2. In general.
III. CONTROL AND REGULATION.
§3. In general.
IV. TARIFFS AND CONSTRUCTION.
§4. In general.
V. ADVANCED RATES.
§5. In general.

CROSS REFERENCES

See Coastwise Traffic; Demurrage §2¼ (a); Merchant Marine Act; Port Differentials.

I. DETERMINATION OF STATUS.

See Advanced Rates §24 (a); Interstate Commerce I; Rail-And-Water Rates (3d).

§ 1. In General.

(a) Contention that commission is without jurisdiction over shipments of commodities arriving from foreign ports and stored at ports of entry to await shipment to interior points located within same State as port of entry on ground that transportation is intrastate, non sustained. Temporary storage at ports does not divest such traffic of its foreign character acquired at time it begins its journey from foreign port, and movement to port of entry is only a step in its transportation to interior destinations. Alexander Grocery Co. v. B., S. L. & W., 104 I. C. C. 155, 156.

(b) Import shipment arrived at East San Pedro, Calif., where it was unloaded from vessel. Complainant, being unable to handle as rapidly as discharged from ship, moved part to San Pedro where it was stored and subsequently forwarded to Los Angeles. No place of business was maintained by complainant at San Pedro or East San Pedro, nor was any of the shipment sold at, or distributed to consumers from, those points. FOUND: Shipment constituted import traffic subject to commission's jurisdiction, the foreign character of commerce not being destroyed by temporary storage at San Pedro, there being a continuing intention that transportation should not end at that point but that a further movement beyond—i. e., to Los Angeles—would follow water transportation. Woodhead Lbr. Co. v. P. E., 104 I. C. C. 751.

(c) There is nothing inherent in import traffic, as such, that entitles it to lower rates than domestic traffic, and commission may not require a difference in rates on the two classes of traffic unless there is a substantial difference in services performed. Knoxville Traffic Bureau v. A. C. L., 109 I. C. C. 705, 709.

(d) Rates on imported burlap bagging delivered to carriers from private warehouses in Savannah, Ga., for movement to Chicago and Milwaukee, found unreasonable to extent they exceeded rates contemporaneously in effect on similar shipments received by initial carrier from ship side, from ship dock, from initial carrier's own warehouse, or from customs warehouse. After shipments moved carrier amended application of its import rates so as to include shipments stored in private warehouses. Reparation awarded. Rockstroh & Co. v. C. of G., 112 I. C. C. 409.

II. REASONABLENESS OF RATES AND DISCRIMINATION.

See Advanced Rates §5 (2) (m) (n) (o), §14¾ (c); Cars and Car Supply §8 (r); Discrimination; Evidence §13 (4); Minimums §7 (v); Reasonableness of Rates; Restricted Rates (c).

§2. In General.

(a) Hudson Falls, N. Y.: Rate on imported wood pulp from Boston to, found not unreasonable or unduly prejudicial as compared with rates from Boston and New York to competing destinations. The Boston-Hudson Falls rate is not out of line with single-line and joint-line rates from New York or with single-line rates from Boston, and compare favor-Ondawa, less distant from Boston to Watertown, Gouverneur, Plattsburg, and Ondawa, N. Y. Moreover, in 102 I. C. C. 109, rate here in issue was found to be reasonable maximum joint rate on similar shipments moving from Boston to Ondawa, less distant than from Boston to Hudson Falls. Union Bag & Paper Corp. v. B. & M., 104 I. C. C. 327.

(b) Applicable sixth-class rate on imported rough-quarried marble blocks from New York to Chicago, applying via standard all-rail routes, found not unjustly discriminatory, unduly prejudicial, or in violation of long-and-short-haul clause of section 4 of the act. While lower commodity rate applies from Roxbury, Vt., and Lowell, Mass., competing points supplying domestic marble, such lower rate is not applicable through New York, being restricted to apply only over differential Canadian routes embracing carriers different than those involved in standard routes. Liquid Carbonic Co. v. E. R. R., 104 I. C. C. 446.

(c) Charges assessed on imported cement from San Pedro to Los Angeles, Calif., found applicable and not unreasonable. A lower rate was contemporaneously in effect on traffic transported on the high seas and received from ocean carriers at San Pedro, among other ports, but its application was definitely limited and did not include East San Pedro, the point at which shipments were received from ocean carriers, but which was not reached by defendant carrier's line. Woodhead Lbr. Co. v. P. E. Ry., 104 I. C. C. 751.

(d) Import shipment arrived at East San Pedro, Calif., where it was unloaded from vessel. Complainant, being unable to handle as rapidly as discharged from ship, moved part to San Pedro where it was stored and subsequently forwarded to Los Angeles. No place of business was maintained by complainant at San Pedro or East San Pedro, nor was any of the shipment sold at, or distributed to consumers from, those points. FOUND: Shipment constituted import traffic subject to commission's jurisdiction, the foreign character of commerce not being destroyed by temporary storage at San Pedro, there being a continuing intention that transportation should not end at that point but that a further movement beyond, i. e., to Los Angeles, would fol-

low water transportation. Woodhead Lbr. Co. v. P. E., 104 I. C. 751.

(e) Proposed reduction in time limit for storage in transit of tea, matting, grass, matting and grass articles, and rattan furniture, at Minnesota Transfer, Minneapolis, St. Paul, and Duluth, Minn., from 18 to 12 months, found justified except on tea. Established trade practices require a minimum storage of 18 months on tea, importers requiring benefit of such a time limit at mid-western points in order to be able to distribute therefrom in competition with importers at New York and Boston who can store tea indefinitely at ports of entry. Moreover, the 18-month limit has not been abused and no reason appears for depriving transcontinental carriers of opportunity to compete for this traffic. Conference Ruling of July 25, 1913, affirmed. Storage in Transit on Import Traffic, 104 I. C. C. 755.

(f) Domestic rates assessed on shipments of tin imported from China and shipped from San Francisco to Chicago, Newark, and New York found unreasonable to extent they exceeded lower import rate established subsequent to movements here involved. Reparation awarded. Mitsui & Co. v. Director General, 107 I. C. C. 469.

(g) Rate on imported wood pulp from Baltimore, Md., to Baltimore, Ohio, found not unreasonable or unduly prejdicial as compared with rates from Gulf ports to destinations in same general territory. Fact that present rate is not 78 per cent of New York-Chicago rate, less the differential from Baltimore, is not evidence that rate in effect is unreasonable or unduly prejudicial. The percentage formula is not a hard and fast rule, but is merely a guide. And further, the practice of not scaling back the New York-Chicago rate to 78 per cent territory is no confined to wood pulp but applies to rates on many commodities. Fairfield Paper Co. v. B. &. O., 109 I. C. C. 514.

(h) Rates on imported pyrethrum flowers from Seattle and Tacoma, Wash., and San Francisco, Calif., to Minneapolis, Minn., there ground and the product shipped to Winona, Minn., found unreasonable as compared with rates on similar traffic moving via Atlantic seaboard, and to extent it exceeded lower import commodity rate subsequently established. Reparation awarded. Winona Asso. of Commerce v. C., R. I. & P., 109 I. C. C. 648.

(i) Domestic rates on imported fertilizer materials, from Charleston, S. C., and Savannah, Ga., to Knoxville, Tenn., found not unreasonable, but unduly prejudicial to extent it exceeded import rate contemporaneously maintained from same points of origin to Chattanooga, Tenn., and other competing points. Reparation denied, due to lack of proof of damage. Knoxville Traffic Bureau v. A. C. L., 109 I. C. C. 705.

(j) Rates on imported fertilizer materials from Charleston, S. C., and Savannah, Ga., to Chattanooga, McCarty, and certain other points found to contravene long-and-short-haul provision of section 4 of the act. These rates were unrestricted as to routing, and shipments could move through Knoxville at a less rate than shippers at Knoxville must pay. Knoxville Traffic Bureau v. A. C. L., 109 I. C. C. 705, 706.

(k) There is nothing inherent in import traffic, as such, that entitles it to lower rates than domestic traffic, and commission may not require a difference in rates on the two classes of traffic, unless there is a substantial difference in services performed. Neither can it consider needs of the shipper as a basis for reasonable rates, nor fact that a rate has been reduced as establishing unreasonableness of the former rate. Knoxville Traffic Bureau v. A. C. L., 109 I. C. C. 705, 709.

(l) Complainant attacked commodity rates charged on three cars of imported burlap bagging in bales, which moved from a private warehouse at Savannah, Ga., in August, 1921, two cars to Milwaukee, Wis., and one to Chicago, Ill., as unjust and unreasonable. Shipments moved over C. of Ga., to Birmingham, Ala., and I. C., to Chicago, two to Milwaukee over C. M. & St. P. Distances were about 1,138 miles to Chicago and 1,223 miles to Milwaukee. Applicable rates 99c to Milwaukee and 97c to Chicago, made up of 55c to New Orleans plus 44c to Milwaukee and 42c to Chicago. On the dates named the C. of G., maintained a rate of 46c from Savannah to Chicago on burlap bagging originating in foreign countries and delivered to it from ship side or dock of the vessel bringing such traffic to the port of Savannah, and on such traffic stored in the possession of the carrier or received by it from customs bonded warehouses. Effective Dec. 15., 1923, the

C. of Ga., amended the application of its import rates to include shipments stored not more than 18 months at Savannah in private warehouses. HELD: Rates attacked unreasonable to extent they exceeded import rates on burlap bagging originating in foreign countries, reparation awarded. Rockstroh & Co. v. C. of Ga. Ry., 112 I. C. C. 409.

(m) Complainant attacked through rate charged on imported burlap, carloads, from New York, N. Y., and Jersey City, N. J., to Omaha, Neb., delivered subsequent to May 7, 1922, as unreasonable. Charged 71.5c prior to July 1, 1922, and 65c thereafter. Complainant contends rate should have been the same as to Kansas City, Mo., which were during the period of movement 64.5c and 58.5c respectively. No import rates are published on any commodity other than burlap from New York and Jersey City to points beyond Chicago, Ill., and the Mississippi River crossings. The location of Omaha and Kansas City with respect to the Gulf ports indicates that the rates to Omaha may properly be higher than to Kansas City. HELD: Rates attacked and present rate not unreasonable, complaint dismissed. Peters Mill Co. v. L. V. R. R., 112 I. C. C. 703.

(n) Complainant attacked rate of 48.5c on imported green coffee, carloads, from New Orleans, La., to Montgomery, Ala., as unreasonable and unduly prejudicial. This commodity loads over 40,000 pounds, is rated fifth class, moves regularly and in large volume and complainant has made no damage claims. In 93 I. C. C. 555 the commission found the rate attacked not unreasonable. In 96 I. C. C. 481 commission found the rate from New Orleans to Chattanooga not unreasonable. Traffic from New Orleans to Cincinnati moves through Chattanooga over the Southern, and traffic from south Atlantic ports to Nashville moves through Atlanta and Chattanooga over N. C. & St. L. Knoxville is intermediate to Cincinnati on traffic from south Atlantic ports. HELD: Rate attacked not unreasonable or unduly prejudicial, complaint dismissed. Fletcher Wilson Coffee Co. v. L. & N. R. R., 113 I. C. C. 319.

(o) Class rate assessed on imported mahogany logs from Greenville Piers, N. J., to Knoxville, Tenn., found unreasonable to extent it exceeded lower contemporaneous commodity rate over a route other than route of movement, which lower rate was subsequently established over route of movement. Reparation awarded. Foreign & Domestic Veneer Co. v. L. & N., 112 I. C. C. 46.

(p) Application for authority to establish a rate on sugar from Key West, Fla., imported from Cuba, to Jacksonville, Fla., lower than to intermediate points, denied. Actual competition with water lines between Cuba and Jacksonville direct does not exist, and, while there is a substantial movement of raw sugar from Cuba to Port Wentworth (Savannah), Ga., the volume of refined sugar shipped to Jacksonville from Port Wentworth, is not shown, nor is it established that competition with that sugar warrants the rate proposed. Sugar from Key West, 112 I. C. C. 347.

(q) Rates on imported burlap bagging delivered to carriers from private warehouses in Savannah, Ga., for movement to Chicago and Milwaukee found unreasonable to extent they exceeded rates contemporaneously in effect on similar shipments received by initial carrier from ship side, from ship dock, from initial carrier's own warehouse, or from customs warehouse. After shipments moved carrier amended application of its import rates so as to include shipments stored in private warehouses. Reparation awarded. Rockstroh & Co. v. C. of G., 112 I. C. C. 409.

(r) Upon further hearing, taking into consideration development of the flaxseed industry in this country, the conditions which have demanded importation of flaxseed from abroad, the early rates on this commodity, comparisons with other rates, and comparative earnings thereunder, finding in American Linseed Co., 91 I. C. C. 663, wherein rates on flaxseed from New York Harbor points to Buffalo, N. Y., were found unreasonable and reparation awarded, affirmed, and converse finding in the Kellogg case, 77 I. C. C. 249, reserved. In addition, similar rates from same origin points to Chicago and Toledo, and from Philadelphia to Toledo found unreasonable and reparation awarded. Spencer Kellogg & Sons v. D., L. & W., 112 I. C. C. 629.

(s) Import rates on burlap from New York and Jersey City to Omaha found not unreasonable as compared with those to Kansas City. Import rates to these two destinations were formerly equal, but owing to maintenance of lower import rates from New Orleans

traffic was being diverted from Atlantic to Gulf ports and to meet this competition Atlantic port lines established rates which reflected basic adjustment of port differentials generally known as the Todd-Knott award of 1907. While domestic rates to Omaha and Kansas City are same, the location of these points with respect to the Gulf ports indicates that the rates to Omaha may properly be higher than to Kansas City. Peters Mill Co. v. L. V., 112 I. C. C. 703.

(t) All-rail and rail-and-water rates on imported tanning extracts and materials from New York and other eastern seaboard points to Buford, Ga., found unreasonable as compared with rates on similar products of domestic manufacture to and from competitive points in same destination territory and to points east and north. Rates on and after date on which carriers established reduced rates on imported products found not unreasonable. Reparation awarded. Bona Allen v. B. & M., 113 I. C. C. 215.

(u) Following Fletcher-Wilson Coffee Co., 93 I. C. C. 555, rates on imported green coffee from New Orleans, La., to Montgomery, Ala., found not unreasonable or unduly prejudicial as compared with rates to various points in Mississippi, Alabama, and Tennessee, and to St. Louis, Louisville, and Chicago. Fletcher-Wilson Coffee Co. v. L. & N., 113 I. C. C. 319.

(v) Complainant attacked rate of $1.80 charged on imported matting, matting rugs, and various straw goods, in carloads, from San Francisco, Calif., and Seattle, Wash., to Knoxville and Chattanooga, Tenn., Atlanta, Ga., and Jacksonville, Fla., as unreasonable and unduly prejudicial to extent it exceeded $1.50 maintained on like traffic to Louisville, Ky., Birmingham, Ala., and other points taking same rates, and in violation of section four. The rate of $1.50 is blanketed to a wide territory embracing, in general, Wisconsin, Iowa, Kansas, Oklahoma and Texas on the west, extending eastwardly through central territory to the Buffalo-Pittsburgh line, and including Ohio river crossings. No southern carrier serving the destination cities, whether it be the L. & N., Southern or another, controls the rates to the other destinations alleged to be preferred. The latter generally are not reached over the lines of the southeastern carriers. Through rates to the destinations alleged to be preferred are controlled by the transcontinental lines in connection with strictly central territory lines. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Sterchi Bros. v. G. N. Ry., 113 I. C. C. 665.

(w) Rate on imported matting, matting rugs, and various straw goods from Pacific coast points to Knoxville, Chattanooga, Atlanta, and Jacksonville, found not unreasonable or otherwise unlawful as compared with rates contemporaneously maintained on like traffic from same origins to Louisville, Birmingham, and other points taking same rates. Sterchi Bros. v. G. N., 113 I. C. C. 665.

(x) Rates on imported cork waste and cork wood from New York to Baltimore (Highlandtown, Md.), found unreasonable to extent they exceeded lower rate subsequently established which lower rate was contemporaneously in effect during period of movement from same point of origin to Beaver Falls, Pa., a farther distant point, subject to Rule 77 of Tariff Circular 18-A. The establishment of a lower rate to a more distant point subject to Rule 77 is tantamount to an admission that a higher rate to an intermediate point is unreasonable; and when rates are so established shippers at intermediate point have a lawful right to a rate no higher than that to more distant point. Reparation awarded. Crown Cork & Seal Co. v. B. & O., 113 I. C. C. 726.

(y) Complainant attacked rates charged on cars of imported cork waste and cork wood having value for grinding purposes only during 1923 and 1924 from New York to Baltimore and that present rates are unreasonable and as compared with rates from New York to Beaver Falls, Pa., unjustly discriminatory and unduly prejudicial. Distance New York to Baltimore is 185 miles. Fifth class rate of 28.5c is applicable on cork waste and a commodity rate of 31.5c on cork wood having a value for grinding purposes only. From New York to Beaver Falls, about 548 miles, a commodity rate of 31.5c is published on both cork waste and cork wood. HELD, rate of 44c in effect on cork wood prior to Feb. 16, 1924 from New York to Baltimore unreasonable to extent it exceeded 31.5c reparation awarded. Crown Cork & Seal Co. v. B. & O. R. R., 113 I. C. C. 726.

(z) Respondents proposed to cancel an import commodity rate of 41.5c applying on iron and steel articles, carloads, from Texas gulf ports to St. Louis, Mo., and to certain points in Oklahoma. The rate to Oklahoma points, established on March 22, 1926, was published to expire on April 22, 1926. Concurrently therewith respondent proposed to cancel a like rate applicable from those ports, and from other Gulf ports, to Little Rock and Pine Bluff, Ark. It is also proposed, effective May 23, 1926, to increase a similar rate applying on such traffic from New Orleans, La., and other Gulf ports, not including other Texas Gulf ports, to St. Louis to 50c, making it applicable only over routes on and east of the Mississippi river. It is further proposed to restrict the import class rates so that fifth class rates will not apply on iron and steel articles from Texas gulf ports to these destinations. The changes proposed will have the effect of making domestic rates applicable to these destinations on practically all iron and steel articles imported through Gulf ports. The resulting rates from New Orleans to Pine Bluff and Little Rock will be 47 and 48.5c on merchant iron and 52.5c and 53.5c on structural iron, respectively. HELD, proposed increased rate on import iron and steel from New Orleans and other gulf ports, excluding Texas gulf ports, to St. Louis and the restriction in its application over lines east of the Mississippi river, and increased rates proposed from New Orleans to Little Rock and Pine Bluff justified. HELD, further, proposed increased rates from Texas gulf ports to St. Louis, to points in Oklahoma and Kansas and to Little Rock and Pine Bluff and the proposal to restrict the import class rates so that fifth class rates will not apply on iron and steel articles from those ports to the destinations involved not justified. HELD, further, reasonable maximum rates on these commodities from Texas gulf ports to the destinations under consideration will be those in Tables 10 and 11, Appendix 8, of the report in 77 I. C. C. 473. Import iron and steel from Gulf ports, 115 I. C. C. 373.

(aa) Respondents proposed to establish specific rates on import and inbound coastwise shipments of fertilizers from Texas Gulf ports to Shreveport, La., and points in that group. Respondents assert that their principal object at this time is to put all Texas and Louisiana Gulf ports upon a parity with respect to rates on import and inbound coastwise fertilizer traffic moving through such ports to Shreveport. The only justification offered is that the carriers are attempting to carry out what they consider to be the view of the Commission as expressed in a proceeding now pending. HELD, proposed schedules not justified. Fertilizers from Texas ports, 115 I. C. C. 582.

(bb) Complainant seeks reparation on some 107 cars of imported nitrate of soda shipped from points within the lighterage limit of New York to Greensand, N. J., two years prior to December 23, 1924, alleging that 13c was unreasonable, unjustly discriminatory and unduly prejudicial to extent it exceeded the subsequently established rate of 11.5c. The nitrate of soda was imported from South America and unloaded at New York harbor points. It moved in LV lighters at Jersey City and thence over that line to destination, charged fifth class rate of 13c. A commodity rate of 11.5c contemporaneously applied from New York harbor points to Boundbrook, N. J., and made effective to Greensand December 29, 1924. Distance to Greensand is 6 miles greater than to Boundbrook. HELD: Rate attacked not unreasonable, but unduly prejudicial to extent it exceeded rate to Boundbrook, reparation denied. Complaint dismissed. Granton Chemical Co. v. L. V. R. R., 115 I. C. C. 726.

(cc) In 104 I. C. C. 255, the Commission found rates charged on imported rattan furniture, in bundles, shipped from Seattle, Wash., to Cleveland, O., were not illegal and dismissed the complaint. Rates charged $8 per 100 pounds in June, 1922, and $7.20 in November, 1922, were less carload rates. Domestic rates were $5.165 in June and $4.65 in November, 1922. HELD: Rates charged illegal to extent they exceeded the domestic rates and minima, reparation awarded. Bailey Co. v. I. C. R. R., 118 I. C. C. 455.

(dd) In 115 I. C. C. 373, division 3, found that the proposed increased rate on import iron and steel from New Orleans, La., and other Gulf ports excluding Texas Gulf ports, to St. Louis, Mo., and the restriction in its application over lines east of the Mississippi river, and the increased rates proposed from New

Orleans to Little Rock and Pine Bluff, Ark., had been justified, and that the proposed increased rates on import iron and steel from Texas gulf ports to St. Louis, to Oklahoma and Kansas, and to Little Rock and Pine Bluff and the proposal to restrict the import class rates so that the fifth class rates would not apply on iron and steel articles from these ports had not been justified and that reasonable maximum rates on those commodities from Texas gulf ports to the destinations under consideration would be those set forth in tables 10 and 11 of Appendix 8 of 77 I. C. C. 473. This report will deal only with rates from the Texas Gulf ports. Commission is convinced that the present import rates from Texas gulf ports is too low. HELD: Affirmed former findings that the proposed increased rates from Texas Gulf ports to St. Louis, and other territory should not exceed those in 77 I. C. C. 743. Import iron and steel from Gulf ports, 118 I. C. C. 482.

(ee) Complainant attacked rates on imported flint brick and imported flint pebbles, in carloads, from New York, N. Y., and other Atlantic ports of entry to Oregon, Ottawa and Wedron, Ill., as unreasonable and unduly prejudicial. Oregon is on the Burlington 99 miles west of Chicago, Wedron is on the Burlington 74 miles southwest of Chicago and Ottawa on the Burlington and Rock Island 82 miles southwest of Chicago. Flint pebbles and flint brick, carloads, are rated sixth class in official classification, but from the ports and to the destinations here under consideration present standard all rail rate on flint pebbles are to Ottawa and Wedron 42.5c and to Oregon 45c, flint brick 39c and 41.5c. Taking into consideration the values and other transportation characteristics of the commodities here under consideration the present rates on flint brick do not appear unreasonable, but there seems to be no justification for higher rates on flint pebbles than on flint brick. HELD: Rates attacked on imported flint brick not unreasonable or otherwise unlawful but rates attacked on imported flint pebbles unreasonable to extent they exceed rates on flint brick, reparation awarded. National Silica Co. v. W. Ry. Co., 118 I. C. C. 669.

(ff) Combination rates on crude rubber from New York terminals, and on reclaimed rubber from points in c. f. a. territory, to Omaha, Nebr., found not unreasonable or otherwise unlawful as compared with lower import rates from Pacific coast ports to Akron, Ohio, blanketed back to Missouri River. Complainant contended that it was unreasonable to apply blanket rates eastbound while maintaining graded rates westbound. The eastbound blanket rates, however, are shown to be unduly low, having been established by western carriers for purpose of securing some of traffic to Akron which otherwise would move through New York. Moreover, the Mississippi River combination basis of constructing through rates has been in effect for many years, and has in numerous cases received approval of commission. Nebraska Tire & Rubber Co. v. B. & O., 115 I. C. C. 99.

(gg) Proposed increased rates on imported iron and steel articles from Texas Gulf ports to St. Louis, points in Oklahoma and Kansas, and Little Rock and Pine Bluff, Ark., and proposed restriction of import class rates so that fifth-class rates will not apply on iron and steel artices from those points to destinations involved, designed for purpose of restoring domestic and import rates to the same level, found not justified. Reasonable maximum rates for future prescribed. Import Iron and Steel from Gulf ports, 115 I. C. C. 373.

(hh) Third-class rates on imported plate glass from New York Harbor points to High Point and Winston-Salem, N. C., found unreasonable. Rates assailed were considerably higher than those to same destinations from more distant points and 58 per cent higher than fifth-class rate accorded window glass in all three classifications concerning which the commission said in 21 I. C. C. 113, that if fifth-class rates afford a fair remuneration for carriage of window glass there is no such difference in transportation condition as would warrant a rate of 50 per cent higher on plate glass. Reasonable rates prescribed for future and reparation awarded. Southern Mirror Co. v. S. Ry., 115 I. C. C. 590.

(ii) Fifth-class rate on imported nitrate of soda from New York, N. Y., to Greensand, N. J., found not unreasonable but unduly prejudicial in that it exceeded lower commodity rate contemporaneously in effect to Boundbrook, N. J., a competing point directly intermediate to Greensand, lower rate being established to latter named point subse-

quent to movement. Carrier showed that both assailed and subsequently established rates were subnormal, having been established to meet a depressed, postwar condition of the chemical industry; also that service thereunder entailed an expensive lighterage service in New York Harbor. Damages resulting from undue prejudice not shown with that degree of certainty which would entitle complainant to reparation. Granton Chemical Co. v. L. V., 115 I. C. C. 726.

(jj) Rates on imported flint brick found not unreasonable or otherwise unlawful as compared with those on comparable commodities, values and transportation characteristics considered, but rates on flint pebbles found unreasonable to extent they exceeded those contemporaneously in effect on flint brick. Reasonable rates prescribed for future and reparation awarded. Nat'l. Silica Co. v. W. Ry., 118 I. C. C. 669.

(kk) Complainant attacked commodity rate on 25 cars of imported pyrethrum flowers shipped from Pacific coast to Peoria, Ill., between Dec. 26, 1922 and Oct. 16, 1924 as unreasonable and unduly prejudicial. Charged $1.75. Loss and damage claims are rare. The commodity appears to be desirable traffic and to have yielded substantial earnings, but the record will not support a finding that the rates charged were higher than maximum reasonable rates. HELD, rates charged not unreasonable or unduly prejudicial, complaint dismissed. Allaire Woodward & Co. v. A. T. & S. F. Ry., 120 I. C. C. 249.

(ll) Complainant attacked rate on imported wood pulp, carloads, from Boston, Mass., to Whippany, N. J., since Sept. 1, 1924 as unreasonable, unjustly discriminatory and unduly prejudicial. Shipments moved B. & M. to Mechanicville, N. Y., D. & H., to Binghamton, N. Y., D. L. & W. to Morristown, N. J., or Erie to Essex Falls, N. J., and M. & E. beyond. Applicable rate 37.5 cents, made up of sixth class of 28.5 cents to Morristown or Essex Falls and 9 cents beyond. A commodity rate of 4 cents was established from Morristown to Whippany effective Aug. 5, 1925 and since that date a combination rate of 32.5 cents has been in effect via Morristown. No rates on wood pulp from Boston have been instanced by either complainant or defendants which are upon a level, distance considered, as high as that of the rate attacked. HELD, rate attacked unreasonable to extent it exceeded 28.5 cents, reparation awarded. United Paperboard Co. v. B. M. R. R., 120 I. C. C. 280.

(mm) Import rates are frequently lower than domestic rates, the former being influenced by considerations which are unrelated to, and have little, if any, bearing upon the reasonableness per se of the domestic rates. Tompkins Summer Co. v. C., M. & St. P. Ry., 120 I. C. C. 677, 678.

(nn) Rate on imported pyrethrum flowers from Pacific coast points to Peoria, Ill., found not unreasonable or otherwise unlawful. Contention was made that manufacturer at Peoria is at a marked disadvantage with competing manufacturers at Baltimore and New York City by reason of ocean rates to those points lower than ocean-and-rail rates to Peoria, but no evidence was offered of actual damage. It was shown that western carriers do not control ocean rates to Atlantic ports and are not responsible under section 3 for any prejudicial situation that may exist. Furthermore, while rate charged appears to have yielded substantial earnings they were no higher than maximum reasonable rates and in 109 I. C. C. 648 the commission awarded reparation on this commodity to basis of rate here assailed. Allaire, Woodward & Co. v. A., T. & S. F., 120 I. C. C. 249.

(oo) Sixth-class rate on imported wood pulp from Boston, Mass., to Whippany, N. J., found unreasonable as compared with lower commodity rates contemporaneously in effect from Boston and other points to various destinations for comparable distances, and with rates found reasonable by commission on this commodity in 101 I. C. C. 171 and other cited cases. Reasonable rate prescribed for future and reparation awarded. United Paperboard Co. v. B. & M., 120 I. C. C. 280.

(pp) Upon contention that domestic rates are unreasonable when compared with lower import rates, HELD: Import rates are frequently lower than domestic rates, the former being influenced by considerations which are unrelated to, and have little, if any, bearing upon, reasonableness per se of domestic rates. See 62 I. C. C. 422. Tomkins-Summer Co. v. C., M. & St. P., 120 I. C. C. 677, 678.

(qq) Complainant attacked rates charged on imported china clay and ball clay, carloads, from Philadelphia, Pa., to New Jersey as unreasonable, unduly prejudicial; that the charge assessed for handling the clays from shipside to cars where the rate is less than 9 cents per 100 pounds was and is unreasonable and unduly prejudicial. These clays are rated sixth class, but commodity rates are generally applicable. Since March 19, 1924 a charge of 50 cents per ton has been assessed by the carriers serving Philadelphia for handling cargoes from ship side to cars. This charge is absorbed by the line haul carrier in all cases where the rate is 9 cents per 100 pounds or more. Where the rate is less than the amounts specified, those amounts are the maximum total charges. Shippers have the option of performing the handling service at their own expense but seldom, if ever, exercise that privilege. In Philadelphia Commercial Traffic Managers v. B. & O. R. R., 104 I. C. C. 173, the 50 cent handling charge when the rail rate was less than 9 cents per 100 pounds, was found not unreasonable or otherwise unlawful. Since August 10, 1925 defendants have provided rates on these clays to central territory on the basis of the standard brick rates. These clays and the domestic clays which take the standard brick rates may not be readily distinguished and rated the same is official classification. HELD, rates attacked since Aug. 10, 1925 unreasonable and unduly prejudicial to extent they exceeded the standard brick rates, reparation awarded; handling charge not unreasonable or otherwise unlawful. Ceramic Traffic Asso. v. P. R. R. Co., 123 I. C. C. 591.

(rr) Charge for handling imported china and ball clay from ship side to cars at Philadelphia, found not unreasonable or unduly prejudicial. Charge is the same as that applicable at Philadelphia on export, import, and intercoastal traffic found reasonable in 104 I. C. C. 173, where it was shown that charge was established for purpose of placing Philadelphia on a substantial parity with Baltimore and New York, and record here does not warrant a modification of that finding. Ceramic Traffic Asso. v. P. R. R., 123 I. C. C. 591.

(ss) Rates on imported china clay and ball clay from Philadelphia, to New Jersey destinations, found unreasonable and unduly prejudicial as compared with rates contemporaneously maintained on like traffic to Beaver Falls and Newcastle, Pa., East Liverpool and Steubenville, Ohio, and Wheeling, W. Va., and to extent they exceeded rates made under trunk-line brick scale prescribed in 68 I. C. C. 213. Aside from fact that better equipment is required, transportation characteristics of ball and china clay compare favorably with those of articles included in uniform brick list. Imported clays are not readily distinguished from domestic clays, which take standard brick rates and are rated the same in official classification. Reasonable and nonprejudicial rates prescribed for future and reparation awarded. Ceramic Traffic Asso. v. P. R. R., 123 I. C. C. 591.

(tt) Complainant attacked rates on burlap, carloads, from New York, Philadelphia and Boston to Memphis, Tenn., as unreasonable and unduly prejudicial. In carloads it is rated fourth class in official territory and sixth class in southern territory. Practically all of the burlap used in this country is imported, about 85% from Calcutta, India. New York and New Orleans are the principal ports of entry. Present rates to Memphis are joint sixth class rates subject to the southern classification, and those to St. Louis are joint commodity rates, the domestic all rail rates being equivalent to the sixth class rates subject to the official classification. Defendants propose rates of 63.5c from New York and Philadelphia and 66c from Boston to apply on domestic and import traffic, all rail and water and rail routes. Short line distance to Memphis is about 100 miles greater than to St. Louis. HELD, all rail domestic and import rates of 63.5c from New York and Philadelphia and 66c from Boston just and reasonable, and all rail import rate New York to Memphis unduly prejudicial to extent it exceeds contemporaneous all rail import rate on burlap from New York to St. Louis by more than 12c. Water and rail rates not prescribed. Memphis Freight Bureau v. A. G. S. Ry., 126 I. C. C. 87.

(uu) Complainants alleged that the all rail rates on imported nitrate of soda, carloads, from New Orleans, La., and other Gulf ports, to Pollard, East Alton, Edwards, and East St. Louis, Ill., Grasselli, Ind., Lockland, O., Ashburn, Mo., and Mooar, Ia., also the barge and rail rates on imported nitrate of soda

in carloads from New Orleans and other Gulf ports to Grasselli and Lockland were and are unjust, unreasonable, unjustly discriminatory and unduly prejudicial. This commodity is imported from Chile. Its principal use is as a fertilizer or fertilizer ingredient, but it is also used to a considerable extent in the manufacture of explosives and in smaller quantities for other purposes. Nitrate of soda is desirable traffic as it moves in large volume, loads heavily, and no special service is required in its handling. Owing to its susceptibility to damage by water it is shipped in box cars. As it is an oxidizing material, the regulations for the transportation of explosives and other dangerous articles require that it be shipped under a yellow label. Loss and damage claims are negligible. Defendants proposed to cancel the application of domestic fertilizer and fertilizer material rates on nitrate of soda, in carloads, from Gulf ports to destinations north of the Ohio river, leaving the sixth class rate applicable on domestic shipments of this commodity. Tariffs were suspended and in Nitrate of Soda from Gulf Ports, 85 I. C. C. 586, the Commission found them not justified. There are numerous technical violations of the fourth section. There is no merit in complainants contention that, in the absence of an import commodity rate, domestic commodity rates are applicable on imported nitrate of soda, even though import class rates are maintained, and that, therefore, violations of the fourth section occur at all points on the I. C. except Chicago. The domestic commodity rates apply only in the absence of tariffs naming specific import rates. The import class rates maintained from Gulf ports are specific rates and are applicable when no import commodity rates are published. HELD, rates attacked on imported nitrate of soda, carloads, from New Orleans, Gulfport, Mobile, Pensacola and other Gulf ports were not and are not unjustly discriminatory or unduly prejudicial and rates to Cincinnati and Lockland were not and are not unreasonable, but that to other destinations were, are, and for future will be unreasonable to extent they exceed 31.5c by all rail routes to Pollard, East Alton and East St. Louis, and 35c to Ashburn, Edwards, Grasselli and Hegeswich, and 32.5c by barge and rail routes to Grasselli and Hegeswich. Import rates to East St. Louis and Calumet City unreasonable to extent they exceeded 31.5c and 35c, respectively, but rates attacked on muriate of potash, sulphat of potash and kainit to these destinations not unreasonable. Rates atacked unreasonable to extent they exceed 27c to Cairo, 31.5c to Louisville, and East St. Louis, 35c to Peoria, Springfield and Chicago and 37c to Milwaukee. Rates on muriate of potash, sulphate of potash and kainit, carloads, to Peoria and Springfield unreasonable to extent they exceed 35c, but rates to other destinations not unreasonable, reparation awarded. Egyptian Powder Co. v. I. C. R. R., 126 I. C. C. 293.

(vv) Complainant alleged that the rates on imported wood pulp in rolls and bales, from New York, Hoboken, N. J., Philadelphia, Pa., and Baltimore, Md., to Garfield, N. J., were and are unjust and unreasonable. Similar allegations were made with respect to sixth class rates of 22.5c and 12.5c on like traffic from Baltimore and New York to Passaic-Dundee, N. J. Garfield is a local point on the Erie about 12.5 miles north and west of Jersey City. The wood pulp was imported from Europe. Charged sixth class rates. Wood pulp is desirable traffic. It loads heavily, moves in regular volume, and is not susceptible to damage in transit. HELD, rates attacked from Hoboken, Philadelphia and Baltimore to Garfield are unreasonable to extent they exceed 10.5c, 16.5c, and 20.5c, and from Baltimore to Passaic, 20.5c. From New York to Garfield and Passaic not unreasonable, reparation awarded. Hammersley Mfg. Co. v. E. R. R. Co., 126 I. C. C. 491.

(ww) Import rate on burlap from New York, to Memphis, Tenn., found unduly prejudicial to extent it exceeds the contemporaneous rate to St. Louis by more than 12 cents. Complainant competes with St. Louis in production of burlap bags but because of higher rate to Memphis, purchases of burlap are made through the New Orleans market at a higher price. However, while short-line distance from New York to Memphis is greater than to St. Louis, in 28 I. C. C. 543 it was stated that a 16-cent differential in favor of St. Louis on imported burlap was not warranted, and differential prescribed herein would seem to be sufficient to amply compensate for additional haul as well as make due allowance for different transportation conditions in official and southern territories. Memphis Freight Bureau v. A. G. S. 126 I. C. C. 87.

(xx) Joint sixth-class rates on imported burlap from New York, Philadelphia, and Boston to Memphis, Tenn., found unreasonable as compared with lower domestic commodity rates contemporaneously in effect to St. Louis, Mo., and from New York to points in Illinois, Wisconsin, and Missouri, for comparable distances; and with import rates from Baltimore, Md., to Louisville, Ky., and from Savannah, Ga., to Memphis, Louisville, Cairo, Ill., and Cincinnati, Ohio. As practically all burlap is imported there appears to be no necessity for different domestic and import rates, and lower rates proposed by carriers for application on both domestic and import traffic do not appear to be in excess of maximum reasonable rates. Reasonable rates prescribed for future. Memphis Freight Bureau v. A. G. S. 126 I. C. C. 87.

(yy) Import rates on muriate of potash, sulphate of potash and kainit, from New Orleans and other Gulf ports to destinations in Illinois, Indiana, Ohio, Kentucky, Wisconsin, Iowa, and Missouri, found not unreasonable as compared with domestic rates on same commodity, except to Springfield and Peoria, Ill., and points grouped therewith. Reasonable rates, applicable from ship side at points of origin, prescribed for future and reparation awarded. Egyptian Powder Co. v. I. C. 126 I. C. C. 293.

(zz) Import rates on nitrate of soda from New Orleans and other Gulf ports to points on and north of Ohio River, found not discriminatory or unduly prejudicial, but unreasonable as compared with lower domestic rates contemporaneously in effect and with lower import rates to points south of the river for comparable distances. Reasonable rates to apply from ship side at points of origin prescribed for future and reparation awarded. Egyptian Powder Co. v. I. C. 126 I. C. C. 293.

(3a) Upon contention that combination of domestic commodity rates lower than the import rate is a violation of the aggregate-of-intermediates clause of section 4 of the act, HELD: Contention is without merit, for in applying provisions of the fourth section, rates and fares of the same kind must be compared with one another. See Conf. Ruling 304. Moreover, domestic rates apply only in absence of tariffs naming specific import rates. Egyptian Powder Co. v. I. C., 126 I. C. C. 293, 301.

(3b) Shipments of nitrate of soda from New Orleans, were billed to Edwards, Ill., and moved by carrier to complainant's plant at Olin, Ill., a point six miles farther distant without further orders. At time shipments moved no import class or commodity rates were maintained to Olin and import commodity rates applicable to Edwards were assessed. HELD: As Olin is located in the Peoria, Ill., group to which lower rates on domestic shipments were contemporaneously maintained, and as such rates apply in absence of specific import rates, shipments were overcharged. Refund of overcharges directed. Egyptian Powder Co., v. I. C., 126 I. C. C. 293, 301, 302.

(3c) Water-and-rail rates on imported nitrate of soda from New Orleans and other Gulf ports to Lockland, Ohio, Hegewisch, Ill., and Grasselli, Ind., found not discriminatory or unduly prejudicial, but unreasonable, except to Lockland, as compared with lower domestic water-and-rail rates on fertilizer contemporaneously in effect. Reasonable rates to apply from ship side at points of origin prescribed for future and reparation awarded. Egyptian Powder Co. v. I. C. 126 I. C. C. 293, 302, 303.

(3d) Sixth-class rates on imported wood pulp from New York, N. Y., to Garfield and Passaic-Dundee, N. J., found not unreasonable, but rates from Hoboken, N. J., Philadelphia, Pa., and Baltimore, Md., to Garfield, and from Baltimore to Passaic-Dundee, found unreasonable as compared with lower commodity rates on wood pulp to Piermont and Orangeburgh, N. Y., and Hamburg, N. J., and various destinations in same general territory for comparable distances, and to extent they exceeded rates equal to 90 per cent of sixth class, which basis was found reasonable in 52 I. C. C. 84, for application on woodpulp board, building paper, and roofing paper, in official territory. Reasonable rates prescribed for future and reparation awarded. Hamersley Mfg., Co. v. E. R. R. Co., 126 I. C. C. 491.

(3e) Complainant attacked rates charged on crude clay, in carloads, from Kentucky, Tennessee and Mississippi to destinations in central and trunk line territories as unreasonable, and rates charged on imported china clay and ball clay, carloads from North Atlantic ports to central and trunk line territories were inapplicable and until August 10, 1925 unreasonable to extent

they exceeded rates established on that date from and to the same points. There are three kinds of clay, distinguished by their mode of origin and formation, namely primary kaolin, which is still found in contact with the parent rock, commonly called English china clay; secondary kaolin, which has been washed away from the primary deposits; and the kaolin which has been transported and mixed with organic material and is distinguishable in color from the secondary kaolins, which are of a light or cream color. Complainants in 18058 contend that clay used in the manufacture of pottery is crude clay and should be accorded the rate published on crude clay, common or fire. It does not follow that, because pottery clays can be used in the manufacture of brick, common or fire clay can be used in the manufacture of pottery. The rates under attack are those approved in Kentucky and Tennessee clay, 41 I. C. C. 498, as modified by the subsequent general increases and reduction, and are equivalent to the sum of the rates applicable on clay to and from the Ohio river basing points. Clay used in the manufacture of pottery is found only in restricted areas and is considerably more valuable than common fire clay. The use to which it is put requires that it be transported in clean, tight box cars, whereas common or fire clay, which is not susceptible to deterioration, may be shipped in leaky or open top cars. In 18064 and 18662, import clay, complainants contend that the shipments come within the description "clay, crude or ground (common or fire)". The rates on ball clay and china clay were reduced to that basis on August 10, 1925. China clay and ball clay imported through the north Atlantic ports come from southern England and are not subjected to any manufacturing process before importation. Clean tight box cars are used in transporting the shipments from the ports to the consuming points in order to protect the commodity from freezing and from contamination by foreign substances such as cinders, iron rust, or oil. The distinction between china clay, ball clay, and what is known as "common clay" was recognized by complainants witnesses, who admitted that common crude clay used in the manufacture of common brick can not be used for the manufacture of pottery. Despite such evidence complainants contend that, as china clay and ball clay are crude clays, they should have been charged at the rates on "clay, crude or ground (common or fire)". It is true that pottery clays can be used in the manufacture of brick, but because of their high value they are not ordinarily so used, and can not properly be included as brick clays. HELD, rates attacked not unreasonable, complaints dismissed. United States Potters Asso. v. A. C. & Y. Ry., 128 I. C. C. 249.

(3f) Upon contention that since differentials of New Orleans and other Gulf ports and south Atlantic ports under New York and other north Atlantic ports are now in effect on all European and African import traffic destined to points north of Ohio River, in order to allow Gulf ports to compete on a fair basis because of superior steamship service at north Atlantic ports, that differentials at Texas ports under New Orleans are justified for same reason, FOUND: While such commercial advantages can not be determinative of rate relationships and ordinarily can not be taken into consideration when passing upon question of undue prejudice, they serve to show that advantages of New Orleans are superior to those of Texas ports and that differentials mentioned would not likely cause serious injury to New Orleans. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349, 368.

(3g) Suspended schedules filed in purported compliance with findings in original report 100 I. C. C. 110, wherein relationship between rates on certain commodities in export, import, and coastwise movement from points in Kansas, Oklahoma, and Texas to Galveston and New Orleans and ports taking same rates, were found unduly prejudicial and ordered removed by establishment of differentials prescribed, found not justified, without prejudice to filing of new schedules conforming with findings herein. Galveston Commercial Asso. v. G., H. & S. A. 128 I. C. C. 349, 392, 393.

(3h) Complainant alleged that rates charged on four cars of imported and domestic mah-jongg sets from San Francisco and Paraffin, Calif., to Chicago, Ill., during Nov. 1923, were unreasonable and illegal. Shipments moved over S. P., U. P. and C. & N. W, charged second class rate of $4.43. Rate in the op-

posite direction was $2.50 commodity rate, which was subsequently established eastbound. HELD, rate attacked on domestic sets unreasonable to extent it exceeded $2.50, rate on import sets inapplicable to extent it exceeded $2.385 the rate on games, n. o. s. reparation awarded. Paraffine Companies v. S. P. Co., 128 I. C. C. 421.

(3i) Sixth-class rate on imported wood pulp from Boston, Mass., to Fort Edward, N. Y., found unerasonable as compared with lower commodity rate contemporaneously in effect; with those to various points in c. f. a. territory for comparable distances; with blanket rates extending from points on the Hudson River to Buffalo and Niagara Falls; and to extent it exceeded distance scale rates on like traffic from Wilmington, Del., to points in New England territory prescribed in 122 I. C. C. 543. Reasonable rates prescribed for future and reparation awarded. International Paper Co. v. B. & M., 128 I. C. C. 466.

(3j) Complainant alleged that rates charged on imported wood pulp in carloads, between March 23, 1923 and July 5, 1924, from Boston, Mass., to Fort Edward, N. Y., as unreasonable. Loss and damage claims are negligible. Wood Pulp is rated sixth class in the governing official classification. Fort Edward is on the D. & H, 55.5 miles north of Troy and 36.5 miles north of Mechanicville, N. Y. Over the short route the distance is 223 miles. B. & A., published a joint commodity rate of 22.5c which was also established by the B. & M, on July 26, 1923. Prior thereto the applicable rate was joint sixth class rate of 28.5c. Effective July 17, 1924, the rate on imported wood pulp was reduced to 21.5c via both routes. HELD, rate attacked unreasonable to extent it exceeded 20.5c, reparation awarded. International Paper Co. v. B. & M. R. R., 128 I. C. C. 466.

(3k) Rate on wood pulp, imported found unreasonable as compared with rate contemporaneously in effect on imported china clay, an analogous commodity. International Paper Co. v. B. & M., 128 I. C. C. 466, 468.

(3l) Complainant attacked rates charged on 36 cars of imported china clay shipped between Oct. 11, 1922, and Sept. 23, 1924, from Philadelphia, Pa., to Newton Falls, N. Y., as unreasonable. They moved over Reading to Newberry Jct., Pa., thence N. Y. C. to destination. Newton Falls is on a branch line of the N. Y. C. 46 miles from Carthage, N. Y. Charged sixth class rate of 30c prior to June 1, 1923 and 30.5c thereafter to Carthage plus sixth class proportional rate of 3c beyond. On April 9, 1925, a commodity rate of 28.5c was established. HELD, rate attacked unreasonable to extent it exceeded 28.5c reparation awarded. Newton Falls Paper Co. v. Reading Co. 128 I. C. C. 563.

(3m) Complainant attacked commodity rates charged on carloads of crushed stone shipped between Jan. 1, 1922 and Nov. 24, 1925, from Security, Md., to Best Gate, Md., and from Martinsburg, W. Va., to destinations in Maryland were unreasonable and unlawful. Security is on the main line of the W. M. 3 miles east of Hagerstown, Md. It is also on a branch line of the B. & O. 3.6 miles from Security Jct., Md., a point 1.5 miles south of Hagerstown. Martinsburg is on the main line of the B. & O. The destinations are on the W. B. & A. Charged on shipments moving over the W. M. at joint sixth class rate of $4.30. Effective Feb. 22, 1926, the B. & O. established a joint rate of $1.40 from Martinsburg and Security to the destinations. HELD, applicable rate over B. & O. $1.10, over W. M. unreasonable to extent it exceeded $1.40, reparation awarded. North American Cement Corp. v. W. M. Ry., 129 I. C. C. 90.

(3n) Complainant alleged that the rates charged on 23 cars of imported burlap, shipped between July 18, 1918 and July 19, 1919 from Pacific coast ports to Omaha, Neb., were unreasonable. Two carloads moved from Tacoma, Wash., five from San Francisco, Calif., and the remainder from Seattle, Wash., charged import rate of 85c, except that on one shipment from San Francisco a rate of 75c applied. Prior to June 25, 1918 an import rate of 55c from Pacific coast ports, blanketed to transcontinental groups from Denver, Colo., to Chicago, Ill., applied on burlap bagging to Omaha. On the date mentioned the import rate, in common with other import rates from the Pacific coast, was canceled. A class rate of $1.065 thereupon became applicable to Omaha, but on July 1, 1918 a blanket import rate of 85c was established. On May 29, 1919 this rate was reduced to 75c, and following the general increase of 1920 became $1. At present an import rate of

65c, minimum 50,000 pounds, to Omaha. HELD, rates assailed not unreasonable, complaint dismissed. Peters Mill Co. v. Director General, 129 I. C. C. 331.

(3o) Respondents proposed a revision in the rates applicable on imported iron and steel articles, in carloads, from Texas gulf ports to St. Louis, Mo., and Little Rock and Pine Bluff, Ark., from three of these ports to various destinations in Oklahoma and southern Kansas, and from two of these ports on most iron and steel articles, to Kansas City, Mo. An import commodity rate of 41.5c is now maintained on certain iron and steel articles, in carloads, from Texas gulf ports to St. Louis, Little Rock and Pine Bluff. Previous decision, Import Iron and Steel from Gulf ports, 115 I. C. C. 373 and 118 I. C. C. 482. ABSORPTION OF TERMINAL CHARGES AT PORTS. Terminal charges at the ports absorbed in connection with the present import rates including switching, wharfage, and carloading charges. Under the proposed rates only switching charges would be absorbed. There is nothing of record to indicate that carriers should be required to perform greater service for the same charge on import traffic than on domestic traffic between the same points except where necessary to avoid undue prejudice or preference. The services for which the terminal charges at the Texas ports accrue do not exisit with respect to domestic traffic. Very few domestic carload rates include car loading, one of the services for which the terminal charges apply. Respondents have justified the addition of reasonable terminal charges at the ports to the socalled domestic rates for application on import traffic from ship side provided no undue prejudice or preference results. EQUALIZATION OF TEXAS PORTS. The ports of Galveston, Houston and Texas City are equalized under the present import commodity rate of 41.5c to all destinations here considered, except Kansas City, and that to Little Rock, Pine Bluff and St. Louis this equalization includes all the Texas gulf ports. The ocean rates on the traffic are the same to Galveston and Houston and generally the same vessel calls at both ports. No sufficient justification appears for disturbance of the existing parity of the rail rates on import traffic from these ports. RATES ON PIPE WIRE NAILS ETC. From the Texas gulf ports to St. Louis, Little Rock, and Pine Bluff, from Galveston, Houston and Texas City to the intermediate destinations in Oklahoma and Kansas under consideration, and from Galveston and Houston to Kansas City, respondents propose to apply the socalled domestic commodity rate of 61c on pipe. An import commodity rate of 47.5c now applies on wire and nails from the Texas Gulf ports to Kansas City and no change is proposed in that rate but, subject to this exception, respondents proposed to apply the domestic class rates on wire and nails from the Texas gulf ports to the various other destinations under consideration. The import tariff naming the present commodity rates of 41.5c and 47.5c also provides import class rates to some of the destinations considered and, by alternative provision of the tariff, these class rates apply if lower than the commodity rates from and to the same points. HELD, suspended schedules not justified without prejudice to filing tariffs in accordance with conclusions hereinbefore reached. Import iron and steel articles, 129 I. C. C. 350.

(3p) Complainant alleged fifth class rate of 19.5c charged on carloads of imported vegetable fibers, from New York Lighterage, Manhattan Piers, N. Y., and Greenville Piers, N. Y., to Beverly, N. J., has been and is unreasonable. Beverly is on the Pennsylvania, 15.6 miles northeast of Philadelphia. Traffic moves from New York harbor points to Beverly via South Amboy, N. J., distance 84 miles. No special or expedited service is required; movement in considerable volume is uniform throughout the year; and claims for loss and damage are negligible. A rate of 17.5c was applicable on hemp from Long Island City, N. Y., distance 84 miles. HELD rate charged unreasonable to extent it exceeded 17.5c reparation awarded. Wall Rope Works v. Pennsylvania R. R., 129 I. C. C. 717.

(3q) K. C. S., M. P. and T. & N. O. proposed to establish an interstate rate of 38.5c on import and coastwise shipments of newsprint paper, in carloads from Lake Charles, La., to Shreveport, La. Short line distance is 183.9 miles. Short line distance from New Orleans to Shreveport is 304.2 miles. Present rate is fifth class 55c. The rate over lines of the other respondents, other than K. C. S. is a commodity rate

of 27c. By the schedules under suspension the K. C. S. proposed a commodity rate of 38.5c, 16.5c lower than the class rate, and the other respondents proposed to increase their present commodity rate by 11.5c to the same figure. No justification was offered for increasing the commodity rate of 27c. HELD, suspended schedules in so far as they effect a reduction over the K. C. S. has been justified, other respondents not justified. Newsprint paper from Lake Charles, 132 I. C. C. 543.

(3r) Complainant alleged that rates charged on 52 cars of imported dry quebracho extract shipped from New York to Waukegan, Ill., between June 11, 1924 and Dec. 11, 1925 were unreasonable and unduly prejudicial. Rated fifth class, which was charged. Commodity rates of 45, 43 and 40 were established over the standard route effective July 20, 1926 and over the National Dispatch and rail lake and rail routes effective Aug. 20, 1926. These are the present rates and the basis to which reparation is sought. HELD, rates assailed not unreasonable or unduly prejudicial. Complaint dismissed. Griess Pfleger Tanning Co. v. C. V. Ry., 132 I. C. C. 661.

(3s) Rates on imported burlap from Pacific coast points to Omaha, Nebr., found not unreasonable as compared with those contemporaneously in effect from Gulf and Atlantic ports; with import rates prescribed in 77 I. C. C. 78; 59 I. C. C. 570, on istle and nitrate of soda from Mexico border points and Atlantic ports, respectively; or with those prescribed in 57 I. C. C. 465, and other cited cases, on copra, manila hemp, unground pepper, and various other commodities between Pacific ports and eastern destinations. Peters Mill Co. v. Director General, 129 I. C. C. 331.

(3t) Addition of reasonable terminal charges at Texas ports to domestic rates for application on imported iron and steel articles from ship side, found justified, provided no undue prejudice results. Nothing of record indicates that carriers should be required to perform greater service for same charge on import traffic than on domestic traffic between same points except where necessary to avoid undue prejudice or preference. Here, services for which terminal charges at ports accrue do not exist with respect to domestic traffic and very few domestic rates include car loading, one of services for which terminal charges apply. Import Iron and Steel Articles, 129 I. C. C. 350, 353, 355.

(3u) Proposed import rates on iron and steel articles from Texas Gulf ports to St. Louis, Mo., and Little Rock and Pine Bluff, Ark., based on distance scale prescribed in 77 I. C. C. 473, in purported compliance with 115 I. C. C. 373; 118 I. C. C. 482, found not justified. While Houston objects to present equalization of Texas ports on ground that distances to various destinations are less from that port than from Galveston thus depriving it of its natural advantage of location, two ports named are and have been equalized as to import and export rates on various traffic; ocean rates are same to both ports; and no justification appears for disturbance of existing parity of rail rates on import traffic. See 101 I. C. C. 116. Import Iron and Steel Articles, 129 I. C. C. 350, 355, 356.

(3v) Proposed application of domestic commodity rate on imported pipe, wire, and nails from Texas ports to St. Louis, Mo., Little Rock and Pine Bluff, Ark. from Galveston, Houston, and Texas City, Tex., to intermediate destinations in Oklahoma and Kansas; and from Galveston and Houston to Kansas City, Mo., except on wire and nails to Kansas City, in purported compliance with 115 I. C. C. 373; 118 I. C. C. 482, found not justified. Domestic rates are higher than those under distance scale prescribed in 77 I. C. C. 473, and in 123 I. C. C. 203 (294), it was stated that a common rate should apply on staple articles in merchant-iron, structural-iron, and wire lists and same rates were prescribed therein on articles involved. Import Iron and Steel Articles, 129 I. C. C. 350, 356, 357.

(3w) Proposed restriction of fifth-class import rates on iron and steel articles from Texas Gulf ports to St. Louis, Mo., Little Rock and Pine Bluff, Ark., and various points in Oklahoma and Kansas, so as not to defeat application of import commodity rates established in purported compliance with 115 I. C. C. 373; 118 I. C. C. 482, found justified in so far as found necessary to give effect to bases of rates herein found reasonable. Tariff naming import commodity rates and class rates provides that latter shall apply if lower than former, and since in many cases class

rates are lower, restriction thereof is necessary in order to conform to fourth-section requirements and findings herein. Import Iron and Steel Articles, 129 I. C. C. 350, 357, 358.

(3x) Fifth-class rate on imported benzol from Eagle Pass, Tex., to Ivorydale, Ohio, a point within Cincinnati switching district, found unreasonable as compared with lower commodity rates contemporaneously in effect from near-by Texas producing points to Cincinnati and other northern markets; with rates on gasoline to Cincinnati; and to extent it exceeded lower combination consisting of lower commodity rate from Eagle Pass to St. Louis, subsequently established plus a contemporaneous commodity rate St. Louis to Cincinnati. Reparation awarded. Caldwell & Taylor v. C., R. I. & G., 129 I. C. C. 626.

(3y) Fifth-class rates on imported vegetable fibers, commonly known as hemp, sisal, istle, manila, gopalupore, varn, jute, and jute butts, from New York Lighterage, Manhattan Piers, N. Y., and Greenville Piers, N. J., to Beverly, N. J., found unreasonable as compared with import commodity rates on fibers from New York Harbor points to points in Massachusetts, New York, New Jersey, and Pennsylvania, with commodity rate on rope from Beverly to New York and to extent they exceeded lower contemporaneous rates on fibers from Long Island City, N. Y. Reasonable rates prescribed for future and reparation awarded. Wall Rope Works v. P. R. R., 129 I. C. C. 717.

IV. TARIFFS AND CONSTRUCTION.

§ 4. In General.

See Tariffs.

(a) Commission suspended schedules proposing increased rates for interstate transportation of papermaker's clay and scrap or waste paper and provided that use of such rates be deferred on interstate traffic pending hearing and decision. Terms "interstate transportation" and "interstate traffic" technically do not comprehend import traffic, i. e., foreign commerce, and carriers, so construing them, charged increased rates on imported clay and waste paper. Increased rates so assessed found unreasonable to extent they exceed rates on this traffic in effect immediately prior to date when the increases were made effective. Various Commodities between New England Points, 113 I. C. C. 44.

(b) On imported rattan furniture in bundles, moving from Seattle, Wash., to Cleveland, Ohio, no import c. l. rates were in effect and l. c. l. rates were assessed. Domestic rates provided minimum weights for cars of varying length but carriers elected to load this furniture in smaller cars. HELD: Domestic rates were applicable, and action of carriers in loading in smaller cars should not debar shipper from benefit of minimum on cars which presumably would have held shipments. Reparation awarded and original report 104 I. C. C. 255, reversed. Bailey Co. v. I. C., 118 I. C. C. 455.

(c) An importer of nitrate of soda, bought in Chile and brought from there in chartered ships, received delivery at Wilmington, N. C., which was his place of business. On arrival the nitrate was stored or delivered from the dock to purchasers to whom quantities had been resold; all contracts of resale providing for delivery at Wilmington. Purchasers, either from store or dock, reshipped by rail on new billing to various manufacturers of fertilizer or dealers to points both within and without the state. HELD that such reshipments were not in continuance of the foreign shipment, not being within the intention of the importer, whose purpose was fully subserved on delivery to him at Wilmington, but were new and independent movements, with which the importer had no concern, and that where such a reshipment was to a point within the state it was an intrastate shipment, and subject to established local rates. Seaboard Air Line Ry. Co. v. Lee, 14 Fed. (2d) 439.

(d) Second-class rate on games or toys, n. o. i. b. n., was assessed on imported mah-jongg sets. Contemporaneously lower import commodity rate applied on toys, in boxes or barrels (except as otherwise provided) viz: Games, not otherwise specified herein; Games, toy." Upon contention that the rates applied exclusively on toys, FOUND: While to some extent mah-jongg is played by children, it can not be denominated a toy, and since commodity rates must be applied strictly, only articles clearly comprehended within descriptive terms of such rates can be considered as removed from the classification. Here,

however, the abbreviation "viz" appears to include articles having similar characteristics but which do not come within general terms theretofore stated. Obviously item names rates on toy games, and also on games which can not be described as toy games, as any other interpretation would render meaningless descriptive term "Games, not otherwise specified herein." Rate assessed was therefore inapplicable. Reparation awarded. Paraffine Companies v. S. P., 128 I. C. C. 421.

V. ADVANCED RATES.

See Advanced Rates.

§5. In General.

(a) Proposed increased rate on imported iron and steel articles from New Orleans and other Gulf ports, excluding Texas Gulf ports, to St. Louis, and its restriction to lines east of Mississippi River, and proposed increased rates on those articles from New Orleans to Little Rock and Pine Bluff, Ark., designed for purpose of restoring domestic and import rates on this traffic to same level, found justified, nothing inherent in import traffic, as such, being shown which would entitle it to lower rates than domestic traffic. Import Iron and Steel from Gulf ports, 115 I. C. C. 373.

(b) Upon further consideration, former report, 115 I. C. C. 373, affirmed and proposed increased rate on imported iron and steel articles from New Orleans and other Gulf ports, excluding Texas Gulf ports, to St. Louis, and its restriction to lines east of Mississippi River, and proposed increased rates on those articles from New Orleans to Little Rock and Pine Bluff, Ark., found not justified. Import Iron and Steel from Gulf Ports, 118 I. C. C. 482.

(c) Upon further consideration, former report, 115 I. C. C. 373, affirmed and proposed increased rates on iron and steel articles, imported from Texas Gulf ports to St. Louis, to points in Oklahoma and Kansas, and to Little Rock and Pine Bluff, Ark., and proposed restriction of import class rates so that fifth-class rates will not apply on iron and steel articles from these points to the destinations involved, found not justified. Reasonable maximum rates from Texas Gulf ports prescribed for the future. Import Iron and Steel from Gulf Ports, 118 I. C. C. 482.

INDUSTRIAL RAILROADS

See Common Carrier; Divisions; Tap Lines.

INJUNCTIONS

See Advanced Rates §20; Courts §14; Finance Dockets §10 (a).

INSPECTION

See Bills of Lading §9½; Cars and Car Supply §7½; Classification §12¾, §16 (g); Express Companies §31; Facilities and Privileges §9¼; Loss and Damage §7½; Weights and Weighing §12.

INSULATED CARS

See Cars and Car Supply §9⅝; Facilities and Privileges §7½.

INTERCHANGE OF CARS

See Allowances; Cars and Car Supply §30; Switch Tracks and Switching; Tap Lines; Through Routes and Joint Rates.

INTERMEDIATE POINTS

See Long and Short Hauls §5, §6.

INTERSTATE COMMERCE

I. DETERMINATION OF STATUS.
- §½. In general.
- §1. Beginning and end of transit.
- §2. State shipment through another state.
- §3. Participation in interstate movement.

II. CONTROL AND REGULATION.
- §4. State.
- §5. United States.

CROSS REFERENCES

See Common Carrier; Crimes; Foreign Commerce §2; Gas and Electric Companies; Panama Canal Act; Pipe Lines; Through Routes and Joint Rates §19, §22; Transportation §11.

I. DETERMINATION OF STATUS.

§½. In General.

See Foreign Commerce §2; Import Traffic I.

(a) Whether or not a shipment is interstate must be determined by essential

character of the commerce, taking into consideration, among other things, the intention of party controlling movement of the traffic; and this must be ascertained from all of the pertinent facts, circumstances, and conditions, and not by mere billing or forms of contract. Hines Yellow Pine Trustees v. A., C. & Y. Ry., 109 I. C. C. 453, 456.

(b) Shipments moving from points in Maryland through the District of Columbia to other points in Maryland move in interstate commerce and are subject to commission's jurisdiction. Security Cement & Lime Co. v. B. & O., 113 I. C. C. 579, 580.

(c) By every fair test the transportation of this coal from mine to the upper lake ports is an interstate carriage, intended by the parties to be such. Lake Cargo Coal Rates, 1925, 126 I. C. C. 309, 313.

(d) Interstate shipments of oil from company's refineries by its own vessels to its storage plant, to be there stored and reshipped to substations and to customers at such times and in such quantities as business should demand, HELD terminated by such stoppage and storage, so that subsequent shipments from such plant to points within state were subject only to intrastate rates; the stoppage being in good faith. Standard Oil Co., v. Atlantic Coast Line R. Co., 6 Fed. (2d) 911; Same v. Seaboard Air Line Ry. Co., 6 Fed. (2d) 911.

(e) Interstate commerce, which begins when the articles are delivered to carrier for transportation, ceases when they have arrived at their destination, and are there held for final disposal or use. Fox Film Corporation v. Trumbull, Governor of Connecticut, 7 Fed. (2d) 715; American Feature Film Co., Inc., v. Same 7 Fed. (2d) 715.

(f) Interstate character of shipments of oil from oil company's refineries by its own vessels to its storage plant, to be there stored and reshipped to substations and customers, at such times and in such quantities as business should demand, HELD terminated by such stoppage and storage, so that subsequent shipments from such plant to points within state were subject only to intrastate rates, notwithstanding further movement was contemplated when shipment was originally made. Atlantic Coast Line R. Co., v. Standard Oil Co., of N. J. 12 Fed. (2d) 541.

(g) Shipper in good faith and for convenience of business has right to gather articles in interstate commerce at distributing points, and thereafter as demands arise ship articles in entirely separate and distinct movement, even though bulk is not broken, continuity of journey not perceptibly interrupted, nor articles transferred from original means of carriage. Standard Oil Co., of Ky., v. Atlantic Coast Line R. Co., 13 Fed. (2d) 633.

(h) Interstate movement of gasoline and oil, shipped into state from different points and there transferred to storage tanks, to be later shipped to different points in state, HELD to end on delivery of products to such storage tanks, and later shipment was intrastate, there being no question of bad faith in having delivery made at storage tanks. Standard Oil Co. of Ky. v. Atlantic Coast Line R. Co., 13 Fed. (2d) 633.

(i) Intent of shipper at time shipment was made is vital element in determining whether admittedly interstate movement ends at given point. Standard Oil Co., of Ky., v. Atlantic Coast Line R. Co., 13 Fed. (2d) 633.

(j) In determining whether or not freight movement is interstate or intrastate, court must look to essential nature of movement, and not merely to its accidents or isolated incidents. Standard Oil Co., of Ky. v. Atlantic Coast Line R. Co., 13 Fed. (2d) 633.

(k) Distribution of gasoline and oils from storage tanks, to which they are shipped in interstate commerce, to owner's service stations as needs of business demand, HELD local in character, as if made directly to consumer. Standard Oil Co., of Ky., v. Atlantic Coast Line R. Co., 13 Fed. (2d) 633, 634.

(l) Shipment of fuel oil from storage point within state HELD intrastate, though contracted to consumer before shipped to storage point from without state, where interstate shipment was ended for storage and safe-keeping until time of delivery, and no particular part of interstate cargo was intended for particular purchaser. Standard Oil Co., of Ky., v. Atlantic Coast Line R. Co., 13 Fed. (2d) 633, 634.

(m) Where shipment of automobiles in interstate commerce with title remaining in consignor was refused by consignee

and placed in warehouse by carrier in its own name, interstate character of shipment ceased, justifying state tax thereon despite Const. U. S. art. 1, § 8. The Columbia Motors Co., v. Ada County, (Idaho, 1926) 247 Pac. 786.

(n) Employment and service of railroad employe in water service department who fixed pumps and kept up wells on railroad at places where trains got water coming from Kansas and going into New Mexico, were in furtherance of interstate commerce. Chicago R. I. & G. Ry. Co., v. Bernnard, (Tex., 1925) 275 S. W. 505.

(o) When crude oil is pumped from tank steamers, which bring it into the state, into tank cars on the railroad tracks to be carried to the places to which it was originally intended by the shippers it should be taken, the last leg of the journey is not made an intrastate movement because a business agent of the shipper at the port of entry supervises the transshipment and rebilling of the commodity. State ex rel. Burr, State Railroad Com'rs, v. Seaboard Air Line Ry. Co., (Fla., 1926) 109 So. 656.

(p) The mere existence of business agencies of oil companies at ports of entry, to which crude oils and gasoline are brought in interstate movement, is not the determining factor which converts the movement, which began in interstate commerce, into an intrastate movement. State ex rel. Burr, State Railroad Com'rs, v. Seaboard Air Line Ry. Co., (Fla., 1926) 109 So. 656.

(q) The cause and purpose of the delay of the petroleum products, brought into the state in interstate movement, at the ports of entry to which they are first consigned are the factors by which it may be determined whether reshipments of the products at the ports of entry from storage tanks and warehouses, into which the products have been stored, is or is not a continuation of the original interstate movement. State ex rel. Burr, State Railroad Com'rs, v. Seaboard Air Line Ry. Co., (Fla., 1926) 109 So. 656.

(r) Where oil is transported in tank steamers from other states or countries to Florida ports and there unloaded into permanent storage tanks, owned and maintained by the shippers, for the purpose of reshipment as orders are received, and not for the purpose of promoting the safe or convenient transit in continuous interstate movement, such reshipment from permanent storage tanks at the ports to interior Florida points is intrastate and not interstate transportation. State ex rel. Burr, State Railroad Com'rs, v. Seaboard Air Line Ry. Co., (Fla., 1926) 109 So. 656.

(s) Change in method of transportation by floating to carriage on vessel does not affect continuity of interstate passage actually intended by parties. Hughes Bros. Timber Co., v. State of Minnesota, 47 Sup. Ct. 170.

(t) Owner's intention to ultimately send logs out of state, or preparatory gathering at depot for such purpose, does not place them in interstate commerce until movement to another state has actually begun. Hughes Bros. Timber Co., v. State of Minnesota, 47 Sup. Ct. 170.

(u) Imposition of direct burden on interstate commerce by state is restrained by force of the commerce clause, and must necessarily fall, regardless of its purpose. Public Utilities Commission of Rhode Island v. Attleboro Steam & Electric Co., 47 Sup. Ct. 294.

(v) Test of validity of state regulation is not character of general business of company, but whether particular business which is regulated is essentially local or national in character. Public Utilities Commission of Rhode Island v. Attleboro Steam & Electric Co., 47 Sup. Ct. 294.

(w) Sale of electric current generated in one state to purchaser in another state, with delivery at the state line, is a transaction in "interstate commerce." Public Utilities Commission of Rhode Island v. Attleboro Steam & Electric Co., 47 Sup. Ct. 294.

(x) To require that regulating body of state be advised of proposed change seriously affecting transportation conditions is not such obvious interference with interstate commerce as, on application for preliminary injunction, should be assumed beyond state's power. Lawrence v. St. Louis-San Francisco Ry. Co., 47 Sup. Ct. 720.

(y) Mere immediate reshipment of traffic which has moved interstate is not sufficient to give it interstate character where reshipment moves intrastate. New England Brick Co. v. B. & M., 129 I. C. C. 607, 609.

(z) Shipments of potatoes from points within state to seaboard, some of which were already sold for freign delivery, and all of which were intended for export, held not intrastate commerce entitled to lesser intrastate rates. Chandler v. Pennsylvania R. Co., 9 Fed. (2d.) 703.

(aa) As respects freight rates, interstate movement of fuel oil shipped into state on annual contracts with consumers in state, executed before shipment. HELD, not to end on delivery of oil into storage tanks at port of entry, where title passed from producer, to await further shipment to consumers as needed. Atlantic Coast Line R. Co. v. Standard Oil Co. of Kentucky, 16 Fed. (2d.) 441.

(bb) Intent of those engaged in interstate commerce determines whether interstate commerce ends at particular point. Atlantic Coast Line R. Co. v. Standard Oil Co. of Kentucky, 16 Fed. (2d.) 441, 442.

(cc) As respects freight rates, interstate movement of gasoline and kerosene. HELD, not to end when temporarily stored in tanks at port of entry awaiting distribution to shipper's "bulk stations" in interior points, from which distributed to consumers, notwithstanding title did not pass from producer until delivery at entry port. Atlantic Coast Line R. Co. v. Standard Oil Co. of Kentucky 16 Fed. (2d.) 441, 442.

(dd) Interstate movement of gasoline and kerosene, as respects freight rates. HELD, to end on delivery into storage tanks at port of entry, where 13 per cent, of quantity received into tanks was used locally. Atlantic Coast Line R. Co. v. Standard Oil Co. of Kentucky, 16 Fed. (2d.) 441, 442.

(ee) Interstate movement of lubricating oil, as respects freight rates. HELD, to end at port of entry in state from which it was to be distributed to local consumers. Atlantic Coast Line R. Co. v. Standard Oil Co. of Kentucky, 16 Fed. (2d.) 441, 442.

§1. Beginning and End of Transit.

See Through Routes and Joint Rates §19; Transportation §11.

(a) Under the provisions of the commerce clause of Const. U. S. art. 1, § 8, railway companies may be regulated by Congress if they engage in interstate commerce, even though they may also carry on intrastate commerce. Missouri-Kansas-Texas R. Co., of Texas v. Mars, (Tex., 1927) 294 S. W. 941.

§2. State Shipment Through Another State.

(a) Where freight passed from Southern Illinois into Indiana and back to Illinois, it was "interstate commerce," and act to regulate commerce was applicable. Michael v. United States, 7 Fed. (2d) 865.

§3. Participation in Interstate Movement.

See Through Routes and Joint Rates §3½, §6½.

(a) When certain commodities, like petroleum and petroleum products, which are transported in bulk, come into the state on an interstate movement, whether the subsequent movements of such products from the receiving point in the state to other points in the state are movements in interstate or intrastate commerce must be determined by the essential character of the commerce, and not by the billing or forms of contracts. State ex rel. Burr., State Railroad Com'rs, v. Seaboard Air Line Ry. Co., (Fla., 1926) 109 So. 656.

(b) Where owner of pulp wood, in which buyer had acquired qualified interest by partial payment, agreed to float timber from place of piling for delivery on vessels for interstate shipment, the shipment was in interstate commerce from time it was placed afloat, precluding state taxation thereof. Hughes Bros. Timber Co., v. State of Minnesota, 47 Sup. Ct. 170.

(c) The Commission is without jurisdiction to prescribe a rate for the future from a point in the United States through a foreign country to a point in the United States. Montello Granite Co. v. M. St. P. & S. S. M. Ry., 129 I. C. C. 427, 429.

(d) Mere immediate reshipment of traffic which has moved interstate is not sufficient to give it interstate character where reshipment moves intrastate. New England Brick Co. v. B. & M., 129 I. C. C. 607, 609.

II. CONTROL AND REGULATION.

See Control and Regulation.

§4. State.

See Courts V; Crimes XI; Discrimination §11; Evidence §35; Express Companies §1½; Loss and Damage §9; State Rates and Regulation; Transportation §9, §11.

(a) Although state may legislate on matters affecting interstate commerce that are local and limited in character and operation, such power must be so exercised as not unreasonably to affect interstate traffic. State v. Caplan, (Vt., 1927) 135 Atl. 705, 708.

(b) Order of Rhode Island Public Utilities Commission, fixing rates on electric current generated within state and sold to distributor in another state, HELD invalid, as imposing a burden on interstate commerce, although regulation of such rates would necessarily benefit local consumers of electricity furnished by same company. Public Utilities Commission of Rhode Island v. Attleboro Steam & Electric Co., 47 Sup. Ct. 294.

(c) State may, in public interest, reasonably control and regulate use of its highways, so long as it does not directly burden or interfere with interstate commerce. Interstate Busses Corporation v. Holyoke St. Ry. Co., 47 Sup. Ct. 298.

§5. United States.

See Constitutional Law.

(a) Judicial decisions recognize paramount authority of Congress to regulate interstate and foreign commerce, and in certain of them uphold direct assertions of its supreme authority or exercise thereof through commission as against conflicting exercises of a State's police power. See 219 U. S. 467 and other cited cases. M.-K.-T. v. K. C. T., 104 I. C. C. 203, 221.

(b) Provision of federal Constitution covering interstate commerce is not self-executing, and, when subject affecting interstate commerce is local and limited in character and operation, state may legislate thereon until Congress assumes control over it. State v. Caplan, (Vt., 1927) 135 Atl. 705, 707.

(c) Commerce clause of federal Constitution is not a limitation upon proper and reasonable exercise of police power abiding in state. State v. Caplan, (Vt., 1927) 135 Atl. 705, 708.

(d) Power of Congress to regulate commerce with Indian tribes is not terminated by mere fact that allotments of land have been made and citizenship conferred on Indians. Browning v. United States, 6 Fed. (2d) 801.

(e) In determining validity of exercise of power by Congress to regulate commerce with Indian tribes, circumstances surrounding such exercise should be considered. Browning v. United States, 6 Fed. (2d) 801.

(f) Power of Congress under Const. art. 1, §8, to regulate commerce with Indian tribes is continuing, and cannot be addicated, and covers traffic and intercourse, not only with tribes, but with members thereof, though within limits of state. Browning v. United States, 6 Fed. (2d) 801.

(g) Power of Congress to regulate commerce between states is complete, exhaustive, and paramount and not subject to interference by any state or municipality, in view of Const. U. S. art. 6, par. 2, and article 1, §8, cl. 3. St. Louis Connecting R. Co., v. Blumberg, (Ill., 1927) 156 N. E. 298, 299.

(h) In passenger's suit against railroad involving interstate commerce, pertinent federal statutes and decisions of federal courts determining their applicability control over inconsistent decisions of state courts. Franklin v. Southern Pac. Co., (Calif., 1927) 256 Pac. 214.

(i) Interstate shipments are governed by rules of law laid down by federal courts. Walters v. Kansas City Southern Ry. Co., (Mo., 1925) 266 S. W. 491.

(j) Interstate Commerce Act, § 12, as amended by Act. Cong. Feb. 28, 1920, § 415 (U. S. Comp. St. § 8576), enacted pursuant to power of Congress under Const. U. S. art. 1, § 8, vested Interstate Commerce Commission with complete and exclusive control of everything pertaining to regulation of interstate commerce, and state must surrender its jurisdiction and right of regulation whenever question involved is within purview of Commission's powers. Louisville & N. R. Co., v. Brashear, (Ky., 1926) 289 S. W. 1094.

(k) Paramount federal power over interstate commerce should not be exerted unnecessarily, hastily, or harshly; the demand of comity and courtesy, as well as law, requiring that, whenever possible, conflict with state authorities and resultant irritation be avoided. Lawrence v. St. Louis-San Francisco Ry. Co., 47 Sup. Ct. 720.

(l) The fact that regulation, within the acknowledged power of Congress to enact, may affect the ports of one state more than those of another, cannot be construed as a violation of any constitutional provision. Galveston Commercial Asso. v. G. H. & S. A. Ry., 128 I. C. C. 349, 378.

(m) It is impossible to decree dissolution for intrastate traffic as violative of state law, of combination for general traffic of competing railroads, without directly affecting and upsetting interstate traffic, and thus trespassing on federal subject, as to which Congress has legislated. Continental Securities Co. v. Michigan Central R. Co., 16 Fed. (2d.) 378.

INTERSTATE COMMERCE COMMISSION

I. JURISDICTION.
§ 1. In general.

II. PRIMARY JURISDICTION.
§ 2. In general.
§ 3. Finality of findings.

III. OVER PROCEDURE.
§3½a. In general.
§ 4. Examiners.
§ 5. Orders.
§ 6. Witnesses and correspondence.
§ 6½. Investigations in general.

IV. OVER RAILROADS.
§ 6½a. In general.
§ 6¾. Documents and correspondence.
§ 7. Capitalization.
§ 8. Physical valuation.
§ 8¼. Earnings.

V. OVER RATES.
§ 8½. In general.
§ 9. Interstate.
§ 9½. Government guaranty.
§ 10. Intrastate.
§ 10½. Territorial.
§ 11. Suspension.
§ 12. Undercharge.
§ 13. Unpublished rate.
§ 13½. Government control or guaranty.

VI. TO AWARD DAMAGES.
§ 14. In general.

VII. APPEALS TO COURT.
§ 15. In general.
§ 16. Concurrent jurisdiction.
§ 17. Validity of orders.
§18. Decisions as precedents.

CROSS REFERENCES

See Adjacent Foreign Country; Advanced Rates §21; Control and Regulation; Government Control; Jurisdiction of Commission; Procedure Before Commission.

I. JURISDICTION.

See Accounting §1; Adjacent Foreign Country; Advanced Rates §1, §2, §9, §20; Alaska; Allowances I; Bills of Lading I; Blanket Rates §1; Branch Lines §6; Bridges and Tolls; Classification §2; Control and Regulation; Courts; Demurrage §1, §1½; Differentials §½; Discrimination §2; Divisions §1; Electric Lines I; Equalization of Rates §1; Export Rates and Facilities §1; Express Companies §1; Facilities and Privileges §1; Foreign Commerce §1; Government Control; Interstate Commerce §2; Lighterage §1; Long and Short Hauls §2; Loss and Damage §4; Overcharges; Passenger Fares and Facilities; Precooling; Procedure Before Commission; Proportional Rates §1; Reconsignment §9; Reduced Rates §1;Refrigeration §1; Released Rates §1; Reparation §1; Routing and Misrouting §1; Storage §1; Substitution of Tonnage; Switch Tracks and Switching §2; Tap Lines §2; Tariffs §1; Terminal Facilities §1; Through Routes and Joint Rates §1; Transportation §1½; Undercharges §1; Water Carriers §2; Weights and Weighing §2.

§1. In General.

(a) It is not within commission's province to prescribe rates which appear desirable to it, but to ascertain whether existing rates are unlawful and, if so, to prescribe lawful rates in lieu thereof. Morrell & Co. v. N. Y. C., 104 I. C. C. 104, 134, 135.

(b) The commission should not undertake to usurp the office of a court and

pass upon merits of issues raised in court proceedings. M.-K.-T. v. K. C. T., 104 I. C. C. 203, 226.

(c) Carriers may accord rates which commission may not require and their doing so does not of necessity afford a criterion for testing propriety of their refusal to accord similar treatment to other commodities, under other conditions, or in other territories. See 23 I. C. C. 432, 437. Western Paper Makers' Chem. Co. v. A. A. R. R., 109 I. C. C. 133, 137.

(ca) Carriers may accord rates which commission may not require and their doing so does not of necessity afford a criterion for testing propriety of their refusal to accord similar treatment to other commodities, under other conditions, or in other territories. See 23 I. C. C. 432, 437. Western Paper Makers' Chem. Co. v. A. A. R. R., 109 I. C. C. 133, 137.

(d) Upon contention that the regulation of train service for transportation of property is not one of the powers delegated to the commission by Congress; further, that by legislative enactment, the state has prescribed the minimum train service that may be maintained on all railroads within its borders, and that the sole jurisdiction of such service is in the state. HELD: Under section 1, paragraphs (10) (11), and (14), and section 15 of the act, jurisdiction to regulate the supply of trains for transportation of property has been vested in the commission, and where there is a conflict of jurisdiction similar to that here considered the state law must give way to the Federal statute. See 225 U. S. 501 and 267 U. S. 404. Train Service on Northern Pacific, 112 I. C. C. 191, 192, 195.

(e) Upon contention that commission has no authority to regulate the usual freight service maintained on any railroad and that its jurisdiction over train service is to be exercised only in times of emergency. HELD: Under section 1 (10) and (11) of the act the duty of carriers with respect to "car service" is continuous, and it is their duty to furnish safe and adequate car service at all times, the terms being used with equal force. It can not be said that duty of furnishing safe car service is in force only in times of emergency, and the same is true with respect to term adequate. Moreover, section 1 (14) and section 15 impose the duty upon carriers to furnish an adequate "supply of trains" for transportation of property, and confers authority upon commission to determine and prescribe just, reasonable, and equitable practice to be followed in respect thereto. Train Service on Northern Pacific, 112 I. C. C. 191, 192, 195.

(f) Claims for refund of transportation charges upon a "commercial transaction" or under terms of contract of sale are not subject to commission's jurisdiction, the basis of sale being a thing apart from the transportation. Such claims are for a court of law if refunds can not be voluntarily obtained from carriers. Briggs & Turivas v. Director General, 112 I. C. C. 313, 315.

(g) The commission has only such jurisdiction as is specifically conferred upon it by statute, and the two-year limitation of action provision as set forth in section 16 (3) of the act sets a limit to its powers, as distinguished from a rule of law for its guidance in reaching conclusions. See 246 U. S. 638, 642. Pfister & Vogel Leather Co. v. E. R. R., 112 I. C. C. 659, 660.

(h) A shipper may rightfully assail, and commission may properly condemn, unreasonable or otherwise unlawful rates regardless of their present use. Nebraska State Ry. Comm. v. A. & W., 113 I. C. C. 467, 469.

(i) The act contemplates that carriers shall receive just and reasonable compensation for transportation service rendered by them. It does not contemplate that they shall participate in transportation without any charge, and it certainly does not permit or require such transportation at less than no charge. Such a result is wholly repugnant to the letter and spirit of the law, and when it is sought to be accomplished it is to be condemned. The commission's power under the law is ample to deal with cases of this kind and commission would be derelict in its duty if it did not intervene to prevent unwarranted dissipation of carrier revenue regardless of where the responsibility lies. Standard Oil Co. v. A., T. & S. F., 113 I. C. C. 597, 605.

(j) The commission must deal with freight charges as such and not as part of the price of a commodity. Duluth Boiler Works v. A. T. & S. F. Ry., 118 I. C. C. 161, 164.

(k) Fact that transportation charges have not been paid by a shipper does not

deprive commission of jurisdiction to pass upon lawfulness of such charges. Western Bridge & Construction Co. v. St. L.-S. F., 118 I. C. C. 607, 608.

(l) The commission can not attempt to go beyond transportation charges as such to determine equities of parties under sales contracts. Sinclair Crude Oil Co. v. A., T. & S. F. 126 I. C. C. 73, 80.

(m) Upon contention that in an I. & S. proceeding the only issue before commission is as to lawfulness of suspended schedules which commission is called upon either to condemn or approve; that commission has no authority to approve a basis intermediate between the existing rates and basis sought to be made effective; and that where the proposed schedules are disapproved a finding that present rates are too low is "irrelevant," "gratuitous," and "not binding on anyone," HELD: This contention is wholly untenable and in conflict with numerous decisions of the commission and with specific provisions of the act. See Section 15 (7) of the act; 20 I. C. C. 307, 314, and other cited cases. Lignite Coal from North Dakota, 126 I. C. C. 243, 245.

(n) It is no part of commission's duty to canvass and compare wage scales and other expenses and incidents of industrial operation, or the social or economic conditions surrounding a particular industry with a view to adjusting the rate structure to them. Lake Cargo Coal Rates, 1925, 126 I. C. C. 309, 359.

(o) Under Interstate Commerce Act Feb. 4, 1887 (24 Stat. 379), as amended (U. S. Comp. St. § 8563 et seq.), and particularly sections 12-15 (U. S. Comp. St. §§ 8576, 8581-8583), Interstate Commerce Commission is corporate agency of federal government, with administrative and quasi judicial powers for the regulation and control of interstate commerce, possessing broad powers of investigation, regulation, and control over transportation companies within the scope of its powers, but beyond such powers having no authority, except such as may be necessarily incident to its specific powers, and it is not a federal court under the Constitution, nor does it exercise judicial powers. Davis, Director General of Railroads, v. Rochester Can Co., 221 N. Y. S. 666.

(p) Where there is conflict of jurisdiction between state court and Interstate Commerce Commission as to building and acquiring certain railroad, power to determine whether state action will obstruct interstate commerce is in United States as incident of power to regulate such commerce. People v. Illinois Cent. R. Co., (Ill., 1927) 155 N. E. 841.

(q) The action of the Interstate Commerce Commission is legislative or administrative in making rates and charges. The order of the Commission fixing rates and charges for transportation has the effect of legislative acts, and is the law determining the rights of the parties involved in the controversy. Chicago, R. I. & P. Ry. Co. v. Howe-McCurtain Coal & Coke Co., (Okla. 1926) 247 Pac. 986.

(r) Under the Interstate Commerce Acts, if the lawfulness or unlawfulness of the charge or service depends upon its being reasonable or unreasonable, just or unjust, the determination of the matter involves the trial of an issue of fact. The Interstate Commerce Commission is the exclusive trier of the question of fact so made. If there then remains a question among the parties, it goes to the court, for protection and enforcement as a judicial matter. Chicago, R. I. & P. Ry. Co. v. Howe-McCurtain Coal & Coke Co., (Okla., 1926) 247 Pac. 986.

(s) Interstate Commerce Commission, acting under Congress' paramount authority, occupies entire field pertaining to interstate comerce thereby ousting state jurisdiction to control intrastate transportation in manner resulting in unjust or unreasonable discrimination against interstate commerce. Atlantic Coast Line R. Co. v. Commonwealth State Corporation Commission (Va., 1926) 133 S. E. 883.

(t) Under Interstate Commerce Act, § 13, subd. 2, as amended by Act June 18, 1910, § 11 (Comp. St. § 8581), a complaint is not a prerequisite to exercise of jurisdiction by commission, which on its own motion may investigate and act on any matter which might be subject of complaint. United States v. New York Cent. R. Co., 47 Sup. Ct. 130.

(u) Price regulation is not matter within the province of commission. Sugar Between Louisiana and Texas Points 128 I. C. C. 309, 313.

(v) As an agency of Congress the Commission must assume that in laying statutory duties upon the Commission it has not transcended its powers. Gal-

veston Commercial Asso. v. G. H. & S. A. Ry., 128 I. C. C. 349, 379.

II. PRIMARY JURISDICTION.

See Actions at Law; Courts.

§2. In General.

(a) Owner of railroad entirely within state, which is leased to company operating interstate railroad, HELD to be engaged in "interstate commerce" and under authority of Interstate Commerce Commission, rather than Illinois Commerce Commission, in view of Callaghan's Ann. St. 1924, c. 111a, par. 109, as regards right of state courts to interfere with certificates and orders of Interstate Commerce Commission in condemnation proceedings. St. Louis Connecting R. Co., v. Blumberg (Ill., 1927) 156 N. E. 298, 299.

(b) Complaint to effect that rules and orders of Interstate Commerce Commission are unreasonable or unfair or result of unlawful or unreasonable practice or unjust discrimination or undue prejudice to shippers would involve an administrative question over which Interstate Commerce Commission alone would have jurisdiction. Midland Valley R. Co. v. Barkley, (Ark., 1927) 291 S. W. 431.

(c) Whether there are sufficient grounds to authorize the Interstate Commerce Commission to grant an order permitting the purchasers of a railroad company to assume liability upon a judgment of the sold-out corporation HELD a mixed question of law and fact, the determination of which was within the exclusive jurisdiction of the Commission. Missouri-Kansas-Texas R. Co., of Texas, v. Mars, (Tex. 1927) 294 S. W. 941.

(d) Where legality of rate depends on a controverted question of fact, it must be determined initially by Interstate Commerce Commission, though construction of tariff not dependent on extrinsic evidence or disputed fact is question which court may consider in first instance. J. C. Famechon Co. v. Northern Pac. Ry. Co. 11 Fed. (2d) 312.

(e) Whenever rate, rule. or practice is attacked as unreasonable or discriminatory, preliminary resort must be had to Interstate Commerce Commission. J. C. Famechon Co. v. Northern Pac. Ry. Co., 11 Fed. (2d.) 312.

(f) Courts may not exert original authority over subjects primarily within jurisdiction of Interstate Commerce Commission. J. C. Famechon Co. v. Northern Pac. Ry. Co., 11 Fed. (2d.) 312.

(g) In railroad's action to collect special tariff charge, Interstate Commerce Commission HELD not to have exclusive preliminary jurisdiction, precluding jurisdiction of court. Oyler v. Cleveland C. C. & St. L. Ry., Co.,16 Fed. (2d.) 455.

(h) The Interstate Commerce Commission is not negislative body, and cannot make or modify the law, having power only to execute and enforce. W. A. Hover & Co. v. Denver & R. G. W. R. Co., 17 Fed. (2d.) 881.

§3. Finality of Findings.

See Allowances §3; Procedure Before Commission §11.

(a) Finding of Interstate Commerce Commission of reasonableness of a rate cannot be pronounced arbitrary or unreasonable, if there is any competent evidence in its support. Western Paper Makers' Chemical Co., v. United States, 7 Fed. (2d) 164.

(b) Rail rates established by Interstate Commerce Commission on rosin from points south of the Ohio river to Kalamazoo and Grand Rapids, Mich., HELD not unjustly discriminatory as against such cities, or violative of the "long and short haul" clause of Interstate Commerce Act, § 4, as amended by Act Feb. 28, 1920, § 406, though rate from Gulf points was higher to Kalamazoo than to Chicago, and higher to Grand Rapids than to Milwaukee. Western Paper Makers' Chemical Co., v. United States 7 Fed. (2d) 164.

(c) The determination whether rate is unreasonable or discriminatory is a question on which the finding of Interstate Commerce Commission is conclusive, if supported by substantial evidence, unless there was some irregularity in proceeding or some error in application of rules of law. Western Paper Makers' Chemical Co., v. United States, 46 Sup. Ct. 500.

(d) Finding of Interstate Commerce Commission that rate is unjustly discriminatory, if supported by substantial evidence, is conclusive, unless there was

some irregularity in the proceeding, or error in application or rules of law. Virginian Ry. Co. v. United States. United States v. Virginian Ry. Co., 47 Sup. Ct. 222.

(e) Orders of Interstate Commerce Commission are final, unless beyond power which it could constitutionally exercise, or beyond its statutory power, or based on a mistake of law. Berdwin-White Coal-Mining Co. v. United States, (Pa., 1925) 9 Fed. (2d.) 429.

(f) Unless order of Interstate Commerce Commission is not within its powers, its reasonableness is administrative question, for Commission to decide, though it cannot so arbitrarily exercise its discretion as to transcend its conferred power. Berwind-White Coal-Mining Co. v. United States, (Pa., 1925) 9 Fed. (2d.) 429, 430.

(g) In determining validity of order of Interstate Commerce Commission court will consider only whether Commission acted within its power, and not the expediency or wisdom of the order, or whether on like testimony it would have made a similar ruling. Berwind-White Coal-Mining Co. v. United States, (Pa., 1925) 9 Fed. (2d.) 429, 430.

(h) Findings of Interstate Commerce Commission are prima facie true, and order of Commission, though reviewable, will not be examined, further than to determine whether there is substantial evidence to support it. Berwind-White Coal-Mining Co. v. United States, (Pa., 1925) 9 Fed. (2d.) 429, 430.

III. OVER PROCEDURE.

See Procedure Before Commission.

§3½a. In General.

(a) The authority of the Commission to reopen a case is not affected by whether or not an order was entered in connection with the decision. Lignite coal from North Dakota, 126 I. C. C. 243, 245.

IV. OVER RAILROADS.

§6½a. In General.

(a) The act contemplates that carriers shall receive just and reasonable compensation for transportation service rendered by them. It does not contemplate that they shall participate in transportation without any charge and it certainly does not permit or require such transportation at less than no charge. Such a result is wholly repugnant to the letter and spirit of the law, and when it is sought to be accomplished it is to be condemned. The commission's power under the law is ample to deal with cases of this kind and commission would be derelict in its duty if it did not intervene to prevent unwarranted dissipation of carrier revenue regardless of where the responsibility lies. Standard Oil Co. v. A. T. & S. F., 113 I. C. C. 597, 605.

(b) Contention that the word "practice" as used in the act relates only to matters between shippers and carriers and not to questions affecting handling of traffic between carriers, not sustained. The word as used in paragraphs (6) and (11) of section 1 and paragraph (1) of section 15 of the act clearly comprehends within its meaning questions relating to handling of traffic between carriers. C., R. I. & P. v. B. & O., 113 I. C. C. 681, 683.

§8¼. Earnings.

See Government Guaranty.

(a) Section 15a of the act requires or authorizes commission to fix remunerative reasonable rates in circumstances which embrace honest, efficient, and economical management as a condition of limitation. Commission should have information in that respect which will aid an effective exercise of its duty and authority, but it is not commanded to insure or empowered to enforce such management, responsibility for which at all times rests upon carriers. M.-K.-T. v. K. C. T., 104 I. C. C. 203, 224.

V. OVER RATES.

§8½. In General.

(a) Section 15a of the act requires or authorizes commission to fix remunerative reasonable rates in circumstances which embrace honest, efficient, and economical management as a condition or limitation. Commission should have information in that respect which will aid in effective exercise of its duty and authority, but it is not commanded to insure or empowered to enforce such management, responsibility for which at all times rests upon carriers. M.-K.-T. v. K. C. T., 104 I. C. C. 203, 224.

(b) The commission does not subscribe to proposition that where freight

rates are producing, on the property devoted to freight service, the rate of return which has been fixed as fair, the commission can as a matter of law authorize no increases in such rates to correct deficiencies in aggregate earnings growing out of inability of passenger business to meet its full share of revenue burden. Freight and passenger services are both essential and both may be subjected to reasonable rates and charges to produce the fair aggregate return authorized by law even though thereby a higher rate of return may be exacted from one than the other. Revenues in Western District, 113 I. C. C. 3, 22, 23.

(c) Provision in section 15a directing commission to initiate, modify, establish, or adjust rates so that carriers may earn a fair return, does not relieve carriers from primary duty of initiating rates. That function belongs to management and not to regulation. It is the right and duty of carriers to take steps necessary to correct improper rate relations as they may be found to exist, and to supply revenue deficiencies by initiating suitable rates. Revenues in Western District, 113 I. C. C. 3, 38.

(d) Commission's decision involving rates on a particular class of traffic can not properly be predicated solely upon an attempt to average existing rates and maintain revenues of carriers. It is commission's duty to determine what are maximum reasonable rates and to prescribe such rates, whether the effect be to increase or reduce carriers' earnings. Fertilizers between Southern Points, 113 I. C. C. 389, 419.

(e) In the judgment of the commission its authority under section 15a in the exercise of its power to prescribe just and reasonable rates to initiate, modify, establish or adjust rates is not a mere transitory authority to establish in the first instance a general rate structure calculated to produce a fair return, but is a continuing authority to see that such a rate structure shall not be undermined and its purpose thwarted by new rates, either increases or reductions, proposed by particular carriers for the purpose of augmenting the traffic on certain lines, or on certain descriptions of traffic, or for the immediate and special benefit of particular persons, companies, firms, corporations, localities or particular descriptions of traffic, in disregard of the more general and seemingly inevitable consequences of such rates newly proposed. To upset or seriously to menace a general structure lawfully established suffices to make proposed rates calculated to effect such disruption unreasonable and unlawful. Grain and grain products, 115 I. C. C. 153, 164.

(f) Failure of a complaint to allege a violation of section 6, or that charges were inapplicable, does not affect jurisdiction of commission to determine applicable charges. See 102 I. C. C. 355, 357. Western Bridge & Construction Co. v. St. L.-S. F., 118 I. C. C. 607.

(g) Under transportation act, 1920, the commission has power where warranted by record to prescribe specific rates to remove undue prejudice. See 59 I. C. C. 662; 107 I. C. C. 219; 113 I. C. C. 629. Chicago Gravel Co. v. A., T. & S. F., 118 I. C. C. 633, 647.

(h) It is not the province of the commission to require carriers to meet rates of water carriers by the maintenance of rates lower than reasonable maxima. Consolidated Southwestern Cases, 123 I. C. C. 203, 319.

(i) It is not the province of the commission to require circuitous or more expensive routes to meet the rates of shorter or less expensive routes. However, it may give consideration to the rates of other routes and attempt to devise an adjustment which on the whole will provide reasonable rates and at the same time will, as nearly as may be, permit the various routes to engage in the traffic where they so desire. Consolidated Southwestern Cases, 123 I. C. C. 203, 374.

(j) Power to prescribe minimum rates should be sparingly exercised and only in cases where it clearly appears that its exercise is necessary in order that substantial public injury may be avoided. The commission does not desire to interfere with the initiative of railroad management in the reduction of rates unless compelling reasons affecting the public interest so require. Ex-Lake Iron Ore from Chicago to Granite City, 123 I. C. C. 503, 504.

(k) Rates that may lawfully be required must in principle be high enough to cover all of the cost that may fairly be allocated to the service plus at least some margin of profit. See 236 U. S. 585; 236 U. S. 605. But it has always been

recognized that the burden of transportation may reasonably be adjusted with some regard to the value of service; in other words, that the higher-grade, more valuable commodities may be required to pay a greater margin of profit than those that are of lower grade and less value. The substance of the Hoch-Smith resolution is that agricultural products affected by depression shall in this respect be included in the class of most favored commodities, to such extent, at least, as may be "compatible with the maintenance of adequate transportation service." Grain and Products, 122 I. C. C. 235, 264.

(l) In the past the commission has had occasion to consider at times what may be called "out-of-pocket" cost, but while it has been contended that carriers might voluntarily, in certain situations, establish rates covering only such cost, it has never been seriously contended that commission could lawfully require this to be done. Rates that commission may lawfully require must in principle be high enough to cover all cost that may fairly be allocated to the service plus at least some margin of profit. See 236 U. S. 585; 236 U. S. 605. The commission says "in principle" because only rarely is definite information available as to such cost, and in practice rates must often be fixed largely by comparison with other rates. Of course, the other sections of the act must also be borne in mind in determining lowest lawful rates in a particular situation. American Nat'l Live Stock Asso. v. A., T. & S. F., 122 I. C. C. 609, 617, 618.

(m) The commission is without authority to pass upon lawfulness of intrastate rates where the only issues raised in complaint are violations of sections 1, 2, and 3 of the act. Chicago Fire Brick Co. v. C. & N. W., 123 I. C. C. 164.

(n) Section 15 of the act provides that the Commission is given authority to determine the "lawfulness" of a "new" rate, whether it be increased or decreased. The duty of specifying in what respect and to what extent the new rate will be lawful or unlawful is not laid upon the Commission, although it "may" make any order which would be proper in a proceeding pending upon complaint. Lignite coal from North Dakota, 126 I. C. C. 243, 245.

(o) Upon contention that commission has no jurisdiction over rates on traffic moving to Lake Erie ports for transshipment by vessel, upon theory that because of lack of control over the water carriers which handle traffic beyond the ports, commission has no authority to deal with or prescribe proportional rates on traffic over which it does not have jurisdiction for the entire movement from points of original shipment to point of ultimate destinations, HELD: Where transportation to the port is interstate or foreign in character, it is subject to commission's jurisdiction under general provisions of section 1 of the act, irrespective of the mode of transportation beyond the port. Lake Cargo Coal Rates, 1925, 126 I. C. C. 309, 313, 314.

(p) In fixing minimum rates on specific commodity from different points of origin to common destination, Interstate Commerce Commission may consider going rates on same commodity in same or different territories, relation of rates to destinations, revenue per car mile and ton mile, variations in traffic density, and pecularities in transportation which affect general transportation costs. Jefferson Island Salt Mining Co., v. United States (Interstate Commerce Commission, Intervener) 6 Fed. (2d) 315.

(q) Commission is authorized by the act to inquire into management of all common carriers subject to its provisions and is directed to keep informed as to manner and method by which same is conducted. In exercise of its power to prescribe rates yielding a fair return it must also satisfy itself with respect to honesty, efficiency, and economy of management. Construction and Repair of Railway Equipment, 128 I. C. C. 323, 342, 343.

(r) In the judgement of the Commission its authority under section 15a in the exercise of its power to prescribe just and reasonable rates to "initiate, modify, establish or adjust" rates is not a mere transitory authority to establish in the first instance a general rate structure calculated to produce a fair return, but is a continuing authority to see that such rate structure shall not be undermined and its purpose thwarted by new rates, either increases or reductions, proposed by particular carriers for the purpose of augmenting the traffic on certain carrier lines, or on certain descriptions of traffic, or for the immediate and special benefit of particular

persons, companies, firms, corporations, localities, or particular descriptions of traffic, in disregard of the more general and seemingly inevitable consequences of such rates newly proposed. To upset or seriously to menace a general structure lawfully established suffices to make proposed rates calculated to effect such a disruption unreasonable and unlawful. Absorption of drayage charges, 128 I. C. C. 405, 412.

(s) The Commission can not require carriers to reduce their rates for the purpose of meeting water competition, and it will not undertake to adjust rates from competing producing territories in order to equalize manufacturing costs. Woodstock Lumber Co. v. B. & A. R. R., 129 I. C. C. 255, 260.

(t) Commission has no power to compel defendants to publish a rate less than reasonable in order to meet a commercial exigency. Woodstock Lumber Co. v. B. & A. R. R., 129 I. C. C. 255,

(u) Nothing in section 15 operates to prevent the Commission, on complaint, from prescribing a reasonable maximum rate to be used as the basis of determining the charges to be assessed over an existing route. The Commission is not requiring the establishment of a new through route and it is not prescribing joint rates. Colorado Portland Cement Co. v. A. T. & S. F. Ry., 132 I. C. C. 671, 677.

§9½. Government Guaranty.

See Government Guaranty.

(a) The act specifically provides that rate of return determined by commission to be fair "shall be uniform for all rate groups or territories which may be designated by the commission." Paragraph (3) of section 15a. Before the commission changes its finding as to the fair rate of return, general announcement should be given of the intention to consider that subject at hearings. Revenues in Western District, 113 I. C. C. 3, 19.

§ 10. Intrastate.

See State Rates and Regulations.

(a) Upon contention that the regulation of train service for transportation of property is not one of the powers delegated to the commission by Congress, further, that by legislative enactment, the State has prescribed the minimum train service that may be maintained on all railroads within its borders, and that the sole jurisdiction of such service is in the State. HELD: Under section 1, paragraphs (10), (11), and (14), and section 15 of the act, jurisdiction to regulate the supply of trains for transportation of property has been vested in the commission, and where there is a conflict of jurisdiction similar to that here considered the State law must give way to the Federal Statute. See 225 U. S. 501 and 267 U. S. 404. Train Service on North Pacific, 112 I. C. C. 191, 192, 195.

(b) The order instituting this proceeding invited discussion of the question of the jurisdiction of the commission to approve, after Aug. 31, 1920, a reduction in rates or an award of reparation by state authority on intrastate traffic which moved during the period March 1 to Aug. 31, 1920, the guaranty period. Whatever doubt may have existed before, as to whether an award of reparation was a reduction of a rate within the meaning of section 208a of the act, must be taken to have been settled by the Supreme Court; and it seems clear that the Supreme Court regarded an award of reparation in intrastate traffic which moved during the guaranty period as being, in effect, a reduction of a rate prior to Sept. 1, 1920, regardless of the date on which the decision was rendered. HELD, the authority of the commission to approve awards of reparation on intrastate shipments which moved during the guaranty period did not expire on Aug. 31, 1920 but it was given authority to approve such awards upon traffic which moved during the guaranty period or thereafter. The phrase "prior to Sept. 1, 1920" as used in section 208 a of the transportation act, 1920, apparently is not to be construed as prescribing a time limitation within which it was authorized to act, but as fixing the period as to which its approval was necessary to a reduction in rates whether made during the guaranty period by the naming of lower rates for the future, or accomplished after the expiration of the period by way of reparation on shipments which moved during that period. The commission adheres to its conference ruling of March 13, 1922 and previous decisions to that extent that they hold that section 208 a of the transportation act, 1920, does not authorize it to award reparation on intrastate shipments which

moved during the guaranty period. It now holds however, that it has authority under that section to approve after Aug. 31, 1920 awards of reparation by state authority on intrastate traffic which moved during the guaranty period and the conference ruling will be modified accordingly. It is of the opinion that the power to approve necessarily implies the power to approve in whole or in part, or to disapprove, but does not include the power to enlarge the award. Reparation on Intrastate Traffic, 122 I. C. C. 443.

(c) Interstate Commerce Act, § 13, pars. (3), (4), as amended, and section 15a, as added by Act. Feb. 28, 1920, §§416, 422 (U. S. Comp. St. Ann. Supp. 1923, §§ 8581, 8583), give Interstate Commerce Commission power to regulate intrastate commerce only so far as necessary efficiently to regulate interstate commerce under Congress' paramount power, and state authorities may deal with intrastate rates on general level which commission has found fair to interstate commerce. Atlantic Coast Line R. Co., v. Commonwealth State Corporation Commission, (Va., 1926) 133 S. E. 883.

(d) Intention to interfere with state function of regulating intrastate rates is not to be presumed, and, where there is serious doubt whether Interstate Commerce Commission's order extends to intrastate rates, doubt will be resolved in favor of state power. Arkansas Railroad Commission v. Chicago, R. I. & P. R. Co., 47 Sup. Ct. 724.

(e) Orders of Interstate Commerce Commission relative to discrimatory character of intrastate rates for carriage of cottonseed and products in Southwestern states must be read together, to determine whether rate in Arkansas was declared discriminatory. Arkansas Railroad Commission v. Chicago, R. I. & P. R. Co., 47 Sup. Ct. 724.

§11. Suspension.

See Advanced Rates §1 (4); Suspension of Rates.

(a) The position is taken that, in an investigation and suspension proceeding, the only issue before the Commission is as to the lawfulness of the suspended schedules; that the Commission has no authority to approve a basis intermediate between the existing rates and the basis sought to be made effective; and that as the proposed schedules were not approved, the finding that the present rates were too low was consequently "irrelevant," "gratuitous" and "not binding on anyone." But this view is wholly untenable and in conflict with specific provisions of the act and numerous decisions of the Commission. Lignite coal from North Dakota, 126 I. C. C. 243, 244.

(b) Upon contention that commission has no power to reopen an I. & S. proceeding where its order requiring the cancellation of a proposed schedule is a final order; that when such order is complied with "nothing remains for consideration," and nothing "which is the subject of a lawful order" can be before commission, HELD: The commission's authority to re-open a case is not affected by whether or not an order was entered in connection with the decision. See 39 I. C. C. 523, 535. Lignite Coal from North Dakota, 126 I. C. C. 243, 245.

(c) Upon contention that in an I. & S. proceeding the only issue before commission is as to lawfulness of suspended schedules which commission is called upon either to condemn or approve; that commission has no authority to approve a basis intermediate between the existing rates and basis sought to be made effective; and that where the proposed schedules are disapproved, a finding that present rates are too low is "irrelevant," "gratuitous," and "not binding on anyone," HELD: This contention is wholly untenable and in conflict with numerous decisions of the commission and with specific provisions of the act. See Section 15 (7) of the act; 20 I. C. C. 307, 314, and other cited cases. Lignite Coal from North Dakota, 126 I. C. C. 243, 245.

(d) As a prerequisite to the commission's approval of rates under section 1 of the act it is only necessary for carriers to show, as it is in all suspensions proceedings where the commission approves rate changes, that the rates are within the limits of reasonableness, i. e., not more than reasonable maxima nor less than reasonable minima. Federated Metals Corp. v. C. R. R. Co. of N. J. 126 I. C. C. 703, 709.

§13. Unpublished Rate.

See Evidence §60; Unpublished Rates.

(a) The Commission has jurisdiction to examine and pass upon the alleged unlawfulness of the factors beyond Dawkins even though the Kentucky Ry., which

publishes the component from Royalton to Dawkins, which is not attacked, is not a party. Dawkins Lumber Co. v. C. & O. Ry., 129 I. C. C. 415, 418.

VI. TO AWARD DAMAGES.

§14. In General.

See Reparation.

(a) The commission is without jurisdiction to award punitive or exemplary damages. Harden v. Pullman Co., 120 I. C. C. 359, 360.

VII. APPEALS TO COURT.

§15. In General.

See Courts.

(a) Through order of Interstate Commerce Commission is invalid, unless supported by evidence, reviewing court cannot weigh testimony as to reasonableness of rates or wisdom in establishing them. Commission's judgment as to such matters being final. Jefferson Island Salt Mining Co. v. United States (Interstate Commerce Commission, Intervener) 6 Fed. (2d) 315.

(b) The courts are without power to interfere with an order of the Interstate Commerce Commission, made within its jurisdiction and not arbitrary nor unreasonable. Chicago, R. I. & P. Ry. Co. v. United States, 6 Fed. (2d) 888.

(c) It is no defense to an action against a railroad company on an award of damages made to a shipper by the Interstate Commerce Commission for overcharges that the shipper included the excessive rate paid in the prices charged its customers. Wyoming Sugar Co. v. Davis, Director General of Railroads and Agent, 7 Fed. (2d) 622.

(d) In an action on an award of damages made by the Interstate Commerce Commission to a shipper for overcharges, the fact that at the time the railroad was being operated under federal control, under Act March 21, 1918, § 10 (Comp. St. 1918, Comp. St. Ann. Supp. 1919, § 3115¾j), does not deprive plaintiff on recovery of the right to interest and cost and the attorney's fee provided by Interstate Commerce Act, § 16, subd. 2 (Comp. St. §8584). Wyoming Sugar Co., v. Davis, Director General of Railroads and Agent, 7 Fed. (2d) 622.

(e) Judicial Code, § 207 (Comp. St. § 993, giving District Court jurisdiction of suits to enjoin, annul, or suspend "any order" of Interstate Commerce Commission, does not include orders relating to practice or precedure of Commission, and gives court no jurisdiction of suit to enjoin Commission from proceeding under socalled order practically reopening valuation proceedings in respect to items not expected to by railroad. New York, O. & W. Ry. Co. v. United States (Interstate Commerce Commission, Intervener) 14 Fed. (2d) 850.

(f) The enforcement and protcetion terstate Commerce Commission is a juof the lawful rights created by the Indicial function for courts of competent jurisdiction. Chicago, R. I. & P. Ry. Co., v. Howe-McCurtain Coal & Coke Co., (Okla., 1926) 147 Pac. 986.

(g) Shipper, suing to annual order of Interstate Commerce Commission permitting one railroad to acquire control of another system, and not alleging any direct legal injury, except as might arise out of change of conditions in respect to transportation, unless the order definitely related to transportation, HELD without a proper cause of complaint, unless the order definitely related to transportation within meaning of Act Oct. 22, 1913 (Comp. St. §994). Home Furniture Co., v. United States, 46 Sup. Ct. 545.

(h) Order of Interstate Commerce Commission permitting acquisition of control of one railroad system by another HELD an order relating to transportation, suit to set aside which, under Act Oct. 22, 1913 (Comp. St. § 994), was required to be brough in district of residence of party on whose petition order was made. Home Furniture Co., v. United States, 46 Sup. Ct. 545.

(i) Action of District Court, staying enforcement of order of Interstate Commerce Commission pending an appeal from a decree dismissing bill in suit to enjoin enforcement, HELD unwarranted by the facts. Virginian Ry. Co., v. United States. U. S. v. Virginian Ry. Co. 47 Sup. Ct. 222.

(j) To justify stay of enforcement of order of Interstate Commerce Commission pending appeal from decree sustaining order, it must appea that District Court entertains serious doubt as to correctness of decree, or that decision depends on question of law on which there is conflict among courts of the several circuits, or unless for another special reason order of Commission ught not to become operative until Supreme Court

has considered its validity. Virginian Ry. Co., v. United States. United States v. Virginian Ry. Co. 47 Sup. Ct. 222, 223.

(k) That decree of District Courts sustaining order of Interstate Commerce Commission was not unanimous is not alone ground for staying enforcement of order pending appeal. Virginia Ry. Co., v. United States. United States v. Virginian Ry. Co., 47 Sup. Ct. 222, 223.

(l) Stay of enforcement of order of Interstate Commerce Commission pending appeal in injunction suit is not a matter of right, even if irreparable injury might otherwise result. Virginian Ry. Co., v. United States. United States v. Virginian Ry. Co. 47 Sup. Ct. 222, 223.

§17. Validity of Orders.

See Courts §5, §16a.

(a) While an order of the Interstate Commerce Commission fixing rates is invalid, unless supported by evidence, District Court cannot weight evidence of the reasonableness of rates or wisdom of establishing them; such subjects being finally committed to judgment and discretion of Commission, when acting within its powers. Western Paper Maker's Chemical Co. v. United States 7 Fed. (2d) 164.

(b) In an action against a carrier on an award of damages, made to a shipper by the Interstate Commerce Commission because of overcharges, the order of the Commission is prima facie evidence of the facts therein found. Wyoming Sugar Co. v. Davis, Director General of Railroads and Agent, 7 Fed. (2d) 622.

(c) Order of Interstate Commerce Commission, regular on its face, may be set aside if, on facts found, it is confiscatory and in violation of constitutional prohibition against taking of property without due process of law, or if authority has been exercised in unreasonable manner. Berwind-White Coal-mining Co. v. United States, (Pa., 1925) 9 Fed. (2d.) 429.

§18. Decisions As Precedents.

See Previous Decisions of Commission.

(a) When a given situation has been fully considered and deliberately passed upon, that decision ought not to be disregarded and the question kept open indefinitely unless good cause is shown for the adoption of a different course. American Door & Mfg. Co. v. B. & O. R. R., 122 I. C. C. 471, 472.

(b) Findings of the Interstate Commerce Commission are made by law prima facie true. Western Paper Maker's Chemical Co. v. United States, 7 Fed. (2d) 164.

INTERVENERS

See Claims §5¾; Procedure Before Commission §10 (3); Reparation §24.

INTOXICATING LIQUORS

See State Rates and Regulations.

(a) Whether sellers sold lemon and orange extracts containing alcohol under circumstances from which they might reasonably deduce buyer's intention to use them for purposes illegal under Volstead Act, tit. 2, § 4 (U. S. Comp. St. § 10138½b), HELD for jury, in action against guarantors of purchase price. Furst v. Shaws, (Ala., 1926) 110 So. 299.

(b) Where buyer's guarantors claimed that sales of extracts containing alcohol were for beverage purposes, refusing to charge that sale was legal, in absence of notice of buyer's intent to make such use, was reversible error; "notice" being equivalent to "under circumstances from which the seller might reasonably deduce" unlawful intention, found in Volstead Act, tit. 2, § 4 (U. S. Comp. St. § 10138½b.) Furst v. Shaws, (Ala., 1926) 110 So. 299.

JUNCTION POINT RATES

See Advanced Rates §8½a (h); Cars and Car Supply §14½, §23½; Routing and Misrouting §5½.

(a) Combination rates on coal from certain mines in the New River district of West Virginia on the C. & O. to interstate destinations on or via the Virginian Ry., and from mines on the Virginian to eastern interstate destinations on or via the C. & O., found not unreasonable, discriminatory, or unduly prejudicial as compared with rates accorded other mines similarly situated which, by trackage agreements or otherwise, have the benefit of the district rate on or via either line. Rates sought are not shown to be necessary or that it would be in the public interest to open the markets served by either the Chesapeake or the Virginian to shippers on the other line. Ragland Coal Co. v. V. Ry., 115 I. C. C. 147.

(b) Complainant, Coal Co., and Ballard & Thompson, a corporation owning

a single track of railroad which connects the coal mine with the main line of the D. & R. G. W. at Thompson, Utah, 5 miles, alleged that the carload rates from Thompson on coal originating at Sego destined to western Colorado and Utah east of Castle Gate, Utah, were and are unreasonable; that the rates to Grand Jct., Colo., were unduly prejudicial when compared with rates from Somerset, Colo.; that the rates from Thompson to California, Nevada and Utah west of Castle Gate were unreasonable and when compared with rates from Rock Springs, Wyo., unduly prejudicial; that the practice of defendants in publishing district rates from mines on branch and independent lines in the Castle Gate district and not publishing rates from Sego was and is unduly prejudicial and unreasonable; and that failure of defendants to maintain the track of Ballard & Thompson, perform the train service from Sego to Thompson and grant an allowance sufficient to repay the interest on the capital invested in the Ballard & Thompson has damaged complainant. The distance from Thompson to destinations west of Castle Gate is 94 miles greater than the average distance from mines within that group. During federal control the rates from Thompson to these destinations were a differential of 10c over Castle Gate. The rates from the Rock Springs district in southern Wyoming, although for a somewhat longer haul, were generally the same as those from the Castle Gate district. HELD, assailed rates from Thompson during the period of federal control were not unreasonable except to destinations on the Nevada Northern, W. P. from Salduro to Winnemucca, and L. A. & S. L. from Leamington to Los Angeles. Complainant bore only the 10c differential of Thompson over Castle Gate, which was not unreasonable. Complainant has not proved damage by any undue preference of Rock Springs. Reparation denied. Present rates from Thompson to Nevada and California west of Castle Gate not unreasonable. Ballard & Thompson is owned by complainant American Fuel Co., and although said to be a common carrier, it owns no equipment, publishes no tariffs and files no annual report with the Commission. The traffic handled over its line has been and now is exclusively coal traffic shipped by complainant. Since the hearing it filed an application for a certificate of convenience and necessity for authorization to become a common carrier which was denied, 72 I. C. C. 644. This complainant was not and is not a common carrier, but was and is a plant facility. The record does not show that complainant's competitors in the Castle Gate group shipped, or are likely to ship, coal to eastern Utah and western Colorado. Complainant's mine is the only one in this territory which is not reached by the tracks of a common carrier. The D. & R. G. W. does not grant an allowance to any mine in the Castle Gate district, nor does it operate a plant facility for any mine within that district. It applies the main line rates from all mines located on branch or independent lines in the Castle Gate district. There is nothing in the record to indicate that the compensation for this gathering service demanded by defendants was unreasonable, separately considered. HELD, failure of defendants to publish junction points rates on coal from complainants mines not unreasonable but unduly prejudicial in that the D. & R. G. W. for the K. & H. performs the gathering service without any charge in addition to the junction point or group rate. HELD, refusal of defendants to pay interest on complainant's investment in the B. & T. not in violation of the act. If the D. & R. G. W. continues to perform the service over the B. & T. it will be expected to do so under proper tariff authority. American Fuel Co. v. A. T. & S. F. Ry., 123 I. C. C. 101.

(c) Upon contention that practice of carriers in publishing junction-point rates from coal mines located on branch and independent lines and not publishing such rates from complainant's mine which is connected with main line by its plant-facility track, is unreasonable, HELD: Complainant had option of hauling its coal by wagon or truck to rails of a common carrier; of constructing its own rails and furnishing its own equipment and motive power to so move it; or of asking for and obtaining the service of a common carrier in gathering its coal, and having selected latter course it should pay for it. Moreover, compensation demanded for this gathering service, separately considered, is not unreasonable. American Fuel Co. v. A., T. & S. F., 123 I. C. C. 101, 112.

(d) Practice of carriers in according junction-point rates to mines located on branch and independent lines, even

though performing the gathering service themselves, while contemporaneously failing to accord same rates and services to a mine which is connected with its line by a plant-facility track, is clearly a difference in treatment under substantially similar circumstances and conditions which comes within the inhibition of section 3. While service over private or plant-facility tracks by a common carrier is neither compelled nor prohibited under the act, to furnish or withhold it being within the discretion of carrier, in either event the statutory inhibition against discrimination or undue prejudice must be observed. American Fuel Co. v. A., T. & S. F., 123 I. C. C. 101, 112.

(e) Where a carrier elects to perform service of gathering coal from mines located on private or plant-facility tracks, it should publish tariffs to cover such service, section 1 (3) of the act providing that "the term 'transportation' shall include * * * all services in connection with receipt * * * of property transported," and section 6 providing that no carrier shall engage in transportation as defined in the act unless rates, fares, and charges shall have been filed and published. American Fuel Co. v. A. T. & S. F., 123 I. C. C. 101, 113.

JURISDICTION OF COMMISSION

See Accounting §1; Adjacent Foreign Country; Advanced Rates §1, §2; Allowances §1, §2; Arbitration; Bills of Lading §1; Blanket Rates §1; Branch Lines §6; Bridges and Tolls §1; Cars and Car Supply IA; Classification §2; Control and Regulation; Courts; Demurrage §1; Discrimination §2; Divisions §1; Equalization of Rates §1; Export Rates and Facilities §1; Express Companies §1; Facilities and Privileges I; Foreign Commerce I; Government Control; Interstate Commerce Commission I, II; Lighterage §1; Long and Short Hauls §2; Loss and Damage §4; Panama Canal Act; Passenger Fares and Facilities §1; Proportional Rates §1; Reconsignment §9; Reduced Rates §1; Refrigeration §1; Released Rates §1, §4; Reparation I; Routing and Misrouting §1; Special Contracts §4 (1); State Rates and Regulation; Storage §1; Switch Tracks and Switching §1, §2; Tap Lines §1, §2; Tariffs §1; Telephone and Telegraph Companies §3½; Terminal Facilities §1; Through Routes and Joint Rates §1; Transportation §1½; Undercharges §1; Unpublished Rates; War Taxes; Water Carriers §2.

KELLY RULE

See Live Stock Shipments (i).

KNOCKED-DOWN SHIPMENTS

See Classification §4½, §5.

LAKE-CARGO RATES

(a) Lake-cargo rates are in the nature of proportional rates, and commission has frequently prescribed such rates on a lower basis than corresponding local rates. Lake Cargo Coal Rates, 1925, 126 I. C. C. 309, 361.

LEASE

See cars and Car Supply §11½; Common Carriers §2; Finance Dockets §3; Gas and Electric Companies (b); Warehouses.

(a) Carrier's action in leasing warehouse space and track facilities in its Pittsburgh produce yards to the Union Fruit Auction Co., for unloading, displaying, and selling at auction fruit and vegetables, while refusing to accord like use of same property to the Independent Fruit Auction Co., not shown to result in any violation of interstate commerce act or other statute administered by the commission. A carrier is free to grant an exclusive lease of such property to anyone it elects, whether shipper or not. See 199 U. S. 279, and other cited cases. This general rule is subject to exception, however, that carrier may not lease its property in such a manner as will result indirectly in a violation of some section of the act or related acts, for in such instances the commission has indirect authority over the lease. See 73 I. C. C. 673, 682. Prior proceedings 38 I. C. C. 165; 95 I. C. C. 87. Andrews Bros. Co. v. P. R. R., 123 I. C. C. 733.

(b) Complainant alleged that defendants refusal to lease to it a section of a certain building owned by them at Atlanta, Ga., while leasing similar sections to complainants competitors, resulted in unjust discrimination. The building in question, owned and maintained by defendants, and located on their private property, was designed as a place of business for produce dealers, and is

leased to a number of such dealers for their exclusive use. Each dealer has a section where he receives interstate and intrastate carload shipments of produce and sells to other dealers and to the public. Railroad tracks run alongside and the cars are switched to and from the respective dealers sections. Complainants lease expired during federal control, but a second lease was arranged which ran until Dec. 31, 1923. Prior to the expiration of the second lease complainant was notified that a renewal would not be made and that it would have to vacate the property on that date. Produce Row offers many advantages. Its facilities save its tenants drayage and promote efficient handling of the produce. If complainant is compelled to go elsewhere in Atlanta for a business location, it may have great difficulty in competing with the dealers which continue to occupy sections in Produce Row. Leading case Andrews Bros. v. P. R. R. 123 I. C. C. 733. HELD, defendants refusal to lease to complainant a section of Produce Row has been shown to result in unjust discrimination or other violation of the act, complaint dismissed. Williams Thompson Co. v. A. & W. P. R. R., 126 I. C. C. 417.

(c) Following 123 I. C. C. 733, refusal of carriers to lease to complainant a section of a certain building owned by them at Atlanta, Ga., for the sale of produce, while leasing similar sections to its competitors, FOUND not discriminatory, unduly prejudicial, or otherwise in violation of the act. Williams-Thompson Co. v. A. & W. P. 126 I. C. C. 417.

(d) Cars delivered on tracts alongside dock space leased by shipper held not "on or about" leased premises, within clause of lease whereby lessee assumed risk of loss by fire "on or about said leased premises," so as to exempt carrier from liability loss by fire; "on or about" meaning anywhere or everywhere on, but not outside of, locus. Pillsbury Flour Mills Co., v. Erie R. Co., (1926) 216 N. Y. S. 486, 487.

(e) Upon investigation by commission on its own motion, FOUND: That leasing of respondent's marine repair yard and floating equipment to a private concern; compensation paid such concern for lightering, towing, and shifting, including the furnishing of free coal for such transfer of its freight in New York Harbor; and expenditures under contracts with a private concern in violation of the Clayton Act, the officers of which concern are directly associated with respondent corporation, were not only in conflict with "honest, efficient, and economical management and reasonable expenditures for maintenance" and repugnant to sound business methods, but were also not in the interest of efficient and economical management as required by section 15a of the act. Construction and Repair of Railway Equipment, 128 I. C. C. 323.

(f) Commission instituted an investigation into and concerning all matters relating to the arrangement by which the marine repair yard and certain floating equipment of the Erie Railroad and subsidiaries, respondent, were leased; the reasonableness of the compensation paid to contractors for performing lightering, towing, shifting of vessels, and fire protection of water front property in New York harbor and repairs to floating equipment; and the names of all persons who receive directly or indirectly such compensation or the benefits thereof. This report primarily relates to dealings between the respondent and the three corporations, the Phoenix Transit Company, the Hudson Shipbuilding & Repair Co., and the International Marine Welding Co. The report also deals with the pecuniary interests of officials and employees of the respondent in the capital stock, profits, or transactions of these three companies and whether or not the charges or allowances paid or made by respondent to them were unreasonable and excessive. The contracts and agreements with these three companies relate to the leases to the Phoenix Company of respondents marine repair yard at Weehawken, N. J., 13 steam tugs, and 5 steam lighters; the arrangement with the Phoenix to perform all work incidental to the shifting and transferring of freight for respondent in New York harbor; and in addition thereto, repairs to respondents floating equipment by the Hudson, Phoenix and International. While the record does not contain all data necessary for an exact computation in dollars and cents of the total loss incurred by respondent by reason of excessive expenditures resulting from the lease and operation of the marine yard equipment, tug boats, and steam lighters, the facts with respect to rental, repairs, wages, shifting, free coal,

and comparative costs of operation are no less conclusive as to the improvident and improper character of the arrangement. The Commission is authorized by the act to inquire into the management of all common carriers subject to its provisions and are directed to keep ourselves informed as to the manner and method by which the same is conducted. In the exercise of this power to prescribe rates which will yield a fair return it must also satisfy itself with respect to the honesty, efficiency and economy of management. The Commission can not, therefore, disregard transactions such as these which, made under the circumstances and conditions, are not only in conflict with "honest, efficient and economical mangement and reasonable expenditures for maintenance" but are repugnant to sound business methods and in some cases at least repugnant to good conscience. Construction and Repair of Ry. Equipment 128 I. C. C. 323.

LEGAL RATE

See Advanced Rates §5 (7½), §19¼; Classification V, §20, §22; Commodity Rates II, §3, §4; Demurrage §15½; Distance Rates §2; Evidence §13 (3); Facilities and Privileges §15, §18; Long and Short Hauls §5, §6¾; Overcharges; Proportional Rates I; Rail-And-Water Rates; Reconsignment §5; Tariffs §14, §18; Through Routes and Joint Rates §22.

LEGALITY OF RATES

See Absorption of Charges §5½; Advanced Rates §19¼; Allowances IV, §10; Blanket Rates II; Divisions IV; Proportional Rates III; Reconsignment I; Reduced Rates II; Released Rates III; Restricted Rates; Special Contracts II; Tap Lines §7; Tariffs §14.

LIGHTERAGE

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
II. CHARGES.
§2. In general.
§3. Reasonableness and discrimination.
III. ALLOWANCES.
§4. In general.
IV. THROUGH ROUTES AND JOINT RATES.
§5. In general.
V. OBLIGATION TO FURNISH.
§6. In general.
VI. TARIFFS AND CONSTRUCTION
§7. In general.
VII. REPARATION.
§8. In general.

CROSS REFERENCES

See Allowances §8 (4); Car Ferry; Floatage; Long and Short Hauls §4½ (a); Towage.

II. CHARGES.

§ 2. In General.

(a) The shipper or receiver of lighterage freight obtains, generally speaking, all the service that a shipper of freight through the pier station does, and in addition a service involving a further handling of freight to and from lighters and the use of lighters to move it. Generally speaking, where shipper or consignee is located on the water front, the lighterage rate saves him cost of cartage to or from the rail stations. Colgate & Co. v. N. Y. C., 112 I. C. C. 573, 577.

§ 3. Reasonableness and Discrimination.

See Discrimination; Reasonableness of Rates.

(a) Rates on soap from complainant's pier at foot of Sussex Street, Jersey City, N. J., within lighterage limits of Greater New York, to various New England destinations, found not unreasonable or unduly prejudicial as compared with lower rates from freight stations, piers, and shipping points on Manhattan Island and Brooklyn, N. Y. A finding of undue prejudice would require a showing of substantial similarity of transportation conditions, not here shown, in addition to a competitive relationship and while cost of transporting complainant's shipments is greater by substantial amounts than cost of transporting those from Manhattan and Brooklyn, the present differences between assailed rates and those from Manhattan and Brooklyn are not shown to be greater than differences in transportation con-

ditions warrant. Colgate & Co. v. N. Y. C., 112 I. C. C. 573.

(b) Complainant objected to figures of carriers purporting to show cost of performing lighterage service as being incomplete, lacking in detail, and of such character as to leave not only a wide margin of possible error, but a wide opportunity for difference of opinion. HELD: While cost figures without the details upon which those figures are based are open to serious criticism, the lack of detail goes to weight to be given cost study and not to its relevancy. Motion to strike the study from the record denied. Colgate & Co. v. N. Y. C., 112 I. C. C. 573, 578.

(c) Class rates on barrel shooks from Rahway, N. J., to New York Harbor, which entail lighterage service, found not unreasonable as compared with other rates from and to same points including lighterage, on various commodities differing in transportation and other characteristics, or with rates for comparable distances on lumber and articles taking same rates, including barrel shooks, which do not include such service. Assailed rates compare favorably with commodity rates for similar distances from a number of New Jersey points to destinations on Long Island and South Brooklyn over routes which entail movement by car float across the Harbor. Hamilton v. P. R. R., 113 I. C. C. 723.

(d) Aggregate of express rate to Jersey City, N. J., plus Erie Railroad's floatage charge beyond, applicable to shipments of fruits and vegetables, n. o. s., from points in California, Washington, Oregon, and Idaho to Piers 20 and 21, New York, found unreasonable as compared with lower rates contemporaneously in effect to various Atlantic coast destinations and to extent it exceeded rate found reasonable in original report 81 I. C. C. 87, from California points. Rates from the Northwest and California were formerly the same, as floatage charges on shipments from both origin points were absorbed by the express company, and record does not justify increases resulting from cancellation of such absorptions. Reasonable rate prescribed for future and reparation awarded. Finding in original report above cited, affirmed. Amer. Fruit & Veg. Shippers Asso. v. Amer. Ry. Exp. Co., 128 I. C. C. 651.

VI. TARIFFS AND CONSTRUCTION.

See Tariffs.

§7. In General.

(a) Shipments of machinery and paint from Cleveland, Ohio, to Long Island City, N. Y., intended for lighterage delivery, were billed to local address of consignee which was not a specific station on the tracks of any carrier, its location not being shown in any tariff or billing book. Tariff governing lighterage service contained specific provision to effect that "all shipments requiring lighterage delivery must be receipted to 'New York lighterage' and billed to Greenville Piers or Manhattan Piers, N. J." Failure of complainant to specify lighterage delivery on bills of lading resulted in demurrage, storage and other charges and subsequent reconsignment of shipments. HELD: Extra expenses incurred as result of complainant's initial mistake found applicable and not unreasonable. Brown Hoisting Machinery Co. v. P. R. R., 115 I. C. C. 218.

LIMITATION OF LIABILITY

See Bills of Lading IV; Cars and Car Supply VII; Courts §15; Express Companies XII; Loss and Damage §9, §10 (1) (2), §11; Released Rates V; Reparation IV; Routing and Misrouting III; Special Contracts III; Telephone and Telegraph Companies IV; Undercharges IV.

LIVE STOCK SHIPMENTS

See Advanced Rates §8½a (a); Caretakers; Distance Rates §3 (4l); Facilities and Privileges §5½, §7½; Hoch-Smith Resolution; Limitation of Liability; Loss and Damage; Minimums §7 (o); Personal Injuries; Proportional Rates VIII (f); Quarantine Regulations; State Rates and Regulation (n); Stock Yard Companies; Tariffs §9a (3r), §18 (6i); Through Routes and Joint Rates §13 (5l), §20a (h); Twenty-Eight Hour Law.

(a) Interstate rates on livestock in single and double-deck cars from eastern and central Oregon and southern Idaho to North Portland, Oreg., and Tacoma and Seattle, Wash., found unreasonable but not unduly prejudicial. Reasonable distance rates, percentage relationships, and differentials prescribed and reparation denied. Cattle & Horse Raisers Asso. v. N. P., 104 I. C. C. 51.

(b) Proposed increased rates on cattle and sheep from stations on Oregon Short Line in eastern Idaho and southwestern Montana to Portland, Seattle, and points taking same rates, found not justified. Cattle & Horse Raisers Asso. v. N. P., 104 I. C. C. 51.

(c) Rates on cattle and hogs from Chicago, Indianapolis, and South St. Paul to Allentown, Pa., found unreasonable to extent component from east Penn Junction, Pa., the interchange point, exceeded industrial switching charge from that point. Reasonable rate prescribed for future and reparation awarded. Arbogast & Bastain Co. v. L. V. R. R., 107 I. C. C. 105.

(d) Collection of passenger fares for transportation of attendants accompanying shipments of live poultry from points in various States to Hoboken, N. J., found unreasonable. For many years it has been general practice of carriers to furnish transportation to attendants accompanying shipments of live poultry without charge, because carrier is thereby relieved of caring for poultry. Here the charges were apparently published in error and remained in effect for a short time only. Werner v. Director General, 107 I. C. C. 363.

(e) Upon reconsideration, rules and charges of carriers governing bedding of livestock cars found not unreasonable. Findings in former reports in that regard, 80 I. C. C. 747 and 87 I. C. C. 157, reversed. Nat'l Live Stock Exchange v. A., T. & S. F., 107 I. C. C. 512.

(f) Carriers have right to make a reasonable charge for service of bedding livestock cars. Report in 80 I. C. C. 747, affirmed. Nat'l. Live Stock Exchange v. A., T. & S. F., 107 I. C. C. 512, 513.

(g) Cost of service of bedding livestock cars naturally vary with conditions in different parts of the country, and fact that carriers failed to present uniform testimony upon this subject tends to strengthen rather than weaken credibility of their cost figures. Nat'l. Live Stock Exchange v. A., T. & S. F., 107 I. C. C. 512, 515.

(h) Cattle moving from Alfred, Tex., to Foraker, Okla., upon arrival were found tick infested, whereupon they were ordered by Federal authority to Oklahoma City for dipping. This accomplished, they were reforwarded to Foraker and delivered, carriers assessing an intrastate rate for movement between Foraker and Oklahoma City upon theory that original contract of carriage was completed on first arrival at Foraker and that movement to Oklahoma City and return was an independent intrastate shipment subject to local intrastate rates for haul each way. FOUND: Since cattle were inspected before delivery and full control denied complainant, who paid no freight charges at that time, took out no new bills of lading, or made shipments to new consignees, the shipments were overcharged, being subject to lower rates for entire movement under provisions of an interstate tariff permitting stoppage in transit of cattle moving under above circumstances. Refund of overcharges directed. Borroum & Tucker v. M. V., 107 I. C. C. 668.

(i) Proposed cancellation of the Kelly combination rule on livestock, originating on the C. & N. W. and C., M. & St. P. railways in South Dakota and intermediate stations in adjoining States, and publication in lieu thereof of proportional rates lower than corresponding locals from Chicago which reflect proper proportion of increases under General Order No. 28 of director general when applied to through traffic, found justified. When the Kelly rule was first established it was never intended that one carrier alone should bear burden of adjusting its rates so as to take care of the entire increase under General Order No. 28 in connection with traffic moving under combination rates. At that time all participating carriers bore their proportional share. To now require the equalization to be made by a single line smacks not only of inequity and unreasonableness, but would saddle upon respondents a shrinkage of their earnings, which they should not be called upon to bear. Proportional Rates on Livestock, 109 I. C. C. 417.

(j) Rate on horses and mules from Memphis, Tenn., to Fort Worth, Tex., found unreasonable as compared with rates from and to other points in same general territory for comparable distances. Darnell Commission Co. v. M. P., 109 I. C. C. 427.

(k) Houston, Tex.: Rates on horses and mules from Wichita, Kans., and Oklahoma City and Calumet, Okla., to, found not unreasonable but to have been unduly prejudicial in so far as they exceeded lower rates contemporaneously in

effect to Beaumont, Tex., a competing point. No damage shown by reason of discrimination found, which did not prevent complainants at Houston from doing a substantial business. While the cause of complaint was removed by subsequent establishment of rates pursuant to decision in Horse and Mule Rates in the Southwest, 1924, 93 I. C. C. 479, that case involved a comprehensive and systematic readjustment of rates within a large territory, following which claims for reparation are not ordinarily allowed. Moreover, rates to both Houston and Beaumont have been in effect for a number of years without protest by shippers. Cook v. A., T. & S. F., 109 I. C. C. 493.

(l) Rates on cattle, calves, hogs, and sheep from Sioux Falls, S. Dak., to Albert Lea and Austin, Minn., found not unreasonable or unduly prejudicial, but on like traffic from Sioux Falls to Chicago, Peoria, East St. Louis, Milwaukee, Madison, Cudahy, St. Louis, Kansas City, Omaha, Ottumwa, Des Moines, Cedar Rapids, and Mason City found unreasonable and unduly prejudicial as compared with rates to same destinations from St. Paul, Minn., Sioux City, Iowa, Omaha, Nebr., and Kansas City, Mo. Reasonable and non-prejudicial rates prescribed. Sioux Falls Live Stock Exchange v. A., T. & S. F., 109 I. C. C. 501.

(m) Rates on beef cattle in straight carloads and on sheep and lambs, in double-deck and single-deck carloads, from points in Oregon, Washington, Idaho, and Montana to Chicago, St. Paul, Omaha, and other middle-western and Missouri-River markets, found unreasonable as compared with rates from points in the West and Southwest. Reasonable distance scale of rates to St. Paul, Omaha, and related points, and differentials over such rates to St. Louis and Chicago and related points, prescribed for future. American Nat'l. Live Stock Asso. v. O.-W. R. R. & N. Co., 109 I. C. C. 621.

(n) Rates on meat animals from points in Alabama to Moultrie, Ga., found not unreasonable, but the relationship of rates on hogs from southeastern Alabama to Moultrie, on the one hand, and Montgomery and Birmingham, Ala., on the other, found unduly prejudicial and preferential and unjustly discriminatory against interstate commerce. Nonprejudicial relationship prescribed for future. Swift & Co. v G. N., 109 I C. C. 733.

(o) Proposed revision of rates on calves from points in Texas to various interstate markets, designed for purpose of making such rates uniformly 15 per cent higher than cattle rates in conformity with views expressed by commission in 22 I. C. C. 160, and other cited cases, found justified, except for rates to Kansas City and points grouped therewith. This relationship was disrupted by general increases and reductions and through errors in tariff publication. However, there is no competitive reason for a spread between rates on cattle and calves, the 115 per cent relationship having been employed merely as a convenient means of arriving at rates on calves, once reasonable cattle rates are fixed. Rates on cattle from Texas points to Kansas City not having been fixed by commission and the record containing no evidence to show that they are maximum reasonable rates, it is as likely that cattle rates are too high as that the calf rates are too low. Calves from Texas, 112 I. C. C. 163.

(p) There is no competitive reason for a spread between the rates on cattle and calves, the 115 per cent relationship, calves over cattle, having been employed by commission in decided cases merely as a convenient means of arriving at rates on calves, once reasonable cattle rates are fixed. Calves from Texas, 112 I. C. C. 163, 165.

(q) Rates on livestock in the territory between Missouri River and Pacific coast, more particularly between range and feeding points, found not unreasonable or unduly prejudicial. This vast area reflects wide disparities in topographical, climatic, operating, and transportation conditions which render it impracticable to establish uniform mileage scales or some other basis differing therefrom only in degree. In numerous cases commission has reached widely divergent conclusions which point to a lack of homogeneity from a transportation standpoint which in fact exists throughout this area. Record, however, indicates desirability of a more stable and readily ascertainable basis of rates which will facilitate the movement of stock cattle between ranges and feeding points and it is strongly recommended that parties cooperate with a view looking to establishment of rates adapted to existing operating and transportation conditions in the different sections which

will encourage such movements. American Nat'l Live Stock Assn. v. A. T. & S. F., 112 I. C. C. 197.

(r) Combination rate on horses and mules from National Stock Yards, Ill., to Philadelphia, Miss., found not unreasonable or otherwise unlawful, as compared with lower rate contemporaneously in effect to Meridian, Miss., a farther distant point, or with rate subsequently established. The fourth section departure was protected by an appropriate order, and the subsequent reduction of the rate assailed is not of itself sufficient to establish unreasonableness of the former rate. Moreover, in absence of proof of damage, fact that carriers have charged a higher rate to an intermediate than to a more distant point is not sufficient to entitle shipper to an award of reparation. Dees v. M. & O., 112 I. C. C. 397.

(s) Respondents proposed certain changes in rates on livestock, in carloads, between points in Arkansas, Louisiana, Missouri, New Mexico, Oklahoma and Texas and also from that general territory to Arkansas City, Wichita, and Wichita Union Stock Yards, Kansas, Memphis, Tenn., and Natchez and Vicksburg, Miss. While the rates apply "between" points in the territory described, the movement is practically all northbound, and the present controversy relates almost entirely to the movement of stock or feeder cattle from producing points in Texas to the feeding grounds in Oklahoma and Kansas. It results in both increases and reductions. The record indicates that the rates on stock cattle from Texas points to Northern Oklahoma and Kansas are about as low as they can reasonably be for application over the present joint routes, or other routes which are not materially longer than the short routes. The commission prescribed the I&S 958 scale on which the present rates are based for application over reasonably direct routes, and defendants are justified in restricting the present rates to such routes. The present record is not comprehensive enough to warrant in fixing a degree of circuity as a measure of a reasonably direct route. HELD: Schedules not justified. Livestock from La. and Tex. to Kans. and Okla., 115 I. C. C. 137.

(t) In 100 I. C. C. 4, was reopened with respect to the method of applying mileage scale of rates on livestock to El Paso, Tex., from points in the Texas Pan Handle on the Ft. W. & D. C. and with respect to mileages from Calexico and El Centro, Calif., to El Paso, and rates on cottonseed oil, cake, meal and hulls based thereon. The tariff defines an impracticable route as one through a point where roads do not cross each other at grade, and where there are no connecting tracks to be used in the exchange of traffic. It contains a list of such points and this list does not include any of the points at which traffic would be interchanged if hauled over the short line route through New Mexico. The exception is specific in its provisions that the rates on livestock under consideration shall be based on short line distances over practicable routes, and does not require that the rates themselves shall be applicable over the routes which thus measure the distances. HELD: Rates applicable are those based on distances over the route of the Ft. W. & D. C., Rock Island and E. P. & S. W. Peyton Packing Co. v. A. E. R. R., 118 I. C. C. 452.

(u) Complainant attacked combination rates on cattle and hogs, carloads, from East St. Louis, Ill., St. Louis, Kansas City and St. Joseph, Mo., Omaha, Neb., Fort Worth, Tex., and Oklahoma City, Okla., to Atlanta and Moultrie, Ga., as unreasonable and also from Chicago. Present rates from all of the origin points except St. Louis are combinations of the rates to and from the Ohio and Mississippi river crossings, treated by the combination rule. The rates from St. Louis are joint rates made by the addition of differentials of 17c on cattle and on hogs in double deck cars and 19.5c on hogs in single deck cars to the rates from Evansville, Ind. HELD: Rates attacked unreasonable to extent they exceed distance rates ranging from 47c on cattle and hogs in double deck cars and 54c on hogs in single deck cars for 450 miles to 68 and 78c respectively for 1,200 miles. In applying these rates 20 miles may be added to the actual distances for Mississippi river transfer, but the rates attacked not unreasonable in past. White Prov. Co. v. A. B. & A. Ry., 118 I. C. C. 601.

(vw) Upon reargument, original report, 109 I. C. C. 733, affirmed, and rates on meat animals from points in Alabama to Moultrie, Ga., found not unreasonable; but relationship of rates on hogs from southeastern Alabama to Moultrie, on

the one hand, and Montgomery and Birmingham, Ala., on the other, found unduly prejudicial to Moultrie, unduly preferential of Montgomery and Birmingham, and unjustly discriminatory against interstate commerce. Removal of such prejudice, preference, and discrimination by establishment of intrastate rates upon basis of compromise scale set forth in Appendix A in 74 I. C. C. 419, prescribed. Swift & Co. v. G. N., 115 I. C. C. 661.

(x) Carload minimum weight of 22,000 pounds for factor from East Clinton, Ill., to Jersey City, N. J., on sheep and lambs in double-deck cars 36 feet 7 inches and under in length, originating at South Omaha, Nebr., found unreasonable to extent it exceeded a minimum of 18,000 pounds. Similar finding was made in 69 I. C. C. 125, and carriers here introduced no evidence to show that use of an 18,000-pound minimum would produce less than reasonable charges for service performed. Reparation awarded. Seaboard Live Stock Traffic Bureau v. A., C. & Y., 115 I. C. C. 687.

(y) Tariff defines an impracticable route as one through a point where roads do not cross each other at grade and where there are no connecting tracks to be used in interchange of traffic. An exception thereto, however, is specific in its provision that rates on livestock shall be based on short-line distances over practicable routes and does not require that rates themselves shall be applicable over routes which thus measure distances. Accordingly, rates on livestock from points in the Texas Panhandle on the Fort Worth & Denver City Ry., to El Paso, Tex., found properly based on distances over route of above-named line, the C., R. I. & P., and former El Paso & Southwestern. Original report 100 I. C. C. 4, affirmed. Peyton Packing Co. v. A. E. R. R., 118 I. C. C. 452.

(z) Combination rates based on Ohio and Mississippi River crossings on cattle and hogs from Chicago, East St. Louis, St. Louis, Kansas City, St. Joseph, Omaha, Ft. Worth, and Oklahoma City to Atlanta and Moultrie, Ga., and from Chicago to Birmingham, Jacksonville, Chattanooga, Knoxville, and Nashville, found not unreasonable in the past but for future found unreasonable and reasonable scale of distance rates, based upon scale approved in 81 I. C. C. 33, prescribed. The practice of basing the interterritorial rates on a combination of factors to and from the river crossings has been in effect for many years, and rates assailed, when judged as combination rates, do not produce excessive earnings. Under the circumstances they were not unreasonable in the past. However, no sound reason exists why interterritorial shipments that cross the rivers should pay materially higher rates than intraterritorial shipments within the Southeast, Southwest, and c. f. a. territories for comparable distances where shipments do not cross the river boundaries. White Provision Co. v. A., B. & A., 118 I. C. C. 601.

(aa) Complainant attacked rates charged on livestock, carloads, from St. Cloud, Calvary, Rosendale and Malone, Wis., to Chicago, Ill., during 1918 and 1919 as unreasonable. Points of origin are local stations, about 11 to 18 miles from Fond du Lac, Wis., on a branch of the Northwestern. Prior to federal control these shippers routed their shipments over the Northwestern direct to Chicago. The train schedules were changed requiring the stock to be held at Fond du Lac until the following morning and would not reach the Chicago market until the second morning. Holding the stock at Fond du Lac for movement over the Northwestern direct brought into operation the provisions of the law requiring the feeding, watering and resting of livestock in transit longer than 36 hours. These shippers signed livestock contracts authorizing routing beyond Fond du Lac over the Soo Line. No joint rates were maintained. The Northwestern individual rates were maintained prior to, during, and after the reparation period. HELD, rates attacked unreasonable to extent they exceeded the Northwestern single line rates, reparation awarded. Chicago Livestock Exchange v. Director General, 120 I. C. C. 295.

(bb) Complainant alleged that between Aug. 8, 1916 and Aug. 8, 1918 they made shipments of ordinary livestock from numerous points of origin to certain points at which their packing plants are located; that they were charged rates which were higher than the rates applicable if certain values had been declared by the consignor; and that the rates charged were unreasonable, unjustly discriminatory, unduly prejudicial and unlawful, to the extent that they exceeded the lowest rates which would have been applicable under declared values.

During the time the shipments moved, defendants maintained standard or basic rates on ordinary livestock the value of which, as declared by the shipper, did not exceed certain specified amounts, and these rates were increased by certain percentages when the declared values exceeded the standard or basic values. All of complainants shipments consisted of ordinary livestock subject to these rates. The effect of the second Cummins amendment to section 20 of the act was to render unlawful and void, on and after Aug. 9, 1916, the date when it became effective, all attempted limitations of liability for loss, damage, or injury to ordinary livestock transported, whatever the form of the attempted limitation. Rates based on values declared by shippers not required by tariffs to be actual values are in effect attempted limitations of carriers liability. HELD, standard or basic rates applicable, reparation awarded. Armour & Co. v. Director General, 120 I. C. C. 587.

(cc) Complainant attacked combination rate of 85.5 cents charged on 80 cars of live hogs shipped between Jan. 1 and July 14, 1924 from Sioux City, Ia., to Jersey City, N. J., and New York, N. Y., as unlawful in violation of section 6 to extent it exceeded 83.5 cents. Rate charged was based on proportional rate of 28 cents from Sioux City to Mississippi River plus a proportional rate of 63 cents beyond, subject to the combination rule. HELD: rate of 83.5 cents applicable, reparation awarded. Armour & Co. v. C. & N. W. Ry., 120 I. C. C. 737.

(dd) Domestic rate assessed on cattle and hogs from East St. Louis, Ill., and Louisville, Ky., to Key West, Fla., for export to Cuba, found not unreasonable as compared with lower export rate contemporaneously in effect to Jacksonville or with lower contemporaneous domestic rates applicable to New Orleans. Carriers showed that Jacksonville rate was depressed, higher rates being in effect to intermediate stations; also that no shipments have ever been exported from Jacksonville to Havana, rates to Jacksonville being published for purpose of facilitating shipments of supplies to Europe during the war. Moreover, carriers may establish export rates lower than domestic of their own volition provided no provisions of the act are violated. However, they are not required to do so, there being nothing inherent in export traffic that entitles it, as such to take lower rates than domestic. See 88 I. C. C. 269. Knight & Kennett v. L. & N., 115 I. C. C. 732.

(ee) Combination rates during Federal control on livestock, from St. Cloud, Calvery, Rosendale, and Malone, Wis., to Chicago, Ill., over Chicago & North Western Ry., to Fond du Lac, Wis., and Soo Line beyond, found unreasonable to extent they exceeded rates contemporaneously in effect over North Western direct. Change in schedule of trains instituted by Director General necessitated holding livestock at Fond du Lac, thus entailing additional expense for feeding. To expedite movement shipments were routed via the Soo beyond Fond du Lac and higher combination of locals assessed. However, service afforded was in nowise superior to or materially different from that enjoyed under lower rate and there is little difference in distances over the two routes. Reparation awarded. Chicago Live Stock Exchange v. Director General, 120 I. C. C. 295.

(ff) Rates charged on shipments of ordinary livestock which were higher than those applicable if standard or basic rates had been declared by consignor found unlawful and void under the second Cummins amendment to section 20 of the act. The effect of that amendment was to render unlawful and void all attempted limitations of liability for loss, damage, or injury to ordinary livestock transported, whatever the form of attempted limitation. Accordingly, rates here which were based on values declared by shippers and which were not required by tariffs to be actual values were in effect attempted limitations of carrier's liability. See 69 I. C. C. 235 and other cited cases. Reparation awarded. Armour & Co. v. Director General, 120 I. C. C. 587.

(gg) Proposal to restrict proportional commodity rate on horses and mules from Chicago to Ohio River crossings so that it will not apply on shipments routed over or in connection with the C., C., C. & St. L. Ry., found not justified. This rate was originally established to meet a rate of the Illinois Central R. R., but the Big Four does not desire to meet competition of that carrier. No justification, however, was shown for higher second-class rates which would result on this traffic from both Chicago and intermediate points. Moreover, the record indicates that pro-

posed restriction is only a temporary expedient, there now being under consideration an adjustment which, if made effective, will either materially increase present rate or result in its cancellation over certain routes. Piecemeal revision of rates, however, is not desirable except in unusual circumstances, not here present. Horses and Mules from Chicago, 120 I. C. C. 607.

(hh) Complainant attacked combination rates charged for four cars of graders outfits with excess livestock shipped Aug. 17, 1922 from Hazelhurst, Miss., to Hartselle, Ala., as unreasonable. Hazlehurst is a local station on the I. C., 34 miles south of Jackson, Miss., intermediate to New Orleans, La. Hartzelle a local station on the L. & N. is 72 miles north of Birmingham, Ala., intermediate to Nashville, Tenn. Shipments were tendered unrouted and moved I. C. via Jackson, Tenn., to Birmingham, thence L. & N., 580 miles, charged fifth class combination rate of $1.06, composed of 65c to Birmingham and 41c beyond. Charges on the excess livestock were collected at first class combination less carload rate of $2.015, made $1.35 to Birmingham and 66.5c beyond. There were contemporaneously in effect from New Orleans to Nashville first class and fifth class rates of $1.44 and 74.5c, respectively, which were subsequently established on July 20, 1924 from Hazlehurst to Hartselle. HELD, rates attacked unreasonable to extent they exceeded 144c on excess livestock and 74.5c on graders outfits, reparation awarded. Jones Construction Co. v. L. & N. R. R., 122 I. C. C. 18.

(ii) Complainant alleged commodity rates on hogs and cattle, carloads, to Madison, Wis., from South St. Paul, Minn., Sioux Falls, S. D., and Sioux City, Ia., are unreasonable and unduly prejudicial in favor of Milwaukee, Wis., and Racine, Wis., and Chicago and Peoria, Ill. Madison is practically the geographical center of the southern third of Wisconsin, which comprises the hog belt of that state; it is on through lines from important western and northwestern livestock markets; and has an adequate supply of labor. It is about 130 miles northwest of Chicago and 82 miles west of Milwaukee, and is reached by the Milwaukee and Northwestern, and I. C. From the standpoint of distance the rates to Madison should be lower than to Chicago and Milwaukee. Other elements affect the situation, and are entitled to consideration in determining whether the present relation shall be changed, and if so, to what extent. It is obviously impossible to set off these various factors one against another and arrive at a conclusion as to how they should be reflected in the rates, the correctness of which can be demonstrated with mathematical accuracy. HELD, carload rates on hogs in double deck cars, and on cattle, to Madison from South St. Paul on traffic from beyond, and from Sioux Falls and Sioux City are not shown to have been or to be unreasonable, except that the rate from Sioux Falls was unreasonable prior to June 22, 1926 to the extent it exceeded 37.5c, but that for future unduly prejudicial to extent they exceed amounts which are 2.5, 2.5 and 1c, less than the rates from the same points to Chicago and Milwaukee, reparation awarded. Mayer & Co. v. A. T. & S. F. Ry., 122 I. C. C. 305.

(jj) In 15686 all rates on livestock in the territory served by the carriers in the western and mountain Pacific groups, including Illinois and Wisconsin, are alleged to be unreasonable to the extent they exceed the pre war rates; that is, generally speaking, the rates in effect for many years prior to June 25, 1918, when G. O. 28 of the Director General became effective. This case is similar to 63 I. C. C. 107. While the condition of the livestock industry has materially improved since the period of extreme depression the recovery has by no means been complete. The industry is still suffering from depression, although not in all branches and not in the same degree as heretofore, and the Commission is required by the Hoch-Smith resolution to afford to livestock affected by that depression the lowest possible lawful rates compatible with the maintenance of adequate transportation service. Defendant's evidence as to the peculiarities of the traffic, the special facilities necessary, and the special services performed is similar to that offered in other livestock cases. The nature of the traffic is such that it must be handled with utmost care. Stock is easily injured. Damage claims are often filed when, by reason of delay in transit, stock shrinks unduly or reaches the market too late for advantageous sale. They exceed 2% of the livestock revenue. Livestock is handled with greater expedition than is most other traffic, except perishable

freight. Special runs by locomotives are often made in gathering the stock and getting it under way promptly after loading, particularly where it originates on branch lines, as a large proportion of it does. The livestock trains from one division point to another are frequently if not generally, moved at a speed several miles per hour greater than that of most trains. Livestock is also given expedited movement into and out of division terminals along the way. Special trains frequently run with only a few cars in order to reach division terminals along the way. Expedition is necessary in order to avoid as much as possible stopping in transit for water, feed, and rest. Other causes for expense occasioned by livestock are the showering of hogs, cleaning and disinfecting cars, and interference with other freight movements. Shippers may send caretakers with the stock and no charge is made for their transportation. The caretakers generally ride in cabooses, although some roads furnish special equipment known as drovers' cars. Free return transportation on regular passenger trains is provided if the caretaker has accompanied two or more cars of livestock to destination. The caretakers are expected to look after the welfare of the stock in such a way as to reduce loss and damage claims and relieve railroad employees of certain duties in that connection. The empty car movement occasioned by livestock traffic is relatively high. Livestock loads lighter than almost all other kinds of carload traffic that move in substantial volume. Special equipment is necessary for livestock, and it is not generally usable for other commodities, although so used to some extent. Loading and unloading pens and chutes must be provided, not only at points where the traffic originates and where it is delivered, but at intermediate points as facilities for stopping stock in transit for water, feed and rest. Obviously a determination whether all less carload traffic combined with a particular class of carload traffic selected by complainants loads more or less heavily than livestock would throw no light on the question of how profitable livestock traffic is to the carriers at present rates. Although the evidence relating to cost and revenues does not lead to a definite conclusion as to the precise profit derived from livestock traffic at present rates, it is sufficient to demonstrate that the Commission is not warranted, on the one hand, in reducing the livestock rates by any substantial amount; or, on the other hand, in regarding them as confiscatory. The record, as it now stands, is inadequate to warrant a finding either that livestock rates in the west, as a whole, are in excess of reasonable maxima as alleged, or in excess of the lowest possible rates compatible with the maintenance of adequate transportation service, that lawfully might be required. Complainants have gone as far as they can in adversary proceedings, but the record that they have been able to present is not sufficient in the respects noted. The record will be kept open in connection with 17000 for the purpose of removing inconsistencies in the present rates. It may be that the record in such further investigation will afford more light on the question of whether the present level constitutes the lowest possible lawful rates on this commodity. HELD, short haul rates complained of in 15686 and 16113 are not in excess of reasonable maxima, and in 16113 not in excess of reasonable maxima. Reparation denied. However, the Commission prescribes for the future for interstate application from and to such points in Oklahoma, Louisiana, Texas, Arkansas, Kansas and Missouri as now carry rates based upon the Shreveport scale, on cattle, in carloads, or on calves, hogs, sheep or goats in double deck cars, rates ranging single line 8.5c joint line 12c for 10 miles to 49.5c single and joint line for 600 miles. Hogs and calves in single decks 115% of the cattle rates and on sheep or goats in single decks 125% of the cattle rates. In No. 16131 it is alleged that certain rates on stock cattle from Oklahoma and Texas points to Missouri river markets as far north as Sioux City, and to interior points in Missouri, Iowa, and Nebraska were and are unreasonable to extent they exceed 75% of the fat cattle rates. Stock cattle are quite generally loaded considerably above the minimum weight, but as it is often impracticable to weigh the cars or to otherwise obtain the exact weights before delivery is made, the carriers in many instances transport some tonnage without charge. HELD, rates complained of, except those that exceed the aggregate of the intermediate rates, not in excess of reasonable maxima. Reparation denied. In No. 15565 a Fort Worth organization alleged that the rates on cattle from Texas to Kansas are unreasonable, un-

duly prejudicial and in violation of section four. 75% of fat cattle rates is asked on feeder cattle. HELD, present rates not in excess of reasonable maxima, except those that exceed the aggregate of intermediate rates, otherwise unlawful. American National Livestock Asso. v. A. T. & S. F. Ry., 122 I. C. C. 609.

(kk) Rates on hogs and cattle from South St. Paul, Minn., originating beyond, and from Sioux Falls, S. Dak., and Sioux City, Iowa, to Madison, Wis., found not unreasonable, except that rate from Sioux Falls was unreasonable prior to establishment of and to extent it exceeded the distance rate prescribed in 77 I. C. C. 451. Such rates, however, found unduly prejudicial in favor of Chicago and Milwaukee to extent that rates to Madison exceed 2.5, 2.5, and 1 cent, respectively, less than rates contemporaneously maintained to Chicago and Milwaukee. Nonprejudicial basis of rates prescribed and reparation awarded. Mayer & Co. v. A., T. & S. F., 122 I. C. C. 305.

(ll) Rates in the aggregate for interstate transportation of livestock between points in the territory served by the western and mountain-Pacific groups of carriers, including Illinois and Wisconsin, found not in excess of reasonable maxima, or in excess of the lowest possible rates compatible with maintenance of adequate transportation service, that lawfully might be required. A consideration of economic conditions surrounding the livestock industry together with evidence relating to cost and revenues, while not leading to a definite conclusion as to precise profit derived from traffic at present rates, demonstrates that commission is not warranted, on the one hand, in reducing the livestock rates by any substantial amount; or, on the other hand, in regarding them as confiscatory. American Nat'l Live Stock Asso. v. A., T. & S. F., 122 I. C. C. 609.

(mm) Rates on cattle, hogs, sheep and goats from and to certain points in Oklahoma, Louisiana, Texas, Arkansas, Kansas, and Missouri, found not in excess of reasonable maxima. However, for purpose of removing existing discrepancies and in light of the Hoch-Smith resolution rates on a distance basis prescribed for future application. American Nat'l Live Stock Asso. v. A., T. & S. F., 122 I. C. C. 609.

(nn) The nature of livestock traffic is such that it must be handled with utmost care. Stock is easily injured. Damage claims are often filed when, by reason of delay in transit, stock shrinks unduly or reaches the market too late for advantageous sale. They exceed 2 per cent of the livestock revenue. American Nat'l Live Stock Asso. v. A., T. & S. F., 122 I. C. C. 609, 615.

(oo) While condition of livestock industry has materially improved since the period of extreme depression, the recovery has by no means been complete. The industry is still suffering from depression, although not in all branches and not in same degree as heretofore, and commission is required by the Hoch-Smith Resolution to afford to livestock affected by that depression the lowest possible lawful rates compatible with maintenance of adequate transportation service. American Nat'l Live Stock Asso. v. A., T. & S. F., 122 I. C. C. 609, 615.

(pp) Shippers may send caretakers with live stock and no charge is made for their transportation. The caretakers generally ride in cabooses, although some roads furnish special equipment known as drovers' cars. Free return transportation on regular passenger trains is provided if caretaker has accompanied two or more cars of livestock to destination. The caretakers are expected to look after welfare of the stock in such a way as to reduce loss and damage claims and relieve railroad employees of certain duties in that connection. For 11 railroads carriers estimate that at current fares this service amounted to 5.6 per cent of the revenue from livestock in 1923. American Nat'l Live Stock Asso. v. A., T. & S. F., 122 I. C. C. 609, 616.

(qq) Livestock is handled with greater expedition than is most other traffic except perishable freight. Special runs by locomotives are often made in gathering the stock and getting it under way promptly after loading, particularly where it originates on branch lines, as a large proportion of it does. The livestock trains from one division point to another are frequently, if not generally, moved at a speed several miles per hour greater than that of most other trains. Livestock is also given expedited movement into and out of division terminals along the way. Special trains frequently run with only a few cars in order to reach division terminals and markets on time. Expedition is necessary in order

to avoid as much as possible stopping in transit for water, feed, and rest. American Nat'l Live Stock Asso. v. A., T. & S. F., 122 I. C. C. 609, 616.

(rr) The law requires carriers to bear expense of loading and unloading livestock at public stockyards and at points where it is stopped for water, feed, and rest. Almost all other carload freight is loaded and unloaded by shippers. American Nat'l. Live Stock Asso. v. A., T. & S. F., 122 I. C. C. 609, 617.

(ss) Special equipment is necessary for livestock, and it is not generally usable for other commodities, although so used to some extent. Loading and unloading pens and chutes must be provided, not only at points where traffic originates and where it is delivered, but at intermediate points as facilities for stopping stock in transit for water, feed and rest. American Nat'l Live Stock Asso. v. A., T. & S. F., 122 I. C. C. 609 617.

(tt) American Railway Express Company and Southeastern Express Company, provide in their tariffs for the free transportation of a specified number of attendants with race horses, in carloads, moving by express. Complainant alleged that these rules are unreasonable, and that the rules with respect to polo mounts and show horses are unjustly discriminatory and unduly prejudicial to the extent they permit less than six attendants per car in any territory. Defendants proposed to restrict the number of attendants carried free with carloads of race horses to two in all instances. The six attendant rule in connection with race horses has been maintained in most of eastern territory at least since 1898. The record warrants the conclusion that two and one attendants per aisle, respectively, are usually sent with and are necessary for the proper care of race horses and other horses, respectively, in stalled cars, by express, and that these attendants should be transported without any charge in addition to the minimum rates per car on this traffic. This can best be accomplished by regulating the number of free attendants by the number of horses in the car. HELD, rules unreasonable to extent they accord such transportation to fewer attendants per car than are indicated below: Race horses 4 and less attendants 2, 8 and over 4, attendants 4, 9 and over, attendants 6; Polo mounts and show horses, 6 and less 1 attendant, 12 and over 6, attendants 2, 13 and over, attendants 3. Horse Asso. of America v. American Railway Express Co., 126 I. C. C. 103.

(uu) Complainant attacked commodity rates charged on carloads of live hogs shipped between Jan. 1, 1918 and Feb. 29, 1920, from Peoria, Ill., to East St. Louis, Ill., and Chicago, Ill., as unlawful in that they were in excess of the published tariff rate. Hogs are not raised in Peoria for shipment to other markets. They are transported to that point by rail, by boat, by motor truck and by other means. Complainants records do not enable it to make a definite showing as to how those comprizing the shipments in question moved to that point or the percentage of tonnage received at Peoria by these respective methods of transportation. A tariff of the C & A named two sets of rates, one published without restricton and the other, which was on a somewhat lower level, published as applicable on traffic "when from beyond". Local rates were charged. The rates which complainant seeks to have applied were not expressly termed proportional rates in the body of the tariff. This tariff on its title page, is described as a local and proportional tariff and the only limitations upon the use of any rates therein which could establish their proportional application were the words "when from beyond". HELD, rates attacked legally applicable, complaint dismissed. Armour & Co. v. Director General, 126 I. C. C. 539.

(vv) Complaint alleged that the combination of local rates to and from Huron, S. D., charged on carloads of hogs between May 10, 1923 and March 31, 1924 from points in North and South Dakota, stopped in transit at Huron for feeding, watering, resting, or sorting, and reforwarded to Mason City, Ia., were unreasonable, unduly prejudicial and in violation of section 6 and 4. Shipments originated at Redfield, S. D., and at stations on defendants lines west and north of Redfield to and including Gettysburg, S. D., and Oakes, N. D. and moved as billed, south from Redfield to Huron where they were stopped for feeding, watering, resting and sorting. The movement into Huron was in single deck cars. Beyond Huron the shipments moved in double deck cars east over the line through Brookings, S. D., and Tracy, Minn., to Sanborn, Minn., thence southerly through Blue Earth, Minn., to Mason City. Charged on basis of separately

established local rates to and from Huron, subject to the single deck minimum inbound and double deck minimum outbound. Contemporaneously with the movement of these shipments specific rates from the several points of origin to Mason City were maintained over the short route through Redfield, Watertown, S. D., Marshall, Minn., and Tracy, and over the route through Watertown and Brookings. The route through Marshall and Tracy is 13 miles shorter, and the route through Watertown and Brookings 6.5 miles longer, than that through Huron. These specific rates were lower than the combination rates applied. At all times covered by the complaint defendant provided that carload shipments of hogs originating at points on its lines and destined to Chicago or intermediate points might be stopped in transit at certain stations, including Huron, for a period not to exceed 72 hours to finish loading, or for weighing, resting, feeding, watering, sorting, or consolidating, provided the stopping point was directly intermediate between the points of origin and destination. Prior to Nov. 24, 1923, defendants transit tariff also provided that when shipments were handled into the transit station in single deck cars and outbound in double deck cars, the charges inbound would be computed at the local rate to the transit station, subject to the single deck minimum weight, and that outbound charges would be computed at the balance of the through rate, subject to the double deck minimum weight. To settle a controversy as to the meaning of the "balance of the through rate" which arose subsequent to the publication on August 9, 1923, of different rates on single deck from those on double deck shipments, defendant on Nov. 24, 1923, expressly provided for the application in such instances of the through single deck rates and double deck minimum weights. Prior to March 14, 1924, transit at Huron was not applicable on the specific through rates, but on that date a note was added to the transit tariff providing that Huron would be considered as intermediate. This accorded Huron the transit arrangement at the specific rates from the points of origin here considered on shipments to Mason City. The evidence does not establish any undue prejudice or any violation of section 6. Violation of long and short haul provision has now been removed. HELD, attacked rates unreasonable to extent they exceeded the specific rates on hogs in single deck cars, subject to the double deck minimum provided in connection therewith, contemporaneously in effect from the respective points of origin to Mason City, Ia., reparation awarded. Decker & Sons v. C & N. W. Ry.. 126 I. C. C. 551.

(ww) Complainant sought refund of alleged overcharges on 427 shipments of hogs and 1 shipment of sheep, from the markets of Sioux City Ia., and South Omaha, Neb., and from country shipping stations in Iowa, to its packing plants at Kansas City and Wichita, Kan. In the original report, Cudahy Packing Co. v. Director General 104 I. C. C. 705, the Commission found the shipments were subject to graded rates based upon the actual value of the stock, that they were not of a value entitling them to the lower rates sought, and that the rates charged were applicable and dismissed the complaint. In Crown Overall Mfg. Co. v. Director General 100 I. C. C. 471, the Commission pointed out the clear distinction between rates in connection with which a declaration of value is required as a released value, and those rates where the declaration required is the actual value of the shipment, the principle underlying the latter rates being that the articles covered by the different groups of valuations are so different from a transportation standpoint as to constitute in effect different commodities. In the case of the latter, called actual value rates, there is no holding forth by the carrier of an offer to transport goods at the higher values at the lower rates in consideration of release by the shipper of the carriers liability, and the value declared is not given as a measure of the carriers liability, but as a part of the necessary description of the goods. Released rates and actual value rates may be fairly and effectively differentiated, and actual value rates should be applied as published. HELD, former finding affirmed, complaint dismissed. Cudahy Packing Co. v. Director General, 126 I. C. C. 674.

(xx) Rules governing free transportation of attendants with race horses, polo mounts, and show horses, in carloads, moving by express, found unreasonable to extent they accord transportation to fewer attendants than herein prescribed based on kind and number of horses per car. Express company's proposal to restrict number of attendants to two per car in all instances, FOUND not justified. Record indicates that race

horses being nervous, tempermental, and highly susceptible to disease, require a greater number of attendants per car than either polo or show horses which are more tractable and of more even temperament. Moreover, as record shows that two and one attendants per aisle, respectively, are usually sent with and are necessary for proper care of race horses and other horses, this number should be transported without charge in addition to minimum rates per car. Reasonable rules prescribed for future. Horse Asso. of America v. Amer. Ry. Exp. Co., 126 I. C. C. 103.

(yy) Tariff governing shipments of hogs from Peoria, Ill., to Chicago and and East St. Louis, Ill., carried an unrestricted local rate and a lower rate applicable on traffic "when from beyond." Upon contention that local rates were applicable only to hogs raised in the city of Peoria and were mere paper rates, while lower rates were applicable on all hogs from that point, including those raised immediately outside the city limits and driven across the boundary line, HELD; This interpretation can not be accepted. While lower rates were not termed proportional rates in body of tariff, title-page described tariff as a local and proportional tariff, only limitations upon use of any rates therein which could establish their proportional application being the words "when from beyond." In 81 I. C. C. 688 it was pointed out that the word "beyond" implied a line-haul movement "beyond" the rate-breaking point. Therefore, in instant case, local rates assessed on shipments moving to Peoria other than by rail from beyond were applicable. Armour & Co. v. Director General, 126 I. C. C. 539.

(zz) Combinations of local rates on hogs from North Dakota and South Dakota, moving in single-deck cars subject to single-deck minimum weight and rate inbound to Huron, S. Dak., there stopped in transit for feeding, watering, resting, sorting, and consolidating, and reforwarded to Mason City, Iowa, in double-deck cars subject to local outbound rate at double-deck minimum weight and rate, FOUND unreasonable to extent they exceeded lower specific through rates contenporaneously in effect between the same points via other routes and subsequently established via route of movement, on shipments moving in single-deck cars to transit point and double-deck cars beyond, subject to single-deck rate and double-deck minimum both inbound and outbound. See also 98 I. C. C. 153. Reparation awarded. Decker & Sons v. C. & N. W. Ry., 126 I. C. C. 551.

(3a) Finding in former report 104 I. C. C. 705, that shipments of hogs and sheep from South Omaha, Nebr., Sioux City and other Iowa points, to Kansas City and Wichita, Kans., on which charges were collected based upon actual-value rates, were not overcharged, affirmed. Complainant bases its claim upon 69 I. C. C. 235, 80 I. C. C. 737, in which it was found that actual-value rates and released rates alike operated as limitations upon shipper's right of recovery for full actual loss or damage and therefore the lowest of such graded rates were applicable upon shipments regardless of value. However, in 100 I. C. C. 471, this decision was overruled and it was declared that released rates and actual-value rates may be fairly and effectively differentiated, and that actual-value rates should be applied as published. Cudahy Packing Co. v. Director General, 126 I. C. C. 674.

(3b) Carrier's schedules for live stock shipments on file with Interstate Commerce Commission HELD not to limit a carload to 28 horses, but to merely fix this for rate-making purposes, with a graduated rate in proportion, if an additional number be loaded. Shaffer v. American Ry. Express Co., (Mo., 1926) 282 S. W. 725, 726.

(3c) Proposed rules, regulations, and charges governing the bedding of cars used for transportation of livestock in c. f. a. and western trunk-line territories, found not justified. Rules proposed are similar to those found not justified in 98 I. C. C. 323, principal difference being that in former case quantities considered suitable were specified, whereas rules here proposed specify like quantities as being sufficient to enable animals to retain their footing, respondents maintaining that when this is done their obligation ceases and that expense involved in furnishing additional bedding should be borne by shippers. While they disclaim any intention to deny their common-law obligations to furnish suitable bedded cars, it is not shown that proposed stock rules would not have this effect. Bedding Charges for Livestock, 128 I. C. C. 167.

(3d) Duty resting upon carriers to

bed cars for transportation of livestock has been recognized under the uniform rules established by the railroad administration and those now in effect. Climatic and transportation conditions vary the kind and quantity of bedding essential to safe transportation, but whatever is reasonably necessary the carrier is by law required to furnish. See 80 I. C. C. 747. Bedding Charges for Livestock, 128 I. C. C. 167, 168.

(3e) Charges based on joint-line interstate rates under agreed distance scales on livestock to Atlanta and Howell Stockyards, Ga., over certain lines under same management and control, found unreasonable to extent they exceeded rates based on single-line rates under agreed distance scale, which rates were subsequently made applicable in connection with carriers shown. In 101 I. C. C. 105, it was found that wherever joint-line rates under agreed distance scales had been applied under circumstances similar to those here involved, such rates were unreasonable to extent they exceeded the single-line rates under the agreed distance scales on a joint or continuous mileage basis, and record in instant case does not warrant a different conclusion. Reparation awarded. Bragg & Millsaps Co. v. A. & W. P. 128 I. C. C. 238.

(3f) Joint-line interstate rates under agreed distance scale on livestock to Atlanta and Howell Stockyards, Ga., over certain lines under separate management and control, found reasonable. Complainant contended that as certain groups of carriers were under common management and control the single-line rates rather than joint-line rates should have been applied in conformity with order in 74 I. C. C. 419. However, carriers showed that the traffic policy of any of the roads was in no way dictated by officials of other carriers. Carriers found not to be under same management and control as defined in 87 I. C. C. 654. Bragg & Millsaps Co. v. A. & W. P., 128 I. C. C. 238.

(3g) Complainant attacked joint-line distance scale of rates on livestock, in carloads, forwarded since July 15, 1923 to Atlanta and Howell Stockyards, Ga., as unreasonable and in contravention of order in Livestock to, from and between points in south east, 74 I. C. C. 419, to extent they exceeded the single line distance scale therein prescribed. Shipments originated at points on L. & N. and moved W. Ry., of Ala., and A. & W. P. Shipments originated at points on the L & N. and moved over N. C. & St. L. Shipments originated at points on the W. Ry. of Ala., and moved over A. & W. P. Shipments originated at points on the A. G. S. and C. N. O. & T. P. and moved over Southern. There is nothing on record to justify a finding that the carriers in class 1 and 2, were, or are, under the same management and control. As to class E and 4 single line rates should apply, and on August 31, 1925 single line rates were made applicable, reparation awarded. Bragg & Millsaps Co. v. A. & W. P. R. R., 128 I. C. C. 238.

(3h) In former report, 104 I. C. C. 607, division 3 found that the rates charged on hogs, carloads, from Iowa and adjacent states to East Cambridge, Mass., and other destinations in New England were in excess of the rates legally applicable to the extent they exceeded the combination rates in effect June 24, 1918 increased 7c per 100 pounds. The finding was limited to federal control. The publication on Feb. 29, 1920 of proportional rates from Iowa points to the Mississippi river crossings 2.5c higher and from the Mississippi river crossings to the east 4.5c higher than the rates in effect June 24, 1918 was an attempt to establish definitely and clearly for the first time the combination in force on the latter date increased 7c in accordance with G. O. 28. The failure concurrently to cancel reference to the combination rule in connection with the proportional rates so established, however, made such rates subject to the basis for constructing through combinations provided therein, that is, the components to the river were to be reduced 25 per cent and those from the river 7c, and the aggregate result increased 7c. This error resulted in establishing through combination rates for the period subsequent to Feb. 29, 1920 only slightly higher than the combinations in effect June 24, 1918 and thereby inadvertently eliminated a substantial portion of the increase contemplated in G. O. 28. It seems clear that the complaint in 13485 was filed merely for strategic purposes in connection with the complaint against the director general and that complainants recognized the injustice of taking advantage of defendants inadvertance in

order to secure transportation at an admittedly subnormal rate during the transitional period immediately following federal control, when the carriers earnings were guaranteed by the Government, and Congress had taken steps to prevent any unwarranted reductions in their rates. HELD, complaint dismissed. North Packing & Provision Co. v. Director General, 128 I. C. C. 306.

(3i) Rates on hogs in single and double deck cars from points in New Mexico, Kansas, and Oklahoma to Los Angeles found unreasonable but not unduly prejudicial as compared with those under distance scales prescribed in 22 I. C. C. 160; 26 I. C. C. 37; 81 I. C. C. 115, for application in same general territory. Reasonable rates and minimum weights prescribed for future and further hearing ordered on question of reparation. Calif. Dressed Beef Co. v. A., T. & S. F., 128 I. C. C. 607.

(3j) Complainant assailed rates and bedding charges on hogs, in single and double deck carloads, shipped since July 1921 from points on defendants lines in New Mexico, Texas, Oklahoma and Kansas to Los Angeles, Calif., as unreasonable, unjustly discriminatory, unduly prejudicial and illegal and in violation of section four. It does not appear that there were any departures of the fourth section and allegations with respect to the bedding charges were withdrawn. The rates assessed and collected on the shipments from points on the Santa Fe and its subsidiaries in New Mexico and Texas were the full aggregate of intermediate rates to and from Mojave. Since May 10, 1925 the Santa Fe has published in its own tariffs joint and through rates from stations in New Mexico and Texas to Los Angeles which have been and are generally speaking, the same in amount as the aggregate of intermediate rates to and from Mojave in effect immediately prior to May 10, 1925. HELD, rates attacked unreasonable to extent they exceeded double decks 74c single deck 85c for 1,000 miles to 95c and 109.5c respectively for 1,700 miles. Minimum on hogs single deck standard car 16,500 pounds, double deck 23,000 pounds. California Dressed Beef Co. v. A. T. & S. F. Ry., 128 I. C. C. 607.

(3k) Combination rates on hogs from points on A. T. & S. F. Ry., in New Mexico and Texas to Los Angeles, based on Mojave, Calif., found not unreasonable. Complainant contended that lower rate from Mojave should be extended to apply from Barstow, Calif., because distance from latter to Los Angeles is less. However, while none of shipments actually moved to Mojave and back through Barstow but moved directly through Barstow, the Mojave combination was applicable under rule 5 (b) of Tariff Circular 18-A, and over the Southern Pacific, the rate-making line, distance between Mojave and Los Angeles is much less than over the Santa Fe. Moreover, authority to depart from long-and-short-haul clause of California constitution and public utilities act has been granted the Santa Fe and departure from section 4 of the act is protected by application. Calif. Dressed Beef Co. v. A., T. & S. F., 128 I. C. C. 607, 610, 611.

(3l) Complainant attacked commodity rates charged on 14 cars of horses and mules, shipped between Jan. 8 and June 3, 1922 from Sikeston and Oran, Mo., to Memphis, Tenn., as inapplicable. Under rule 4c of the Tariff Circular 18-A it is permissible for a general commodity tariff to refer to other tariffs in which certain named class or commodity rates may be found, but where, as here, the tariff referred to fails to publish any rate on the commodity in question, the rate in the general commodity tariff remains the applicable rate. HELD, rate of $53.50 per car was applicable prior to April 1, 1922 and $75.50 thereafter, overcharges to be refunded, complaint dismissed. Maxwell Sons Commission Co. v. St. L. S. F. Ry., 128 I. C. C. 725.

(3m) General commodity tariff found applicable on shipments of horses and mules from Sikeston and Oran, Mo., to Memphis, Tenn., moving prior to date of its cancellation, although tariff, by exception, referred specifically to other tariffs for rates from points on carrier's lines in Missouri to Memphis. Contention of carrier that exception prohibited application of general tariff not sustained in view of fact that tariffs referred to fail to provide rates on livestock from and to points in question. Under rule 4 (c) of Tariff Circular 18-A it is permissible for a general commodity tariff to refer to other tariffs in which certain named class or commodity rates may be found, but where, as here, the tariff referred to fails to publish any rate on commodity in question, rate in general commodity tariff remains applicable.

Maxwell Sons Commission Co. v. St. L. S. F., 128 I. C. C. 725.

(3n) Complainants assailed the carload rates on horses and mules from St. Louis, Mo., East St. Louis, Ill., Ohio river crossings and various points in Kentucky and Tennessee to Atlanta and Howell stock yards, Ga., and from all points north of the Ohio and west of the Mississippi river to the same destinations and Birmingham and Montgomery, Ala., as unreasonable and unduly prejudicial. Original report 63 I. C. C. 6, the Commission found no violation of sections 3 or 4, departures from the latter section being protected by applications for fourth section relief, but it did find that "while the rates assailed appear not unduly high, they were unreasonable in and to the extent they respectively exceeded the aggregates of the intermediate rates subject to the act" and awarded reparation. Second report 74 I. C. C. 419, and on further hearing, 93 I. C. C. 325, the Commission awarded reparation to the basis of the lowest aggregates of intermediate rates upon shipments moving during the period from May 9, 1919 to May 15, 1923. HELD, the Commission is now of the opinion that the disparity between the through rates and the combination rates was due to the low level of the latter rather than any excessiveness in the former. It follows that the presumption of unreasonableness has been rebutted, complaints dismissed. Hudson Mule Co. v. L. & N. R. R., 129 I. C. C. 365.

(3o) Complainant alleged charges collected on seven double deck cars of sheep shipped during May, 1922 from Chicago, Ill., to Wolverine, Mich., were unreasonable and inapplicable. They moved in double deck cars furnished on orders for 36 ft. 6 inch double deck cars, charged 38c and applicable minimum of 22,000 pounds. The tariff publishing the 38c rate also published a rate of 30c on feeder sheep subject to a provision reading "these rates only apply when a certificate is presented by the shipper that the stock is intended for feeding purposes and not for slaughter." A certificate purporting to meet the requirements of that provision was presented some time after the shipments had moved. A reasonable interpretation of that provision requires that the certificate be presented at a time not later than the tendering of the shipments. As the provision reads, the shipper was required to present a certificate that the stock "is intended for feeding purposes." This must relate to the time of movement and a certificate presented subsequent to the movement would not serve the purpose. HELD, charges applicable but unreasonable to extent they exceeded minimum of 18,000 pounds, reparation awarded. Calkins Augsbury & Mikan v. M. C. R. R., 129 I. C. C. 475.

(3p) Complainant alleged that the rules and regulations governing the assessment of freight charges on mixed carloads of livestock between points in official classification territory are unreasonable. The Commission prescribed rules for future application in National Live Stock Exchange v. A. A. R. R., 69 I. C. C. 125, and 81 I. C. C. 305. These rules are applicable throughout the United States, and became effective Sept. 28, 1923. HELD, rules and regulations assailed not unreasonable, complaint dismissed. Ohio Farm Bureau Federation v. A. C. & Y. Ry., 129 I. C. C. 689.

(3q) Complainant alleged that rates charged on horses, mules, burros and asses in straight or mixed carloads since Jan. 1, 1923 from Oklahoma, Missouri, Kansas, Nebraska, Colorado and New Mexico to Fort Worth, Tex., and from that point to Vicksburg, Miss., were and are unjust, and in violation of the fourth section; also that the additional charge of 35c a head of those animals collected for yardage at Fort Worth since the same date was unreasonable. RATES ASSAILED. Prayer for future rates from New Mexico to Fort Worth and from that point to Vicksburg were with drawn. Reparation was limited to the period prior to April 20, 1925 when rates were established pursuant to Horse and Mule rates in the Southwest, 1924, 93 I. C. C. 479. No rates to Fort Worth are shown from Nebraska and Colorado points. The issue is thus narrowed to reparation on shipments from Oklahoma, Missouri and Kansas prior to April 20, 1925. The record fairly warrants the conclusion that this complaint was brought primarily with a view to securing reparation in larger measure than was accorded in the original case. HELD, dismissed as to reparation. YARDAGE CHARGE. Defendant, Forth Worth Stock Yards Co.,

a corporation operates a public stockyard and marketing facilities in that part of Fort Worth known as North Fort Worth. At the hearing the two dealers located within the stockyard withdrew their complaint against the yardage charge. Carload shipments of horses, mules, burros, and asses consigned to the outside dealers from interstate points of origin are delivered by the line haul carriers, together with the accompanying waybills, to the Belt at their several recognized points of interchange, ranging from about 0.5 miles to 2 miles from the stockyard. They are hauled thence by the Belt with its own power and crews to the unloading platform along the east side of the stockyard and spotted opposite the chutes. The Belt delivers the waybills to the stockyards company, which records the car initials and numbers, consignor, consignee, and all other information usually shown on such documents, retains copies and returns the originals to the Fort Worth agents of the line haul carriers. The stockyards company immediately notifies the outside dealers of the arrival of the shipments, ascertains and records the locations of the cars, and unloads the animals into pens adjoining or in the vicinity of the unloading platform, and cares for them as long as they remain in the stockyard. The interstate rates to Fort Worth include delivery of the livestock under consideration into the unloading pens at the stockyard through absorption by the line haul carriers of the switching charges of the Belt and the charge of the stock yard company for unloading. An additional charge of 35c per animal called a yardage charge, is assessed by the stockyards company for the use of its facilities from the time the animals are taken out of the unloading pens by it or the outside dealers and for the services rendered, except unloading. No part of this charge is divided with the line haul carriers or the Belt. The switching charges are filed with this commission but the unloading and yardage charges are not. The yardage charge is filed with the Secretary of Agriculture in purported compliance with the packers and stockyards act, 1921. The outside dealers pay the interstate rates to the line haul carriers and the yardage charge to the stockyards company. These costs are charged to the shippers in final settlements for shipments sold on commission and are borne by the outside dealers on shipments handled for their account. The question therefore is whether section 15 paragraph (5) is complied with by delivery of the livestock into such pens. A careful reading of the amendment to section 15 in the light of prior and subsequent decisions dealing with the questions closely related to that here presented leads to the conclusion that transportation of ordinary livestock, in carloads, to public stockyards ends when the animals are unloaded into suitable pens at such yards. It follows that this marks also the limit of the jurisdiction of the Commission over such shipments. HELD, the Commission is without jurisdiction to determine the issues respecting the yardage charge here assailed, complaint dismissed. Southwestern Horse & Mule Asso. v. A. T. & S. F. Ry., 129 I. C. C. 730.

(3r) Complainant alleged commodity rates charge on beef cattle, and on hogs in double deck cars, from Kansas City and St. Joseph, Mo., to Houston, Tex., were and are unreasonable and unduly prejudicial as compared with the rates from the same origin points to Oklahoma City, Okla., Fort Worth, Tex., and other points not named. Various rates in excess of 50c were charged. On Oct. 6, 1923 a reduction to 50c was made in the rates from Kansas City over direct routes, but not over circuitous routes nor from St. Joseph over any route. Rate of 50c is sought. It is satisfied with present rate of 50c over direct routes from Kansas City. HELD, rates assailed were and will be unreasonable to extent they exceeded those for actual distances provided by the modified 1716 scale published on pages 51 and 52 of Lelands tariff I. C. C. 1823, reparation awarded. Houston Packing Co. v. A. T. & S. F. Ry., 132 I. C. C. 326.

(3s) One tariff of the southwestern lines, naming rates from and to certain points provides in connection with the livestock distance scale that the rates based on short line distances will also apply over circuitous lines, but the fact that the carriers thus show a disposition to meet each others competition is not a sufficient reason for here compelling them to do so. Houston Packing Co. v. A. T. & S. F. Ry., 132 I. C. C. 326. 328.

(3t) Complainant alleged that rates charged on 92 cars of cattle and hogs

shipped between Jan. 8, 1923 and Oct. 1, 1924, from Carpenter, Wyo., and certain points in northern Colorado to Los Angeles, Calif., were unreasonable and in excess of the applicable rates. Charged group commodity rates plus incidental charges, which rates specifically applied from these points of origin, with the exception of Hayden, Colo. From that point combination on Denver. Complainant contends that the commodity rates from Willard. N. M., were applicable rates. All points of origin, except Hayden, Colo., were accorded specific commodity rates to Los Angeles and so do not come within the tariff provision relating to "Stations not named in individual rate items." Hayden is not an intermediate point. No evidence tending to show that the rates assailed were unreasonable other than that as to the applicable rates, was submitted. HELD, rates assailed not inapplicable or unreasonable, complaint dismissed. Clayton Murman Live Stock Co. v. C. B. & Q. R. R., 132 I. C. C. 421.

(3u) Complainant alleged commodity rates charged on ordinary livestock, in mixed carloads, from Mississippi, Tennessee, and Alabama to Louisville, Ky., and from Blackford, Ky., to Evansville, Ind., were unreasonable. The applicable tariffs required the application of the highest rate and the highest minimum weight. As the calf rate was higher than the cattle rate, and the cattle minimum greater than the calf minimum, charges collected on shipments of calves and cattle based on the calf rate and cattle minimum. Defendants offered no evidence. HELD, reparation awarded to basis of amended rule providing for application of the rate and minimum for that kind of stock which on a straight carload basis produces the highest charge, reparation awarded. Louisville Livestock Exchange v. L. & N. R. R., 132 I. C. C. 667.

(3v) Atlanta and Howell Stock Yards, Ga: upon further consideration through rates on horses and mules from St. Louis, Mo., Ohio River crossings, and numerous other points, to Atlanta, Ga., and certain other points, found not unreasonable nor in violation of aggregate-of-intermediates clause of section 4 of the act. Rates assailed compare favorably with rates contemporaneously maintained on like traffic from Ohio and Mississippi River crossings to other cities in the Southeast and with distance scale found reasonable for future in original report. Moreover, since disparity between through rates and combination rates appears to be due to low level of latter rather than any excessiveness in former, persumption of unreasonableness has been successfully rebutted. Findings in previous reports 63 I. C. C. 6; 74 I. C. C. 419; 93 I. C. C. 325, reversed. Hudson Mule Co. v. L. & N., 129 I. C. C. 365

(3w) Shipments of sheep moved in double-deck cars, charges being collected at rate of 38 cents, minimum 22,000 opunds Governing tariff also published a rate of 30 cents on feeder sheep, subject to provision, "These rates only apply when a certificate is presented by the shipper that stock is intended for feeding purposes and not for slaughter." Certificate purporting to comply with provision was presented sometime after shipments moved. Defendant contends that lower rate was inapplicable as certificate was not submitted at time of shipment. Complainant, on the other hand, contends that nothing in tariff indicated when certificate was to be presented and that subsequently presentation in writing met tariff requirements. HELD: A reasonable interpretation of provision requires that certificate be pesented at a time not later than tender of shipments. As the provision reads shipper was required to present a certificate that stock "is intended for feeding purposes," and commission is of opinion that this must relate to time of movement. Rate assessed found applicable. Calkins, Augsbury & Mikan v. M. C., 129 I. C. C. 475.

(3x) Charges collected on shipments of sheep, from Chicago, Ill., to Wolverine, Mich., in double-deck cars, minimum weight 22,000 pounds, found unreasonable to extent they exceeded charges which would have accrued on basis of 18,000 pounds, which basis was found reasonable in 69 I. C. C. 125, for application on sheep in double-deck cars of size here involved. Reparation awarded. Calkins, Augsbury & Mikan v. M. C., 129 I. C. C. 475.

(3y) Rules and regulations providing for the assessment of charges on mixed carloads of livestock at the rate and minimum weight for that kind of stock which on a straight c. l. basis

would produce highest charge, with certain exceptions, between points in official classification territory found not unreasonable as compared with the intrastate traffic rule effective in Ohio, and rates provided in rule 10 of the consolidated freight classification for mixed shipments of other commodities. These interstate rules were prescribed in 69 I. C. C. 125 and 81 I. C. C. 305, and are applicable throughout the United States. Complaint dismissed. Ohio Farm Bureau Federation v. A., C. & Y. Ry. Co. 129 I. C. C. 689

LOADING AND UNLOADING

See Allowances §8 (4⅞); Classification §4, §13; Demurrage; Facilities and Privileges §10; Minimums; Reasonableness of Rates §15½; Transportation §10.

LOCAL RATES AND COMBINATIONS

See Advanced Rates §5 (8); Class Rates; Combination Rule; Commodity Rates; Evidence §13 (3), §13 (5), §28, §47; Passenger Fares and Facilities §5¾; Reasonableness of Rates §28; Through Routes and Joint Rates §13½, §15, §22.

(a) Combination rates on sand and gravel from South Beloit, Ill., and on cement from Buffington, Ind., to Darien, Wis., thence recoonsigned to Vaughn Siding, Wis., found not unreasonable or otherwise unlawful. Complainant made comparisons with lower through rates on shipments which may be reconsigned to various Wisconsin points when no back haul is involved. To accomplish reconsignment here it was necessary to back haul shipments and comparisons of continuous line hauls are therefore of little value. Moreover, in 41 I. C. C. 422, 424, commission held that nonexistence of an out-of-line haul was a condition precedent to the right of a shipper to demand reconsignment. Fess v. C., H. & G. L., 104 I. C. C. 262.

(b) Shipment moved under combination rates, each factor of which was increased under General Order No. 28 of Director General. Tariff naming second factor contained combination rule which provided a method for constructing through rates made on combination, but made no reference to tariff carrying first factor, nor did the latter contain any reference to rule. FOUND: Following the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, and other cited cases, rate charged was inapplicable, and reparation awarded. Miller & Brickley Grain Co. v. Director General, 107 I. C. C. 81.

(c) Rates on solid asphalt in iron barrels and drums from Port Arthur and West Port Arthur, Texas., to Porter, Ind., based on Chicago combination, found unreasonable to extent they exceeded combinations contemporaneously in effect to and from Whiting, Ind. Reparation awarded. Sall Mt. Co. v. A., T. & S. F., 107 I. C. C. 395.

(d) Rates on wool, in the grease, in sacks, from points in Missouri to Boston, Mass., found unreasonable to extent they exceeded sum of proportional fourth-class rates to west bank of the Mississippi River and proportional commodity rate beyond. Reasonable rates prescribed for future. Former report, 77 I. C. C. 431, corrected. Boston Wool Trade Asso. v. B. & A. R. R., 107 I. C. C. 497.

(e) Shipments of brick moving from Springfield, Ill., to St. Petersburg, Fla., found overcharged inasmuch as lower combination should have been applied by application of combination rule which provided a method of constructing through rates made on combination. Reparation awarded. Boston Brick Co. v. I. T., 107 I. C. C. 507.

(f) Rates on Bristol board and printing paper from Holyoke, Mass., to Oklahoma City found unreasonable to extent they exceed lowest combination. Reasonable basis of rates prescribed for future and reparation awarded. Express Publishing Co. v. A. S., 107 I. C. C. 528.

(g) Rate on wood-pulp board from Bellows Falls, Vt., to Oklahoma City found not to have been unreasonable in past, but present rate found unreasonable to extent it exceeds lowest combination. Reasonable basis of rates prescribed for future. Boston Wool Trade Asso. v. B. & A. R. R., 107 I. C. C. 497, 528.

(h) Mere comparison of through rates with combinations does not prove that combination rates are unreasonable. Beatrice Creamery Company v. C., B. & Q., 107 I. C. C. 568, 570.

(i) Combination rate assessed on an unrouted sporadic shipment of rig irons and nails from Ranger, Tex., to Coman-

che, Okla., which moved over a route embracing three lines, found unreasonable to extent it exceeded a lower rate contemporaneously in effect via a slightly shorter two-line route. Notwithstanding that shipment was sporadic complainant is entitled to have its traffic move at a rate that is not unreasonable. The joint rate applying over shorter route is by no means depressed and unquestionably would produce earnings sufficient to be applied over slightly longer three-line route. Reasonable rate prescribed for future and reparation awarded. Lone Star Gas Co. v. C., R. I. & P., 109 I. C. C. 258.

(j) Combination rates assessed on forest products and naval stores from Barth, Kiln, and Loretta, local points on the Mississippi Southern R. R., a short line carrier, to interstate destinations, and on coal from interstate points to above-named stations, found not unreasonable as compared with lower blanket rates contemporaneously maintained from and to Lumberton, the junction point, and adjacent points in Mississippi Valley territory, which lower rates were subsequently established as through rates from and to Kiln, Barth, and Loretta. Reparation denied for any undue prejudice which may have existed in the past, no such proof of damage as is required to sustain an award of reparation under such a finding having been furnished. Hines Yellow Pine Trustees v. A., C. & Y. Ry., 109 I. C. C. 453.

(k) Class rate assessed on sporadic shipments of green salted hides from Moultrie, Ga., to Elsemere Junction, Del., found unreasonable as compared with lower commodity rates contemporaneously in effect from various points in Georgia, Alabama, and Florida to Elsemere Junction and to Philadelphia, New York, and Boston, and to extent it exceeded lower commodity rate subsequently established. Reparation awarded. Barr & Dougherty v. G. N., 109 I. C. C. 487.

(l) Combination rates assessed on lumber from Millville Junction, Fla., to Decatur, Ga., reconsigned to Scottdale, Ga., found unreasonable to extent that factor Millville Junction to Decatur exceeded rate from same origin point to Atlanta. Carrier offered no justification for an unusual situation whereunder industries at Decatur having private sidings were accorded the Atlanta rate, whereas higher rates were assessed on lumber consigned to the general public. Reasonable rates prescribed for future and reparation awarded. Watters-Tonge Lumber Co. v. A. & St. A. B., 109 I. C. C. 598.

(m) Complainant attacked combination rate charged on two cars of bituminous coal from Christopher, Ill., to Malvern, Ia., on June 24 and Aug. 20, 1924, as unreasonable. Shipments moved as routed by shipper over Burlington from Christopher to Litchfield, Ill., Wabash beyond, charged $1.36 to Litchfield and $3.10 beyond. There was a joint rate of $3.59 to Malvern over defendant's lines when routed via Jacksonville, Ill., 524 miles. This rate was in effect over the route of movement up to June 18, 1924, when the routing was changed to read via Jacksonville. Present rate via Jacksonville is $3.49. Short line distance is I. C., to East St. Louis Wabash beyond 470 miles. HELD: Rate attacked unreasonable to extent it exceeded $3.59, reparation awarded. Green Bay Lumber Co. v. C. B. & Q. R. R., 112 I. C. C. 562.

(n) Complainant attacked combination rate charged on two cars of wheat shipped July 30 and Oct. 3, 1921, from St. Francis, Kas., to Wausau, Wis., as unreasonable and inapplicable. St. Francis is on a branch line of the Burlington. Wausau is 180 miles northwest of Milwaukee on the Milwaukee and Northwestern. Shipments moved over Burlington to Kansas City, Mo., where they were stored and reforwarded over that line to Council Bluffs, Ia., and Northwestern beyond, distance 1,391 miles, charged 25c to Kansas City, 13c to Council Bluffs, and 27.5c beyond. Shipments were tendered to Burlington at Kansas City routed C. & N. W. delivery. The lowest combination consistent with the terminal delivery specified was a rate of 60c in connection with the M. P., as an intermediate carrier from St. Josephs, Mo., to South Omaha, Neb. Shipments misrouted. A rate of 51.5c was applicable over M. P., Omaha Northwestern. HELD: Rate attacked unreasonable to extent it exceeded 51.5c, reparation awarded. Hodgson Davis Grain Co. v. C. B. & Q. R. R., 113 I. C. C. 234.

(o) Complainant attacked combination rate of $1.175 charged on a car of alfalfa seed shipped Nov. 16, 1922, from Clayton, N. M., to Kansas City, Mo., as unjust, unreasonable and unduly discriminatory and in violation of section 4 to extent it exceeded 69c. Shipment

moved as routed in the bill of lading over C. & S., to Trinidad, Colo., thence Santa Fe, charged class A of 48.5c to Trinidad and commodity rate of 69c beyond. A joint rate of 69c was applicable from Clayton to Kansas City over C. & S., to Pueblo, Colo., and Santa Fe beyond. No necessity appears for a commodity rate over the route of movement. HELD, rate attacked unreasonable to extent it exceeded 69c, reparation awarded. Peppard Seed Co. v. A., T. & S. F. Ry., 113 I. C. C. 309.

(p) Complainant attacked combination commodity rates of 72 and 47c charged on 51 cars of petroleum products from Brunswick, Ga., to Richmond and Petersburg, Va., during Oct. and Nov., 1922, as in excess of the combination rate of 42c then in effect over the lines of defendant carriers. No specific commodity rates were in effect, but there was applicable a local rate of 24.5c to Wilmington, N. C., and 17.5c beyond. Complainant called defendants' attentions to this combination before any shipments were made and requested them to publish a through rate of 42c over their direct lines. A rate of 47c was published on one day's notice effective Oct. 12, 1922. HELD: Rate attacked unreasonable to extent it exceeded 47c, reparation awarded. National Oil Co. v. S. A. L. Ry., 113 I. C. C. 371.

(q) Through combination rate on unshelled peanuts from Suffolk, Va., to Hutchinson, Kans., found unreasonable to extent it exceeded rate prescribed in 83 I. C. C. 14 and 100 I. C. C. 307 from Suffolk and other Virginia points to Oklahoma and Texas destinations for comparable distances. Reasonable rates prescribed for future and reparation denied. Western Brokerage Co. v. A. C. L., 112 I. C. C. 103.

(r) Combination rates on coal from Colorado and northern New Mexico producing districts to local points in State of Kansas on the Frisco, Katy, and Midland Valley Railroads found unreasonable and unduly prejudicial as compared with joint rates maintained to destinations on other lines in same general Kansas territory. Reasonable rates prescribed for future. Kansas Public Utilities Comm. v. A., T. & S. F., 112 I. C. C. 235.

(s) Proposed increased rates on potatoes from Monte Vista and surrounding Colorado points on the Denver & Rio Grande Western to certain destinations in Texas on the Texas & Pacific found justified. Present rates were established to meet competition from Greeley, Colo., and were to apply as maxima only at intermediate points on direct routes. In establishing revised rates from Colorado to Texas, to comply with fourth section requirements, the present rates were inadvertently continued to destinations here considered, nor were they restricted in their application to direct routes as intended. Proposed schedules will eliminate these existing fourth-section violations and place points under consideration on general basis of rates now applying from and to all other points in same origin and destination territories for substantially same distances. Potatoes from Colorado to Texas, 112 I. C. C. 389.

(t) Combination rate on fresh peaches, in baskets, from Emmett, Idaho, to Miami, Fla., found unreasonable to extent it exceeded a joint rate contemporaneously applicable to same destination from numerous points in Oregon and Washington, Emmett being intermediate between these groups and Miami. The lower joint rate was published subject to rule 77 of Tariff Circular 18-A, and subsequent to filing of complaint was established from Emmett. Reparation awarded. Drake Produce Co. v. O. S. L., 112 I. C. C. 551.

(u) Combination rate on coal from Christopher, Ill., to Malvern, Iowa, via Litchfield, Ill., found unreasonable as compared with rates contemporaneously in effect from Illinois and Kentucky points to various destinations for comparable distances, and to extent it exceeded joint rate between origin and destination via Jacksonville, Ill. Reasonable rate via Litchfield prescribed for future and reparation awarded. Green Bay Lbr. Co. v. C., B. & Q., 112 I. C. C. 562.

(v) Combination rate on coal from Christopher, Ill., to Malvern, Ia., via Litchfield, Ill., found unreasonable to extent it exceeded lower joint rate contemporaneously in effect via Jacksonville, Ill. Reasonable rate via Litchfield prescribed and reparation awarded. Green Bay Lbr. Co. v. C., B. & Q., 112 I. C. C. 562.

(w) The primary purpose of a local rate is to apply to local shipments of the commodity which it covers from and to points specified, although in absence of joint through rates or of proportional

rates of same character between same points, it applies on through traffic as well as local traffic. Indian Refining Co. v. L. & N., 112 I. C. C. 732, 735, 736.

(x) The commission's tariff rules authorize the publication of proportional rates and are silent as to the necessity for canceling the local rates between the same points for application on through traffic, and since the rules do not provide that proportional rates conflict with local rates, it follows that the establishment of a proportional commodity rate removes the application on through traffic of a local commodity rate on the same article between the same points. Indian Refining Co. v. L. & N., 112 I. C. C. 732, 736.

(y) On a carload of cement from York, Pa., to Cape Girardeau, Mo., a combination of two local rates to and from an intermediate point, subject to combination rule, produced a lower charge than a combination of a local and a proportional rate to and from same intermediate point, not subject to said rule. Following Indian Refining Co., 112 I. C. C. 732. FOUND: That the higher combination of the local and the proportional rate was applicable. Sandusky Cement Co. v. P. R. R., 112 I. C. C. 737.

(z) Applicable combination rates on newsprint paper from Millinocket and East Millinocket, Me., to Providence, South Providence, and Pawtucket, R. I., found unreasonable as compared with lower rate on newsprint from Howland and Woodland, Me., to same destinations, and to extent they exceeded combinations composed of proportional commodity rate on printing paper to Northern Maine Junction plus the sixth-class rate beyond. Reparation awarded. Great Northern Paper Co. v. B. & A., 113 I. C. C. 463.

(aa) Combination rates charged on grain and products from points in Colorado, Kansas, and Nebraska to destinations in Tennessee, Georgia, and Alabama, found legally assessed. Lower joint rates applied to Greenwood, Miss., and New Orleans, La., farther distant points, and while tariff provided for their application to directly intermediate points, it also carried complete routes, none of which operated through intermediate destinations here involved. Complainant here attempts to ignore such routes and construct unauthorized circuitous routes via which destinations would be intermediate to Greenwood and New Orleans. The naming of specific routes to the farther distant points, however, eliminated all other routes, and conclusion set forth in rule 4 (j) of Tariff Circular 18-A which provides that "When a tariff specifies routing the rates may not be applied via routes not specified," is controlling. Russell Grain Co. v. A. G. S. R. R., 113 I. C. C. 701.

(bb) Complainant attacked combination rates charged on cars of crude rubber from New York, N. Y., and of reclaimed rubber from central territory to Omaha, Neb., during the statutory period, as unreasonable and unjustly discriminatory. Charged on fourth class rates to and from the Mississippi river. Present rates being fifth class to and from the river. HELD: Rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Nebraska Tire & Rubber Co. v. B. & O. R. R., 115 I. C. C. 99.

(cc) Complainant attacked combination rate charged on a car of peaches shipped on July 26, 1923, from Willvale, Ga., to Uniontown, Pa., reconsigned from Pittsburgh, Pa., as unreasonable and unduly prejudicial to extent it exceeded rate from Willvale to Connellsville, Pa. Willvale is a local point on the C. of Ga. about 5 miles west of Fort Valley, Ga. Uniontown is on a branch of the Pennsylvania extending from Greensburg, Pa., and is 69 miles from Pittsburgh. Connellsville is 56 miles from Pittsburgh and directly intermediate to Uniontown. The shipment moved from Willvale to Pittsburgh as routed, over C. of Ga., Southern, C. N. O. & T. P. and Pennsylvania to Pittsburgh, from which point it was reconsigned to Uniontown, charged 66.5c to Cincinnati and 47.5c beyond. The contemporaneous rate to Connellsville was $1.05, made up of 66.5c to Cincinnati and 38.5c beyond. HELD: Rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Gentile Bros. Co. v. C. of Ga. Ry., 115 I. C. C. 251.

(dd) Respondents stress the fact that in several reports the commission has commented upon the undesirability of the combination rule from a tariff standpoint. They refer to the cooperation and suggestions of Bureau of Traffic looking to the ultimate elimination of the combination tariff. Those suggestions did

not contemplate increases in rates, for which no sound justification is offered, by the cancellation of the combination rule. Combination rule on brick, 115 I. C. C. 293, 303.

(ee) A provision in a tariff carrying rates which may be used in combination to the effect that the rates are subject to the combination rule is equivalent to the publication of the rule in the rate tariff. Pendleton & Gilkey v. M. R. L. & M. Ry., 115 I. C. C. 413, 414.

(ff) Complainant attacked combination rates charged on a car of grapes shipped on September 27, 1918, from Portland, N. Y., to Memphis, Tenn., and reforwarded to New Orleans, La., as illegal and unreasonable. Shipment was originally consigned to complainant at Memphis. On arrival at Memphis the car was placed on a track adjacent to complainant's warehouse where deliveries are usually made, and complainant paid the charges thereon based on a rate of 74c. The shipment remained as placed for six days when complainant having disposed of the car at New Orleans reshipped it to that point on a separate bill of lading, paying the rate of 56.5c thereon from Memphis to New Orleans. Contemporaneously, there was in effect a joint rate of 99c on grapes in carloads from Portland to New Orleans. It was complainant's intent that the car should move to Memphis, that this intent was not changed prior to arrival of the car at Memphis, and it was tendered to and accepted by complainant at that point, thereby terminating the contract for carriage from Portland to Memphis. The further movement to New Orleans was under new billing and constituted a new contract of carriage. The car was reshipped from Memphis, and not reconsigned. HELD: Rates charged not illegal, complaint dismissed. Canale & Co. v. Director General, 115 I. C. C. 415.

(gg) Complainant attacked sixth class rates charged on rough marble, carloads, as inapplicable. Shipments were forwarded over interstate routes to Buffalo from piers in New York Harbor or from the yards of importers at Long Island City, N. Y. Some of the shipments moved over the Erie direct and others over the C. of N. J. and the Erie. Sixth class over either route previous to January 2, 1922, was 28.5c. On that date it became 29.5c. On July 1, 1922, it was reduced to 26.5c which is the present rate. A commodity rate of 25c was in effect up to June 30, 1922, on building stone from Long Island City and New York harbor points or Jersey City to Buffalo over the C. of N. J. and Erie and also from Long Island City to Buffalo over the Erie direct, subject to rule 77. HELD: Rates charged inapplicable, applicable rates commodity of 25c. Rates charged unreasonable to extent they exceeded rates from Long Island City, reparation awarded. Lautz Marble Corp. v. E. R. R., 115 I. C. C. 543.

(hh) It is settled that where the combination of separately established locals or proportionals is the usual and recognized basis of rates, the application of an increase to each component of such a combination rate is governed by the applicable tariffs in effect on the date of shipment, and that if neither of the tariffs carrying the component rates contains or makes reference to a combination rule there is no holding out to the shipper under the principle announced in Sligo case, 62 I. C. C. 643, and 73 I. C. C. 551. Utah Idaho Sugar Co. v. Director General, 115 I. C. C. 707, 709.

(ii) Complainant attacked combination commodity rate charged on one car of limestone rock shipped from Margerum, Ala., to Dallas, Tex., August 29, 1922, as unreasonable, unjustly discriminatory and unduly prejudicial. Shipment was billed as rough stone, charged over Southern to Memphis 123 miles, 4.5c on broken stone, and beyond 482 miles over St. L. S. W. rate of 29.5c on paving stone, rough quarried. On May 6, 1925, Southern published a scale of distance rates applicable from the Margerum quarry to certain destinations east of the Mississippi river on limestone, asphaltic, broken or crushed, not ground or pulverized. These were the rates sought by complainant. It is apparently satisfied with the rates for the future and the only question is reparation. None moved before, none has moved since, and none is likely to move in the future. HELD: Rates attacked not unreasonable, complaint dismissed. Florence Chamber of Commerce v. Southern Ry., 118 I. C. C. 7.

(jj) Complainant attacked combination rates charged on 6 cars of cordwood shipped from Twin and Crosby, Miss., to Braithewaite, La., during May and October, 1923, as unreasonable. Twin is on the N. O. G. N. and Crosby on the Pearl River Valley. Braithwaite is on the L. S.

16.1 miles south of New Orleans. Charged to New Orleans 8c from Crosby and 6c from Twin, beyond New Orleans 13c. On December 26, 1924, and April 1, 1925, commodity rates of 3 and 8c were established on cordwood from New Orleans to Braithwaite and from Crosby to New Orleans, respectively. HELD: Rate attacked unreasonable to extent the factor New Orleans to Braithwaite exceeded 3c, reparation awarded. E Z Opener Bag Co. v. Pearl River Valley R. R., 118 I. C. C. 524.

(kk) It would be manifestly impossible to adjust the inbound and outbound rates from and to all market points so that the combination of rates to any destination would be the same through all markets. Nashville Traffic Bureau v. L. & N. R. R., 118 I. C. C. 748, 753.

(ll) Combination rates on automobiles from Detroit, Flint, and North Flint, Mich., and on plumbers' supplies from Noblesville, Ind., to Birmingham, Ala., found not unreasonable as compared with lower joint rates subsequently established, or with rates to South Atlantic and Gulf ports. Rates from Ohio River to South Atlantic and Gulf ports are subnormal, being induced by competition over which rail lines have no control. For many years the prevailing basis for rate making to points south of the Ohio River has been the combinations on the crossings, and joint through rates subsequently established were constructed on that basis. Moreover, rates assailed to Birmingham compare favorably with those to such inland points as Atlanta, Gainesville, Macon, and Rome, Ga., and Montgomery, Alabama City, and Tuscaloosa, Ala. Birmingham Traffic Bureau v. Director General, 115 I. C. C. 33.

(mm) Two-factor combination rate assessed on automobiles from Detroit, Flint, and North Flint, Mich., and on plumbers' supplies from Noblesville, Ind., to Birmingham, Ala., based on Jeffersonville, Ind., found inapplicable. Legal rate found to be a lower three-factor combination based on Louisville and Water Works, Ky., and applicable under rule 5 (b) of Tariff Circular 18-A. Refund of overcharges directed. Birmingham Traffic Bureau v. Director General, 115 I. C. C. 33, 36.

(nn) Full combinations of locals to and from junction points on bituminous coal from West Frankfort, West Frankfort mine No. 18, Christopher, Christopher mine No. 20, Johnson City, and Buckner, Ill., to points in Indiana on the Big Four, found unreasonable and unduly prejudicial to extent they exceeded lower joint rates contemporaneously naintained from competing mines located in so-called Harrisburg group in southern Illinois to same Indiana destinations. Reasonable and nonprejudicial rates prescribed for future. Old Ben Coal Corp. v. C., C., C. & St. L., 115 I. C. C. 84.

(oo) Combination rates on crude rubber from New York terminals, and on reclaimed rubber from points in c. f. a. territory, to Omaha, found not unreasonable or otherwise unlawful as compared with rates to Akron, Ohio. Complainant's allegation of unreasonableness rests upon a showing that rates to Omaha yield ton-mile earnings higher than rates to Akron, but that fact alone does not establish unreasonableness of Omaha rate. The Mississippi River combination basis of constructing through rates has been in effect for many years, and has in numerous cases received approval of commission. Nebraska Tire & Rubber Co. v. B. & O., 115 I. C. C. 99.

(pp) Combination rates on crude rubber from New York terminals, and on reclaimed rubber from points in c. f. a. territory, to Omaha, Nebr., found not unreasonable or otherwise unlawful as compared with lower import rates from Pacific coast ports to Akron, Ohio, blanketed back to Missouri River. Complainant contended that it was unreasonable to apply blanket rates eastbound while maintaining graded rates westbound. The eastbound blanket rates, however, are shown to be unduly low, having been established by western carriers for purpose of securing some of traffic to Akron which otherwise would move through New York. Moreover, the Mississippi River combination basis of constructing through rates has been in effect for many years, and has in numerous cases received approval of commission. Nebraska Tire & Rubber Co. v. B. & O., 115 I. C. C. 99.

(qq) Combination rates on coal from certain mines in the New River district of West Virginia, on the C. & O., to interstate destinations on or via the Virginian Ry., and from mines on the Virginian to eastern interstate destinations on or via the C. & O., found not unreasonable, discriminatory, or unduly prej-

udicial as compared with rates accorded other mines similarly situated, which by trackage agreements or otherwise have the benefit of the district rate on or via either line. Rates sought are not shown to be necessary or that it would be in the public interest to open the markets served by either the Chesapeake or the Virginian to shippers on the other line. Ragland Coal Co. v. V. Ry., 115 I. C. C. 147.

(rr) Combination rate on crushed rock from Dresser Junction, Wis., to Minnehaha Falls, Minn., outside the switching district but within the city limits of Minneapolis, Minn., found unreasonable as compared with lower rates contemporaneously in effect from point of origin to various delivery points within the Minneapolis switching limits and to extent it exceeded lower joint rate subsequently established. Reparation awarded. Board of Park Commrs. v. C., M. & St. P., 115 I. C. C. 211.

(ss) Upon contention that combination rates on shipments of potatoes from Sidney, Mich., to Philadelphia, Pa., reconsigned at Old Forge, Pa., were inapplicable and unreasonable to extent they exceeded lower joint rate, contemporaneously in effect from origin to final destination over another route, plus a backhaul charge, HELD: Governing reconsignment tariff provided for the application of through rate plus certain distance rates for detours or back hauls not to exceed 300 miles, but a back haul of more than 480 miles would have been necessary in instant case. Reconsignment at Old Forge did not, therefore, come within such provision. Miller v. P. M. Ry., 115 I. C. C. 461, 462, 463.

(tt) Combination rates on staves and headings from Winnsboro, La., to Jackson, Miss., found unreasonable. Lower joint rates contemporaneously applied on lumber, commission having indicated in 52 I. C. C. 598, 619, that such rates should be observed as maxima on heading and staves. Moreover, no reason was shown why through rates should not be somewhat less than combination of locals, and mere fact that carrier desired to keep traffic on its own lines in order to secure a longer haul is no valid reason why it should refrain from becoming a party to joint rates. Reasonable joint rates prescribed for future and reparation awarded. Jackson Traffic Bureau v. A. & V., 115 I. C. C. 570.

(uu) On gravel moving from Glencoe, Yeatman, and Jedburg, Mo., to Greenville, Ill., no joint rates were in effect, charges being collected on basis of a two-factor combination treated by combination rule, which provided a specific method for construction of through rates. Contemporaneously a lower three-factor combination applied when treated by the rule, one factor of which carried the rule unrestricted, one restricted its application to cases where all factors referred to the rule and authorized an affirmative application thereof, third factor neither referring to nor containing the rule. HELD: The holding-out principle laid down in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551 governs, and lower combination treated by the rule was applicable. Shipments found overcharged and reparation awarded. Van Dusen & Baumberger Co. M. .P., 115 I. C. C. 603.

(vv) Upon reargument, former report, 101 I. C. C. 138, modified, and combination rates on shelled peanuts from points in Alabama, Florida, Georgia, and South Carolina, to Chicago, Ill., Milwaukee, Wis., Canton and Cleveland, Ohio, South Bend, Ind., and Dubuque, Iowa, and from Nashville, Tenn., to Chicago, found unreasonable due to factors north of the Ohio and Mississippi River crossings. Reasonable rates for future prescribed and reparation awarded only for the period extending back to date of filing of complaint. United Fig & Date Co. v. A. C. L., 115 I. C. C. 643.

(ww) Shipments moved under combination rates. Tariff governing one factor made reference to combination rule which provided a specific method for constructing through rates made on combination. Tariff governing other factor made no similar reference nor contained a similar rule. Upon contention of carriers that combination rule was not applicable because not specifically set forth in tariff but merely referred to, HELD: This position is untenable, following 93 I. C. C. 186, and rates constructed by use of the rule were applicable. See also 62 I. C. C. 643 and 73 I. C. C. 551. Allen Mfg. Co. v. L. & N., 115 I. C. C. 739.

(xx) Combination rate assessed on printing, blotting, and wrapping paper and on pulp board in mixed carloads from Hamilton, Ohio, to Wichita, Kans., found unreasonable to extent it exceeded a lower combination contemporaneously

in effect over route of movement. Reparation awarded. Western Newspaper Union v. A., T. & S. F., 118 I. C. C. 692.

(yy) Local rates on grain and products from Ohio and Mississippi River crossings to Nashville, Tenn., found unreasonable and unduly prejudicial in their relation to corresponding rates from same crossings to Memphis. Reasonable and nonprejudicial rates prescribed for future and reparation denied. Nashville Traffic Bureau v. L. & N., 118 I. C. C. 748.

(zz) Local rates on grain and products from Memphis, Tenn., to Birmingham, Ala., found unreasonable as compared with rates to Meridian, Miss., and other points in Mississippi Valley territory. Reasonable rates prescribed for future and reparation denied. Birmingham Traffic Bureau v. St. L.-S. F., 118 I. C. C. 756.

(3a) Complainant attacked combination rate of 44 cents charged on three cars of rough granite shipped in Dec. 1923 and April and August 1924, from Salida, Colo., to Keokuk, Ia., as unreasonable, unjustly discriminatory and unduly prejudicial. Shipments moved D. & R. G. W. to Denver, Colo., and Burlington beyond, 1,061 miles, charged at through rate of 44 cents constructed under the combination rule. Shipments consisted of rough granite in blocks. The ton-mile earnings over the route the shipment moved may well be somewhat higher than earnings for a haul through level country. HELD, rate charged not unreasonable or otherwise unlawful, complaint dismissed. Cameron Joyce & Schneider v. D. & R. G. W. R. R., 120 I. C. C. 129.

(3b) Complainant attacked combination rate charged on five cars of stoves and ranges shipped between Sept. 18, 1923 and March 13, 1924 from Indianapolis, Ind., to Des Moines, Ia., as unreasonable. Shipments moved Pennsylvania to Peoria, Ill., thence Burlington, charged fifth class 30.5 cents to Burlington, Ia., and 17 cents beyond. There was contemporaneously published a combination rate of 46 cents via Hannibal, Mo., in connection with the Wabash composed of 29 and 17 cents to and from the gateway, which rate was established via the Burlington on May 24, 1924. HELD, rate charged unreasonable to extent it exceeded 46 cents, reparation awarded. Indianapolis Chamber of Commerce v. Pennsylvania R. R., 120 I. C. C. 153.

(3c) Complainant attacked combination rate charged on one car of basket tops shipped Sept. 17, 1924 from Beaumont, Tex., to North East, Pa., as unreasonable. Shipment was originally consigned to Buffalo, N. Y., but at Fort Wayne, Ind., was diverted to North East a point directly intermediate to Buffalo. Shipment moved T. & N. O. and St. L., S. W. to East St. Louis, Ill., C. & A. to Chicago, Ill., N. Y., C. & St. L. Ry., beyond, charged 39.5 cents to Chicago and 34 cents beyond. A specific commodity rate of 47.5 cents was contemporaneously applicable on lumber, in carloads from Beaumont to North East, applicable on various lumber articles, including egg case material and box shooks. HELD, rate attacked unreasonable to extent it exceeded the rate on lumber, reparation awarded. Liberty Cooperage & Lumber Co. v. N. Y., C. & St. L. Ry., 120 I. C. C. 271.

(3d) Complainant attacked combination rate of 36.5 cents charged on three cars of second hand radiators shipped between Oct. 15 and Nov. 9, 1923, from Camp Meads, Md., to Trenton, N. J., as unreasonable and unjust to extent it exceeded 29 cents. Routed B. & O. to Wilmington, Del., and Pennsylvania beyond, applicable rate was 2.5 cents to Camp Meade Jct., plus 29 cents fifth class beyond. Reparation is sought to basis of 29 cents, which was the rate from Camp Meade to Princeton, N. J., to which Trenton is intermediate. On July 8, 1924 the rate of 29 cents was made to apply from Camp Meade. HELD, rate attacked unreasonable to extent it exceeded 29 cents, reparation awarded. Camp Meade Salvage Co. v. B. & O. R. R., 120 I. C. C. 273.

(3e) Complainant attacked combination rate of $3.52 charged on curbing, carloads, from Granite Hill, Ga., to St. Petersburg, Fla., as illegal and unreasonable to extent it exceeded a rate of $3, and unduly prejudicial as compared with a rate of $2.82 to Tampa, Fla. Granite Hill is on the Georgia R. R. 57 miles east of Macon, Ga. Charged $1.92 to Jacksonville and $2.10 beyond, subject to the combination rule. Short line distance is 482 miles over Georgia R. R. to Macon, G. S. & F. and A. C. L. through Valdosta, Ga., Jasper and Trilby, Fla. To Tampa distance 468 miles. Curbing

is shipped in flat cars. HELD, rate attacked not unreasonable, unjustly discriminatory or unduly prejudicial, complaint dismissed. Georgia Quincy Granite Co. v. A. C. L. R. R., 120 I. C. C. 408.

(3f) Complainant attacked rate charged on coal, carloads, from La Follette, Tenn., to Ludington, Mich., reconsigned while in transit to Hawkeye, Ia., as unreasonable and illegal. Car was consigned to complainant at Ludington, and was reconsigned in transit. Shipment routed L. & N. and Big Four, bill of lading carrying the notation "this car is shipped with intention of reconsigning. Failure to follow routing specified hereon will subject consignee to loss." L. & N. tariff named a proportional rate of $3.43 to Milwaukee and Manitowoc, Wis., when for beyond, and the tariff also carried a reconsigning clause which permitted shippers to bill coal to Ludington. Subsequent to movement L. & N. amended its tariff and provided a rate of $3.43 from La Follette to Milwaukee and Manitowoc when for beyond, via L. & N. to Cincinnati, Big Four to Benton Harbor and P. M. beyond. HELD, rate attacked unreasonable to extent it exceeded $3.43, reparation awarded. Reeves Coal & Dock Co. v. L. & N., 120 I. C. C. 428.

(3g) Complainant attacked charges on six shipments comprising seven carloads, of cotton compress parts moving between Dec. 29, 1920 and May 29, 1922 from Winona and Houston, Miss., to Earle, Russellville, and Little Rock, Ark., as unreasonable and in violation of section four. Combination of locals to and from Memphis, Tenn., were applicable. The record on the whole falls short of establishing that the rates applicable were unreasonable to the extent that they exceeded the rates sought, but it warrants the conclusion that they were unreasonable to extent they exceeded the rates from New Orleans, Jackson and Meridian. HELD, applicable rates on parts or pieces weighing less than 2,000 pounds not unreasonable but rates on castings or forgings weighing 2,000 pounds or more unreasonable to extent they exceeded rates from New Orleans, Jackson and Meridian to the same destinations, reparation awarded. Russellville Compress Co. v. G. M. & N. Ry., 120 I. C. C. 481.

(3h) The fact that the Commission may not have found the combination basis of charges unreasonable in certain past cases dealing with other commodities is not conclusive. The issue concerns the measure of the charges. The method of their construction is incidental. Russellville Compress Co. v. G. M. & N. R. R., 120 I. C. C. 481, 485.

(3i) Complainant attacked combination rate of 86.5c charged on two cars of wooden telephone insulator pins and brackets shipped Aug. 29 and Dec. 3, 1924 from Charlottesville, Va., to Tampa, Fla., as unreasonable to extent it exceeded rates on lumber. Charged 48c to Jacksonville and sixth class 38.5c beyond. Rate on lumber was 43.5c, and rate on lumber in the reverse direction being 36c. HELD, rate attacked unreasonable to extent it exceeded lumber rates, reparation awarded. Peninsular Telephone Co. v. Southern Ry., 120 I. C. C. 669.

(3j) Complainant attacked combination rate charged on a car of lumber shipped Oct. 4, 1921 from Breckenridge, Tex. to Apperson, Okla., diverted in transit at Kaw, Okla., as unreasonable. Shipment moved W. F. & S. to Graham, Tex., C. R. I. & G. to Fort Worth, Tex. and Santa Fe beyond, 464 miles, charged class D of 34.5c to Fort Worth and commodity rate of 36c beyond. Breckenridge is in central Texas about 133 miles west of Fort Worth. Contemporaneously a commodity rate of 39c applied from numerous points in central Texas to Kaw. HELD, rate attacked unreasonable to extent it exceeds 39c, reparation awarded. Gulf Production Co. v. W. F. & S. Ry., 120 I. C. C. 709.

(3k) Combination rate based on Los Angeles, Calif., charged on petroleum refined oil from O'Donnell Spur, Calif., to Wilmington, Calif., for export, found not unreasonable as compared with rates contemporaneously in effect on same commodity from and to various points in same general territory. Complainant contended that as each factor of a combination rate is designed to cover a local movement and two terminal services, and as there were but two terminal services on its shipments, through rate should be less than combination rate assessed. Carrier, however, showed that each factor of the combination charged was depressed by actual or potential truck, pipe-line, and rail competition, which made it impracticable to establish a through rate lower than the sum of

locals. Thomas Traffic Co. v. L. A. & S. L., 120 I. C. C. 671.

(31) Complainant attacked combination rates charged on 9 cars of copper wire, in coils, and copper wire strand, on reels, from Black Eagle, Mont., to Salt Creek, Wyo., between Aug. 20 and Nov. 21, 1924 as unreasonable and unduly prejudicial. Shipments moved G. N. to Laurel, Mont., C. B. & Q. to Illco, N. & S. beyond, charged $1.065, made up of commodity rate of 70.5c to Illco about 529 miles plus fourth class rate of 36c beyond, 41.2 miles, the former factor not being under attack. When the shipments moved there was in effect from Illco to Salt Creek a commodity rate of 21c on oil well supplies, described as including articles such as boilers, steel cable, iron or steel cable wire, iron or steel strand wire, and also copper or iron wire when forming not to exceed 20% of a car of machinery. Rate of 21c was made applicable on copper wire July 15, 1925. HELD, rate attacked from Illco unreasonable to extent it exceeded 21c, reparation awarded. Midwest Refining Co. v. G. N. Ry., 122 I. C. C. 205.

(3m) Complainant attacked combination rate charged of 78.5c on two cars of basket tops made of scarfed material, shipped on Aug. 15 and 16, 1924 from Ellisville, Miss., to Cleveland, O., and reconsigned to North East, Pa., as unreasonable to extent it exceeded the rates on lumber. Shipments moved Southern to Cincinnati, O., Big Four and N. Y. C. & St. L. They were originally consigned to complainant at Cleveland, routed by the shipper over Southern, N. Y. C. St. L. delivery. Prior to their arrival at that point complainant effected a sale of the material and requested reconsignment to North East. Rate attacked combination rate composed of class A rate of 52c to Cincinnati, O., and fifth class 26.5c beyond. Joint rates are maintained, and during the period in question were maintained, on lumber from an extensive southern territory to destinations generally in central and trunk line territories, and these rates were and are accorded on various lumber products. Scarfed material used in making basket tops consists of that portion of the wood remaining in the slab after the log has been squared. Lumber rate was 45c. This rate was made applicable on June 5, 1925. HELD, rate attacked unreasonable to extent it exceeded 45c, reparation awarded. Liberty Cooperage & Lumber Co. v. Southern Ry., 122 I. C. C. 297.

(3n) Complainant attacked combination rates charged on 46 shipments of automobiles and extra parts from South Bend, Ind., to Pueblo, Colo., between Jan. 9, 1924 and May 28, 1925 as unreasonable. Automobiles are rated first class in western classification and 110% of first class in official classification. Rate charged was 58.5c to Chicago and $2.735 beyond. Complainant contended that on all shipments made subsequent to April 8, 1924 the rate charged was unreasonable to extent it exceeded $3.12 made up of $1.37 to Missouri river and $1.75 beyond. The factor to the Missouri river was published following 88 I. C. C. 728 and became effective June 1, 1925. The alternative is combination rate of $3.275 made up of 54c to Gary, Ind., and $2.735 beyond. Complainant is satisfied with the present rate. The decision in 88 I. C. C. 728 related only to future rates and resulted in a widespread readjustment of rates of long standing. Reparation denied. As to the Gary combination, the tariffs contained a restrictive note which prevented the use of the Gary-Pueblo factor in constructing through rates from points beyond Gary. The Chicago combination was applicable. A finding under section 1 that the difference of 4.5c by which it exceeded the Gary combination represents an excess over a reasonable maximum rate would necessarily have to proceed from considerations other than those ordinarily presented in the determination of questions of reasonableness. In other words, a difference of 4.5c in a total rate of $3.32 is relatively so inconsiderable that it could hardly be said to transgress the "flexible limits of judgment" in rate making. The publication of rates to Gary lower than rates to Chicago from points near Gary is not of itself unlawful. The restriction whereby all shippers east of the Indiana-Illinois state line are placed upon the Chicago basis on traffic to Colorado and other states is an equalization measure which places all shippers on an equal plane and should not lightly be condemned. HELD, rates charged not unreasonable, complaint dismissed. Van Dyke Motor Co. v. M. P. R. R., 122 I. C. C. 412.

(3o) Complainant attacked combination rate charged on two cars of bituminous coal screenings from Harrisburg, Ill., to Watertown, S. D., between Aug.

18 and 21, 1925 as unreasonable. Shipments were routed by consignor over Big Four to Danville, Ill., N. Y. C. and E. J. & E. and C. & N. W. to destination 881 miles, charged $1.85 to Joliet and $3.82 beyond. Contemporaneously a rate of $3.93 was applicable over Big Four to Peoria and C. & N. W. beyond and subsequently was published via routes shipments moved. HELD, rate attacked unreasonable to extent it exceeded $3.93, undercharges waived. Saline County Coal Corp. v. C. & N. W. Ry., 122 I. C. C. 469.

(3p) Complainant attacked commodity rates charged on naphtha, carloads, from Tulsa, Okla., Wichita Falls, Tex., and Shreveport, La., to Tulsa, Okla., as unreasonable and unduly prejudicial. The rates on refined oil from the midcontinent field to destinations in central territory east of the Illinois-Indiana state line usually have been composed of the separately established proportional rates to and beyond St. Louis or the other river crossings, the lowest combination applying. HELD, rates attacked from Shreveport, La., to Cincinnati, O., not unreasonable and from Tulsa and Wichita Falls not unreasonable but for future unreasonable to extent they exceed 46.5c and 49c respectively. Proctor & Gamble Co. v. A. T. & S. F. Ry., 122 I. C. C. 473.

(3q) Complainant attacked combination rate charged on 6 cars of gravel shipped in May 1925 from Holliday, Kas., to St. Joseph, Mo., as unreasonable. Shipment moved Santa Fe to Leavenworth, Kas., and Burlington beyond 67.3 miles, charged distance rate of 5.5c to Leavenworth and class E of 8c beyond. The line of the Santa Fe extends from Holliday to St. Joseph through Atchison, Kas., 78 miles. Prior to August 15, 1925 the rate via this route was 8c, upon which date the latter carrier established the present rate of 5c. HELD, rate attacked unreasonable to extent it exceeded 5c, reparation awarded. Spencer Co. v. A. T. & S. F. Ry., 122 I. C. C. 689.

(3r) The Commission in the past has consistently refused to condemn rates on grain merely because they are the same as, or are in fact the combination on the primary markets. Ogden Grain Exchange v. A. & S. Ry., 122 I. C. C. 691, 716.

(3s) Complainant attacked combination rate charged on a car of cane sirup, in barrels, shipped Dec. 23, 1923 from Inwood, Fla., to Columbus, Ga., was unreasonable. Inwood is on the L. & N. 9 miles west of River Jct., Fla. Shipment moved L. & N. to River Jct, A. C. L. to Albany, Ga., and C. of Ga., beyond 226 miles, charged fifth class of 27c to River Jct., and commodity rate of 24.5c beyond. On June 26, 1926 a commodity rate of 43c was established. HELD, rate attacked unreasonable to extent it exceeded 43c, reparation awarded. Hardway Cargill Co. v. L. & N. R. R., 123 I. C. C. 23.

(3t) Combination rates run counter to the theory that the financial necessities of weak lines should be met by liberal divisions of joint rates, because when rates are so constructed the trunk lines earn more for their hauls to and from junctions with short weak lines than they would earn to and from the same junctions on traffic to and from other trunk lines. Consolidated Southwestern Cases, 123 I. C. C. 203, 388.

(3u) Complainant alleged combination rates charged on powdered milk, carloads and less carloads, from Andes and Shavertown, N. Y., moving via East Branch, N. Y., to Pier 23, North River, New York between May 24, 1923 and July 31, 1925, as unduly prejudicial and in violation of section four. Shipments moved D. & N. to East Branch and N. Y. O. & W. beyond, charged combination on East Branch. The evidence is directed against the factors from East Branch. The rate from Delhi a point beyond East Branch was 28.5c carloads and 38c less carloads, subject to rule 77. Effective Oct. 10, 1925 commodity rates equal to the rates from Delhi were established. HELD, complaint dismissed, without prejudice to filing of application on the special docket under rule 77. Innis Speiden & Co. v. N. Y. O. & W. Ry., 123 I. C. C. 577.

(3v) Complainant attacked combination rate charged on gravel, carloads, from Montgomery, Ala., to Barney, Ga., between Jan. 10 and May 21, 1924 as unreasonable and inapplicable to extent it exceeded $1.98. Shipments moved A. C. L., to Quitman, Ga., thence South Georgia to destination, charged $1.53 to Quitman and 68 cents beyond. At the time these shipments moved defendants maintained a rate of $1.76 on gravel from Montgomery to various destinations beyond Barney, and in territory contiguous thereto, for comparable hauls.

HELD, rates charged unreasonable to extent they exceeded $1.76 per ton, reparation awarded. Luten Bridge Co. v. A. C. L. R. R., 123 I. C. C. 612.

(3w) It is not unreasonable to apply the combination of locals on a shipment which has been placed for unloading at original destination and is subsequently reforwarded to a different destination. This is doubly true where the shipment has been unloaded by the shipper and is subsequently reforwarded by him or another to a different destination. Sioux City Live Stock Exchange v. C. & N. W. 122 I. C. C. 177, 186.

(3x) Combination rates assessed on shipments of structural iron and steel, from St. Louis, Mo., Chicago, Ill., and Bethlehem, Pa., routed by shipper for fabrication in transit at Muskogee, Okla., and reforwarded to Casper, Illco, and Salt Creek, Wyo., found applicable and not unreasonable. While contemporaneously lower joint rates were in effect to Great Falls, Mont., and Spokane, Wash., they were restricted so as not to apply to destinations named, and lower joint rates in effect to the Wyoming points were not applicable via Muskogee. Complainants routed shipments over extremely circuitous routes involving an out-of-line haul of at least 800 miles. Had they been forwarded over direct routes, lower rates could have been secured and wasteful transporation avoided. Tulsa Rig, Reel & Mfg. Co. v. M. K. T., 122 I. C. C. 405.

(3y) Combination rates based on Chicago, Ill., charged on shipments of automobiles and extra parts from South Bend, Ind., to Pueblo, Colo., found not unreasonable as compared with lower combination subsequently established pursuant to commission's decision in 88 I. C. C. 728, or with lower combination contemporaneously in effect at time of movement via Gary, Ind. Tariff containing the Gary-Pueblo factor contained a provision which prevented its use in constructing through rates from points beyond Gary. Under such restriction all shippers east of the Indiana-Illinois State line are placed upon the Chicago basis on traffic to Colorado and other States, and this constitutes an equalization measure which should not lightly be condemned. Moreover, difference in the total rates is relatively so inconsiderable that it could hardly be said to transgress the "flexible limits of judgment" in rate making. Van Dyke Motor Co. v. M. P., 122 I. C. C. 411.

(3z-4d) Combination rate applicable via route of movement on bituminous coal screenings from Harrisburg, Ill., to Watertown, S. Dak., found unreasonable as compared with lower rates from and to other points in same general territory for comparable distances and to extent it exceeded lower joint rate contemporaneously in effect over other routes and subsequently established via route of movement. Waiver of undercharges authorized. Saline County Coal Corp. v. C. & N. W., 122 I. C. C. 469.

(4e) Rates to and from points on short lines should not be made by combining local rates to and from junctions with other lines. Combination rates of this character put the territory local to the weak or short lines at an even greater disadvantage than that under which such points of necessity labor, and tend to hamper development of such roads and of industries and towns located thereon. Also, such combination rates run counter to theory that financial necessities of weak lines should be met by liberal divisions of joint rates, because when rates are so constructed truck lines earn more for their hauls to and from junctions with short, weak lines than they would earn to and from same junctions on traffic to and from other trunk lines. Consolidated Southwestern Cases, 123 I. C. C. 203, 388.

(4f) Combination rates to and from points on short lines run counter to theory that financial necessities of weak lines should be met by liberal divisions of joint rates, because when rates are so constructed the trunk lines earn more for their hauls to and from junctions with short weak lines than they would earn to and from same junctions on traffic to and from other trunk lines. Consolidated Southwestern Cases, 123 I. C. C., 203, 388.

(4g) Complaint alleged that combination rates on powdered milk, moving interstate from Andes and Shavertown, N. Y., to Pier 23, North River, New York, were unduly prejudicial and in violation of long-and-short-haul provision of section 4 of the act. Contemporaneously carrier's tariff, subject to rule 77 of Tariff Circular 18-A, published commodity rates from Delhi, N. Y., lower than factor of rates assailed from East Branch, point directly intermediate to Delhi. HELD: While publication of a lower rate from a farther distant point under authority of rule 77 is equivalent to an

admission that higher rate from intermediate point is unreasonable, here complainant did not allege unreasonableness and has failed to show damage resulting from undue prejudice or violation of section 4. Moreover, commodity rates equal to those in effect from Delhi have since been established from East Branch. Innis, Speiden & Co. v. N. Y., O. & W., 123 I. C. C. 577.

(4h) Complainant assailed combination rates charged on 20 cars of nursery stock, five in Jan. 1923, eight in Dec. 1923 and seven in Dec. 1924 from Montebello, Calif., to Riverton, N. J., as unreasonable and unduly prejudicial, and that shipments were misrouted. Montebello is on U. P., 9 miles east of Los Angeles; Riverton is on the Pennsylvania 9 miles east of Philadelphia. Shipments were routed by the shipper and moved over the U. P. to Los Angeles, S. P. to New Orleans, Southern via Meridian, Miss., and Atlanta, Ga., to Potomac Yard, Va., and Pennsylvania beyond. Rate charged combination of $1.875 to Washington, D. C., and 31c beyond. Rate of $1.875 was effective over routes through St. Louis, Mo., Cincinnati, O., and Louisville, Ky., and was formerly in effect over the route of movement. HELD, rate charged over route of movement not unreasonable, shipments not misrouted, complaint dismissed. Dreer v. L. A. & S. L. R. R., 126 I. C. C. 130.

(4i) Complainant attacked combination rate charged on two cars of wall paper, shipped Dec. 12, 1924 and March 20, 1925 from Niagara Falls, N. Y., to Dallas, Tex. One shipment moved L. V. and Pennsylvania to Philadelphia, Pa., thence Southern Steamship Co. to Houston, Tex., and M. K. T. beyond. Other moved N. Y. C. to New York, Mallory Line to Galveston and M. K. T. beyond, charged combination of 149c, composed of 9.5c to Depew, N. Y., and 139.5c beyond. Allegation is that rate charged is unreasonable to extent it exceeded 94c. This rate was in effect on wrapping paper from Depew and 99c from Niagara Falls, composed of 5c to Depew and 94c beyond. HELD, rate attacked not unreasonable, complaint dismissed. Tex Mex Jobbing House v. L. V. R. R., 126 I. C. C. 175.

(4j) Combination rate on nursery or florists' stock, including dormant rosebushes and other plants and bulbs, from Montebello, Calif., to Riverton, N. J., routed by shipper via a southerly route to prevent freezing, FOUND not unreasonable as compared with lower rates contemporaneously in effect via various other routes and formerly in effect over route of movement. Carriers showed that routing in question was cancelled because of refusal of carriers in southeastern territory to participate in rates to points north of Potomac River and Virginia cities gateways; that to open route to Riverton would discriminate against other destinations north of the gateways; and that divisions accruing under divisions prescribed in 95 I. C. C. 385, are so low as not to warrant extension of transcontinental basis to points beyond lines of southeastern carriers north of the gateways. Moreover, earnings over route of movement indicate that rate charged was reasonably low. Dreer v. L. A. & S. L., 126 I. C. C. 130.

(4k) Combination rates on lumber and products from points in Puget Sound district of State of Washington to Montana, North Dakota, South Dakota, and Minnesota destinations, FOUND not unreasonable or unjustly discriminatory but unduly prejudicial to extent they exceed joint rates contemporaneously maintained from Tacoma, Wash., and other points in the coast group. Since absorption by complainants of differentials over coast-group rates is generally difficult or impracticable, resulting rates are prohibitive and buyers tend to deal with complainant's competitors in the coast group who can ship at lower rates. Non prejudicial rates required for future. Pacific States Lbr. Co. v. G. N. Ry., 126 I. C. C. 471.

(4l) Combination rates on lumber and products from Elk River, Idaho, to Montana, North Dakota, South Dakota, and Minnesota destinations, FOUND not unreasonable, discriminatory, or unduly prejudicial except that rates to points east of the Montana-Dakota State line are unduly prejudicial as compared with joint rates contemporaneously in effect from Spokane, a competing point; with rates prescribed in 50 I. C. C. 591, and 77 I. C. C. 156, from Winchester, Idaho, a point south of Elk River, and points southeast of Spokane, respectively, to same destinations; and to extent indicated in report. Nonprejudicial rates required for future. Pacific States Lbr. Co. v. G. N. Ry., 126 I. C. C. 471, 473, 474.

(4m) Local rate on crude petroleum oil from certain Kentucky points to Owensboro, Ky., for movement by pipe line to Lawrenceville, Ill., FOUND not un-

reasonable, unduly prejudicial, or otherwise unlawful, as compared with local rates contemporaneously in effect from same and various other points to Evansville, Ind., and Louisville, Ky.; or with proportional rates to Evansville and Louisville, Ky.; or with proportional rates to Evansville and Louisville, and to Jeffersonville and New Albany, Ind., more distant points. If proportional rates had been established to Owensboro for application in connection with the pipe line, no reason appears why they should have been higher than those to Louisville and Evansville. However, local rates assessed appear not to have exceeded maximum reasonable rates for service performed. Indian Refining Co. v. L. & N., 126 I. C. C. 543.

(4n) Combination rate on paving brick from Buffalo, Kans., to McCook, Nebr., subject to switching charge at Superior, Nebr., found unreasonable as compared with joint-line rates contemporaneously in effect on cement on which switching charge is absorbed; with distance rates prescribed in 77 I. C. C. 22 from Mason City., Iowa, to destinations in Nebraska and South Dakota; and to extent it exceeded joint-line distance rate prescribed in 77 I. C. C. 4, from Sioux City, Iowa, to Nebraska points for comparable distances. Reparation awarded. Buffalo Brick Co., v. M. P. Ry., 126 I. C. C. 744.

(4o) Combination rate is constructed when freight is carried from point on one railroad to point on another railroad when there is no through rate. Norfolk Southern R. Co. v. Freeman Supply Corporation, (Va., 1926) 133 S. E. 817.

(4p) Complainant attacked combination rates charged on carloads of lime from Engle, W. Va., and Woodville, O., to points in Maryland on the H. & F. and W. B. & A. as unreasonable and inapplicable. Complainant attacked rates on crushed stone and ground limestone, carloads, from Martinsburg, Kearneysville, Engle and Millville, Va., to W. B. & A. stations as unreasonable and inapplicable. No joint rates were in effect at the time the shipments moved, nor when complaints were filed, and full combination of rates without deduction were charged. Since the filing of the complaint joint rates have been established from points on the B. & O. to W. B. & A. stations on the full combination basis. Tariffs of the trunk lines made reference to the combination rule. Joint class rates have not been justified. HELD, they were unreasonable to extent they exceeded the joint commodity rates subsequently established, the latter not being unreasonable and are reasonable maximum rates for the future. The combination basis, plus the switching charge, is not shown to be unreasonable. While it may be that rates in trunk line territory should reasonably be somewhat higher than those in central territory, particularly to destinations on short or weak lines, defendants have failed to justify the increased rate from Woodville. The applicable combination basis in effect prior to Sept. 1, 1924 was not unreasonable. The rates maintained since that date are unresonable to extent they exceed the combination previously in effect. Reparation awarded. Washington Building Lime Co. v. B. & O. R. R., 128 I. C. C. 9.

(4q) Complainant attacked combination rate charged on a car of railroad ties shipped Jan. 14, 1924 from East End., Mo., consigned to Decatur, Ill., and reconsigned in transit to Clearing. Ill., as inapplicable. Shipment moved Sligo & Eastern to Sligo, Mo., Frisco to St. Louis and Wabash beyond, charged three factor combination of 36.5c plus a reconsignment charge of $2.70. Tariffs publishing the factors beyond Sligo were subject to the combination rule. HELD, shipment overcharged on basis of rate of 35c, which would be the rate applying the combination rule, reparation awarded. Potosi Tie & Lumber Co. v. S. & E. Ry., 128 I. C. C. 41.

(4r) Complainant attacked combination rate charged on 35 cars of bituminous smithing coal and foundry coke from Pennsylvania and West Virginia to points west of the Mississippi river or in Canada between March 4, 1919 and Feb. 28, 1920 were inapplicable. Charged combination rate without use of combination rule. Tariffs naming one of the factors were subject to the combination rule. HELD, rates charged inapplicable, rates applicable were the combination using the combination rule, reparation awarded. Pioneer Coal & Coke Co. v. Director General, 128 I. C. C. 49.

(4s) Complainant attacked combination rate charged on 28 cars of automobiles, 5 from Pontiac, Mich., and 23 from Detroit, Mich., shipped to Dodge City Kansas, from June 27, 1924 to May 25, 1925 as unreasonable. Charged 110% first

class rate to Mississippi river and first class beyond. A first class rate of $2.995 applies from these points to Tyrone, Okla., on the main line of the Rock Island about 96 miles southwest of Bucklin. This rate applies at intermediate points on the Rock Island. Dodge City is on a branch line. On July 1, 1925 a rate of 6c higher than $2.995 was made applicable to Dodge City. HELD, rate attached not unreasonable or otherwise unlawful, complaint dismissed. Gum Motor Co. v. A. T. & S. F. Ry., 128 I. C. C. 61.

(4t) Rates on iron and steel rails and reinforcement concrete bars from Huntington, W. Va., to certain points in Kentucky, Tennessee, and Virginia, found unreasonable as compared with lower rates for comparable distances from Pittsburgh, Pa., Newark, Ohio, and Birmingham, Ala., competitive points and to extent that rates on the rails over specific routes, exceeded those subsequently established from Huntington to Johnson City, Tenn., plus prescribed distance rate factors beyond, and rates on bars and rails to destinations involved, to extent they exceeded specific base rates, plus prescribed distance factors beyond Winchester, Ky. Reasonable rates prescribed for future and reparation awarded. West Virginia Rail Co. v. C. & O., 128 I. C. C. 153.

(4u) Complainant attacked combination rates charged on blank unfinished wall paper and newsprint paper, carloads, over routes wholly within the United States, from Thomson, N. Y., to points within and contiguous to central territory as unreasonable and unduly prejudicial. Rates from Thomson are generally based on the combination of local or proportional rates to Johnsonville and Albany group rates beyond. Blank wall paper and newsprint paper, are generally rated sixth class, by exception to the classification. Rates on newsprint paper from Thomson to central territory are based on the combination of a proportional commodity rate of 6c to Johnsonville and sixth class rates beyond. HELD, rates attacked on blank wall paper, in carloads, not unreasonable or otherwise unlawful, but on newsprint paper unreasonable to extent they exceed rates on blank wall paper. Iroquois Pulp & Paper Co. v. A. A. R. R., 128 I. C. C. 187.

(4v) Combination rates on grain and products from Oklahoma points to destinations in southeastern and Carolina territories found unreasonable to extent that factors east of Memphis, Tenn., exceed rates based on and approximating the class 12 rates prescribed in Southern Class Rate Investigation, 113 I. C. C. 200, and to extent that factors west of Memphis from all points exceed present group rates, computed as provided in Consolidated Southwestern Cases 123 I. C. C. 203, up to 610 miles and from points at greater distance from Memphis those graded up 1.5 cents on wheat and flour and made less by 10 per cent on coarse grains, for each 50 miles. Factors east of Memphis constructed as above should apply not only on Oklahoma traffic but also from other western states from which through rates are equalized via the various gateways. Reasonable joint through rates prescribed for future. Oklahoma Millers' League v. A. & M., 128 I. C. C. 523.

(4w) Combination rates on grain and products from Oklahoma points to destinations in Louisiana west of the Mississippi River, including points on west bank thereof, and to Mississippi River crossings in Mississippi and Louisiana on east bank thereof, found unreasonable as compared with rates contemporaneously in effect from Kansas City, Mo., and Council Bluffs, Iowa, and to extent they exceed through rates based on those prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203. Reasonable joint through rates prescribed for future. Oklahoma Millers' League v. A. & M., 128 I. C. C. 523.

(4x) Trend of recent decisions has clearly been against combination rates between territories. See 100 I. C. C. 513, 663. Rates on combination basis over the Mississippi River have been condemned in 81 I. C. C. 33, 39; 102 I. C. C. 540, and other cited cases. Oklahoma Millers' League v. A. & M., 128 I. C. C. 523, 529, 530.

(4y) Complainant attacked combination class rates charged on 9 cars of second hand machinery, dredging, shipped between Oct. 29 and Dec. 19, 1923 from Iron Mountain, Mont., to Baker, Ore., as unreasonable. Shipments moved N. P. via Spokane, Wash., to Wallula, Wash., thence O. W. R. R. & N. to Baker, 578 miles. Prior to Oct. 11, 1923 there was no joint commodity rate in effect. On that date, defendants established a joint rate of 85c minimum

80,000 pounds. Prior to its establishment the through rate had been $1.23 composed of class A rates of 35.5c from Iron Mountain to Wallace, Idaho, 87.5c beyond. HELD, rate attacked not unreasonable, complaint dismissed. Sweet Bros. v. N. P. Ry., 128 I. C. C. 543.

(4z) Complainant attacked combination rates charged on 23 cars of ground poultry manure between Oct. 1923 and April 24, from Kenton, O., to Hattiesburg and Meridian, Miss., as unreasonable. Eight moved to Hattiesburg and 15 to Meridian. Movement to Hattiesburg was over the Erie to Chicago, C. B. & Q. Paducah, Ky., N. C. & St. L. Jackson, Tenn., M. & O. Meridian, and N. O. & N. E, 1,213 miles. To Meridian 1,269 miles. Charged combination commodity rates of $7.60 to Hattiesburg and $8 to Meridian. There were contemporaneously published from Kenton joint commodity rates of $6.36 to Mobile, Ala., applicable over the route of movement via Meridian, and to New Orleans applicable over route of movement via Hattiesburg, which were subsequently established. HELD, rate attacked unreasonable to extent it exceeded $6.36, reparation awarded. Fosse & Company v. Erie R. R., 128 I. C. C. 553.

(5a) Complainant attacked combination rate charged on a carload of dried fruit shipped Nov. 3, 1924 from Suisun, Calif., to Phoenix, Ariz., as unjust and unreasonable. Shipment was tendered to S. P. at Suisun routed by the shipper "S. P., A. T. & S. F." It was forwarded to Stockton, Calif., over the S. P. and thence Santa Fe via Cadiz, Calif., to Phoenix 809 miles, charged 8c to Stockton and $1.25 beyond. At the time of movement there was in effect from Suisun to Phoenix over S. P. through Stockton and Maricopa, Ariz., 920 miles, a joint commodity rate of $1.25 and on Nov. 1, 1926 defendants established a joint rate of $1.25 over the route of movement. HELD, rate attacked unreasonable to extent it exceeded $1.25, reparation awarded. California Packing Corporation v. S. P. Co., 128 I. C. C. 631.

(5b) Combination rate on printing presses from Vancouver, British Columbia, to Orlando, Fla., a point taking Group K rates, found not unreasonable as compared with Group A rates contemporaneously maintained from Pacific coast terminals to New York. Earnings under latter rates as well as those under rates from various producing points to Orlando, compare favorably with those under rates assailed for comparable distances. Duplex Printing Press Co., v. B. C. E., 128 I. C. C. 692.

(5c) Complainant attacked combination rates charged on tanning extract, in carloads, from Nashville, Tenn., to Milwaukee, Wis., Kitchener, and Huntsville, Ont., as unreasonable, unjustly discriminatory and unduly prejudicial. Rates for future to Huntsville only are asked. Shipments moved between August 8 and Nov. 23, 1923 to Kitchener over L. & N. to Louisville Ky., C. I. & L. to La Crosse, Ind., P. M. to Detroit, Mich., C. P. to Galt, Ont., and Grand River R. R. beyond, charged 63c, composed of commodity rate of 24.5c to New Albany, Ind., and joint fifth class rate of 38.5c beyond. Other shipment routed L. & N. connections G. T. and moved Feb. 1, 1924 to Huntsville, charged 79.5c composed of commodity rate of 19c to Cincinnati and fifth class 60.5c beyond. Three shipments moved during Oct. and Dec. 1923 and in March 1924 to Milwaukee over N. C. & St. L. to Paducah, Ky., I. C. to Chicago and C. M. & St. P. beyond, applicable combinations 44c and 46c and effective Jan. 10, 1925 a joint commodity rate of 37c was established. HELD, rates to Kitchener not unreasonable or otherwise unlawful but rate to Milwaukee unreasonable to extent it exceeded 37c, and rate to Huntsville for future in so far as the transportation takes place in the United States unreasonable to extent it exceeds 66c, reparation awarded. Tennessee Extract Corp. v. L. & N. R. R., 128 I. C. C. 709.

(5d) Complainant assailed combination rate of $1.43 charged on three cars of peanuts, between Nov. 22, 1923 and April 3, 1924 from Suffolk and Petersburg, Va., to Enid, Okla., as unreasonable. Charged 58c to Memphis, Tenn., and 85c beyond. Effective July 25, 1925 the rate was reduced to $1.23. HELD, rate attacked unreasonable to extent it exceeded $1.23, reparation awarded. Alton Mercantile Co. v. A. T. & S. F. Ry., 128 I. C. C. 721.

(5e) Complainant attacked combination rates charged on 13 cars of lumber from Buick, Mo., to Hillsdale, Mich., between June 1, 1923 and May 1, 1924 as

inapplicable. Charged combination commodity rates ranging from 41.5c to 44.5c which in each instance were composed of three separately established factors made on Sligo and St. Louis. Tariffs except those naming the rates to Sligo were subject to the combination rule. HELD, applicable rate was 41c, reparation awarded. Culler Lumber Co., v. C. B. & Q. R. R., 128 I. C. C. 723.

(5f) Complainant attacked combination rates charged on 10 cars of relaying rails from Bellwood and Hartford, Ala., to Hellams, S. C., during July and August, 1925 as unreasonable. Bellwood and Hartford are local to the C. of Ga., 30 and 22 miles west of Dothan, Ala. Charged $9.942 and $9.822 made on Atlanta, Ga. Single line rates of $5.63 and $6.20 were applicable over the C. of Ga., and Southern, respectively, for distances over 460 up to 480 miles. Distance hauled 475 and 467 miles. Reasonable rate is claimed to be $6.80 arrived at by adding a 60c differential to the Southern Ry., distance tariff of $6.20. HELD, rate assailed unreasonable to extent exceeded $6.80, reparation awarded. Rinehart & Dennis Co., v. C. of Ga. Ry., 129 I. C. C. 247.

(5g) Complainant alleged combination rates charged on a car of lumber Sept. 11, 1925 from Luverne, Ala., to Sarasota, Fla., was unjust and unreasonable. Luverne is on A. C. L. branch line from Sprague, Ala., a point slightly east of Montgomery, Ala., and 53 miles from Luverne. Sarasota is in Florida and served by defendant and S. A. L. Shipments moved via defendants line 607 miles, charged 20.5c and 11.5c to and from Jacksonville. Applicable rate was 22.3c and 5.8c to and from Ruskin, Fla., overcharged. HELD, applicable rate not unreasonable, overcharge to be refunded, complaint dismissed. Aycock Holley Lumber Co., v. A. C. L. R. R., 129 I. C. C. 306.

(5h) Complainant alleged rates charged on 17 cars of rough granite shipped between May 12, 1923 and Nov. 1, 1924 from Bradford and Westerly, R. I., to Montello, Wis., were and are unreasonable and unduly prejudicial. Montello is on a branch line of the Soo Line. Rate charged from May 12, 1923, to April 20, 1924, 38.5c, La Crosse, Wis., rate as a maximum. On April 21, 1924 the La Crosse rate was increased to 42.5c, and on shipments moving on and after that date to Nov. 1, 1924 a combination rate composed of factors of 30.5c to Chicago, Manitowoc and Milwaukee, and of 12c beyond, combination rule, 40c, was assessed. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Montello Granite Co., v. M. St. P. & S. S. M. Ry., 129 I. C. C. 427.

(5i) Complainant alleged that commodity rate charged on sand, in carloads, from Willow Creek and Crisman, Ind., to Chicago Heights, Ill., was and is unreasonable. Willow Creek and Crisman are local on the M. C., 25.1 miles east of Chicago Heights. Charged combination of 75c, composed of 50c for the line haul over M. C. plus 25c switching charge of the Terminal at Chicago Heights. The question for determination is whether the combination rate is unreasonable, and the fact that the M. C. in this particular instance fails to absorb the switching charge of the Terminal can not be considered as controlling. Sand is a low grade commodity and can be transported in any tight open top cars. It loads heavily and is not easily susceptible to loss or damage. HELD, rate assailed not unreasonable, complaint dismissed. Chicago Heights Mfrs. Asso. v. C. H. T. T. R. R., 132 I. C. C. 43.

(5j) Complainant alleged rate charged on one car of scrap aluminum from Nashville, Tenn., to Aurora, Ill., March 12, 1924 and delivered March 27, 1924 as unreasonable and unduly prejudicial. Shipment moved T. C. to Hopkinsville, Ky., I. C. through Evansville, Ind., to Chicago, Ill., and C. & N. W. beyond, 561 miles, charged combination rate of 94.5c, made up of 54c to Evansville and 40.5c beyond, fourth class rates. Nov. 20, 1924 a commodity rate of 24.5c was established from Nashville to Evansville. HELD, rate assailed unreasonable and unduly prejudicial to extent it exceeded 55c made up of 24.5c to Evansville and 30.5c beyond, reparation awarded. Cline & Bernheim v. C. & N. W. Ry., 132 I. C. C. 311.

(5k) Complainant alleged combination rate of $2.15 charged on one carload of ash cans shipped from New York, N. Y., to Dallas Tex., on May 10, 1923 was unreasonable, inapplicable and in violation of the fourth section. Moved Pennsylvania to St. Louis, Mo., and M. K. T. beyond, charged 45c to

Pittsburgh and $1.70 beyond. No routing specified by shipper. There is no evidence of a fourth section violation. HELD, rate charged applicable not unreasonable or otherwise unlawful, complaint dismissed. Selig Co., of Texas v. Pennsylvania R. R., 132 I. C. C. 331.

(5l) Complainant alleged combination rate charged on five cars of yellow pine lumber shipped in Jan. 1923 from Oakdale, La., to Spaulding, Ark., was unreasonable and unduly prejudicial. One shipment moved O. & G. and M. P. to Eldorado, Ark., E. & W. to destination. Other four moved O. & G. and Rock Island to Eldorado and E. & W. beyond. Charged commodity rate of 21c to Eldorado and 5.5c beyond. Rate of 21c was subsequently established. HELD, rate charged unreasonable to extent it exceeded 21c, reparation awarded. Beaumont Lumber Co., v. C. R. I. & P. Ry., 132 I. C. C. 349.

(5m) Complainant alleged rate charged on a car of cedar posts shipped Feb. 13, 1924 from spur 28, Minn., to Stoutsville, Mo., was inapplicable. Shipment moved M. R. L. & M., Bemidji, Minn., Soo Line, Minnesota Transfer, Minn., Burlington, Hannibal, Mo., and M. K. T., charged combination of 42c, 9c to Bemidji and 33c beyond. Factor to Bemidji contained no combination rule but tariff naming factor beyond was subject to the combination rule. HELD, applicable rate 40c, reparation awarded. Pendleton & Gilkey v. M. R. L. & M. Ry., 132 I. C. C. 359.

(5n) Complainant alleged combination rates charged on a car of rough rolled glass, shipped Feb. 18, 1924, from Okmulgee, Okla., to Salina, Kas., was unreasonable. Shipment was routed by complainant "Frisco-Union Pacific" and moved over Frisco to Kansas City, Mo., and U. P. beyond, 494 miles. Charged 61c composed of 30.5c to Topeka, Kas., and 30.5c beyond. At time of movement there was in effect a joint rate of 30.5c over the routes of several competing carriers, the distances in many instances being considerably greater than that over the route traversed and on Dec. 16, 1924 defendants established the same rate over the route of movement. HELD, rate assailed unreasonable to extent it exceeded 30.5c, reparation awarded. Southwestern Sheet Glass Co., v. St. L.-S. F. Ry., 132 I. C. C. 577.

(5o) Combination rates on cottonseed cake and meal from points in Southwest and Mississippi Valley to York and Lancaster, Pa., and Buffalo, N. Y. there mixed in transit and product feed forwarded to trunk-line and New England destinations, found unreasonable and unduly prejudicial to extent they exceeded the contemporaneous joint rates from same origin territory to basing points with which destinations named are usually grouped. While rates assailed to c. f. a. destinations are not on proper basis, record is inadequate to make finding as to their reasonableness, partly due to fact that no basing points have been established in connection with cake and meal to that territory and further that existing joint commodity rates were published to destinations to which there was a known movement. Reparation awarded. American Feed Mfrs. Asso. v. A. & S., 129 I. C. C. 157.

(5p) Local rates from Dawkins, Ky. a point on the C. & O. Ry., to points in central and eastern trunk-line territories on lumber originating at Royalton, Ky., a branch-line point, found not unreasonable but unduly prejudicial to shippers at Royalton and unduly preferential of competing shippers located on the Sewell Valley R. R., which connects with C. & O. at Meadow Creek, W. Va., to extent they exceeded rates made the same differential under contemporaneous local rates from Dawkins as proportional rates to same destinations from Meadow Creek are made under contemporaneous local rates from latter point. Undue prejudice ordered removed. Dawkins Lbr. Co., v. C. & O., 129 I. C. C. 415.

(5q) Combination rates on refined petroleum products from Augusta, Topeka, and El Dorado, Kans., to St. Francis, Kans. and intermediate points in Kansas and Nebraska, via Superior, Nebr., found unreasonable as compared with joint rates in effect over longer routes via Kansas City and other Missouri River points; and via Kansas City or St. Joseph, Mo., unreasonable as compared with rates from Kansas City to points in Kansas, with intrastate rates in Kansas, with rates between points in Oklahoma and Kansas, and from points in Group 2. Reasonable rates prescribed and reparation awarded. White Eagle Oil & Refining Co. v. C., B. & Q. R. R., 129 I. C. C. 467.

LOCOMOTIVE INSPECTION

(a) Locomotive repairs can not be equitably apportioned between services on basis of hours of service alone, without regard to things which affect relative costs, such as the size, tractive capacity, or other characteristics of locomotives used and number of miles run in such services. Rates of P. & P. U. Ry., 115 I. C. C. 469, 489.

(b) This proceeding was instituted pursuant to a petition of the American Electric Railway Association, which includes in its membership a large proportion of the electric railway companies operating in the United States. The primary question involved is whether or not the railway companies included in the membership of this association are subject to order of Dec. 14, 1925 in this matter. The rules and instructions approved applied to locomotives propelled by power other than steam power, locomotives propelled by steam power having previously been covered. The locomotive inspection act makes it the duty of the commission to approve rules and instructions for the inspection and testing of locomotives and tenders and appurtenances thereof subject thereto. After such approval and service of a copy thereof upon the carrier, such rules become obligatory and a violation thereof is punishable as provided in the act. Whereas prior to the amendment of 1924 the locomotive inspection law applied only to locomotives propelled by steam power, the amendment then made removed this restriction and made the law apply to all locomotives used or permitted to be used on the line of any carrier subject to the act, regardless of the power by which they are propelled. It is the view of the commission that under section 2 any locomotive used or permitted to be used on the line of any carrier subject to the act is clearly within the scope thereof and that this is not restricted by the words referred to be the petitioner. Obviously the character of the lines may change without a change in the name of the operating company. The record here shows that the name of a carrier, whether it is called a railroad, traction system, interurban railway, or power and light company, indicates nothing as to the character of the line or the nature of the traffic handled. A line which today extends only between two cities, and is dependent upon passenger traffic for the bulk of its revenues, might properly be termed an interurban line. In a period of years it might through natural development or consolidation become a railway comparable with the steam railroads and still retain its original name. It would no longer, however, be an interurban railway in substance and in fact. The distinguishing feature of their operation is that electric, instead of steam, motive power is used. The commission thinks that such carriers are not excluded from the scope of the locomotive inspection act, as amended. HELD, carriers listed do not operate as a part of a general railroad system and do not fall within the scope of the act as amended, other carriers do fall within that scope. Rules for Testing other than Steam Power Locomotives, 122 I. C. C. 414.

(c) The courts have enunciated important principles which should be kept in mind when construing the locomotive inspection act. This law was enacted for the safety of employees; it should be liberally construed and its obvious purpose effectuated. Rules for Testing other than Steam Power Locomotives, 122 I. C. C. 414, 420.

(d) Order of the commission of December 14, 1925, approving rules and instructions for the inspection and testing of locomotives propelled by power other than steam power in accordance with the locomotive-inspection act, as amended, applies to (a) electric railways subject to the interstate commerce act and which are not street, suburban, or interurban railways, and (b) street, suburban, and interurban electric railways operated as parts of general railroad systems of transportation. Rules for Testing Other than Steam Power Locomotives, 122 I. C. C. 414.

(e) The locomotive-inspection act makes it the commission's duty to approve rules and instructions for inspection and testing of locomotives and tenders and appurtenances thereof subject thereto. See Napier v. A. C. L. R. R., 71 L. Ed. 237. After such approval and service of a copy thereof upon the carrier, such rules become obligatory and a violation thereof is punishable as provided in the act. Rules for Testing other than Steam Power Locomotives, 122 I. C. C. 414, 415.

(f) Upon contention that provisions of the locomotive-inspection act where reference is made to boilers and tenders

of locomotives, and to that part of section 8 which refers to locomotives disabled to extent that they can not be run by their own steam, show that the act was intended to apply only to steam locomotives, HELD: In the light of the language of section 2 of that act, the presence or absence of a boiler, tender, or any particular part or appurtenance of a locomotive does not govern the question as to whether or not such locomotive is subject to the act. Under section 2 any locomotive used or permitted to be used on the line of any carrier subject to the act is clearly within the scope thereof and this is not restricted by the words referred to in the contention. Rules for Testing other than Steam Power Locomotives, 122 I. C. C. 414, 418.

(g) Whereas prior to the amendment of 1924 the locomotive-inspection law applied only to locomotives propelled by steam power, the amendment then made removed this restriction and made the law apply to all locomotives used or permitted to be used on the line of any carrier subject to the act, regardless of the power by which they are propelled. Rules for Testing Other than Steam Power Locomotives, 122 I. C. C. 414, 418.

(h) The locomotive-inspection act was enacted for the safety of employees, 266 U. S. 521, and other cited cases, and should be liberally construed and its obvious purpose effectuated, 275 Fed. 766 and other cited cases. Rules for Testing other than Steam Power Locomotives, 122 I. C. C. 414, 420.

(i) Every carrier by railroad subject to the interstate commerce act and which is not in strictness a street, suburban, or interurban electric railway, is subject to the locomotive-inspection act, as amended. And even though it is a street, suburban, or interurban electric railway, if it is operated as a part of a general railroad system of transportation, such electric railway is also within the scope of the locomotive-inspection act, as amended. Rules for Testing other than Steam Power Locomotives, 122 I. C. C. 414, 422.

(j) Electric railways which have developed into railways which are more than interurbans, and which do not fall fairly within the expression "street, suburban, and interurban electric railways" as used in the locomotive-inspection act, are not excluded from scope of that act, as amended. This view is in harmony with the body of this statute and the provisions and scope of various other laws enacted for the same purpose. Rules for Testing other than Steam Power Locomotives, 122 I. C. C. 414, 424, 425.

(k) Certain carriers found to be street, suburban, or interurban electric railways not operated as parts of general railroad systems of transportation and accordingly not within scope of the locomotive-inspection act, as amended. Rules for Testing other than Steam Power Locomotives, 122 I. C. C. 414, 425, 426.

(l) It is unnecessary for the commission to determine whether electric lines upon which no locomotives are used are subject to the locomotive-inspection act, as amended. Rules for Testing other than Steam Power Locomotives, 122 I. C. C. 414, 426.

(m) Certain electric lines found not properly classed as street, suburban, or interurban electric railways. Accordingly, such carriers are subject to the locomotive-inspection act, as amended. Rules for Testing other than Steam Power Locomotives, 122 I. C. C. 414, 428.

(n) There is nothing in the amendment of 1924 to the locomotive-inspection act which indicates that Congress intended to narrow its scope, but, on the contrary, it is evident from the changes expressly made in the several sections, other than section 1, that the intention was to broaden the act and make it more effective. Rules for Testing other than Steam Power Locomotives, 122 I. C. C. 414, 429.

(o) The locomotive-inspection law has for its purpose the promotion of safety of employees and travelers upon railroads, and commission sees no material difference in the hazard of locomotive operation, or in the beneficial results that will flow from observance of the requirements of that law, on electric as well as other lines. Rules for Testing other than Steam Power Locomotives, 122 I. C. C. 414, 429.

(p) Laws 1923, c. 139, and order of Railroad Commission made in pursuance thereof, requiring railroads operating within the state to equip their locomotives with certain cab curtains, are for purpose of promoting health or comfort of engine men, and hence do not conflict with Locomotive Boiler Inspection Act Feb. 17, 1911, and its amendments, nor Safety Appliance Act and its amendments (U. S. Comp. St. §§ 8605-8650; U. S. Comp. St. Supp. 1925, §§ 8630-8633),

which have for their purpose the promotion of public safety, in view of rules adopted by Interstate Commerce Commission pursuant thereto, and no conflict appearing between such order and rules and regulations prescribed by chief boiler inspector and approved by Interstate Commerce Commission. Chicago & N. W. Ry. Co. v. Railroad Commission of Wisconsin; Chicago, M. & St. P. Ry., Co., v. Same; Minneapolis, St. P. & S. S. M. Ry. Co. v. Same, (Wis., 1925) 205 N. W. 932.

(q) Congress having, by the Locomotive Boiler Inspection Act, as amended by Act March 4, 1915, and Act June 7, 1924 (Comp. St. §§ 8630-8633), occupied the field, state legislation regulating equipment of locomotives used in interstate commerce is precluded. Napier, Atty. Gen., v. Atlantic Coast Line R. Co.; Chicago & N. W. R. Co. v. Railroad Commission of Washington; Chicago, M. & St. P. Ry. Co., v. Same, 47 Sup. Ct. 207.

(r) Congress has power to preclude state legislation regulating locomotive equipment for use in interstate commerce after occupying the field itself. Napier, Atty. Gen., v. Atlantic Coast Line R. Co.; Chicago & N. W. R. Co., v. Railroad Commission of Washington; Chicago, M. & St. P. Ry. Co. v. Same, 47 Sup. Ct. 207.

(s) Locomotive Boiler Inspection Act, as amended by Act March 4, 1915, and Act June 7, 1924 (Comp. St. §§ 8630-8633), HELD to confer on Interstate Commerce Commission power to specify the sort of equipment to be used on locomotives in interstate commerce. Napier, Atty. Gen., v. Atlantic Coast Line R. Co.; Chicago & N. W. R. Co., v. Railroad Commission of Washington; Chicago, M. & St. P. Ry. Co., v. Same, 47 Sup. Ct. 207.

LONG AND SHORT HAULS

I. CONTROL AND REGULATION.
§1. Constitutionality of section 4.
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II. SECTION 4 AS AMENDED.
§2½. Construction in general.
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IV. COMPETITION AS JUSTIFICATION.
§7. In general.
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V. PROCEDURE.
§11. Complaints and orders.
§12. Evidence.
(1) Burden of proof.
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CROSS REFERENCES

See Advanced Rates §5 (2½); Blanket Rates; Market Competition; Motor Truck Competition; Railroad Competition; Restricted Rates (c); Through Routes and Joint Rates.

I. CONTROL AND REGULATION.

See Control and Regulation.

§2. Jurisdiction of Commission.

See Interstate Commerce Commission; Jurisdiction of Commission.

(a) Provisions of fourth section of the act apply where point of origin is in an adjacent foreign country and intermediate point and more distant point of destination are in the United States. See 74 I. C. C. 733. Newsprint Paper and Wall Paper, 126 I. C. C. 166, 168.

(b) Power of Interstate Commerce Commission to prescribe extent to which common carrier may be relieved from operation of Act to Regulate Commerce, § 4, as amended by Act June 18, 1910, § 8, is not limited to long and short haul clause, but extends also to aggregate of intermediate clause added by 1910 amendment. Patterson v. Louisville & N. R. Co., 46 Sup Ct. 8.

II. SECTION 4 AS AMENDED.

§2½. Construction in General.

(a) Violations of long-and-short-haul provision of section 4 of the act, where not protected by applications to or permission from the commission, are unlawful. Decker & Sons v. C., R. I. & P., 109 I. C. C. 261, 271.

(b) Testimony to effect that unrestricted routing is considered necessary on vegetable traffic does not constitute justification for departures from the long-and-short-haul provision of section 4 of the act. Wichita Chamber of Commerce v. A. & V., 109 I. C. C. 368, 374.

(c) An allegation of a violation of the long and short haul provision of the fourth section is one manner of alleging undue prejudice. Anderson Taylor Co. v. A. T. & S. F. Ry., 115 I. C. C. 313, 314.

(d) The law is plain that regardless of basis upon which relief from the long-and-short-haul provision of section 4 of the act is granted the commission must not permit establishment of a rate to a more distant point that is not reasonably compensatory for service performed. In a territory where rates in general via direct hauls have been passed upon by commission and where there is such a maze of possible routes, making it practically impossible to check and enumerate each route available in published tariffs, the commission must place some general limitations upon relief granted, so that rates via direct routes will not be less than reasonably compensatory when applied via circuitous hauls. Class and Commodity Rates from Pennsylvania, 115 I. C. C. 331, 334.

(e) The provisions of the fourth section of the act apply where the point of origin is an adjacent foreign country and the intermediate point and the more distant point of destination are in the United States. Newsprint and wall paper, 126 I. C. C. 166, 168.

(f) Fourth-section departures resulting from changes in classification may be either of long-and-short-haul or aggregate-of-intermediates type. They may occur on local traffic within a classification territory, or on interterritorial traffic between points where joint through rates are in effect. Fourth Section Departures, 129 I. C. C. 187, 189.

§4. Exceptions.

See Tariffs §12½.

(a) Upon applications of C., M. & St. P., Illinois Central, St. L.-S. F., Union Pacific, C., R. I. & P., Missouri Pacific, A., T. & S. F., and Kansas City Southern railways, relief from long-and-short-haul provision of section 4 of the act granted as to class and commodity rates between western trunk line territory and points west of Missouri River. Class and Commodity Rates between Western Points, 104 I. C. C. 578.

(b) Where routes of a carrier seeking relief from long-and-short-haul provision of section 4 of the act are circuitous via some gateways as compared with its own routes via other gateways, it must appear that lower rates to more distant points on circuitous routes are reasonably compensatory before relief will be granted. Class and Commodity Rates between Western Points, 104 I. C. C. 578, 591.

(c) The principle embodied in equidistant provision of section 4 of the act may be applied by commission, at its discretion, to cases in which it is not in terms applicable. See 64 I. C. C. 26, 30. Class and Commodity Rates between Western Points, 104 I. C. C. 578, 591.

(d) If relief is granted from long-and-short-haul provision of section 4 of the act there must be some reasonable limitation upon degree of circuity in order to conform to requirement of the law that lower rates at more distant points must be reasonably compensatory. Class and Commodity Rates between Western Points, 104 I. C. C. 578, 592.

(e) The equidistant rule of section 4 of the act, though formerly also observed by commission as an administrative practice, is now an integral part of the law, and its application is mandatory where relief is sought because of circuity, regardless of methods of rate making. Class and Commodity Rates between Western Points, 104 I. C. C. 578, 595.

(f) Commission is authorized under

section 4 of the act to grant relief from operation thereof "in special cases." The circuity of a rail line or route has long been recognized as a special case in which relief may properly be granted if circumstances as a whole warrant that action. In practice commission has generally limited relief to routes which are not less than 15 per cent circuitous, but this has not been regarded as an inflexible rule. See 24 I. C. C. 192; 61 I. C. C. 700. Class and Commodity Rates between Western Points, 104 I. C. C. 578, 595.

(g) Upon application of certain independent short lines in southern territory for authority to continue to charge lower rates on lumber and other forest products to trunk-line and New England territories from junction points with trunk-line connections than from intermediate points on their lines, relief sought being based solely on ground of water competition. FOUND: Considering the great difference between all-rail and water rates from south Atlantic ports to eastern port cities, and small volume of movement via eastern ports to interior destinations, the continued maintenance of lower rates from these ports than from intermediate points would divert or retain little, if any, traffic to rail carriers. Fourth section relief denied and original report, 85 I. C. C. 270, affirmed. North Carolina Pine Asso. v. A. C. L., 107 I. C. C. 190, 192, 193.

(h) Authority to establish reduced rates on certain commodities from eastern defined territories, Groups D to J, inclusive, to Pacific coast terminals, without observing long-and-short-haul clause of section 4 of the act, based on market competition and a desire to place Mid-Western manufacturers on a rate equality with eastern competitors who enjoy cheaper water transportation by reason of their location near Atlantic seaboard, denied. Section 500 of transportation act, 1920, declares it to be the policy of Congress to foster and preserve in full vigor both rail and water transportation. While rates proposed are reasonably compensatory; traffic diverted from water routes would inappreciably effect net revenues of rail lines, they would be disproportionate to losses the water lines would suffer, and might impair latter's ability to maintain their present standard of service. Commodity Rates to Pacific Coast Terminals, 107 I. C. C. 421.

(i) Before relief from operation of the long-and-short-haul provision of section 4 of the act may be granted the commission must be satisfied that there will not thereby be created infractions of other provisions of the act, particularly those of section 3 prohibiting undue or unreasonable preference or advantage of or prejudice or disadvantage to persons or localities. Commodity Rates to Pacific Coast Terminals, 107 I. C. C. 421, 436.

(j) Warren, Pa.: Authority to continue to charge for transportation of iron and steel articles from Johnstown, to Titusville, Pa., via the B. & O., in connection with the N. Y. C., rates which are lower than rates contemporaneously in effect on like traffic from, to, and between intermediate points, denied. Hammond Iron Works v. P. R. R., 107 I. C. C. 473.

(k) Nashville, Ga.: Authority to continue to maintain for transportation of black sheet steel, c. l. and l. c. l., from Lynchburg, Va., to Valdosta, Sparks, and Moultrie, Ga., rates which are lower than rates contemporaneously in effect on like traffic to Nashville and other intermediate points on the Georgia & Florida Ry., granted, provided that rates at intermediate points shall in no case exceed lowest combination and that rates to said intermediate points shall not exceed rates which may be established pursuant to findings in Southern Class Rate Investigation, 100 I. C. C. 513, 650, 655. Lynchburg Chamber of Commerce v. G. & F., 109 I. C. C. 39.

(l) Authority to continue to charge for transportation of overalls, l. c. l., from Middlesboro, Ky., to Memphis, Tenn., via Birmingham, Ala., rates which are lower than rates contemporaneously in effect on like traffic to Tupelo and other intermediate points, denied. Northeast Miss. Traffic Bureau v. M. & O., 109 I. C. C. 246.

(m) Wichita, Kans.: Authority to continue to charge for transportation of vegetables from Jacksonville and other Florida points to Kansas City, Mo., and other Missouri River cities and points taking same rates or rates made with relation thereto, also other points as to which Wichita, Kans., is intermediate, rates which are lower than those contemporaneously in effect on like traffic to Wichita, without observing the long-and-short-haul provision of section 4 of the act, denied. Wichita Chamber of Commerce v. A. & V., 109 I. C. C. 368, 378.

(n) Applications of certain carriers for authority to maintain class and commodity rates from points in New England and eastern trunk-line territories and Canada to the Twin Cities lower than to intermediate points in Iowa, southeastern Minnesota, and Western Illinois, based upon ground that depressed rates apply via rail-and-water competitive routes via Duluth and Superior, Wis., and low rates in force over routes through Canada, denied. Contention that Twin Cities rates are depressed is not supported by adequate proof in light of the fact that lower rates to intermediate Wisconsin points were prescribed or approved by commission. Nor does evidence sufficiently indicate that financial condition of Minneapolis & St. Louis, one of the applicant carriers, is such as would entitle that carrier to special treatment. Rates from Eastern Territory to Twin Cities, 109 I. C. C. 437.

(o) Application for authority to establish a rate on sugar from Key West, Fla., imported from Cuba to Jacksonville, Fla., lower than to intermediate points denied. Actual competition with water lines between Cuba and Jacksonville direct does not exist, and while there is a substantial movement of raw sugar from Cuba to Port Wentworth (Savannah), Ga., the volume of refined sugar shipped to Jacksonville from Port Wentworth is not shown, nor is it established that competition with that sugar warrants the rate proposed. Sugar from Key West, 112 I. C. C. 347.

(p) Authority to continue to charge for transportation of rosin from Gulfport, Miss., Pensacola, Fla., Mobile, Ala., and New Orleans, La., to Hamilton, Ontario, Canada, rates which are lower than rates contemporaneously maintained on like traffic from Eureka, Ala., Hattiesburg, Miss., and other intermediate points, denied. Procter & Gamble Co. v. A. & V., 112 I. C. C. 381, 386.

(q) Authority to continue to charge for the transportation of transformer cores from Atlanta, Ga., to Pittsfield, Mass., rates which were higher than those contemporaneously maintained on like traffic from Ocoee and other intermediate points denied. Tennessee Electric Power Co. v. L. & N. R. R., 112 I. C. C. 491, 494.

(r) A higher rate from a farther distant than from an intermediate point does not constitute a violation of long-and-short-haul provision of section 4 of the act if protected by an appropriate application on file with commission. Drake Produce Co. v. O. S. L., 112 I. C. C. 551, 552.

(s) Authority to maintain rates on coal from mines in Kansas, Missouri, Arkansas, and Oklahoma to Kansas City, Mo., or Topeka, Kans., and thence via Rock Island to Lincoln and Havelock, Neb., same as those contemporaneously maintained on like traffic by direct lines from and to same points, and to maintain higher rates at intermediate points, granted, such authority not to include intermediate points as to which the haul of petitioning line or route is longer than that of direct line or route between competitive points, the rates at intermediate points affected not be increased without authority from commission, and in no case exceed lowest combination. Lincoln Chamber of Commerce v. A. C. R. R., 113 I. C. C. 161, 164.

(t) In original report, 88 I. C. C. 543, commission granted fourth-section relief under the distance scale there prescribed on brick and related articles between points in southern territory by authorizing indirect lines to meet direct lines' rates at competitive points and maintain higher rates at intermediate points. Upon a showing by carriers that publication of all routes over which rates apply would impose upon them tremendous labor and expense and result in such an increase in the bulk of tariffs as to render them cumbersome and difficult to use, original findings modified and in the interest of tariff simplicity carriers authorized, in lieu of publication of specific routing between points of origin and destination, to publish a general rule showing rates and maximum distances for routing. Brick and Clay Products in the South, 113 I. C. C. 380.

(u) Authority granted to maintain, via routes which are not more than 50 per cent circuitous, on brick and other clay products from Clearfield, Pa., and points grouped therewith, to points in eastern trunk-line and New England territories, rates which are lower than those contemporaneously in effect on like traffic from Johnsonburg and Ridgeway, Pa., and points grouped therewith and intermediate thereto, said authority not to include intermediate points as to which the haul of petitioning line or route is

not longer than that of direct line or route between competitive points, the rates from intermediate points to in no case exceed lowest combination. Alumina Shale Brick Co. v. B. & O., 113 I. C. C. 496, 499, 500.

(v) Applications for authority to continue rates on petroleum and products from Ohio and Mississippi River crossings to Carrollton, Ky., which are lower than rates contemporaneously in effect at Worthville and other intermediate points, denied. Petroleum to Carrollton, 113 I. C. C. 587.

(w) Authority to continue to charge for transportation of sugar from New Orleans and Louisiana points taking same or related rates, from Sugarland, Tex., and from points in various Western States, to Oklahoma, rates which are lower than those contemporaneously maintained to intermediate points, denied. Oklahoma Traffic Assn. v. A. G. S. R. R., 113 I. C. C. 635, 639.

(x) Authority to continue to charge for the transportation of cotton, any quantity, from Goldsboro, Maxton, Selma, and other points in North Carolina to Danville, Va., rates which are lower than those contemporaneously maintained on like traffic from Elm City, Wilson, Black Creek, Freemont, and Lucama, N. C., and from other intermediate points, denied. Bradshaw-Roberson Cotton Co. v. A. C. L., 113 I. C. C. 661, 662, 663.

(y) The law is plain that regardless of basis upon which relief from the long-and-short-haul provision of section 4 of the act is granted the commission must not permit establishment of a rate to a more distant point that is not reasonably compensatory for service performed. In a territory where rates in general via direct hauls have been passed upon by commission and where there is such a maze of possible routes, making it practically impossible to check and enumerate each route available in published tariffs, the commission must place some general limitations upon relief granted, so that rates via direct routes will not be less than reasonably compensatory when applied via circuitous hauls. Class and Commodity Rates from Pennsylvania, 115 I. C. C. 331, 334.

(z) Authority to charge for transportation of refuse sand from Detroit, Mich., to Cincinnati, Ohio, rates which are lower than those contemporaneously maintained on like traffic to Indianapolis and other intermediate points, denied. American Radiator Co. v. D. & T. S. L. R. R., 115 I. C. C. 529, 531.

(aa) An order of commission authorizing temporary rate adjustments involving fourth-section departures pending determination of fourth-section applications, is not sufficient justification for new and increased fourth-section departures in an extensive revision of rates which should be justified for permanent establishment. Taylor Produce Co. v. A. C. L., 115 I. C. C. 633, 636.

(bb) Applications for authority to continue rates on potatoes from Cash Corner, Vandemere, Washington, and Faison, N. C., to Grand Rapids, Mich., which are lower than rates contemporaneously maintained on like traffic to Jackson and Kalamazoo, and other intermediate points, denied. Taylor Produce Co. v. A. C. L., 115 I. C. C. 633, 639.

(cc) Authority to continue to charge for transportation of green salted hides from Birmingham and Montgomery, Ala., Shreveport, Monroe, and New Orleans and Baton Rouge, La., to Winchester, Mass., rates which are lower than those contemporaneously maintained on like traffic from Laurel, Meridian, Clarksdale, Greenwood, Yazoo City, Vicksburg, Jackson, and Natchez, Miss., Tuscaloosa and Dothan, Ala., and other intermediate points, denied. Beggs & Cobb v. A. & V., 118 I. C. C. 13, 18.

(dd) Application for authority to continue to charge for transportation of green salted hides from Mobile, Ohio, to Buffalo, N. Y., rates which are lower than those contemporaneously maintained on like traffic from Meridian and other intermediate points of origin to Portville, N. Y., and other intermediate points of destination, denied. Northwestern Leather Co. Trust v. M. & O., 118 I. C. C. 37, 41.

(ee) Authority to charge for transportation of newsprint paper, from Berlin, N. H., to New Orleans, La., rates which are lower than those contemporaneously maintained to Birmingham and other intermediate points, denied. Birmingham News Co. v. A., B. & A., 118 I. C. C. 205, 207.

(ff) Authority to continue to charge for transportation of bale ties and wire fencing from Sterling, Ill., to Mobile, Ala., rates which are lower than those contemporaneously maintained to Mont-

gomery and other intermediate points, denied. Teague Hardware Co. v. C., B. & Q., 118 I. C. C. 221, 226.

(gg) Authority to charge on sugar from New Orleans, higher rates to Keokuk and Burlington, Iowa, and other intermediate points than to Chicago over the C., B. & Q., denied, and so much of previous order as permits charging of such higher rates, vacated. Relief can not be granted on ground of circuity of route because Iowa points are less distant than Chicago as section 4 of the act specifically precludes granting of relief on than ground when distance to the intermediate point is not greater than to the lower rated competitive point beyond. Moreover, carrier competition is not such as to warrant relief on grounds other than circuity of route. See 88 I. C. C. 46. Keokuk Shippers' Asso. v. A., T. & S. F., 118 I. C. C. 683.

(hh) Authority to continue to charge for transportation of petroleum and petroleum products from points in Oklahoma and Texas to Buffalo, rates which are lower than those contemporaneously maintained on like traffic to Bradford and other intermediate points, denied. Kendall Refining Co. v. A. & V., 118 I. C. C. 689, 691.

(ii) Authority to continue to charge rates for transportation of envelopes from Waukegan, Ill., and West Carrollton, Ohio, to Oklahoma City, Okla., which are lower than rates contemporaneously maintained on like traffic to Wichita and other intermediate points, denied. Western Newspaper Union v. A., T. & S. F., 118 I. C. C. 692.

(jj) S. A. L., T. & G., L. & N., G. R. R., Southern, C. N. O. & T. P., asked for authority to establish rates on paving brick, carloads, from Robbins, Tenn., Coaldale, Alton, Graves Mine, and Birmingham, Ala., Rockmart, and Campania, Ga., to Tampa, St. Petersburg, Palmetto, Bradentown and Sarasota, Fla., without observing the long and short haul provision of the fourth section. Destination points are all located on navigable water with water terminal facilities on Tampa Bay, except Sarasota, which is on Sarasota Bay, just south of Tampa. The competition which the applicants now meet is the water rate to Tampa, plus the rail rates beyond, which from Westport are 16 cents, as compared with the proposed rates of 16.5 cents from Campania, 18.5 cents from Rockmart and 20 cents from the other points. HELD. applicants have not shown sufficient justification for relief sought, application denied. Paving brick to Florida, 120 I. C. C. 469.

(kk) Authority to continue to charge for transportation of salt from East St. Louis, Ill.; St. Louis and Kansas City, Mo.; New Orleans, Cypremort, Weeks Island, and Salt Mine, La.; Memphis, Tenn.; Hutchinson, Nickerson, Sterling, and other points in Kansas; Toledo, Cleveland, and other points in Ohio; Detroit, Ludington, and other points in Michigan; also points in Illinois, Indiana and Wisconsin, to points in Texas, without observing long-and-short-haul provision of section 4 of the act, denied. Salt Between Western and Southwestern Points, 120 I. C. C. 91, 109, 110.

(ll) A departure from the long-and-short-haul clause of section 4 of the act, does not in itself establish unreasonableness of higher rate to less distant point or form a basis for an award of reparation. See 50 I. C. C. 719. Virginia & Rainy Lake Co. v. D., W. & P., 120 I. C. C. 131, 133.

(mm) Authority to continue to charge for transportation of vegetables from points in Virginia on line of Norfolk Southern to points in c. f. a. territory, rates which are lower than rates contemporaneously maintained on like traffic from, to, and between intermediate points, denied. Vegetables from Virginia 120 I. C. C. 319, 324.

(nn) Rates on old secondhand barrels from Cynthiana and Poindexter, Ky., to Rochester and Syracuse, N. Y., found not unreasonable or otherwise unlawful as compared with lower rates contemporaneously in effect from Lexington and Winchester, Ky., to which Cynthiana and Poindexter are intermediate. The fourth-section departures were protected by an appropriate application, considered and disposed of in 100 I. C. C. 513, and orders entered in cited case will result in correction of the situation presented. Carriers showed that because of light loading of barrels, the earnings or shipments here considered were low; also that rates charged compare favorably with rates in general on old secondhand barrels from points in interior Kentucky, other than Lexington and Winchester, to territory north of the Ohio River. Liberty Cooperage & Lbr. Co. v. L. & N., 120 I. C. C. 379.

(oo) Where a fourth-section application has been considered by commission and denied in a previously decided case and effective date of the denial order has been fixed, it would be an idle gesture for a division of the commission to reiterate the denial or to fix a different effective date. Liberty Cooperage & Lbr. Co. v. L. & N., 120 I. C. C. 379, 381.

(pp) Application of Seaboard Air Line Ry., and other carriers for authority to establish rates on paving bricks from producing points in the Southeast to Tampa, St. Petersburg, Palmetto, Bradentown, and Sarasota, Fla., lower than rates contemporaneously maintained to intermediate points, based upon desire of such carriers to meet water, water-and-rail, and market competition from Westport, Md., and prospective competition of paving brick imported from Holland, Belgium, and England, denied. Paving Brick to Florida, 120 I. C. C. 469.

(qq) Authority to continue to charge for transportation of compress castings and fittings from New Orleans, La., and Jackson and Meridian, Miss., to Little Rock and Fort Smith, Ark., rates which are lower than those contemporaneously maintained on like traffic from and to or between intermediate points, denied. Russellville Compress Co. v. G., M. & N., 120 I. C. C. 481.

(rr) Authority granted carriers to apply under distance rates herein prescribed, on salt from Louisiana mines to Mississippi destinations over all routes, the lowest rate available over any route from and to said points, and to maintain higher rates from and to intermediate points; provided that rates from and to the intermediate points shall in no case exceed the lowest combination, and that the relief granted shall not include routes more than 50 per cent longer than the direct route from and to the competitive points. Mississippi R R. Comm. v. A. & V., 120 I. C. C. 569.

(ss) Petitioners ask for authority to establish rates on plaster and gypsum products, in carloads, from Centerville, Fort Dodge, and Gypsum, Ia., Alabaster and Grand Rapids, Mich., and Port Clinton, O., district to Illinois, southern Wisconsin, northwestern Indiana, and on the west bank of the Mississippi River, without observing the long and short haul provision of section four. The fourth section application is incidental to an adjustment agreed to by and between interested carriers and representatives of all plaster manufacturers operating at points of origin, having in view the equalization of the rates from the various origin points to the defined territory. In 34 I. C. C. 202, 41 I. C. C. 1 and 83 I. C. C. 682, the commission considered the rates on these commodities within the territory involved herein, and ordered the removal of undue prejudice found to exist in the rates and minimum weights from Grand Rapids as compared with the rates and minimum weights from Fort Dodge. Although fourth section relief was granted. Circuitous lines are here seeking relief to meet at competitive destinations the rates of the direct routes and to maintain higher rates based upon the proposed scales at points intermediate thereto. The proposed rates over the direct routes conform to the long and short haul rule. The distances shown to the competitive points over the direct routes range from 200 to 594 miles, and over the circuitous routes from 262 to 765 miles. In the illustrations given the circuitous lines or routes range from 9 to 146% longer than the direct routes. HELD, applicants will be authorized to establish and maintain via routes that are not less than 15% nor more than 70% circuitous, from the origin to the destination territory described, the lowest rate applicable via any route and to maintain higher rates to intermediate points, provided that the rates to the said intermediate points shall not exceed the scales of rates proposed and shall in no case exceed the lowest combination; that the relief herein granted shall not extend to intermediate points as to which the haul of the circuitous line or route is not longer than that of the direct line or route to the competitive points; and that the authority herein granted shall be limited to rates under the scales described herein. Except as relief is herein granted, all other and further relief sought by this application will be denied. Plaster and Gypsum Products. 122 I. C. C. 747.

(tt) Carriers parties hereto ask, among other things, for authority to continue to charge rates for the transportation of salt, carloads, from East St. Louis, Ill., St. Louis and Kansas City, Mo., Memphis, Tenn., and points in Louisiana, Ohio, Indiana, Illinois, Michigan, Wisconsin and Kansas to points in Colo-

rado, New Mexico, western trunk line, southwestern, southern and central territories, without observing the provisions of section four of the act. The evidence presented only pertains to relief sought in connection with the rates from Louisiana mines in southern Louisiana, to destination territory described as lying on and east of the Mississippi River. The distance from points of origin to the higher rated intermediate points on circuitous routes is in many instances much less than the distance between competitive points over the direct routes. The rates to such intermediate points are clearly unjustified as compared with the rates to the lower rated destinations. Sufficient basis for relief over direct lines has not been shown. HELD, relief will be granted applicants the same as the rates in effect on like traffic from and to the same points over the lines of their competitors, but not lower than the present rates from and to the same points, and to maintain higher rates to intermediate points; provided, that the authority herein granted shall not include intermediate points as to which the haul of the petitioning line or route is not longer than that of the direct line or route between the competitive points; provided further, that the rates from, to, and between intermediate points shall not be increased except as hereafter may be authorized by the commission and shall in no case exceed the lowest combination; and provided further, that the authority herein granted shall not extend to lines or routes which are more than 50% longer than the direct line or route between the competitive points. Fourth Section Departures on Salt, 123 I. C. C. 73.

(uu) Authority to continue rates on furniture from Fort Smith, Ark., to Birmingham, Ala., which are lower than those contemporaneously maintained on like traffic to Sheffield, Tuscumbia, and other intermediate points in Alabama, denied. Florence Chamber of Commerce v. L. & N., 122 I. C. C. 367, 370.

(vv) Authority granted to maintain on cattle, hogs, sheep, and goats, from and to certain points in Oklahoma, Louisiana, Texas, Arkansas, Kansas, and Missouri, over all interstate routes, the lowest rates over any route, and to maintain higher rates from, to, or between intermediate points, provided that rates from, to, or between the intermediate points shall not exceed the scale of rates prescribed, and in no case the lowest combination, the relief authorized not to apply to lines or routes that are more than 70 per cent circuitous. American Nat'l. Live Stock Asso. v. A., T. & S. F., 122 I. C. C. 609, 630.

(ww) Authority granted the Illinois Central R. R. to charge rates on grain and products from Utah and from points in Idaho on the Oregon Short Line and Utah Idaho Central railroads to St. Louis, Peoria, St. Paul, and Albert Lea, and points grouped therewith, and other points in related rate groups, the same as those in effect over other routes operating from and to same points, and maintain higher rates at intermediate points in instances where the Illinois Central operates to points in lower rated groups through higher rated groups; provided, that rates to intermediate points in no case are increased or exceed lowest combination or basis of rates herein prescribed, such relief not to include intermediate points as to which the haul of applicants' route is not longer than that of direct line or route between same points, or apply in instances where applicants' route between competitive points is more than 50 per cent circuitous. Ogden Grain Exchange v. A. & S., 122 I. C. C. 691, 718, 719.

(xx) Authority granted to maintain rates on salt from Mine, Weeks, Avery, Anse La Butte, Barnett, and Lafayette, La., to destinations on and east of Mississippi River, including c. f. a. and southern territories, except from and to points as to which relief was authorized in 120 I. C. C. 569, same as rates contemporaneously in effect on like traffic from and to same points over competing lines, and to maintain higher rates to intermediate points; provided that authority shall not include intermediate points as to which the haul of petitioning line or route is not longer than that of direct line or route between competitive points; that rates from, to, and between intermediate points shall not be increased except as authorized, and in no case exceed lowest combination; the authority herein granted not to embrace lines which are more than 50 per cent circuitous. Fourth-Section Departures on Salt, 123 I. C. C. 73.

(yy) The manner of constructing rates afford no basis for relief from the requirements of section 4 of the act. Fourth-Section Departures on Salt, 123 I. C. I. 73, 75.

(zz) Upon further consideration, fourth-section relief granted in original report 113 I. C. C. 389, authorizing short or weak-line carriers in the Southeast to maintain rates on fertilizers between junction points on their lines and points generally in that territory the same as those contemporaneously maintained between same points by standard-line competitors, amended so as to provide that such lines may participate in competitive routes which will afford them a longer haul, at same time maintaining higher rates to and from intermediate points on their lines, and to allow them to participate as intermediary lines in competitive routes between points on standard lines. Fertilizers Between Southern Points, 123 I. C. C. 193, 194.

(3a) Upon further consideration, fourth-section relief denied Norfolk Southern R. R., on fertilizer between southern points, in connection with routes which exceeded the limits of circuity prescribed in original report 113 I. C. C. 389. In no instance has the commission made an exception as to circuity of routes which may engage in transportation under fourth-section relief and no sufficient reason was here presented for such an exception. Fertilizers Between Southern Points, 123 I. C. C. 193, 195.

(3b) Where a fourth-section application is on file with commission and pending its disposition the rates from the intermediate and farther distant points are equalized, such equalization removes protection afforded by the application, and if thereafter carriers reestablish higher rates from the intermediate than from the farther distant point a new violation of the long-and-short-haul clause of section 4 of the act is created. See 256 U. S. 408, 416. Globe Brick Co. v. P. R. R., 123 I. C. C. 498, 502.

(3c) Application for authority to continue to charge lower rates for transportation of crude phosphate rock from Florida mines to New Orleans and Gulf ports taking same rates, and to Mississippi River destinations than to intermediate destinations, granted in part. Meridian Fertilizer Factory v. A. C. L., 126 I. C. C. 478.

(3d) Applications for authority to continue to charge for transportation of fleshings from Chattanooga and other points in Tennessee, Virginia, West Virginia, North Carolina, and Kentucky, to West Williamsport, Pa., rates which are lower than rates contemporaneously maintained on like traffic from Johnson City, Tenn., and other intermediate points, denied. Keystone Glue Co. v. S. Ry., 126 I. C. C. 507.

(3e) Under Act to Regulate Commerce, § 4, as amended by Act June 18, 1910, § 8 (Comp. St. § 8566), filing of application for relief from aggregate of intermediates clause, or even order granting such relief, would not validate a rate which violated some other section of act. Patterson v. Louisville & N. R. Co., 46 Sup. Ct. 8.

(3f) Authority to continue to charge for transportation of cabbage and potatoes from points in lower Rio Grande Valley of Texas to Cincinnati, rates which are higher than rates in effect on like traffic to Chicago and Peoria, Ill., Milwaukee, Wis., Evansville, Indianapolis, Terre Haute, and Vincennes, Ind., and other more distant points without observing the long-and-short-haul provision of section 4, denied. Leonard, Crosset & Riley v. A., T. & S. F., 128 I. C. C. 225, 229.

(3g) Authority to continue to charge for transportation of sugar from Franklin, La., to Memphis, Tenn., rates which are lower than those contemporaneously maintained on like traffic to Wilmot, Ark., and other intermediate points, denied. Sugar Between Louisiana and Texas Points, 128 I. C. C. 309, 322.

(3h) Authority to continue to charge for transportation of grain products from points in the Panhandle of Texas to certain destinations in Louisiana, lower rates than contemporaneously apply from intermediate Oklahoma points, denied. Not only are Texas rates lower but combinations over such Texas points make lower through charges than are in effect from the Oklahoma points direct. Oklahoma Millers League v. A. & M., 128 I. C. C. 523, 536.

(3i) Authority to continue to charge for transportation of brass and copper ingots from Baltimore, Md., to Detroit, Mich., rates which are lower than those contemporaneously maintained from East Liberty, Pa., and other intermediate points, denied. Federal Metals Corp., v. P. R. R., 128 I. C. C. 757.

(3j) Commission authorized certain relief in connection with rates between San Francisco and other California points, on the one hand, and Portland

and East Portland, Ore., and related points, on the other, in Pacific Coast Fourth Section Applications 24 I. C. C. 34. For many years the rail carriers have competed with the water carriers not only for the port to port traffic, but for traffic originating at or destined to interior points. This has resulted in relatively low rates between the ports, the influence of which is reflected, more or less, in the rate structure throughout this general territory. CALIFORNIA OREGON APPLICATIONS. Application No. 12193 filed by the S. P. covers all commodity rates as to which relief is now sought on account of water competition. The S. P. has not secured permission of the rail carriers north of Portland to publish as joint rates the rates here requested to and from points north of Portland but, in the event the Commmission sanctions their establishment, it anticipates no difficulty in this regard. Permission is also desired to have the same rate basis made applicable to shipments originating on the Santa Fe and Pacific Electric Ry., and moving in connection with the S. P. CLASS RATES. The proposed intermediate rates are from 108 to 247% of the rates between the more distant points. The class rates seem to be reasonably compensatory. Applicants will be authorized to establish the proposed class rates, provided that the rail class rates at intermediate points shall not be increased except as authorized by the Commission, that they shall in no instance be more than 100% higher than the terminal rates and that they shall not exceed the lowest combination. The S. P. desires to cancel the proportional scales and apply in lieu thereof the 80c local scale. This would result in increasing certain class rates, but it would place the all rail class rates to and from points north, south, and east of Portland on the same relative basis. Relief will be granted which will permit the establishment of rates to and from these points constructed on the basis of the 80c scale between the ports plus the local rates beyond and relief to continue rates based on lower scales will be denied. COMMODITY RATES. There are no joint through commodity water and rail rates between points north, south or east of Portland and interior California points, but such rates are published on certain articles from San Francisco to points east of Portland in Henrys tariff I. C. C. 35. The water arbitraries used in the construction of these joint through rates bear no fixed relation to the steamer locals. The present rail rates are made on San Francisco and Portland combinations, using proportional or basing rates between these ports. Although originally related thereto, these basing rates are not equivalent to the local steamer rates. They, as increased during and subsequent to the war, have been in effect for years. The record shows that the rail carriers have always had to meet keen water competition along the Pacific coast. The rail carriers actual water competition on local rail traffic is the cost to the shipper of marine insurance, plus the expense to reach the dock at point of origin, the local steamer rate and the expense of making delivery at destination. On shipments between interior California points, on the one hand, and interior Oregon and Washington points, on the other, the additional costs of utilizing the water routes are not as great since the transfer charges at Portland and Seattle are absorbed. The Commission is of the opinion that the proposed commodity rates, except as hereinafter indicated, will cover and more than cover the additional expenses incurred in handling the traffic to which they apply. Applicants propose to maintain a minimum less than carload commodity rate of 41c per 100 pounds on traffic between these ports. This application will be denied. Less than carload traffic should move on the applicable class rates herein approved. HELD, further, the minimum carload rate between San Francisco and Portland should be not less than 32c, between San Francisco and San Pedro and Portland 50c, between San Francisco and Seattle not less than 43c, between San Francisco and Everett 46c, between Los Angeles or Los Angeles rate points and Seattle 61c, and between Los Angeles or Los Angeles rate points and Everett 64c. Under the law the all rail rates "can be no lower than necessary to meet existing competition". In the judgment of the Commission this will be accomplished if the applicants establish the proposed carload rates, subject to the minimum rates which have been indicated, and provided that (a) the port to port rates are not less than 10c higher than the rates contemporaneous-

ly maintained on like traffic by the standard steamer lines operating between the same ports; (b) that the rail rates at intermediate points shall in no instance be more than 100% higher than the rates on like traffic between the ports; (c) that the present rates at intermediate points shall not be increased, except where necessary to remove or reduce fourth section departures, and when increased for that purpose shall not exceed rates graded according to distance with relation to rates at other intermediate points at which higher rates are herein authorized; (d) that rates at the said intermediate points shall in no case exceed the lowest combination; and (e) that rates from or to inland points which may be lower than rates at intermediate points shall not be lower than the full combination on the ports. RATES BETWEEN CALIFORNIA PORTS. The Santa Fe and the S. P. desire to maintain the present terminal interstate rates between northern California ports, on the one hand, and southern California ports on the other. These rates are protected by the fourth section applications here in issue and are lower than the intermediate rates. The interstate traffic handled between these ports is relatively small. The present intrastate rates have been sanctioned by the State Commission and are the same as the present interstate rates on which fourth section relief is herein sought. The spread between the rail and water rates, both class and commodity, is great enough to satisfy the standard steamer lines. HELD, proposed class rates between the competitive points are reasonably compensatory, also that the rates at intermediate points are not unreasonable, and relief will be granted to establish and maintain rates not lower than those proposed between the said points and to maintain higher rates at intermediate points, provided the present rates at said intermediate points are not increased except as may be hereafter authorized by the Commission and that they shall in no instance be more than 100% higher than rates in effect between the ports and shall not exceed the lowest combination. HELD, further, the high point intermediate rates should not be more than 100% higher than the proposed terminal rates and in no case less than 31.5c per 100 pounds. No showing was made in justification of rates to other southern California ports such as San Diego and relief to continue them will be denied. APPLICATION NO. 12179 ON AUTOMOBILES. This requests permission to establish on automobiles from San Francisco and Oakland to Tacoma and Seattle and points taking the Seattle rates a rate of $1.27, terminal in application, which is lower than the present intermediate rates. HELD, the proposed rates will be allowed to be established, since it is shown to be reasonably compensatory and also that, if established, it will not cause any violation of other sections of the act. APPLICATION NO. 1435 on lumber. The record shows that the present intrastate lumber rates from California points have been sanctioned by the state commission. The present interstate rates are constructed on the same basis as the intrastate rates. The producing interior lumber points are thus given rates designed to place them on an equal basis in southern California markets with their competitors located in Washington, Oregon and western California. These competitors have access to lumber schooner water rates. The present lumber rates from points on these branch lines of the S. P. bear no fixed relation to the present water rates from northern points. The relief in this case is based solely on the ground of water competition. HELD, no facts in record to show that the higher rates at the intermediate points are reasonable, and the Commission is not satisfied that the applicants have sustained the burden of justifying the continuance of such higher rates. Fourth section relief in this situation will be denied. Pacific Coast Fourth Section Applications, 129 I. C. C. 3.

(3k) To obtain relief under the fourth section the applicant must demonstrate that the intermediate rates proposed are not unreasonably high; that actual water competition exists; and that the proposed terminal rates are "reasonably compensatory". See 74 I. C. C. 48, 71. Pacific coast fourth section applications, 129 I. C. C. 3, 15.

(31) By petition for and on behalf of carriers parties to the official, southern and western classifications ask in substance to be relieved from observance of the fourth section of the act in making changes in classification ratings, rules and regulations. Fourth section departures resulting from changes in

classification may be either of the long and short haul or the aggregate of intermediates type. They may occur on local traffic within a classification territory, or on inter-territorial traffic between points where joint through rates are in effect. The act confers upon the Commission authority to grant carriers relief from the provisions of the fourth section only "in special cases, after investigation". The Commission is here asked to relieve carriers entirely from observing the fourth section in making classification changes for the sole reason that, under the existing rate structure and with several independent classifications effective, fourth section departures can be avoided only with considerable difficulty, if at all. There is no contention that the departures which result from classification changes are of such character as reasonably to justify lower charges for longer than for shorter distances as defined by the statute. On the contrary, the petitioners practically concede that investigation of the individual departures would disclose in nearly all cases a complete absence of justification. Under the circumstances this petition does not present a "special case" for relief as the Commission interprets the law. What is sought rather is a complete repeal of the fourth section in so far as it relates to classification changes; and this the Commission has no power to effect. HELD, the Commission is not convinced that the relief prayed is necessary or desirable. Fourth Section Departures, 129 I. C. C. 187.

(3m) Fourth section application No. 12645 filed by the L. & N. and M. P., authority is asked to establish and maintain rates on coal, in carloads, from mines on the L. & N. in western Kentucky to Helena, Ark., lower than contemporaneously maintained to intermediate points. Applicants seek authority to establish a rate of $2.39 to Helena from western Kentucky mines over the L. & N. through Memphis, Tenn., in connection with the M. P., average distance 353 miles. Relief from the long and short haul provision of the fourth section is asked primarily on the ground of meeting the rates made by carriers operating east of the Mississippi through a lower rated territory. The rate that applicants desire to establish applies from the points of origin under consideration over the L. & N. through Memphis in connection with the Y. & M. V. by way of a Mississippi river transfer at Helena, as no bridge is located at that point. HELD, applicants have not submitted sufficient justification for the relief prayed and the application will be denied. FOURTH SECTION APPLICATION 11694. This application was filed by the L. & N. and the portion thereof under consideration in this proceeding asks authority to continue rates on coal, in carloads, from mines on the L. & N. in western Kentucky to points in Mississippi and Tennessee without observing the long and short haul provision of the fourth section of the act. The destinations to which applicant desires to continue lower rates than to intermediate points are located on either the I. C. or Y. & M. V. HELD, the revision of rates pursuant to Alabama Mining Institute v. I. C. R. R. 109 I. C. C. 749 and Coal from Illinois, Kentucky and Alabama, 128 I. C. C. 113 will obviate the necessity of this relief. HELD, relief denied. FOURTH SECTION APPLICATIONS 3236 and 3237. By 3236 applicants, I. C. and Y. & M. V. ask, among other things, for authority to continue rates on coke, carloads, from points on the Frisco in Alabama and Tennessee to points on their lines that are lower than those maintained to intermediate points, and 3237 from points on the Southern and Northern Alabama Ry. These applications are based upon the desire of applicants to meet over their longer line or route, competitive conditions created by the L. & N., Southern, A. G. S. and M. & O., with their direct line, and also via those lines in connection with the A. & V., N. O. & N. E., M. C., N. O. G. N. and F. & G. They are further based upon the desire of applicants to meet lower rates fixed by competition of water carriers via barges from Pittsburgh and Pennsylvania coal fields by way of the Ohio, Mississippi and Yazoo rivers to various points on applicants lines in the states named. HELD, applicants will be permitted to continue rates on coke, carloads, to points on their own lines from producing points on the Frisco in Alabama and Tennessee, and on the Southern Ry., and N. A. Ry., in Alabama, Kentucky and Tennessee, the same as the rates of the shorter lines in cases where the routes in connection with applicants lines are not less than 15% longer than the shorter

or more direct lines, and to maintain higher rates to intermediate points, provided the authority granted shall not include intermediate points as to which the haul of the applicants lines or routes are not longer than that of the direct line or route from and to the competitive points. Coal and coke from Ky., Ala., and Tenn., 129 I. C. C. 197.

(3n) Section four of the act, as amended by the transportation act, provides that in exercising the authority to relieve carriers in special cases from the provisions of that section "the commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed." Western Cement Rates, 132 I. C. C. 273, 274.

(3o) Fourth-section relief to establish or continue class and commodity rates between San Francisco and other California points and Portland and other Oregon, Washington, and Idaho points lower than at intermediate points granted, provided that relief to continue class rates based on lower scales than the 80-cent scale between ports plus local rates beyond, will be denied, and that in establishing proposed commodity rates subject to minimum rates indicated the port-to-port rates shall not be less than 10 cents higher than contemporaneous rates on standard steamer lines operating between same ports; that rail rates at intermediate points shall not be more than 100 per cent higher than contemporaneous rates between ports; that present rates at intermediate points shall not be increased except as provided and shall not exceed lowest combination; and that rates from or to inland points which may be lower than rates at intermediate points shall not be lower than full combination on ports. Pacific Coast Fourth Section Applications, 129 I. C. C. 3.

(3p) Relief granted Southern Pacific and A., T. & S. F. to establish or continue class rates between northern and southern California ports not lower than those proposed, and to maintain higher rates at intermediate points provided present rates at intermediate points are not increased except as authorized, and shall not exceed by more than 100 per cent rates contemporaneously in effect between the ports or the lowest combination; and to continue or establish commodity rates between San Francisco and Bay points, on one hand, and Los Angeles or Los Angeles rate points, on other, lower than contemporaneous rates at intermediate points but not to exceed lowest combination, subject to condition that high-point intermediate rates shall not be more than 100 per cent higher than proposed terminal rates or be less than minimum rates proposed. Relief to continue rates to other southern California ports denied. Pacific Coast Fourth Section Applications, 129 I. C. C. 3, 19, 22.

(3q) Authority to establish on automobiles from San Francisco and Oakland, Calif., to Tacoma and Seattle, Wash., and points taking Seattle rates, a rate lower than to intermediate points, granted. Rate proposed is shown to be reasonably compensatory; if established will not violate the act; and carriers are of opinion that spread between all-rail and all-water rates effected thereby is sufficient to hold a fair share of traffic to all-rail lines. Pacific Coast Fourth Section Applications, 129 I. C. C. 3, 22.

(3r) Authority to continue terminal lumber rates from Oregon, Nevada, and California points to destinations in southern California which are lower than rates to intermediate points, denied. Relief is based solely on gorund of market competition, it being alleged that lower rates are necessary to enable southern California producers to market their lumber in competition with lumber from Oregon and northern California arriving by water. However record fails to show that higher rates at intermediate points are reasonable and applicants have failed to sustain burden of justifying continuance thereof. Pacific Coast Fourth Section Applications, 129 I. C. C. 3, 22, 23.

(3s) Authority to continue rates on broken, crushed, or ground limestone from Colrock and Margerum, Ala., to destinations in southern territory, without observing long-and-short-haul provision of section 4 of the act, denied. Nearly all rates involved are published subject to rule 77 of Tariff Circular 18-A as to intermediate points, which is a substantial compliance with the fourth section; scale rates herein prescribed will cure most of other departures; and

no justification for any unprotected departures which may exist was offered. Colbert Limerock Asphalt Co. v. A. C., 129 I. C. C. 177, 185.

(3t) Petition for amendment of fourth-section order No. 144, general No. 5, so as to permit changes in classification ratings, rules, and regulations without observing the fourth section of the act, denied, except that temporary relief previously granted in that order should be continued until rates prescribed in Southern Class Rate Investigation, 100 I. C. C. 513; 109 I. C. C. 300; 113 I. C. C. 200, have become established. Petitioners do not contend that departures which result from classification changes justify lower charges for longer than for shorter distances as defined by the statute, but on contrary concede that investigation of individual departures would disclose a complete absence of justification. Moreover, petition does not present a "special case" for relief as provided by section 4, but a complete repeal of that section in so far as it relates to classification changes. This the commission has no power to effect. Fourth Section Departures, 129 I. C. C. 187.

(3u) Fourth-section departures resulting from changes in classification may be either of long-and-short-haul or aggregate-of-intermediates type. They may occur on local traffic within a classification territory, or on interterritorial traffic between points where joint through rates are in effect. Fourth Section Departures, 129 I. C. C. 187, 189.

(3v) Where departures from long-and-short-haul clause of section 4 exist in one class rate and not in another, as in second-class but not in third-class rate, and departure in second-class rate is protected, then in accordance with amendments to order No. 144, general No. 5, the new departure which would result from adding another commodity to group of articles subject to second-class rates is likewise protected. If departure in second-class rate is not protected there is a violation of fourth section whenever the second-class rate, higher to the intermediate point than to the more distant point is charged on any commodity. In such a case, carrier should not urge that it requires protection with respect to commodities added to second class group while it has none and seeks none as to the hundreds of commodities that are subject to that rate. Proper method of correcting such a situation is to remove the departure in second-class rate itself. Fourth Section Departures, 129 I. C. C. 187, 192.

(3w) The interstate commerce act confers upon the commission authority to grant carriers relief from provisions of the fourth section only "in special cases after investigation." Fourth Section Departures, 129 I. C. C. 187, 193.

(3x) It does not seem unreasonable to require a carrier which maintains fourth-section departures under protection of an order to keep in touch with changes in classification governing its class rates between same points and to revise its commodity rates comformably. Fourth Section Departures, 129 I. C. C. 187, 195.

(3y) Authority to establish and maintain rates on coal from mines on the Louisville & Nashville in western Kentucky to Helena, Ark., in connection with the Missouri Pacific at Memphis, Tenn., lower than to intermediate points in Arkansas, on ground of meeting rates of carriers operating east of the Mississippi through a lower-rated territory, denied, insufficient evidence being submitted to justify relief prayed for. Coal and Coke from Kentucky, Alabama, and Tennessee, 129 I. C. C. 197.

(3z) Authority to continue rates on coal from mines on the Louisville & Nashville in western Kentucky to points in Mississippi and Tennessee, lower than to intermediate points, denied. Revision of rates on coal from mines in Alabama, western Kentucky, and southern Illinois to Mississippi Valley destinations, pursuant to decisions in 109 I. C. C. 740; 128 I. C. C. 113, will obviate necessity for granting relief sought. Coal and Coke from Kentucky, Alabama, and Tennessee, 129 I. C. C. 197, 199, 201.

(4a) Authority to continue rates on coke from points on St. Louis-San Francisco in Alabama and Tennessee and on Southern Railway and Northern Alabama Railway in Alabama, Kentucky, and Tennessee, the same as rates of shorter lines, in cases where routes involved are not less than 15 per cent longer than more direct lines, and to

maintain higher rates to intermediate points, granted, provided that such authority shall not include intermediate points as to which the haul of the applicants' lines is not longer than that of direct route between competitive points, and subject to condition that present rates at intermediate points shall not be increased except as authorized and shall in no case exceed the lowest combination. Coal and Coke from Kentucky, Alabama, and Tennessee, 129 I. C. C. 197, 201, 202.

(4b) Upon further consideration in original report 113 I. C. C. 389, fourth-section order No. 9346, amended so as to authorize carriers to maintain rates on fertilizers and materials within southern territory from and to intermediate points on circuitous routes in excess of those under distance scale prescribed in original report, provided such rates shall not exceed the scale basis by more than 15 cents per ton on and after date designated herein. Fertilizers Between Southern Points, 129 I. C. C. 215.

(4c) Upon further consideration in original report 113 I. C. C. 389, petition of Carolina Railroad seeking authority to maintain same rates on fertilizers and materials to Snow Hill, N. C., as are contemporaneously in effect to Maury, N. C., in order to meet competition at latter point, and to maintain rates to intermediate stations on basis prescribed in original report, denied. Fertilizers Between Southern Points, 129 I. C. C. 215, 216, 217.

(4d) Rates on lumber from points in Maine to destinations in New England, found reasonable in 43 I. C. C. 641, but reduced by carriers to allow lumber interests to compete with Pacific coast shipments via Panama Canal, were subsequently increased to former level. Upon contention that such increase was in violation of section 4 (2) of the act, FOUND: Purpose of section 4 (2) is to prevent carriers from increasing rates after water competition has been eliminated by reduced rates. Here, voluntary reduction was not to destroy competition but to preserve it, but since it has continued undiminished, restoration of rates to former basis does not fall within prohibition contained in that section. See 249 U. S. 557. Moreover, in 85 I. C. C. 270, commission stated it would not adjust rates from competing producing territories in order to equalize manufacturing costs. Woodstock Lbr. Co. v. B. & A., 129 I. C. C. 255.

(4e) Rates from various eastern points to Dallas and Fort Worth, Tex., are same as those to Deming, N. Mex., a more distant point, as well as to Los Angeles and other California ports. Rates not higher than rates to the coast necessarily are maintained to Deming in order to avoid unauthorized fourth-section departures; rates to Deming are for same reason observed as maximum at interior points such as Texas common points. Similar blanket applications frequently occur with respect to transcontinental rates and such rates are not necessarily determinative of reasonableness of rates to intermediate points. Nor does it follow that rates to Deming should be scaled back to intermediate points, particularly where showing is not sufficient to warrant such an adjustment. Apex Co. v. A. & V., 129 I. C. C. 283, 287, 288.

(4f) L. c. l. joint commodity rate on cotton piece goods from certain points in Connecticut, Massachusetts, and Rhode Island to Lynchburg, Va., which exceeds contemporaneous class rate to same and more distant Virginia destinations, found not unreasonable or otherwise unlawful, following 113 I. C. C. 270. Fourth-section departures were protected by appropriate applications. Traffic Bureau v. N. Y., N. H. & H., 129 I. C. C. 309.

(4g) Authority granted Rock Island lines and their interested connections to establish and maintain rates on imported iron and steel articles from Galveston and Houston, Tex., to Amarillo, Tex., over their route through Oklahoma, the same as rates contemporaneously in effect on like traffic over direct lines from same ports to Amarillo, but not lower than present rates of direct lines, and to establish and maintain higher rates to Oklahoma stations on their lines on basis herein found reasonable, subject to equidistant provision of section 4 of the act. Import Iron and Steel Articles, 129 I. C. C. 350, 358.

(4h) Motion for further hearing on ground of two alleged errors in original report, 63 I. C. C. 6, viz, statement that

departures from aggregate-of-intermediates provision were protected by applications, heard but not determined, and statement that rates found unreasonable appeared not unduly high, denied. Question of whether departures were protected by applications was res adjudicata not because of commission's decision but that of Supreme Court in 269 U. S. 1. Even if question has not been res adjudicata and commission concluded that departures were not protected, complainants would not be entitled to reparation for violation of fourth section, since there was no proof that they suffered any special damage, and no such proof was submitted at further hearing. Hudson Mule Co. v. L. & N., 129 I. C. C. 365, 368, 369.

(4i) Fourth-section relief sought in connection with readjustment of rates on lime in southern territory, denied, except that Gulf & Ship Island is granted authority to continue to charge higher rates on lime to local stations on its line than to its junctions with trunk lines. That carrier has been recognized generally as a weak line; its rates are generally higher than those of trunk lines; and with respect to other commodities it has been permitted to meet rates to its direct-line connections at junction points and to maintain higher rates to intermediate points where similar competition is not encountered. Lime Between Southern Points, 129 I. C. C. 635.

§4a. Short Lines.

(a) Based upon light traffic density and unfavorable operating and financial conditions, certain independent short lines in southern territory granted authority to continue to charge lower rates on lumber and other forest products to trunk line and New England territories from junction points with trunk-line connections than from intermediate points on their lines; provided rates from such intermediate stations shall in no case exceed lowest combination, and further provided that differences between rates from more distant junction points on the one hand, and intermediate points on short lines on the other, shall not be increased. North Carolina Pine Asso. v. A. C. L., 107 I. C. C. 190.

III. APPLICATION OF SECTION 4 TO RATES.

§4½. In General.

(a) The unauthorized establishment of rates or charges to or from points within lighterage or delivery limits of New York Harbor on a basis higher than that contemporaneously maintained to or from more distant points east thereof on routes which pass through the harbor, so long as such points are continued within delivery limits of New York Harbor, would be considered as in contravention of the long-and-short-haul rule of section 4 of the act. Lautz Marble Corp. v. E. R. R., 115 I. C. C. 543, 545.

(b) Section 4 of the act does not prohibit charging of same rate for a shorter as for a longer distance. Birmingham Traffic Bureau v. St. L.-S. F., 118 I. C. C. 756, 757.

(c) The Commission has consistently held that the publication of rates subject to rule 77 constitutes a substantial compliance with the long-and-short-haul provision of the fourth-section, and affords an adequate basis for an award of reparation on shipments which moved to the intermediate point at charges higher than those to the farther distant point. Burlington Shippers Asso. v. C. B. & Q. R. R., 126 I. C. C. 179, 181.

(d) Compliance with carriers' request that differentials should be applied only over the short-line routes would deprive shippers of the natural advantage of the lower-rate routes through central territory; would result in many rates as high as the full combinations on the gateways and give rise to further long-and-short-haul departures and unwarranted increases in the rates prescribed. Southern Class Rate Investigation, 128 I. C. C. 567, 580.

(e) Rate on fresh peaches from Palisade, Colo., to Syracuse, N. Y., found not unreasonable or otherwise unlawful as compared with those from Georgia points to Syracuse or from California points. Distance considered, rate attacked is on a relatively lower basis than those from Georgia, and as it is blanketed from Colorado to the Pacific coast, the alleged violation of long-and-short-haul provision of section 4 is without merit. Caruso, Rinella, Battaglia Co., v. D. & R. G. W., 128 I. C. C. 687.

(f) The Commission has frequently found that rates in violation of the long and short haul provision of the fourth section were prima facie unreasonable. Forcum James Lumber & Cooperage Co., v. I. C. R. R., 132 I. C. C. 293, 295.

§4¾. Circuitous Routes.

See Advanced Rates §2½ (g); Routing and Misrouting §1½ (j).

(a) Upon applications of the C., M. & St. P., Illinois Central, St. L.-S. F., Union Pacific, C., R. I. & P., Missouri Pacific, A., T. & S. F., and Kansas City Southern railways, relief from long-and-short-haul provision of section 4 of the act granted as to class and commodity rates between western trunk-line territory and points west of Missouri River. Class and Commodity Rates between Western Points, 104 I. C. C. 578.

(b) Where it appears that routes of applicant carriers are unduly circuitous, relief from long-and-short-haul clause of section 4 of the act will be denied. See 77 I. C. C. 473, 526, and cases therein cited; also 49 I. C. C. 40; 47 I. C. C. 576. Class and Commodity Rates between Western Points, 104 I. C. C. 578, 585.

(c) Contention of carrier that where it is not asking for relief on account of circuity of its line, the equidistant provision of fourth section of the act is not applicable and that reductions should not be required at intermediate points to conform to this provision, sustained. Class and Commodity Rates between Western Points, 104 I. C. C. 578, 589.

(d) Where routes of a carrier seeking relief from long-and-short-haul-provision of section 4 of the act are circuitous via some gateways as compared with its own routes via other gateways, it must appear that lower rates to more distant points on circuitous routes are reasonably compensatory before relief will be granted. Class and Commodity Rates between Western Points, 104 I. C. C. 578, 591.

(e) The principle embodied in equidistant provision of section 4 of the act may be applied by commission, at its discretion, to cases in which it is not in terms applicable. See 64 I. C. C. 26, 30. Class and Commodity Rates between Western Points, 104 I. C. C. 578, 591.

(f) If relief is granted from long-and-short-haul provision of section 4 of the act there must be some reasonable limitation upon degree of circuity in order to conform to requirement of the law that lower rates at more distant points must be reasonably compensatory. Class and Commodity Rates between Western Points, 104 I. C. C. 578, 592.

(g) The commission is authorized under section 4 of the act to grant relief from operation thereof "in special cases." The circuity of a rail line or route has long been recognized as a special case in which relief may properly be granted if circumstances as a whole warrant that action. In practice commission has generally limited relief to routes which are not less than 15 per cent circuitous, but this has not been regarded as an inflexible rule. See 24 I. C. C. 192; 61 I. C. C. 700. Class and Commodity Rates between Western Points, 104 I. C. C. 578, 595.

(h) The equidistant rule of section 4 of the act, though formerly also observed by commission as an administrative practice, is now an integral part of the law, and its application is mandatory where relief is sought because of circuity, regardless of methods of rate making. Class and Commodity Rates between Western Points, 104 I. C. C. 578, 595.

(i) In cases where commission prescribes distance scales carriers are not required to establish over circuitous routes rates found reasonable for application over rate-making routes. They may do so if long-and-short-haul provision of section 4 of the act is observed or if relief therefrom is granted. Grain and Products to Mississippi Valley, 107 I. C. C. 167, 169.

(j) The unnecessary hauling of traffic over unduly circuitous routes at same rates that are applicable over direct routes results in wasteful transportation. Brick and Clay Products in the South, 113 I. C. C. 380, 381, 382.

(k) Authority granted to maintain, via routes which are not more than 50 per cent circuitous, on brick and other clay products from Clearfield, Pa., and points grouped therewith, to points in eastern trunk-line and New England territories, rates which are lower than those contemporaneously in effect on like traffic from Johnsonburg and Ridgeway, Pa., and points grouped therewith and intermediate thereto, said authority not to include intermediate points as to which the haul of petitioning line or route is not longer than that of direct line or route between competitive points, the rates from intermediate points to in no case exceed lowest combination. Alumina Shale Brick Co. v. B. & O., 113 I. C. C. 496, 499, 500.

(l) Carriers forming the circuitous

routes from points in the Scranton and Williamsport, Pa., groups to central and western trunk line territories proposed to increase their class and commodity rates from points in these groups to points in the destination territories to the basis of the rates in effect from higher rated intermediate groups. Fourth section application also set for hearing. HELD: Not justified, carriers permitted to meet the rates of the short line without applying this basis to intermediate points. Class and commodity rates from Pennsylvania, 115 I. C. C. 331.

(m) Fourth section relief could not be granted on the ground of circuity of route, inasmuch as the fourth section specifically precludes the granting of relief on that ground when the distance to the intermediate point is not greater than to the lower rated competitive point beyond. Keokuk Shippers Assn. v. A. T. & S. F. Ry., 118 I. C. C. 683, 685.

(n) Proposal of carriers forming circuitous routes from points in Scranton and Williamsport, Pa., groups to increase their class and commodity rates on traffic moving to c. f. a. and western trunk-line territories to basis of rates in effect from higher-rated intermediate groups, found not justified. Class and Commodity Rates from Pennsylvania, 115 I. C. C. 331.

(o) Authority granted carriers to meet via their circuitous lines or routes the class and commodity rates contemporaneously maintained via direct lines or routes from points in the Scranton and Williamsport groups to points in c. f. a. and western trunk-line territories and to maintain higher rates at intermediate points, such authority not to include intermediate points as to which the haul of petitioning line or route is not longer than that of direct line or route from and to competitive points, the present rates at intermediate points in no case to exceed lowest combination, the relief here granted to apply to routes 70 per cent circuitous where direct route does not exceed 150 miles; 50 per cent circuitous where the direct route exceeds 150 but not 1,000 miles; and 33⅓ per cent circuitous where direct route exceeds 1,000 miles. Class and Commodity Rates from Pennsylvania, 115 I. C. C. 331.

(p) If unusual or circuitous movement is desired the necessary instructions therefor should appear on bills of lading as it would place an undue burden on carriers to require them to search tariffs for all possible cheaper routes in absence of routing restrictions. Miller v. C. of G., 115 I. C. C. 518, 520.

(q) Authority to charge on sugar from New Orleans, higher rates to Keokuk and Burlington, Iowa, and other intermediate points than to Chicago over the C. B. & Q., denied, and so much of previous order as permits charging of such higher rates, vacated. Relief can not be granted on ground of circuity of route because Iowa points are less distant than Chicago since section 4 of the act specifically precludes granting of relief on that ground when distance to the intermediate point is not greater than to the lower-rated competitive point beyond. Moreover, carrier competition is not such as to warrant relief on grounds other than circuity of route. See 88 I. C. C. 46. Keokuk Shippers' Asso. v. A., T. & S. F., 118 I. C. C. 683.

(r) Authority granted carriers to apply under distance rates herein prescribed on salt from Louisiana mines to Mississippi destinations over all routes the lowest rate available over any route from and to said points and to maintain higher rates from and to intermediate points; provided that rates from and to the intermediate points shall in no case exceed the lowest combination, and that the relief granted shall not include routes more than 50 per cent longer than the direct route from and to the competitive points. Mississippi R. R. Comm. v. A. & V., 120 I. C. C. 569.

(s) Application for authority to establish rates over circuitous lines which are not less than 15 per cent nor more than 70 per cent longer than direct line or route between competitive points, on plaster and gypsum products from points in Iowa, Michigan, and Ohio, to destinations in Illinois, Indiana, Wisconsin, and on west bank of Mississippi River, same as rates contemporaneously maintained on like traffic by direct lines or routes from and to same points, and to maintain higher rates at intermediate points, granted, relief authorized not to include intermediate points as to which the haul of circuitous line or route is not longer than that of direct line or route between competitive points; rates at intermediate points not to exceed distance scales herein prescribed and in no case the lowest combination. Plaster and Gypsum Products, 122 I. C. C. 747.

(t) Applicable rate on apples from White Salmon, Wash., to Phoenix, Ariz.,

moving by way of a circuitous route found unreasonable to extent it exceeded lower rate contemporaneously in effect over a more direct route. Shipper here originally directed routing via direct route, but carrier's agent refused to execute the bill of lading until it was changed to accord carrier furnishing refrigerator equipment a road haul. In this territory it is the practice of lines forming indirect routes to meet the rates in effect over short routes and rates lower than those here charged were in effect at time of movement between various points over various indirect routes for comparable distances. Wuille & Co v. S. P. & S., 123 I. C. C. 190.

(u) It is not commission's province to require circuitous or more expensive routes to meet rates of shorter or less expensive routes. However, commission may in fixing rates by any route, give consideration to rates of other routes and attempt to devise an adjustment which on the whole will provide reasonable rates and at same time, as nearly as may be, permit various routes to engage in the traffic where they so desire. Consolidated Southwestern Cases, 123 I. C. C. 203, 374.

(v) Carriers having circuitous routes authorized to establish and maintain rates on cement from Ada, Okla., Portland and Concrete, Colo., Bonner Springs, Kans., Sugar Creek, Mo., and points in the Kansas gas belt, to competitive points in Texas, the same as those contemporaneously in effect on like traffic over short lines from and to same points, and to maintain higher rates at intermediate points, provided, that rates at intermediate points shall not exceed distance rates herein prescribed and in no case the lowest combination; authority herein granted not to include intermediate points as to which haul of carriers having circuitous routes is not longer than that of direct lines or routes between competitive points. Oklahoma Portland Cement Co. v. D. & R. G. W., 128 I. C. C. 63, 86.

(w) Where a circuitous route is permitted to meet a short-line rate, latter rate exists in any event over the short route, and no locality or shipper is deprived of the benefit of location if longer routes are permitted to meet this competition and share in the traffic. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349, 386.

(x) In the original report 48 I. C. C. 201 maximum rates were prescribed for the interstate transportation of cement within western trunk line territory, and between points in western trunk line territory and certain other territories adjacent thereto, including trans-Missouri territory and southwestern Missouri. The rates constructed over short or direct lines or routes on the basis prescribed generally conform to the requirements of section four of the act. By fourth section order No. 7260 the circuitous routes were granted relief to meet the rates of the direct routes. This order was modified from time to time and, in 69 I. C. C. 644 it authorized respondent carriers having circuitous routes between points of production in the territory considered and common points or key points to apply over their routes between such points rates on cement the same as those in effect between the same points, over the short lines, and to maintain higher rates at intermediate points not to exceed rates constructed on the basis prescribed. No limitations were placed on the degree of circuity of the routes which might avail themselves of the relief granted in the order. The rates published by the carriers under order 7260 are generally unrestricted as to routing and are applicable over routes which in some instances are so extremely circuitous as to make it doubtful whether such rates are reasonably compensatory for the service performed. HELD, fourth section order 7260 will be amended so that the relief authorized therein shall not apply (1) where the short line is 150 miles or less and the longer line or route is more than 70% circuitous; (2) where the short line exceeds 150 miles in length and the longer line or route is more than 50% circuitous, provided, however, that where the short line exceeds 150 miles and the longer line or route does not exceed 255 miles, relief will apply to such longer line or route even though the said longer line or route is more than 50% circuitous. Western Cement Rates, 132 I. C. C. 273.

§5. Intermediate Points.

See Infra §6; Through Routes and Joint Rates §21.

(a) Bowling Green, Ky.: Proposal to cancel commodity rate on clean rice from New Orleans to Bowling Green, thereby making effective by application of an in-

termediate rule, higher c. l. rate from New Orleans to Louisville, to which Bowling Green is intermediate, and which will remove departures from long-and-short-haul provision of section 4 of the act, found justified. Rice from New Orleans, 104 I. C. C. 333, 336.

(b) Applicable rate on crushed stone from Gary, Ill., to Kankakee and Stillwell, Ind., found in violation of long-and-short-haul provision of section 4 of the act in that it exceeded rate contemporaneously in effect to La Porte and Michigan City, Ind., to which Kankakee and Stillwell are intermediate. Taylor v. N. Y., C. & St. L., 109 I. C. C. 441.

(c) Chattanooga and other Tennessee points: Rates on imported fertilizer materials from Charleston, S. C., and Savannah, Ga., to Chattanooga, McCarthy, and certain other points found to contravene the long-and-short-haul provision of section 4 of the act. These rates were unrestricted as to routing, and shipments could move through Knoxville at a less rate than shippers at Knoxville must pay. Knoxville Traffic Bureau v. A. C. L., 109 I. C. C. 705, 706.

(d) Rate on bulk corn from Jefferson, S. Dak., to Fowler, Colo., found applicable, but unreasonable to extent it exceeded a lower rate contemporaneously in effect to Trinidad, a more distant point, to which Fowler is directly intermediate. Tariff carrying lower rate contained in intermediate rule under provisions of which rates apply to intermediate points only when they are not named in the tariff. Fowler was named in the tariff, but not in item carrying rates on this commodity between points named, consequently the Trinidad rate was not applicable to Fowler. See 36 I. C. C. 523 and 45 I. C. C. 183. Later carriers provided by addition of a note to the rule for application of Trinidad rate to Fowler and other points; thus the situation presented clearly raises a presumption of unreasonableness, which carriers made no attempt to meet. Reparation awarded. Summit Grain Co. v. C., M. & St. P., 109 I. C. C. 763.

(e) Complainant attacked combination rate charged on two cars of ground limestone shipped on Nov. 16, 1922, and Jan. 12, 1923, from Cartersville, Ga., to Cuyahoga Falls, O., as unjust, unreasonable and in violation of the fourth section. One shipment moved L. & N., to Cincinnati, O., Erie to Akron, O., Pennsylvania beyond. The other moved W. & A., to Chattanooga, Tenn., C. N. O. & T. P. to Cincinnati, Erie to Akron and Pennsylvania beyond, charged $2.52 to Cincinnati and $3.50 beyond. Cuyahoga Falls is 33 miles south of Cleveland and intermediate to that point. Rate to Cleveland at time of movement was $4.79. Complainant requested the Cleveland basis of rates on Nov. 23, 1922. On Feb. 5, 1923, the rate was made the same and on Sept. 15, 1923, the rates to both Cuyahoga Falls and Cleveland were reduced to $4.77. HELD: Rate attacked unreasonable to extent it exceeded $4.79, reparation awarded. Thompson Weinman & Co. v. W. &. A. R. R., 112 I. C. C. 395.

(f) Complainant attacked combination rate charged on four cars of horses and mules from National Stock Yards, Ill., to Philadelphia, Miss., between Sept. 8 and Nov. 9, 1921, as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of the fourth section. National Stock Yards is within the switching limits of East St. Louis, Ill. Philadelphia is a local point on the G. M. & N. 33.6 miles north of Newton, Miss., and 47.5 miles northwest of Meridian, Miss. Shipments moved M. & O. to Jackson, Miss., thence G. M. & N. 472 miles. Over this route Philadelphia is intermediate to both Newton and Meridian. Charged combination on Mathison, Miss. Joint rates of $140 and $144.50 were maintained to Meridian and Newton over the route through Philadelphia authorized under fourth section order 7026. HELD: Rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Dees v. M. & O. R. R., 112 I. C. C. 397.

(g) Complainant attacked commodity rates charged on low grade book paper, carloads, from Spring Grove, Pa., to Nashville, Tenn., as illegal, unreasonable, unduly prejudicial and in violation of the fourth section. Spring Grove is on the Pennsylvania and the W. M. Shipments moved W. M., to Hagerstown, Md., N. & W., to Bristol, Tenn., and Southern either to Harriman, Tenn., and T. C., beyond, or to Chattanooga, Tenn., and N. C. & St. L., beyond, hauls of 805 and 850 miles. Until Nov. 28, 1921 the rates to Nashville were the same as, or lower than, those to Memphis, but since that date they have been higher. Over the routes of movement Nashville is intermediate to Memphis on traffic from Spring Grove and prior to July 15, 1925,

the rate over the N. C. & St. L., contravened the fourth section. On that date the N. C. & St. L., withdrew its participation in the rate to Nashville over the routes of movement, thus removing the violation in connection with that carrier. The departure over the T. C., was and is authorized by fourth section order 8680. HELD: Rate attacked unreasonable to extent it exceeded 65.5c prior to July 1, 1922, and 59c on and after that date, reparation awarded. Clements Paper Co. v. T. C. Ry., 112 I. C. C. 411.

(h) Complainant attacked combination rate charged on two cars of crude ground sulphur, shipped Jan. 19 and Feb. 17, 1923, from Freeport, Tex., to Elyria, O., as unreasonable and in violation of section 4. Charged 71.5c made up of 50.5c to Cincinnati, O., sixth class 21c beyond. Elyria is about 17 miles south of Lorain, O., over B. & O. and 25 miles west of Cleveland, O. When shipments moved a rate of 57.5c was applicable to Cleveland, Elyria being intermediate. That rate was established April 1, 1923. HELD: Rate attacked unreasonable to extent it exceeded 57.5c, reparation awarded. Stauffer Chemical Co. v. H. & B. V. Ry., 112 I. C. C. 495.

(i) Complainant attacked combination rate charged on two cars of fresh peaches, in baskets, shipped in August and Sept., 1923, from Emmett, Ida., to Miami, Fla., as unjust, unreasonable, unjustly discriminatory, unduly preferential and in violation of the fourth section. Shipment moved as routed, O. S. L., to Granger, Wyo., U. P., to Kansas City, Mo., Frisco to Birmingham, Ala., Southern to Macon, Ga., G. S. & F., to Jacksonville, Fla., F. E. C., beyond, 3,189 miles charged $3.37 made up of $1.44 to Cairo, Ill., 70c to Jacksonville and $1.23 beyond. Contemporaneously a joint commodity rate of $1.875 was named on fresh peaches, carloads, to Miami from Oregon and Washington. Shipments were in baskets, rate sought not named on shipments in baskets but only in boxes, barrels or crates, applicable rate 50c higher or $2.815. Emmett is intermediate but was protected by unheard fourth section application, rate subsequently being established from Emmett. HELD: rate attacked unreasonable to extent it exceeded $2.815, reparation awarded. Drake Produce Co. v. O. S. L. R. R., 112 I. C. C. 551.

(jk) Complainant attacked joint commodity rate of 66.5c charged on six shipments of cotton piece goods, made between Nov. 9, 1923, and Jan. 31, 1924, from Norwich, Conn., to Canton, Mass., to Lynchburg, W. Va., as unjust, unreasonable, unjustly discriminatory and unduly prejudicial as compared with the rate of 53.5c from the same points to Montview, Va., a farther distant point. Shipments moved over New Haven and Pennsylvania to Potomac Yard, Va., thence Southern. Cotton piece goods are rated fourth class under the governing classification. Fourth class rate from Norwich and Canton to Lynchburg is 53.5c. Fourth class rate to Montview was 53.5c and was applicable as there was no commodity rate published to that point. A higher basis of rates generally applies on cotton piece goods in official territory than the rate attacked. The rate attacked is not out of line with the level of rates on cotton piece goods from Boston to Virginia territory. The fourth section departure should be removed at once. No substantial evidence was introduced with respect to unjust discrimination or undue prejudice and no damage is shown because of the fourth section violation. HELD: Rate attacked not unreasonable, unjustly discriminatory or unduly prejudicial, complaint dismissed. Lynchburg Chamber of Commerce v. N. Y. N. H. & H. R. R., 113 I. C. C. 270.

(l) Complainant attacked fourth class rate charged on a less carload of malleable link belting from Indianapolis, Ind., to Algoma, Ore., on Dec. 20, 1919, as unjust, unreasonable, illegal, and in violation of the fourth section. Charged fourth class rate of $2.69, reparation being sought to rate of $2.065 to Modoc Point, Ore., 9.2 miles north of Algoma on the same railroad. Fourth section departure was protected by 7316, 74 I. C. C. 733. HELD: Rate of $2.065 applicable, but not unreasonable, reparation awarded. Algoma Lumber Co. v. Director General, 113 I. C. C. 311.

(m) Rate on printing paper other than newsprint from Spring Grove, Pa., to Nashville higher than on like traffic to Memphis, a farther distant point to which Nashville is intermediate over route of movement, found to contravene the long-and-short-haul provision of section 4 of the act. Clements Paper Co. v. T. C., 112 I. C. C. 411, 415, 416.

(n) The establishment of a lower rate from a more distant point subject to rule 77 of Tariff Circular 18-A is tantamount to an admission that a higher rate

from an intermediate point is unreasonable, and when rates are so established shippers at intermediate points have a lawful right to a rate no higher than that from the more distant point. Drake Produce Co. v. O. S. L., 112 I. C. C. 551, 552.

(o) Joint commodity rate on cotton piece goods from Norwich, Conn., and Canton, Mass., to Lynchburg, Va., in excess of class rate contemporaneously maintained to Montview, Va., a farther distant point, unprotected by an appropriate application, found to violate long-and-short-haul clause of section 4 of the act. Lynchburg Chamber of Commerce v. N. Y., N. H. & H., 113 I. C. C. 270, 271.

(p) Rate on stone from Silverdale, Kans., to Tulsa, Okla., higher than rate to Muskogee, Okla., to which point Tulsa is directly intermediate found to violate the long-and-short-haul provision of section 4 of the act. Consolidated Cut Stone Co. v. A., T. & S. F., 113 I. C. C. 480, 485.

(q) Complainant attacked commodity rate of $3.73 per ton on clay, carloads, from McKenzie, Tenn., to Abingdon and Macomb, Ill., as unreasonable, unduly prejudicial and in violation of section four. Also on clay, carloads, from western Kentucky and Tennessee to Lincoln and Morton, Ill., as unreasonable and in violation of the fourth section. HELD: Rates attacked from points of origin in Groups 1 and 2 unreasonable to extent they exceeded $3.54 but present rates and rates from Group 3 not unreasonable, reparation awarded. Abingdon Sanitary Mfg. Co. v. C. & N. W. Ry., 113 I. C. C. 556.

(r) Complainant attacked applicable rate of $2.05 on sand, other than blast, engine, foundry, glass, moulding, or silica, carloads, from Sandusky, O., to Pittsburgh, Pa., and points taking the same rates as unreasonable. Prior to August 26, 1920, rate was $1.80, increased on that date to $2.52. Effective December 10, 1921, the carrier in central territory voluntarily reduced all rates on road building materials, including sand, to a basis about 115 per cent of the rate in effect prior to August 26, 1920, making the rate to $2.07, this being changed to $2.05 on June 15, 1922. At the time of the hearing a rate of $1.75 was in effect from Sandusky to West Newton, Pa., to which Pittsburgh is directly intermediate. No sufficient reason appears for the maintenance of a rate from Sandusky to Pittsburgh upon a level other than that of the rates prescribed for application from points in western Pennsylvania to Ohio as laid down in 104 I. C. C. 717. HELD: Rate attacked not unreasonable for the past, but unreasonable for the future to extent it exceeded $1.60 per ton. Booth & Flinn v. Pennsylvania R. R., 113 I. C. C. 613.

(s) A showing that there was a lower rate in effect to a more distant point on same route does not in itself establish unreasonableness of higher rate to an intermediate point. Booth & Flinn v. P. R. R., 113 I. C. C. 613, 614.

(t) Complainant attacked commodity rates charged on certain shipments of cotton from North Carolina points to Danville, Va., between October 7, 1922, and January 12, 1924, as unreasonable, unduly prejudicial and in violation of the fourth section. Wilson is served by the A. C. L., and N. S., the other points of origin named are served only by the Coast Line, Elm City being about 6 miles north of Wilson, Lucama about 8 miles south of Wilson and Black Creek and Freemont about 7 and 14 miles south of Wilson. Apparently all the shipments were delivered to the Coast Line; although the short line route from Wilson is over N. S., through Raleigh, N. C., thence Southern 182 miles. During a part of the time these shipments were moving defendants had joint rates of 65.5c from Wilson, Lucama and Elm City to Martinsville, Va., 43 miles beyond Danville. Effective April 8, 1924, and July 29, 1924, rates to Danville of 65.5c were established from all points of origin. Over short line routes, none of these points of origin is as much as 200 miles from Danville, but the average distance via Suffolk is about 313 miles. The maladjustment in these rates is made clear by the fact that at times during the period considered rates to Danville from all points of origin named, excepting Elm City, made upon the Draper, N. C., combination. HELD: Rates attacked unreasonable to extent they exceeded 65.5c, reparation awarded. Bradshaw Roberson Cotton Co. v. A. C. L. R. R., 113 I. C. C. 661.

(u) Combination rates charged on grain and products from points in Colorado, Kansas, and Nebraska to destina-

tions in Tennessee, Georgia, and Alabama, found legally assessed. Lower joint rates applied to Greenwood, Miss., and New Orleans, La., farther distant points, and while tariff provided for their application to directly intermediate points, it also carried complete routes, none of which operated through intermediate destinations here involved. Complainant here attempts to ignore such routes and construct unauthorized circuitous routes via which destinations would be intermediate to Greenwood and New Orleans. The naming of specific routes to the farther distant points, however, eliminated all other routes, and conclusion set forth in rule 4 (j) of Tariff Circular 18-A which provides that "When a tariff specifies routing the rates may not be applied via routes not specified," is controlling. Russell Grain Co. v. A. G. S., 113 I. C. C. 701.

(v) The establishment of a lower rate to a more distant point subject to Rule 77 of Tariff Circular 18-A is tantamount to an admission that a higher rate to an intermediate point is unreasonable, and when rates are so established shippers at intermediate points have a lawful right to a rate no higher than that to a more distant point. Crown Cork & Seal Co. v. B. & O., 113 I. C. C. 726, 727.

(w) The law is plain that regardless of the basis upon which relief is granted the commission must not permit the establishment of a rate to a more distant point that is not reasonably compensatory for the service performed. In a territory where the rates in general via the direct hauls have been passed upon by the commission and where there is such a maze of possible routes, making it practically impossible to check and enumerate each route available in published tariffs, it must place some general limitations upon the relief granted, so that rates via direct routes will not be less than reasonably compensatory when applied via the circuitous hauls. Class and commodity rates from Pennsylvania, 115 I. C. C. 331, 334.

(x) Complainant attacked sixth class rate charged on 6 cars of refuse sand shipped from Detroit, Mich., to Indianapolis, Ind., during July, August, and September, 1922, as unreasonable, unjustly discriminatory and unduly prejudicial to extent they exceeded the rate from the same point to Cincinnati or Columbus, O. One of the cars moved as routed, M. C., to Michigan City, Ind., C. L. & L. beyond. The remaining cars moved D. & T. S. L., to Toledo, O., N. Y. C. & St. L., to Frankfort, Ind., and Monon beyond, charged 22c. At the time shipment moved commodity rates of $1.64 and $1.89 from Detroit to Columbus and Cincinnati, respectively, were maintained by both the M. C. and Short Line. The Cincinnati rate of $1.89 was applicable on the shipment which was routed, and moved, over M. C. and Monon because of the absence of any restriction in the tariff prohibiting a movement via Michigan City. As to the remaining five shipments which moved by the Shore Line and connections, the words "on the same line" in the intermediate rule required that the intermediate point be on the line of the same carrier as the more distant point to which a rate is published. The rails of the Monon do not reach Cincinnati, therefore, the intermediate rule of the Shore Line tariff did not apply to the shipments which moved over that line and were delivered by the Monon at Indianapolis. However, as no routing instructions were published and as shipments to Cincinnati could be routed through Indianapolis, the higher class rate from Detroit to Indianapolis contravened the long and short haul provision of the fourth section. By no reasonable construction of the tariffs could the $1.64 rate to Columbus be held to apply via Indianapolis. HELD: Rates attacked unreasonable to extent they exceeded $1.89, reparation awarded. American Radiator Co. v. D. & T. S. L. R. R., 115 I. C. C. 529.

(y) The unauthorized establishment of rates or charges to or from points within the lighterage or delivery limits of New York harbor on a basis higher than that contemporaneously maintained to or from more distant points east of New York harbor on routes which pass through the harbor, so long as such points are continued within the delivery limits of New York harbor, would be considered as in contravention of the rule of the fourth section of the act. Lautz Marble Corp. v. E. R. R., 115 I. C. C. 543, 545.

(z) Complainant attacked commodity rate of 66.5c minimum 36,000 pounds, charged on 40 cars of potatoes, in barrels, shipped during June, July, August and September, of 1922, 1923 and 1924 from Virginia points to Jacksonville, Fla., as unjust, unreasonable, unjustly

discriminatory and unduly preferential to extent it exceeded 52.5c minimum 30,000 pounds and in violation of section 4 to extent it exceeded 63c. The points of origin are in eastern Virginia on the Norfolk division of the Pennsylvania about 5 to 58 miles north of Cape Charles, Va., and 699 to 758 miles from Jacksonville. On March 18, 1925, after the shipments moved the rates from these points were reduced to 63c, removing the fourth section departures. Rate of 52.5c was applicable from Washington to Jacksonville. Present rate of 63c is the rate from New York and Philadelphia. HELD: Minimum not unreasonable, rate attacked unreasonable to extent it exceeded 55c, reparation awarded. Nooney & Co. v. P. R. R., 115 I. C. C. 547.

(aa) Complainant attacked sixth class rate of 47c charged on two cars of built up wood, native stock, shipped in June and September, 1923, from Louisville, Ky., to Harriman, Tenn., as unreasonable, unduly prejudicial and in violation of the fourth section. Shipments moved Southern to Danville, Ky., C. N. O. & T. P. beyond. At the same time defendants maintained commodity rates on like traffic from Louisville of 38.5c to Knoxville and Chattanooga, Tenn., and 35.5c to Cleveland, Tenn. Harriman is 258 miles south of Cincinnati, O., and 80 miles north of Chattanooga over the C. N. O. & T. P. Shipments from Louisville over defendant's lines to Knoxville and Chattanooga move through Harriman, but these fourth section departures are protected. Inasmuch as a commodity rate of 17.5c on built up wood has since been established from Louisville to Harriman, effective October 19, 1923, any prejudice which might have existed has since been removed. HELD: Rate charged unreasonable to extent it exceeded 38.5c, reparation awarded. Dame Furniture Co. v. C. N. O. & T. P. Ry., 115 I. C. C. 566.

(bb) Complainant attacked commodity rates of $2.20 and $2.09 charged on coal, carloads, from points in the Alabama coal fields to Columbus, Ga., two years prior to March 15, 1924, as unreasonable and in violation of the fourth section to extent they exceeded rates of $2.03 and $1.93 contemporaneously maintained on like traffic to Girard, Ala., to which Columbus is intermediate over some routes. The points of origin are coal mines in Alabama from 5 to 55 miles distant from Birmingham. The fourth section departures were protected by appropriate applications. During March and April, 1924, the rates were reduced to the Girard basis, thus removing the fourth section departures. HELD: Rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Mayo v. Southern Ry., 115 I. C. C. 595.

(cc) Complainant alleged rates ranging from 55c to 76c and minima of 30,000 pounds charged on numerous cars of potatoes shipped between May 20 and July 30, 1923, from Alabama and Florida to destinations in Indiana, Ohio, Illinois, Michigan, Kentucky and Missouri were and are unjust, unreasonable, illegal and in violation of section four. Five cars originated on the A. F. & G., a lumber tap line about 10 miles long extending south from Falco, Ala., to its junction with the L. & N. at Galliver, Fla. Since the period of movement the road has been abandoned under authority from the commission. The remaining shipments originated at different points on the M. S. B. & P. extending northward from Pensacola, Fla., to Kimborough, Ala., 142.5 miles and there connects with the Southern, and with the L. & N. at Atmore, Ala. All the shipments moved via junctions with the L. & N. and thence over that road and its connections to the destinations, most of which were in Ohio and other states north of Ohio river. Defendants assessed on the five cars three factor combinations of 86c made up of 2.5c minimum 30,000 pounds, to the junction point, 62c minimum 24,000 pounds thence to the Ohio river crossing, and 21.5c minimum 30,000 pounds beyond. Each destination was intermediate to some station to which a specific rate with 24,000 pound minimum was published from the junction point and to which accordingly two factor rates applied from points of origin. The rates were subject to rule 77. HELD: Minimum weight of 30,000 pounds of M. S. B. & P. unreasonable to extent it exceeded 24,000 pounds, that the rates attacked on the five shipments unreasonable to extent they exceeded rates to farther distant points, reparation awarded. Atmore Produce Co. v. M. S. B. & P. Ry., 115 I. C. C. 599.

(dd) Complainant attacked combination rate charged on newsprint paper, carloads, two years prior to June 5, 1925,

from Millinocket, Me., to Lynchburg, Va., as unreasonable, unjustly discriminatory and unduly prejudicial to Lynchburg and unduly preferential of Atlanta, Ga., Chattanooga and Memphis, Tenn., and New Orleans, La. Charged 53c, composed of proportional rate of 12.5c to Deering Junction, Me., class A rate of 40.5c beyond. On traffic from Millinocket, Lynchburg is intermediate to Memphis and the present rate adjustment constitutes a violation of the fourth section. The Southern, the delivering line herein, contemplates increasing the Memphis rate to 60 or 61c. This adjustment would remove the existing violation. HELD: Rate attacked not unreasonable, unjustly discriminatory or unduly prejudicial, complaint dismissed. Lynchburg Chamber of Commerce v. B. & A. R. R., 115 I. C. C. 715.

(ee) Complainant alleged third class rates charged on drugs and medicines, carloads, from Elkhart, Ind., to New York and Philadelphia are unreasonable, unjustly discriminatory, unduly prejudicial and in violation of section four and illegal. At hearing defendants announced their purpose to establish a rate for the future on drugs and medicines, carloads, of 71c, which is satisfactory to complainant. Charged 98.5c and 96.5c prior to July 1, 1922, and 89c and 87c thereafter. During the same period commodity rates applicable on drugs and medicines from Kalamazoo, Mich., were 77.5c and 70c. Elkhart is in the 94 per cent group with regard to the New York-Chicago rate and Kalamazoo is in the 92 per cent group. Elkhart is intermediate. HELD: Applicable rate third class, but prior to June 15, 1925, proper rate was commodity rate from Kalamazoo, overcharge to be refunded, complaint dismissed. Dr. Miles Medical Co. v. B. & O. R. R., 118 I. C. C. 33.

(ff) Complainant attacked commodity rates charged on green salted hides, carloads, from Meridian, Miss., to Portville, N. Y., as unreasonable and in violation of section four in that the rates exceeded the rates from New Orleans and Mobile to Buffalo. Portville is on the Pennsylvania 6 miles south of Olean, N. Y., and takes Rochester basis of rates. Meridian is 135 miles north of Mobile and 202 miles north of New Orleans. Hides are rated sixth class in southern and fifth in official, charged sixth class rates on one car of 97c and 87.5c on the five. Effective October 4, 1924, after the shipments moved defendants established present commodity rate of 73c. Reparation is sought to basis of commodity rates of 56c and 50.5c in effect from New Orleans and Mobile. The 56c rate by which it is sought to measure reparation on shipment of February, 1922, did not become effective until April 1, 1922. When the shipment moved the rate from New Orleans and Mobile to Buffalo was 66c. Defendants admit that the rates on this commodity from points in the south to northern points have been in a very unsatisfactory condition for years. The evidence shows that the rates charged and the present rate of 73c were and are out of line, distance considered, with the rates applicable from and to nearby points of origin and destination, as well as with the rates between points in the same rate territories. HELD: Rates charged prior to July 1, 1922, unreasonable to extent it exceeded 75.5c and thereafter unreasonable to extent it exceeded 68c, reparation awarded. Northwestern Leather Co. Trust v. M. &. O. R. R., 118 I. C. C. 37.

(gg) Complainant attacked commodity rates on newsprint paper, carloads, from Berlin, N. H., to Birmingham, Ala., as unjust, unreasonable, unduly prejudicial and in violation of the fourth section. On 27 shipments originating on the G. T. a rate of 71.5c established January 1, 1924, was applicable but charges collected at 64.5c, undercharged. From November, 1922, to December 31, 1923, the rate had been 64.5c. Berlin is on the G. T. and B. & M. Rates to Birmingham and the destinations varied, dependent upon the initial carrier and the route of movement, whether the all rail route via Virginia cities or Ohio river crossings or the rail-water-rail route. The G. T. and delivering carriers admit that no higher rate should have been applied on the 27 shipments than the rate of 68.5c which contemporaneously applied over the B. & M. as initial carrier and express willingness to waive the charges which exceed that basis. Birmingham is directly intermediate to New Orleans, the all rail to that point being 66c. It is also intermediate over rail-water-rail routes to Nashville and Memphis, destinations to which the present rates are lower, being 47 and 48c, respectively. HELD: Rates attacked unreasonable to extent they exceeded 64c all rail and 60c rail-water-rail; that present rates with B. & M. as initial carrier

not unreasonable; that all rail rates attacked to Birmingham which exceed by more than 1c the rate all rail maintained to Nashville and rail-water-rail rates attacked to Birmingham which exceed rates to Memphis and Nashville are unduly prejudicial, reparation awarded. Birmingham News Co. v. A. B. & A. R. R., 118 I. C. C. 205.

(hh) Complainant attacked commodity rates charged on bale ties and woven and barbed fencing, carloads, from Sterling, Ill., to Montgomery, Ala., as unjust and unreasonable, and unduly prejudicial as compared with the rates to Mobile, Ala., and Meridian, Miss., and in violation of the fourth section. Montgomery is in southeastern territory about 180 miles northeast of Mobile and 150 miles east of Meridian. It is served by the L. & N. and M. & O. Meridian is 135 miles north of Mobile. Both Meridian and Mobile are border line points between Mississippi valley and southeastern territories and are considered Mississippi valley points for rate making purposes. Sterling is in the northwestern part of Illinois, due west of Chicago, Ill., and is in I. F. A. territory. The rates from Sterling to Meridian and Mobile are somewhat lower than to Montgomery. The outbound jobbing rates to the common trade territory are the same from all three points. In consequence, jobbers at Meridian and Mobile can lay their goods down at points equidistant from Montgomery at a much lower aggregate cost than complainants can, thus placing complainants at a disadvantage in doing business at such points. Since the hearing the Montgomery rate has been reduced to 57c, the Mobile and Pensacola basis. It will be observed that the same rates applied and apply on all of the commodities here considered to all destinations except Montgomery, and that those to the latter destination were made the same on all on July 1, 1925. HELD: Rates charged prior to October 15, 1924, unreasonable and unduly prejudicial to extent they exceeded 63c prior to July 1, 1922, and 57c, thereafter, reparation awarded. Teague Hardware Co. v. C. B. & Q. R. R., 118 I. C. C. 221.

(ii) Combination rates on potatoes from Florida points on the Andalusia, Florida & Gulf Ry., to Ohio destinations found unreasonable to extent they exceeded lower rates contemporaneously in effect to farther distant points, such lower rates being subject to rule 77 of Tariff Circular 18-A. Reparation awarded. Atmore Produce Co. v. M. S., B. & P., 115 I. C. C. 599.

(jj) Traffic from certain stations may move via either of two junctions, one of which constitutes normal route. Rates from such stations being unrestricted in their application, applied by way of junction which did not constitute normal route, and when so moving the traffic must pass through intermediate points taking higher rates. HELD: That situation involved a technical violation of long-and-short-haul provision of section 4 of the act because of unrestricted application of rates to the normal or customary route. Indianapolis Board of Trade v. C., C., C. & St. L., 115 I. C. C. 681, 682, 683.

(kk) Rates on newsprint paper from Millinocket, Me., to Memphis, Tenn., lower than corresponding rates to Lynchburg, an intermediate point, found to contravene the long-and-short-haul provision of section 4 of the act. Lynchburg Chamber of Commerce v. B. & A. R. R., 115 I. C. C. 715, 718.

(ll) Fifth-class rate on refined petroleum oil from Reno, Pa., to Rockford, Ill., found to violate section 4 of the act in that a lower commodity rate was contemporaneously applicable via Reno from Foxburg, Pa., a farther distant point. Smith Oil & Refining Co. v. C., M. & St. P., 118 I. C. C. 527.

(mm) Complainant attacked rate of 20.5 cents charged on 13 cars of cement from Humboldt, Kas., to Florence, Neb., between Oct. 9, 1922 and Nov. 2, 1922 as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of the fourth section and inapplicable. Shipments moved over Santa Fe and U. P. to Omaha, Neb., and C., St. P., M. & O. beyond. Delivery was made a point about 2 miles from the Florence station on the only lead track to the spur of the Metropolitan water district and the Metropolitan water district station, private industries at Florence. There was no switch, sidetrack, or plant at the unloading point. The consignee, the National Construction Co., was not a permanent industry on the Omaha. It was granted the privilege of unloading the shipments on the lead track instead of the public team track because delivery at that point saved the cost of drayage, as the paving operation in which it was temporarily engaged was adjacent thereto. Florence,

Neb., is within the corporate limits of Omaha. The rates from Mason City, Gilmore, Des Moines and La Salle, Ill., to Florence were the same as the rates to Omaha. At the time of movement a rate of 16 cents applied from Humboldt to Omaha and to California Jct., Ia. Florence is intermediate to California Jct. via Omaha and the rails of the Omaha. The 16 cent rate became applicable to Florence Jan. 1, 1923. HELD, rate attacked unreasonable to extent it exceeded 16 cents plus switching of $6.30 per car, reparation awarded. Monarch Cement Co. v. C., St. P., M. & O. Ry., 120 I. C. C. 4.

(nn) Complainant attacked joint rate of 31 cents charged on five cars of lumber shipped during Nov. and Dec., 1921 and Feb., 1922 from Virginia, Minn., to Grafton, Wis., as unreasonable, unjustly discriminatory and unduly prejudicial. Virginia is 78 miles north west of Duluth, Minn., on the D. W. & P. Grafton is 24 miles north of Milwaukee, Wis., on the C., M. & St. P. Shipments moved D. W. & P. to Duluth and C., M. & St. P. beyond, 566.7 miles. Prior to Nov. 15, 1919 a specific commodity rate of 23 cents was maintained on lumber. A commodity rate of 18 cents contemporaneously applied from the same point of origin to Hilbert Jct., Neenah and Menasha, Wis., to which Grafton is directly intermediate. The 24.5 cent rate to which reparation is desired is the 18 cent rate brought up to date. HELD, rate attacked not unreasonable, unjustly discriminatory or unduly prejudicial, and complainant not damaged by the fourth section violation, complaint dismissed. Virginia & Rainy Lake Co. v. D. W. & P. R. R., 120 I. C. C. 131.

(oo) Complainant attacked commodity rate charged on 72 cars of gasoline and petroleum refined burning oil shipped between March 17 and Dec. 15, 1924 from Casper, Wyo., to Glenwood Springs, Rifle and Grand Jct., Colo., as unreasonable. Shipments moved C. B. & Q., to Wendover, Wyo., C. & S. to Pueblo, Colo., and D. & R. G. W., beyond, average distance of 733 miles, charged 96.5 cents. There was a rate of 83.5 cents from Casper to Salt Lake City to which the Colorado points named are intermediate over the route of movement. In 66 I. C. C. 8, and 92 I. C. C. 376, the commission found the rate unreasonable to extent it exceeded 66 cents. HELD, rate attacked unreasonable to extent it exceeded 66 cents, reparation awarded. White Eagle Oil & Refining Co. v. D. & R. G. W. R. R., 120 I. C. C. 166.

(pp) Complainant attacked commodity rate charged on 39 cars of gravel from Montgomery, Ala., to Milton, Fla., between June 13 and Nov. 26, 1924 as unreasonable and illegal. Rate charged $1.62. Rate to Pensacola, Fla., was $1.44. Milton is directly intermediate between Montgomery and Pensacola. Subsequent to the movement defendant restricted the tariff provision so as to cover only destinations intermediate to Pensacola over the route through Flomaton. Reference to rule 77 contained no restriction as to route. HELD, rate attacked unreasonable to extent it exceeded $1.44, reparation awarded. Lawrence Construction Co. v. L. & N. R. R., 120 I. C. C. 316.

(qq) Complainant attacked combination rates charged on six cars of old second hand barrels shipped from Cynthiana and Poindexter, Ky., to Rochester and Syracuse, N. Y., as unreasonable, unduly prejudicial and in violation of the fourth section in that they were higher than the rates over the same routes from Lexington and Winchester, Ky., farther distant points. Cynthiana and Poindexter are on the L. & N. between 60 and 70 miles south of Cincinnati, O. Applicable rates were fifth class to Cincinnati plus fourth class beyond. From Lexington and Winchester on the C. & O. and L. & N., there were in effect to Rochester and Syracuse over the same routes, joint fourth class rates which were much lower than the combination charged. The usual method of constructing rates from points immediately south of the Ohio River to destinations in official classification territory has been the combination basis. From Lexington and Winchester to eastern cities joint rates are published which are equal to those applying from Louisiville over the official classification lines under the Chicago-New York adjustment. This departure is said to be due to the action of the C. & O. which, in accordance with a time honored policy of strictly observing the long-and-short-haul rule, has applied the Louisville rates as maxima from Lexington, Winchester and other intermediate points on its line. The L. & N. for competitive reasons has applied the same rates over its line from Lexington and Winchester through Cincinnati. HELD, rates charged not unreasonable or otherwise unlawful, complaint dis-

missed. Liberty Cooperage & Lumber Co. v. L. & N. R. R., 120 I. C. C. 379.

(rr) Complainant attacked rates charged on seven cars of sugar shipped between Nov. 26, 1920 and June 6, 1921 to Lynchburg, Va., from Yonkers and Brooklyn, N. Y., as unreasonable and unduly prejudicial. Applicable commodity rate was 42 cents, the sixth class rate to Lone Jack and South Boston, Va., 8 and 64 miles beyond Lynchburg were 40.5 and 42.5 and 38.5 and 40.5 cents respectively, the fourth section departure being protected. On July 20, 1924 the rates from Brooklyn and Yonkers to South Boston were increased to 41 and 43 cents, and subsequently the rate to Lynchburg was reduced to 35 cents. HELD, rate attacked unreasonable to extent it exceeded 39 cents, reparation awarded. Chamber of Commerce, Lynchburg, Va. v. P. R. R., 120 I. C. C. 392.

(ss) Upon further hearing, previous finding in 89 I. C. C. 356, that joint rates on gasoline from points in Texas and Oklahoma to destinations in California were applicable, and that there is no violation of the aggregate-of-intermediates clause of section 4 of the act unless carriers maintain a specific through rate which is higher than lowest aggregate-of-intermediate rates over same route, the product of intermediate rates, treated by the combination rule and resulting in something less than the aggregate, not being an aggregate within meaning of the fourth section, affirmed. McLeod v. T. & P., 120 I. C. C. 550.

(tt) Rate on cement from Navarro, Pa., to Dunraven, N. Y., found unreasonable to extent it exceeded a lower rate contemporaneously in effect to farther distant points beyond Dunraven, whicl lower rate was established to latter-named destination subsequent to movement. This fourth-section violation, unprotected by an appropriate application, created an unlawful situation raising a presumption of unreasonableness. The mere assertion of carriers that rate to the farther distant points was depressed by reason of competition, and that assailed rate was subsequently reduced for the same reason, unsupported by evidence as to reasonableness of either of these rates, is insufficient to overcome that presumption. Reparation awarded. Atlas Portland Cement Co. v. N. & B., 120 I. C. C. 583.

(uu) The charging of a higher rate to an intermediate than to a farther distant point in violation of long-and-short-haul clause of section 4 of the act is prima facie unreasonable. See 269 U. S. 1. Atlas Portland Cement Co. v. N. & B., 120 I. C. C. 583, 584.

(vv) Complainant attacked rates charged on quebracho extract in carloads from New York Harbor lighterage, N. Y., and Hoboken and Jersey City, N. J., prior to Jan. 7, 1924 and unreasonable and illegal between that date and April 4, 1925, to Ludlow, Pa. Charged prior to April 4, 1925 at the fifth class rate of 34 cents and on and after that date a commodity rate of 31.5 cents. There was on Oct. 25, 1922 and still is published from the points of origin to Salamanca, N. Y., a point beyond Ludlow a commodity rate of 28.5 cents. On April 1, 1923 a like rate was established to Johnsonburg, Pa., a point intermediate to Ludlow. Ludlow is between Johnsonburg and Salamanca on shipments from New York lighterage via Warren and is shown as a point of destination in the tariffs. On April 4, 1925 a commodity rate of 31.5 cents was established to Ludlow under the intermediate clause. By exceptions to the classification a sixth class rate of 28.5 cents is in effect on other similar imported dry extracts from New York harbor to Ludlow over defendants lines. The maintenance of a rate of 31.5 cents to Ludlow and 28.5 cents to Salamanca constituted a departure from the long and short haul provision of the fourth section, which is not protected. HELD, charges April 1, 1923 to April 3, 1925 inapplicable, applicable rate was 28.5 cents; that rate of 31.5 cents applicable on and after April 4, 1925 was unreasonable to extent it exceeded 28.5 cents, reparation awarded. Curtis Leather Co. v. Pennsylvania R. R., 123 I. C. C. 1.

(ww) Complainant attacked commodity rates on brick and articles taking the same rates from Ohio and West Virginia to Verona, Brackenridge and Tarentum, Pa., as unreasonable, illegal, and in violation of section four. Rates charged were $1.50 to Verona and $1.65 to Brackenridge and Tarentum. Rates of $1.35 and $1.50 are published from the same points of origin to Glassmere and Butler Junction, to which destinations Tarentum and Brackenridge are intermediate. Since June 1, 1922 from the Steubenville and New Cumberland groups and Oct. 16, 1922 from the Iron-

dale group, the rates have departed from the long and short haul provision, as the rates to Butler have been, and now are, lower than to the intermediate points. HELD, rates to Brackenridge and Tarentum unreasonable to extent they exceeded $1.50, to Verona $1.35, reparation awarded. Globe Brick Co. v. Pennsylvania R. R., 123 I. C. C. 498.

(xx) Complainant attacked combination rate charged on three cars of cotton shipped on Oct. 10, 1922 from Corinth, Miss., to Monroe, Ga., as unreasonable, unduly prejudicial and in violation of the fourth section. Shipments moved Southern to Atlanta and Georgia to destination, 435 miles, charged 96 cents, composed of 73.5 cents to Atlanta and 40.5 cents beyond, less 18 cents under the combination rule. Contemporaneously there was a rate of 70 cents from Memphis to Monroe, Corinth being intermediate. Distance from Memphis via this route is 528 miles, short line route is 478 miles, Corinth not being intermediate. Effective Oct. 20, 1924 the rates were revised and those from interior Mississippi points reduced the rates to Monroe becoming 82 cents from Memphis and 78 cents from Corinth. HELD, rates attacked not unreasonable, complaint dismissed. Manget Bros. Co. v. Georgia R. R., 123 I. C. C. 532.

(yy) Rates on brick and articles taking same rates from designated points in Ohio and West Virginia to Verona, Brackenridge and Tarentum, Pa., found in violation of fourth section of the act, and unreasonable to extent they exceeded rates from the same origin points to Butler, a farther distant point. Reasonable rates prescribed for future, and reparation awarded. Globe Brick Co. v. P. R. R., 123 I. C. C. 498.

(zz) Complainant alleged commodity rate of $5.07 charged on crude phosphate rock, carloads, shipped between July 26, 1923 and March 3, 1925 from Tilphosco and Brewster, Fla., to Meridian, Miss., was and is unreasonable, unduly prejudicial and in violation of section four of act. Points of origin are on the A. C. L. and C. H. & N. operated by the S. A. L. Crude phosphate rock is necessary ingredient in the manufacture of fertilizer. The rates are the same from the entire Florida phosphate territory. Defendants seek authority to continue to charge lower rates from Florida to New Orleans and to Gulf ports taking the same rates, and to Mississippi river destinations, than to intermediate destinations. Water competition met by defendants at New Orleans and Gulf ports taking the same rates is active and compelling. HELD, rate attacked unreasonable to extent it exceeds $4.73, reparation awarded. Fourth section relief granted. Meridian Fertilizer Factory v. A. C. L. R. R., 126 I. C. C. 478.

(3a) Upon contention that rates on grain and products from points in Colorado and Utah to California destinations are in violation of the long-and-short-haul clause of fourth section of the act in that they exceed rates from Denver and other points in transcontinental westbound Group J to same destinations, HELD: Rates from the more distant points were published subject to provisions of rule 77 of Tariff Circular 18-A and such provision constitutes a substantial compliance with requirements of the fourth section. See 51 I. C. C. 185. Ogden Grain Exchange v. A. E. R. R. Co., 126 I. C. C. 255, 268.

(3b) Complainant alleged fifth rate of 40.5c charged on 35 cars of bar steel moving from Youngstown, O., to Lynchburg, Va., between Feb. 12, 1924 and Sept. 22, 1925, was and is unjust, unreasonable unjustly discriminatory of Lynchburg and unduly preferential of Lone Jack, Va., and in violation of section four. Traffic from Youngstown to Lone Jack, Va., 8 miles farther distant than Lynchburg is governed by the southern classification, in which bar steel, carloads, is rated sixth class. Lone Jack is a flag stop at which there is no post office or business of any consequence. Sixth class rate to Lone Jack was 33c prior to Nov. 28, 1924 since when it has been 33.5c, but under the minimum class rate scale effective Nov. 28, 1924 40.5c became the minimum carload rate on bar steel from Youngstown to Lone Jack, which removed the fourth section departure. The fact that lower charges would have accrued on the shipments that originated prior to Nov. 28, 1924, if they had moved through Lynchburg to Lone Jack does not constitute unjust discrimination, complaint dismissed. Lynchburg Traffic Bureau v. B. & O. R. R., 128 I. C. C. 557.

(3c) Rates on copper wire from Phillipsdale, R. I., to Wallingford, Conn., found unreasonable to extent they exceeded rates to Harlem River, N. Y., published in conformity with rule 77 of

Tariff Circular 18-A, governing publication of rates to intermediate points and unrestricted as to routing. Wallingford is a directly intermediate point over Berlin route, but carrier contended that, the Berlin route being impracticable, Wallingford was not an intermediate point, and rule 77 was therefore not applicable. Routing being unrestricted, contention not sustained. Reasonable rates prescribed for future and reparation awarded. New York Insulated Wire Co. v. N. Y., N. H. & H., 128 I. C. C. 698.

(3d) Complainant alleged rates charged on copper wire, carloads and less carloads, since April 1, 1923 from Phillipsdale, R. I., to Wallingford, Conn., were and are unreasonable and in violation of section four. Phillipsdale is a local station on New Haven in the vicinity of Providence, R. I. Wallingford is 13 miles northeast of New Haven, Conn. Applicable fourth class and third class, 31 and 41c were assessed. Contemporaneously defendant maintained from Phillipsdale to Harlem River, N. Y., commodity rates on copper wire of 22c when in carloads, and 28c in less carloads. Wallingford is directly intermediate between Phillipsdale and Harlem River over the route through Berlin. The tariff naming the commodity rates to Harlem River contained a provision authorized by rule 77 of tariff circular 18-A, for the publication on one day's notice of rates to intermediate points not higher than to more distant points. The tariff reference to rule 77 contains no restriction as to route. HELD, rates attacked unreasonable to extent they exceed 22c carloads and 28c less carload, reparation awarded. New York Insulated Wire Co. v. N. Y., N. H. & H. R. R., 128 I. C. C. 698.

(3e) Complainant alleged third class rate of 79c charged on three less carloads of fruit wrappers, unprinted, cut to size, forwarded during August and Sept. 1924 from Hamburgh, N. J., to Lynchburg, Va., was and is unreasonable, unduly prejudicial and in violation of section four. Shipments moved N. Y. S. & W, Erie and Pennsylvania, Southern, 461 miles. Lynchburg is served also by the N. & W. and C. & O. and is intermediate to Montview, Va., over the route of movement, that point being local to the Southern, 6 miles beyond Lynchburg. Complainants allegations are based entirely upon the lower rates published to Montview and Lone Jack, Va., farther distant points, or on combination rates based upon such points. On shipments to Lynchburg official classification governs, whereas to Montview and Lone Jack the southern classification governs. Fifth class rate to Montview was 52.5c and rate Montview to Lynchburg 10.5c. If the rate to Lynchburg is a reasonable rate, the maintenance of the lower rate to the farther distant points not only violates the fourth section, but is also prejudicial to Lynchburg. Inasmuch as no movement of fruit wrappers unprinted, in less carload quantities, from Hamburgh to Montview has been shown or appears probable the Commission can not make a finding of unjust discrimination or undue prejudice. HELD, rate assailed not unreasonable or otherwise unlawful, complaint dismissed. Lynchburg Chamber of Commerce v. E. R. R. 129 I. C. C. 230.

(3f) Complainant alleged that the commodity rates charged on asphalt, carloads, from North Baton Rouge, La., to Louisville and Philadelphia, Pa., were unreasonable and inapplicable. Charged 25.5c. The tariff contained a general provision that rates on asphalt, in carloads, published therein from New Orleans, La., would also apply from North Baton Rouge; the tariff contained an intermediate rule which provided that unnamed destinations which were intermediate to two named destinations should be accorded the rate to the next more distant point. Louisville and Philadelphia are between Newton and Ackerman, Miss., which points are accorded a rate of 22.5c in the original tariff. On July 1, 1925 the tariff was amended to provide a new basis for making rates to certain points. No change was made in the manner of publishing rates from North Baton Rouge. Under the new basis referred to, both Louisville and Philadelphia were accorded differentials of 3c over the rate of 22.5c from New Orleans to Mathiston, Miss. The intermediate rule in the original tariff was not canceled on July 1, 1925. Complainant contends that under this rule the applicable rates were 22.5c. But the intermediate rule provides only for rates to unnamed points and both these destinations were named in the tariff. Fourth section departures were protected by appropriate order. No evidence was offered in sup-

port of the allegation of unreasonableness. HELD, rates assailed applicable and not unreasonable, complaint dismissed. Merrill Engineering Co. v. G. M. & N. Ry., 129 I. C. C. 249.

(3g) Complainant alleged commodity rate charged on six cars of bituminous coal, shipped from Ziegler, Ill., to Logan and Woodbine, Ia., between Jan. 15 and Feb. 16, 1926 was unreasonable, inapplicable and otherwise unlawful and that shipments were misrouted. Logan and Woodbine are served by the I. C. and Northwestern, Ziegler is a producing point in the socalled Southern Illinois district. Shipments moved via I. C, charged $4.12, rate sought $3.62. On July 19, 1925 a $3.62 rate was established from the southern Illinois district to Omaha, Neb., and Council Bluffs, Ia., applicable over the I. C. direct to Peoria or South Pekin, Ill., and Northwestern beyond. Logan and Woodbine are directly intermediate to Omaha and Council Bluffs over the above specified routes. Fourth section order 8952 authorized that I. C. to maintain lower rates to Omaha and Council Bluffs than to certain intermediate points on its lines, which protected the departure over the I. C. Upon discovering that the departures over the routes via Peoria or South Pekin were not protected, the $3.62 rate was protected on Jan. 2, 1926, in connection with the Northwestern and on April 1, 1926 it was established via defendants line. HELD, rate assailed not unreasonable or otherwise lawful, complaint dismissed. Borman Lumber Co. v. I. C. R. R., 129 I. C. C. 507.

(3h) Complainant alleged charges collected on 827 cars of refined petroleum products from Lawrenceville, Ill., to Greencastle, Indianapolis, LaFayette and Fowler, Ind., between May 4, 1922 and Nov. 20, 1923 were violative of sections 1, 4 and 6 of the act. The movement of the shipments was confined to defendants rails and were charged commodity rates of 17.5c, except to Fowler, 22c. At the time of movement there was in effect from Lawrenceville, Ill., to Chicago, Ill., and Chicago rate points, a commodity rate of 16c applicable over, among others, the route through the points of destination under consideration, and the tariff naming the rate carried an intermediate rule which provided: except as otherwise specifically provided for herein, the rate to any point of destination not specifically provided for, the following will govern: If point of destination is not located between two stations to which specific rates are named, the rates to the next more distant station beyond located on the same railroad as the intermediate station will apply. Complainant and interveners contend that under the above rule the 16c rate was applicable, but this contention is unsound. The rates charged to the first three points were specific commodity rates which became effective prior to the effective date of the intermediate rule and consequently took precedence over any rate which might otherwise have applied under that rule. The rate to Fowler applied on the single group of commodities in the petroleum list and was published as a definite amount. It was, therefore, sufficiently specified to render the rule inoperative in connection with the shipments to this point. The present rates from Lawrenceville and other Illinois points to Indiana destinations are now on a basis of about 80% of fifth class, and from Lawrenceville specifically are 15c to Greencastle 17c to Indianapolis, 18.5c to Lafayette and 19.5c to Fowler. The fact that additional readjustments might be necessary is no ground for denying relief if shown by the record as proper, but the record here shows that the rates charged conformed approximately to the general basis applying in central territory during the period of movement, and that the present rates from Lawrenceville to Indiana destinations are about 10% lower. No sound reason appears for substituting for this basis, as a measure of the reasonableness of the rates assailed, the lower basis applying between points in Illinois territory. Complainant and interveners have shown no damages as a result of these departures and the mere fact that because of unrestricted routing during the period of movement shipments might have moved over the longer route raises no presumption of unreasonableness with respect to the rates to the intermediate points. HELD, rates assailed applicable and not unreasonable, complaint dismissed. Indiana Refining Co. v. C. C. C. & St. L. Ry., 132 I. C. C. 553.

(3i) Complainant alleged that rate charged on numerous carloads of wool noils from Forge Village and Granite-

ville, Mass., to Nepperhan, N. Y., between Sept. 25 and Nov. 30, 1923 was unreasonable and in violation of section four. Shipments moved B. & M. through Ayer, Mass., to Troy, N. Y., thence N. Y. C. to destination, charged second class rate of 60c. A commodity rate of 38c was applicable from Boston, Mass., to Nepperhan. Forge Village and Graniteville are 5.8 and 7.1 miles east of Ayer the junction of the Stony Brook branch with the main line, and are intermediate between Boston and Troy via the B. & M. through Lowell, Mass., and Ayer. Over the route of movement they are 311 and 312 miles from Nepperhan. Distance from Boston 341 miles. The 38c rate from Boston was published without restrictions to route. Effective March 31, 1924, after the shipments moved, a commodity rate of 38c applied from Forge Village and Graniteville to Nepperhan. HELD, rate assailed unreasonable to extent it exceeded 38c reparation awarded. Smith & Sons v. B. & M. R. R., 132 I. C. C. 596.

(3j) The fact that a rate to one point or to a group is the same as maintained to an intermediate point less distant does not necessarily demonstrate that the rate to the intermediate point is unreasonable. Tidal Western Oil Corp. v. M. K. T. R. R., 132 I. C. C. 681, 683.

(3k) Complainant alleged that charges collected on 14 cars of cabbage and potatoes shipped between Oct. 2, 1920 and from Nov. 26, 1921 from New York and Freehold, N. J., to Lynchburg, Va., were and are unreasonable and unduly prejudicial. Charged fifth class rates of 46c from the New York points and 53c from Freehold. Substantially lower rates were maintained from the same points of origin to South Boston, Lone Jack, Rustburg and Danville, Va., which destinations are farther distant from points of origin than is Lynchburg. Complainants claim for reparation is based upon the fact that lower rates were in effect to more distant points. But the mere fact that the rates under attack were out of line with a few other rates to which the assailed rates were closely related, may as well indicate that the compared rates were too low and that the rates assailed were too high. HELD, rates assailed were not and are not unreasonable or otherwise unlawful, complaints dismissed. Lynchburg Chamber of Commerce, v. P. R. R., 132 I. C. C. 708.

(3l) Complainant alleged commodity rate charged on a car of bulk oats shipped Sept. 10, 1923 from Oldham, S. D., to Leides Park, Wis., was inapplicable. Shipment moved C. M. & St. P. to La Crosse, Wis., thence L. C. & S. E. beyond. Charged commodity rate of 28c specifically published from Oldham to Stoddard, Wis., the next more distant point beyond Leides Park and to which Leides Park is directly intermediate. Leides Park was specifically included in the tariff index of stations but it was not named as a point to which rates apply from Oldham. Contemporaneously there was in effect over the route of movement a combination rate of 23c made up of 18c to La Crosse and 5c beyond. HELD, rate assailed applicable, complaint dismissed. Fruen Grain Co. v. L. C. & S. E. Ry., 132 I. C. C. 747.

(3m) Rates on asphalt from North Baton Rouge, La., to Louisville and Philadelphia, Miss., higher than to more distant point to which they were intermediate, found applicable and not unreasonable. An intermediate clause provided for application of this lower rate to unnamed intermediate points, but Louisville and Philadelphia were both named in tariff and fourth-section departures were protected. Merrill Engineering Co. v. G., M. & N., 129 I. C. C. 249.

(3n) Rates from various eastern points to Dallas and Fort Worth, Tex., are same as those to Deming, N. Mex., a more distant point, as well as to Los Angeles and other California ports. Rates not higher than rates to the coast necessarily are maintained to Deming in order to avoid unauthorized, fourth-section departures; rates to Deming are for same reason observed as maximum at interior points such as Texas common points. Similar blanket applications frequently occur with respect to transcontinental rates and such rates are not necessarily determinative of reasonableness of rates to intermediate points. Nor does it follow that rates to Deming should be scaled back to intermediate points, particularly where showing is not sufficient to warrant such an adjustment. Apex Co. v. A. & V., 129 I. C. C. 283, 287, 288.

(3o) Rates on bitiminous lump coal from Zeigler, Ill., to Logan and Woodbine, Iowa, found not unreasonable or otherwise unlawful. While contemporaneously a lower rate applied from southern Illinois district to Omaha, Nebr., and Council Bluffs, Iowa, to which Logan and Woodbine are directly intermediate, and was subsequently established by other carriers to intermediate points including Logan and Woodbine, this departure from fourth section was protected by fourth-section order. However, rate assailed compares favorably with contemporaneous rates to Sioux City and other Iowa points and with those prescribed in 89 I. C. C. 170, from southern Illinois district to Sioux City for comparable hauls. Bowman Lbr. Co. v. I. C., 129 I. C. C. 507.

§6. Intermediate Points Off Line.

See Supra §5.

(a) The fact that a lower combination applies over another route does not constitute a fourth section violation. Baker & Holmes Co. v. I. C. R. R., 112 I. C. C. 407, 408.

(b) Complainant attacked combination rate charged on three carloads of fir lumber, shipped between Nov. 20, 1924, and Dec. 16, 1924, from Ostrander, Wash., to Manchester, O., an inapplicable. Shipments moved via Cincinnati, O., and C. & O. Charged 88.5c to Trinity, Ky., and ferry charge of 8c beyond. When the shipments moved defendants maintained a joint commodity rate of 88.5c from Ostrander to points on the C. & O. L., in Kentucky between Cincinnati and Ashland, Ky., including Trinity. Manchester is on the north bank of the Ohio River, opposite Trinity, and is reached only by a ferry service. The arrangement of stations in the open and prepay station list does not indicate that Manchester is directly intermediate between any two points on the C. & O., in Kentucky. Traffic to such Kentucky points beyond Trinity would not move through Manchester. 96.5c rate applicable. HELD: Rate attacked applicable, complaint dismissed. Miller Lumber Co. v. O. W. R. R. & N. Co., 112 I. C. C. 727.

(c) Complainant attacked commodity rates charged on live poultry, carloads, between April 27, 1922, and June 30, 1923, from Livingston, Carthage, Algood, Cookeville, Baxter, Silver Point, Watertown, and Monterey, Tenn., to New York, as unreasonable, unjustly discriminatory and unduly prejudicial and in violation of the fourth section. All except Livingston and Carthage, are on the main line of the Tenn. Cent. Livingston is on the T. K. & N., 19 miles north of Algood. Carthage is on a branch of the T. C., 7 miles from the main line. None of the shipments moved via Nashville, Tenn., but under the tariffs the Nashville combination was applicable on shipments routed via Cincinnati. Distances to Harriman range from 58 to 121 miles. From Nashville to Harriman distance is 166 miles. Distance from Harriman to New York via Cincinnati is 1,015 miles and via Potomac Yard 893 miles. The $1.425 rate from Nashville to New York was applicable over all open routes, and complainants point out that as to traffic from Nashville routed via Emory Gap and Cincinnati or Harriman and Potomac Yard, all points on the T. C., here under consideration, with the exception of Carthage, are directly intermediate to Nashville. Contemporaneously there was in effect a proportional commodity rate of 94c on live poultry from Chattanooga, Tenn., to New York applicable via either Cincinnati or Potomac Yard. On traffic moving over the C. N. O. T. P. from Chattanooga, Harriman is directly intermediate to and about 90 miles nearer New York than Chattanooga. HELD: Applicable rate unreasonable to extent it exceeded rates to Harriman plus 94c beyond, reparation awarded. Getz v. T. K. & N. R. R., 113 I. C. C. 174.

(d) Complainant attacked commodity rates on potatoes, carloads, from points on the N. P., between Kennewick and Yakima, Wash., known as the Yakima Valley to California as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of the fourth section. Present applicable rates from main line points range from 55.5 to 67c and from branch line points from 60 to 74c. They are combinations on Portland, Ore., of commodity rates of 20c from main line points, 24.5c to 27c from branch line points to Portland, plus commodity rates ranging from 35.5c to 47c beyond. The branch line points are from 5.2 to 20 miles from the main line junctions. Complainants seek the same rates from branch line points as are found reasonable from main line points, and desire the same rate 42.5c from all points of origin. From the evidence of record the only justification for a lower rate from Spokane than from the intermediate Yakima valley points is to be found in the

rates of the short line from Spokane. This being so, as the hauls from the intermediate Yakima valley points are shorter than the short line distance from Spokane, the maintenance of higher rates from Yakima valley main line points than those applicable over the short line from Spokane constitutes a departure from the fourth section. HELD: Rates attacked not unreasonable or unjustly discriminatory, but unduly prejudicial to extent that the difference between the rates attacked and the rates from Spokane to the same destinations is more than the difference between the rates on the same traffic from the same points of origin to Portland. Reparation denied. Wood Curtis Co. v. N. P. Ry., 115 I. C. C. 39.

(e) Complainant attacked carload rates on building material described in item 5135 of Agent Speidens I. C. C. 969, from Jackson, Miss., to Forsythe, Tenn., as unreasonable and in violation of section four. Articles rated fifth class. Forsythe is on the Frisco about 9 miles east of Memphis, Tenn. Shipments moved I. C. to Memphis and Frisco, 219 miles. Charged fifth class rates. Commodity rates of 28 and 29c on the material described in item 5135 applied from Vicksburg to Memphis and Forsythe. The routing is not restricted. Over certain routes Forsythe is intermediate to Memphis, but not over route of movement. HELD, rate attacked unreasonable to extent it exceeded 29c, reparation awarded. Jackson Traffic Bureau v. A. & V. Ry., 128 I. C. C. 744.

(f) Complainant alleged that the rate charged on four cars of automobiles shipped between April 7 and Oct. 4, 1923 from Lansing, and North Flint, Mich., to Santa Fe, N. M., was unreasonable unduly prejudicial and in violation of section four. Complainant attacked the rate charged on a less carload shipment consisting of a steam condenser with motor parts, shipped on June 7, 1923 from Philadelphia, Pa., to Santa Fe was unduly prejudicial. From Lansing and North Flint charged first class rate of $3.945, first class rate from group C to Deming, applicable to Santa Fe as a maximum. Prior to Sept. 1, 1923 a first class rate of $3.74 applied from group C to Columbus, N. M., on that date increased to $3.945. Applicable tariffs from Philadelphia named a combination rate of $4.435 to Santa Fe made up of $1.395 to East Fort Madison, Ia., and $3.04 beyond. Charged $4.45 rate to Deming. A rate of $4.17 applied to Columbus. In order to pass through Santa Fe en route to Columbus an out of line haul from Lamy to Santa Fe thence to Kennedy would be necessary, except over a route in connection with the N. M. C., from Santa Fe to Torrance, thence E. P. & S. W., and the rates of $3.74 and $4.17 are not applicable over that route because Torrance is not shown in the tariff as a western gateway. The rates of $3.74 and $4.17 to Columbus were only applicable in connection with the E. P. & S. W., via Tucumcari, or Deming, or El Paso, which are western gateways. The shipments from Philadelphia appears to have been overcharged 1.5c per 100 pounds. The evidence is insufficient to warrant a finding of unreasonableness or undue prejudice. HELD, except as indicated, rates assailed applicable and not unreasonable or otherwise unlawful, complaint dismissed. Merabal Motor Co. v. M. C. R. R., 129 I. C. C. 411.

§6¼. Comparison of Rates.

See Comparative Rates.

(a) It is well settled that in applying the provisions of the fourth section of the act, rates and fares of the same kind should be compared with one another. Egyptian Powder Co. v. I. C. R. R., 126 I. C. C. 293, 301.

§6¾. Exceeding Combination of Intermediates.

See Advanced Rates §5 (2½); Through Routes and Joint Rates §15.

(a) Fact that a joint rate exceeds aggregate of intermediate rates does not afford a basis for an award of reparation where commission has granted fourth section relief. Valley City Milling Co. v. C. & O., 104 I. C. C. 634, 636.

(b) Complainant attacked joint through rate charged on a car of cantaloupes from Rocky Ford, Colo., to Jacksonville, Fla., on Sept. 10, 1923, as unjust and unreasonable and unlawfully exceeded the aggregate of intermediate rates. Complainant routed shipment A., T. & S. F., Wab., L. & N., G. S. & F., S. A. L., and it moved Santa Fe to Kansas City, Mo., Wabash to East St. Louis, Ill., L. & N. to Montgomery, Ala., thence to destination over S. A. L., and G. S. & F., charged $1.75. The joint rate was can-

celed Oct. 15, 1923, on which date a combination rate of $1.275 became applicable under rule 5b of tariff circular 18a. This rate was composed of 75.5c, to Mobile, Ala., and applicable via Montgomery, Ala., and 52c beyond Mobile, applicable via Montgomery. This combination would have applied when the shipment moved if the joint rate had been canceled. The joint rate charged exceeded the Mobile combination applicable via Montgomery. HELD: Rate attacked unreasonable to extent it exceeded $1.275, reparation awarded. Hulsey Bessent Co. v. S. A. L. Ry., 112 I. C. C. 392.

(c) Complainant attacked joint rates charged on steel sheets, galvanized sheets, black sheets, angle bars, steel bars, washers, band and hoop steel, channel steel, steel plates, and wrought pipe, carloads, from Youngstown, Cleveland, Warren and Girard, O., to Black Rock and Buffalo, N. Y.. as in excess of the aggregate of intermediates and unreasonable. Applicable first class rate of 25c was charged. Combination was 23c composed of 11.5c to Erie, Pa., and 11.5c beyond, this combination being subsequently published as a through rate. HELD: Rate attacked unreasonable to extent it exceeded 23c, reparation awarded. Taylor Co. v. Pennsylvania R. R., 112 I. C. C. 541.

(d) Complainant attacked commodity rates charged on 11 cars of calcium chloride and caustic soda shipped between March 31, 1922, and Jan. 31, 1923, from Midland, Mich., to Oklahoma as illegal and in violation of section 4. Complainant makes no showing that the rates charged were higher than the lowest aggregate of intermediates over routes of movement. HELD: rate not unreasonable or otherwise unlawful, complaint dismissed. Dow Chemical Co. v. P. M. Ry., 112 I. C. C. 559.

(e) Section 4 provides that it shall be unlawful for any common carriers to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the act. There is no violation of this clause unless the carrier maintains a specific through rate which is higher than the lowest aggregate of intermediates over the same route. Dow Chemical Co. v. P. M. Ry., 112 I. C. C. 559, 560.

(f) Complainant attacked through rate charged on two cars of bar steel, one shipped June 18, 1921, from Pittsburgh, Pa., and other shipped Dec. 7, 1921, from South Duquesne, Pa., to Orrville, O., as unreasonable and in violation of section 4. Joint rate charged 23.5c, aggregate of intermediate rates to and from Youngstown was 21c. HELD: Rate attacked unreasonable to extent it exceeded 21c, reparation awarded. Sanderson Cyclone Drill Co. v. Pennsylvania R. R., 113 I. C. C. 213.

(g) Application for authority to continue to charge for the transportation of celery from certain points in Florida to Chicago, Ill., through rates which are higher than the aggregate of intermediates contemporaneously in effect, denied. Zulfer & Co. v. Director General, 112 I. C. C. 723, 725, 726.

(h) In 88 I. C. C. 273, the commission found rates attacked on pickles, carloads, from Colorado to Oklahoma unreasonable to extent they exceeded the aggregate of intermediates over the same routes; and that such rates subject to minimum of 36,000 pounds unduly prejudicial to Oklahoma points and unduly preferential of Kansas to extent they yield earnings per ton mile higher than those yielded by the rates on pickles to Kansas. The responsibility is on defendants to remove the prejudicial relationship now existing with due regard to the other provisions of the act. Ridenour Baker Mercantile Co. v. A. T. & S. F. Ry., 113 I. C. C. 629.

(i) Complainant attacked fifth class rates charged on carloads of iron and steel articles from October, 1917, to 1924, between the Pittsburgh district and other points, on the one hand, and, on the other, Ohio points such as Cleveland, Akron and Canton, as unreasonable and in violation of the fourth section. Rates charged were higher than the aggregate of intermediate commodity rates maintained over the routes by which the class rates applied. HELD: Rates attacked unreasonable to extent they exceeded the aggregate of intermediates, reparation awarded. Firestone Tire & Rubber Co. v. Director General, 113 I. C. C. 751.

(j) Complainant attacked rates and charges on one car of steel frame pitless farm scales, shipped June 11, 1918, from Pleasant Hill, Mo., to Logan, Iowa, stopped at Missouri Valley, Ia., for partial unloading, as unreasonable and in violation of sections four and six. The car was stopped at Missouri Valley and partially unloaded. At the time the

shipment moved there was in effect a class A rate of 24.5c from Pleasant Hill to both Missouri Valley and Logan. The tariffs did not contain the provision for stopping for partial unloading. Applicable charges were 24.5c to Missouri Valley plus a less carload rate of 12.6c beyond. The first factor was in excess of the aggregate of intermediate rates, consisting of 12.5c to Omaha and 6c from Omaha to Missouri Valley. HELD: Rate of 24.5c to Missouri Valley unreasonable to extent it exceeded the aggregate of intermediates, reparation awarded. Deere Plow Co. v. Director General, 115 I. C. C. 1.

(k) In the absence of evidence rebutting the presumption, the commission has found that joint rates in excess of the aggregate of intermediate rates were to that extent unreasonable. Deere Plow Co. v. Director General, 115 I. C. C. 1, 2.

(l) Complainant attacked rates charged on six cars of oak railroad ties from Crocker, Mo., to Lyons, Ia., in April and June, 1922, as unreasonable, unlawful and in violation of section 4. Charged 35c, but refunded to basis of 32.5c. Subsequently the carriers sought to collect on basis of 38c, and on April 1, 1925, complainant paid an alleged undercharge amounting to $179.30. Shipments moved Frisco to St. Louis, Mo., Wabash to Ottumwa, Ia., C. M. & St. P. to Lyons, 570 miles. At time the first five shipments moved a combination rate of 32.5c was applicable to Savanna, Ill., a point 17 miles beyond Lyons by the route of movement but was not applicable to Lyons. HELD: Rates attacked unreasonable to extent they exceeded 32.5c and 33c, reparation awarded. Abeles & Taussig Lbr. & Tie Co. v. C. M. & St. P. Ry., 115 I. C. C. 205.

(m) Complainant attacked class A rates charged on 17 cars of vegetable hampers shipped between April 18, 1923, and May 24, 1923, from Wauchula, Fla., to Meggetts and Nosbig, S. C., as inapplicable and that shipments were misrouted. Wauchula is a local station on defendant's line, 240 miles south of Jacksonville, Fla. Meggetts and Nosbig are also on defendant's line 27 and 18 miles south of Charleston, S. C. Shipments were unrouted and moved over defendant's line from and to points, 488 and 496 miles. Through class A rates of 76c to Meggetts and 78c to Nosbig were applicable. The intermediate rates over route traversed aggregated 47c, composed of class P rate of $31 per car to Jacksonville and 31.5c beyond. HELD: Rate attacked unreasonable to extent it exceeded 47c, and claim will be handled on special docket, complaint dismissed, shipments not misrouted. Wauchula Development Co. v. A. C. L. R. R., 115 I. C. C. 207.

(n) Complainant attacked commodity rate on numerous carloads of cement shipped since June 23, 1922, from Coplay, Saylor, and Hokendauqua, Pa., to Riverhead, Long Island, N. Y., as unreasonable and in violation of fourth section. The points of origin are in the Lehigh cement district of eastern Pennsylvania. Shipments from Coplay and Hokendauqua originated on L. V. and moved via that line and L. I. Shipments from Saylor originated on the Ironton and moved over that line, C. N. J. and L. I., hauls approximating 190 miles. Riverhead is a local station on the Long Island. HELD: Rate charged unreasonable to extent it exceeded the aggregate of intermediates, 23c prior to July 1, 1922 and 20.5c beyond, reparation awarded. Awiza Corp. v. L. I. R. R., 115 I. C. C. 245.

(o) Complainant attacked through fifth class rates charged on steel plates and bar steel, carloads, from Pittsburgh, Bessemer, and Junction Transfer, Pa., to Zanesville and Malta, O., as unjust and unreasonable to extent they exceeded aggregate of intermediates. Charged 23c to Zanesville, 24c to Malta from Junction Transfer and Pittsburgh and 25c to Malta from Bessemer. The aggregate of intermediate rates over routes of movement were lower in each instance than the through class rates. HELD: Rates attacked unreasonable to extent they exceeded the aggregate of intermediates, reparation awarded. Brown Mfg. Co. v. B. & O. R. R., 115 I. C. C. 352.

(p) Complainant attacked sixth class rates charged on 61 cars of crossties shipped between April 4, 1922, and August 6, 1923, from Pennsylvania points to Buffalo, Black Rock, Lockport and North Tonawanda, N. Y., as unreasonable, unjustly discriminatory unduly prejudicial and in violation of section four. Shipments originated in southern Pennsylvania on the Huntington & Broad Top Mountain and the Pennsylvania. Fifty-eight were routed Pennsylvania to John-

sonburg, Pa., and Erie beyond, 349 and 350 miles from Bedford and Everett to Buffalo. The distances over the Pennsylvania direct from Bedford and Everett to Buffalo are 310 and 324 miles. Sixth class rates charged ranging from 26.5c to 30.5c. A commodity rate of 23.5c was established from Everett to Buffalo on Jan. 9, 1925, and on December 17, 1925, this rate was established from Everett and certain other points of origin to Black Rock, N. Y. HELD, rates attacked unreasonable to extent they exceeded 23.5c, reparation awarded. Lafayette Lumber Co. v. Pennsylvania R. R., 115 I. C. C. 445.

(q) Complainant attacked through commodity rates charged on alfalfa meal, carloads, two years prior to Aug. 2, 1924, from Colorado, Nebraska and Kansas to Jackson, Miss., as unjust, unreasonable, and as compared with rates to Vicksburg, Miss., Memphis, Tenn., and New Orleans, La., unduly preferential and in violation of the fourth section. The record discloses a number of instances where the joint rates to Jackson exceeded the aggregate of the intermediates to and from Memphis. HELD, rates attacked unreasonable to extent they exceed aggregate of intermediates, reparation awarded. Jackson Traffic Bureau v. A. & V. Ry., 118 I. C. C. 27.

(r) Complainant attacked joint fifth class rates charged on 46 cars of annealing boxes, rough castings, and unfinished rolling mill rolls, from Vandergrift, Pa., to Cleveland, Elyria, Canton and Ashtabula, O., between May 14, 1923, and Aug. 26, 1924, as unreasonable, unjustly discriminatory and unduly prejudicial, and in excess of aggregate of intermediates. The aggregate of intermediates subsequent to July 1, 1922, from Pittsburgh, Bessemer and other adjacent points was 19c via Youngstown. HELD, rates attacked unreasonable to extent they exceeded 19c, reparation awarded. United Engineering & Foundry Co. v. B. &. O. R. R., 118 I. C. C. 43.

(s) Complainant attacked class rates applicable on soap and related articles, carloads and less carloads from Jersey City, N. J., to Kentucky, Tennessee and Georgia, Cairo, Ill., and Evansville, Ind., as unreasonable and in violation of section 4. Defendants agree that all rates in violation of the aggregate of intermediates provision should be found unreasonable and reparation awarded. HELD, rates attacked unreasonable to extent they exceed the lowest aggregate of intermediate rates over the same route and the lowest rate to either Atlanta, Harriman, Birmingham or Memphis over the same route, reparation awarded. Colgate & Company v. P. R. R., 118 I. C. C. 243.

(t) Complainant attacked fifth class rate of 20c charged on steel bars, carloads, from Massilon, O., to Swissvale, Pa., between Feb. 2, 1923, and October 4, 1924, as unreasonable and in violation of section four. Aggregate of intermediates was 17.5c composed of 6c to Alliance and 11.5c beyond, which was made applicable on Nov. 15, 1925. HELD, rate attacked unreasonable to extent it exceeded the aggregate of intermediates, reparation awarded. Central Steel Co. v. Penn. R. R., 118 I. C. C. 497.

(u) Complainant attacked class rate charged on five cars of steel plates and bars shipped from Rankin, Pa., to Barnesville, O., between March 2 and July 24, 1923, as unreasonable and in violation of the fourth section. Shipments moved B. & O. via Wheeling, charged fifth class 20c, combination 9.5c to and 9.5c from Wheeling. HELD, rate attacked unreasonable to extent it exceeded aggregate of intermediates, reparation awarded. Watt Mining Car Wheel Co. v. B. & O. R. R., 118 I. C. C. 567.

(v) Complainant attacked joint commodity rates charged on 77 cars of wrought iron pipe shipped between Feb. 21 and Aug. 6, 1923, from Youngstown, O., to Louisiana as unreasonable and in violation of section four. Shipments moved Big Four, N. Y. C. and Pennsylvania and B. & O. and M. P. via Monroe, hauls ranging from 1,100 to 1,184 miles, charged 81c to Tioga and 89c to other points which are intermediate to Tioga. A rate of 79c was in effect to Alexandria 6.4 miles beyond Tioga. Fourth section departures were protected, and have since been removed by establishing distance rates as prescribed in 77 I. C. C. 473. HELD, rates attacked unreasonable to extent they exceeded 86c, the rate subsequently established to the more distant point of Alexandria, reparation awarded. Hope Engineering Co. v. M. P. R. R., 118 I. C. C. 598.

(w) Apart from statutory enactment it is prima facie unreasonable to charge

more for a shorter than for a longer haul. To charge more for a through haul than the aggregate of the intermediate rates is likewise prima facie unreasonable. Hope Engineering & Supply Co. v. M. P. R. R., 118 I. C. C. 598, 599.

(x) Rates on soap, soap powder, and cleaning, cleansing and scouring compounds, l. c. l., from Jersey City, N. J., to points in Kentucky, Tennessee, and Georgia, and to Cairo, Ill., and Evansville, Ind., found unreasonable to extent they exceeded lower aggregate of intermediate rates contemporaneously in effect. While fourth-section relief was granted regarding publication of rates to intermediate points upon demand, carriers failed to amend their tariffs in compliance therewith, which action should not be allowed to defeat right of a shipper to reparation. Reasonable rates for the future prescribed and reparation awarded. Colgate & Co. v. P. R. R., 118 I. C. C. 243.

(y) Complainant attacked through rates charged on 1700 cars of watermelons between May 19 and Aug. 4, 1922 and between April 26 and Aug. 15, 1923, from Georgia, Florida and Alabama to Chicago and Peoria, Ill., and Milwaukee, Wis., as unjust, unreasonable and in violation of section four to extent they exceeded the Nashville combination. Applicable rates charged were in all instances in excess of the aggregate of the intermediate rates to and from Nashville. They were protected by appropriate applications. The departures were removed effective Aug. 15, 1923, by increasing the factors from Nashville from 32 to 47.5 cents on traffic to Chicago and Peoria from 34.5 cents to 50 cents on traffic to Milwaukee. HELD, rates attacked unreasonable to extent they exceeded aggregate of intermediates, reparation awarded. Alderman v. A. & V. Ry., 120 I. C. C. 387.

(z) There is no violation of the fourth section unless the carrier maintains a specific through rate which is higher than the lowest aggregate of intermediate rates over the same route. McLeod v. T. & P. Ry., 120 I. C. C. 550, 551.

(aa) The commission has found that where a through rate exceeds the aggregate of the intermediate rates it is prima facie unreasonable to that extent. Bissinger & Co. v. G. N. Ry., 120 I. C. C. 745, 749.

(bb) Rates on sulphate of alumina from Kokomo, Ind., to Wisconsin destinations found unreasonable to extent they exceed the aggregate of intermediate rates contemporaneously in effect, and unduly prejudicial to extent they exceed the contemporaneous rates on like traffic from Chicago Heights and Joliet, Ill., by more than 5.5 cents. Reasonable and nonprejudicial rates prescribed for future. Como Chemical Co. v. A., T. & S. F., 120 I. C. C. 517.

(cc) Upon further hearing, previous finding in 89 I. C. C. 356, that joint rates on gasoline from points in Texas and Oklahoma to destinations in California were applicable, and that there is no violation of the aggregate-of-intermediates clause of section 4 of the act unless carriers maintain a specific through rate which is higher than lowest aggregate of intermediate rates over same route, the product of intermediate rates, treated by the combination rule and resulting in something less than the aggregate, not being an aggregate within meaning of the fourth section, affirmed. McLeod v. T. & P., 120 I. C. C. 550.

(dd) Complainant attacked sixth class rate of 93.5 cents charged on three less carloads of rice from New Orleans, La., to Lynchburg, Va. Feb. 16, March 24 and May 12, 1922 as unreasonable to extent it exceeded aggregate of intermediates. Shipments moved 983 miles over N. O. N. E., A. G. S., Southern through Montview, Va., 6 miles south of Lynchburg. Defendants maintain commodity rate of 59.5 cents to Montview and sixth class 14 cents beyond. No evidence was introduced tending to show that the sixth class rate was unreasonable per se. HELD, rate attacked not unreasonable, unjustly discriminatory or unduly prejudicial, complaint dismissed. Lynchburg Traffic Bureau v. N. O. N. E. R. R., 122 I. C. C. 371.

(ee) Complainant attacked through commodity rate charged on two cars of glass bottles from Terre Haute, Ind., to Homer, La., June 27, 1922 and April 6, 1923 as unreasonable to extent they exceeded 88 cents and 79.5 cents. Homer is on the L. & N. W., 42.5 miles south of McNeil, Ark. Prior to July 1, 1922 a commodity rate of 79 cents was maintained from Terre Haute to destinations on L. & N. W., from McNeil to Mohawk, 21 miles south of McNeil, and 88 cents to Gibsland and Chestnut. Fifth class

rate of 120 cents applied to all other points. On July 1, 1922 these rates became 71.5 cents, 79.5 cents and 108.5 cents, on Nov. 27, 1923 commodity rates were established. Aggregate of intermediate rates on Mohawk were 102.5 cents prior to July 1, 1922 and 92.5 cents thereafter. HELD, rates attacked unreasonable to extent they exceeded aggregate of intermediates on Mohawk, reparation awarded. Root Glass Co. v. E. I. & T. H. Ry., 123 I. C. C. 68.

(ffgg) Complainant attacked rate charged on one triple carload and one double carload of cedar poles shipped on Dec. 17 and 20, 1923 from Sand Point, Ida., to Shingle Springs, Calif., as unreasonable to extent it exceeded the aggregate of intermediates. Sand Point on the G. N., is 75 miles east of Spokane, Wash. Shingle Springs is 48 miles east of Sacramento, Calif. Shipments moved G. N., to Spokane, S. P. & S., to Portland, and S. P., beyond, 1,178 miles, charged 62 cents to Brighton and 17 cents class B basing rate beyond. The governing tariff specified that the rate from Sand Point to Shingle Springs would be made by the addition of this basing rate to the 62 cent commodity rate and thus prescribed a specific maner of constructing the through rate. At the time of movement the rates on cedar poles by the route of movement from Sand Point to Portland and from Portland to Shingle Springs were, and now are, 34 and 37 cents. HELD, rate attacked unreasonable to extent it exceeded 71 cents, reparation awarded. McFarland Co. v. G. N. Ry., 123 I. C. C. 631.

(hh) Complainant attacked rates charged on manufactured iron and steel articles, carloads, from Newton Falls, Youngstown, Niles and points taking same rates to points in western New York and northwestern Pennsylvania as unreasonable, unduly prejudicial and in violation of the fourth section. Rates charged exceeded the aggregate of intermediates. HELD, rates attacked unreasonable to extent they exceed 18.5 cents for 90 miles and less to 23 cents for over 180 miles, reparation. Concrete Steel Co. v. B. & O. R. R., 123 I. C. C. 677.

(ii) A departure from long-and-short-haul provision of section 4 of the act raises a presumption of unreasonableness in the higher rate to the intermediate point, but this presumption is rebuttable. Cardosi & Co. v. B. & O., 122 I. C. C. 1.

(jj) Rates on glass bottles from Terre Haute, Ind., to Homer, La., found unreasonable as compared with rates to various Louisiana and Texas points for comparable distances and to extent they exceeded the aggregate of rates to and from Mohawk, Homer being intermediate thereto over route of movement specified in bills of lading. Reparation awarded. Root Glass Co. v. E., I. & T. H., 123 I. C. C. 68.

(kk) A rate which exceeds the aggregate of intermediates is prima facie unreasonable. Kroehler Mfg. Co. v. C. N. Ry., 123 I. C. C. 555.

(ll) The aggregate of intermediate rates within the meaning of section four is the sum of the separate rates, and not the sum of those rates subjected to the combination rule. Walrath & Sherwood Lumber Co. v. C. & N. W. Ry., 126 I. C. C. 97, 98.

(mm) The Commission has previously stated that joint rates in excess of the combinations of local rates which would apply in the absence of joint rates are prima facie unreasonable. Walrath & Sherwood Lumber Co. v. C. & N. W. Ry., 126 I. C. C. 97, 101.

(nn) Complainant attacked through fifth class rate charged on carloads of boiler tubes between Dec. 20, 1923 and May 17, 1924 from Washington, Pa., to Zanesville and Cleveland, O., as unreasonable and in violation of the aggregate of intermediate provisions of section four. Rates charged were higher than the aggregate of intermediates via route of movement. HELD, rates charged unreasonable to extent they exceeded the aggregate of intermediates, reparation awarded. Tyler Tube & Pipe Co. v. B. & O. R. R., 126 I. C. C. 135.

(oo) Complainant attacked combination rates charged on eight cars of broom corn shipped during Oct. and Nov. 1921 from Leely, Longdale, and Fairview, Okla., to Philadelphia and Hamburg, Pa., and Atco, N. J., as unreasonable, unjustly discriminatory, unduly prejudicial, inapplicable and in violation of the fourth section. The general basis for constructing rates from southwestern territory to eastern territory has been combination on Chicago or Ohio and Mississippi river crossings. On Feb. 14, 1916 joint rates on broom corn were published in order that the lower combination via

Memphis and other lower Mississippi river crossings might be available on traffic via the northern gateways. On April 17, 1922 the joint rates were canceled, permitting lowest combination to again apply. The aggregate of intermediate rates via Chicago and East St. Louis were lower than the joint rates. HELD, rates charged unreasonable to extent they exceeded the aggregate of intermediates, reparation awarded. Hamburg Broom Works v. C. R. I. & P. Ry., 126 I. C. C. 171.

(pp) The aggregate of intermediate rates within meaning of section 4 of the act is the sum of separate rates, and not the sum of those rates subjected to combination rule. See 96 I. C. C. 259. Walrath & Sherwood Lbr. Co. v. C. & N. W., 126 I. C. C. 97, 98.

(qq) Upon contention that combination of domestic commodity rates lower than the import rate is a violation of the aggregate-of-intermediates clause of section four of the act, HELD: Contention is without merit, for in applying provisions of the fourth section, rates and fares of the same kind must be compared with one another. See Conf. Ruling 304. Moreover, domestic rates apply only in absence of tariffs naming specific import rates. Egyptian Powder Co. v. I. C. 126 I. C. C. 293, 301.

(rr) Where through rate, higher than aggregate of intermediates, is attacked under Act to Regulate Commerce, § 1 (Comp. St. § 8563), there is a prima facie presumption that such higher through rate is unreasonable and unlawful, though in proceeding under section 4, as amended by Act June 18, 1910, § 8 (Comp. St. § 8566), specifically declaring such a rate unlawful, there is no occasion to consider either presumption of unreasonableness or justification for higher rate; the rate involved being either violative of that section, or not depending on whether an adequate and timely application to suspend operation of the section has been filed and granted, or remains undetermined. Patterson, v. Louisville & N. R. Co., 46 Sup. Ct. 8.

(ss) Complainant alleged that charges collected on one car of cabbage shipped from Cortland, N. Y., Oct. 15, 1924 to Williamson, W. Va., were unreasonable and in violation of section four. The latter was based on the joint rate being higher than the combination on Kenova, W. Va., but the shipment did not move that way. Shipment was tendered to the L. V. on a bill of lading routing "N. & W. del.". It moved L. V. to East Penn. Jct., Pa., Reading to Shippenburg, Pa., W. M. to Hagerstown, Md., thence N. & W. to destination. Charged joint rate of 79c. There was in effect a combination rate of 65c, made up of 34c to Kenova and 31c beyond. Complainant alleged charges collected on a car of agricultural implements from Syracuse, N. Y., Feb. 9, 1923 to Williamson, W. Va., were unreasonable and that shipment was misrouted. The only routing instructions specified in the bill of lading were "N. Y. C. care of N. & W." Shipment moved N. Y. C. to Newberry Jct, Pa., Reading to Shippensburg, W. M. to Hagerstown, thence N. & W. to Williamson. Charged through joint rate of 79c. Combination rate of 65c was in effect using 34c to Kenova plus 31c beyond. HELD, shipments misrouted, reparation awarded. Amicon Co. v. L. V. R. R., 128 I. C. C. 34.

(tt) Complainant attacked combination rates charged on nine cars of cedar posts and poles moving on and after Nov. 28, 1922 from Hollywood, Larkinsville, and Lim Rock, Ala., Rising Fawn, Ga., and Morristown and Talbott, Tenn., to Illinois as unreasonable and in violation of section 4. Shipments were unrouted except that the delivering carrier was designated in each instance. All of the shipments moved via East St. Louis, Ill., except the one originating at Rising Fawn which originated and moved via Cairo, Ill. From Lim Rock to Mason City and from Rising Fawn to Olive Branch the through rates were higher than the aggregate of intermediates. HELD, reparation awarded based on combination. Nebraska Bridge Supply & Lumber Co. v. A. G. S. Ry., 128 I. C. C. 94.

(uu) Complainant attacked rates of 64.5c charged on four cars of rough marble and 93.5c charged on six cars of polished marble between Nov. 30, 1923 and March 18, 1924 from Marble, Colo., to Clifford Spur, Calif., as unreasonable to extent they exceeded 56c and 84.5c respectively. Marble is on the C. R. & St. J. in central western Colorado. Clifford Spur is within the city limits of Los Angeles, Calif., but beyond the switching limits of the L. A. & S. L. Charged 5c Marble to Redstone, 11 miles plus 56 and 84.5c on rough and polished

marble from Redstone to Los Angeles, plus class rates of 3.5 and 4c from Los Angeles to Clifford Spur. Subsequent to movement defendants established commodity rates of 56 and 84.5c from Redstone to Glendale, Calif., beyond Los Angeles and Clifford Spur. HELD, rates attacked unreasonable to extent they exceeded 61 and 89.5c, reparation awarded. Clifford Co. v. C. R. & S. J. Ry., 128 I. C. C. 182.

(vv) In 77 I. C. C. 431, Commission found that the rates on wool in the grease from points in Iowa to Boston, Mass., were unreasonable to extent they exceeded the sum of the proportional fourth class rates from the points of origin to west bank Mississippi river crossings and the joint proportional commodity rate of 92c thence to destination. HELD, reparation awarded. Boston Wool Trade Asso. v. B. & A. R. R., 128 I. C. C. 185.

(ww) Complainant alleged that rates charged on a car of pears from Fayette Jct., Ark., to Jackson, Miss., Sept. 24, 1924 was unreasonable and in violation of section four. Fayette Jct., is on the Frisco, about 2 miles south of Fayetteville, Ark., shipment was billed to Kansas City, Mo., but while enroute was reconsigned to Memphis, Tenn., and after arrival at Memphis was reconsigned to Jackson, moving through Fayetteville to Monett, Mo., thence Memphis and over I. C. 610 miles, charged combination rate of 1.055, defendant admitting applicable rate was 59.5c to Memphis and 45.5c beyond. HELD, rate attacked unreasonable to extent it exceeded 85.5c reparation awarded. Jackson Traffic Bureau, v. I. C. R. R., 129 I. C. C. 497.

(xx) Complainant alleged that rate charged on a tank car of benzol from Eagle Pass, Tex., to Ivorydale, O., was unreasonable and in violation of the fourth section. Shipment originated at Rosita, Mexico, Feb. 10, 1925, was consigned to Ivorydale, O., a point within the switching district of Cincinnati, and moved from Eagle Pass, via G. H. & S. A. to Fort Worth, C. R. I. & G. and C. R. I. & P. to St. Louis, Mo., and Pennsylvania, beyond, charged fifth class $1.41. On Feb. 10, 1926 a commodity rate of 39.5c on benzol was established from Eagle Pass to St. Louis, Mo., and that rate, combined with a commodity rate of 24c from St. Louis to Cincinnati, made a combination of 63.5c. HELD, rate charged unreasonable to extent it exceeded 63.5c, reparation awarded. Caldwell & Taylor, v. C. R. I. & G. Ry., 129 I. C. C. 626.

(yy) A through rate exceeding a combination under rule 5 b does not violate the fourth section. National Tube Co. v. A. T. & S. F. Ry., 129 I. C. C. 693, 694.

(zz) Upon reconsideration, maintenance of combination rates on rosin from points in the South and Southeast to Hamilton, Ontario, Canada, accorded transit at Ivorydale (Cincinnati), Ohio, higher than joint rates from more distant points over same route, in same direction, the shorter being included within the longer distance, when shipments are accorded transit at Latonia or Central Covington, Ky, found to contravene the long-and-short-haul provision of section 4 of the act. See 35 I. C. C. 27 and other cited cases. Moreover, such rates contravene the fourth section notwithstanding fact that such rates are joint rates from points within United States to Canadian destinations. See Conf. Ruling 447; 66 I. C. C. 627, and other cited cases. Former report 112 I. C. C. 381. Procter & Gamble Co. v. A. & V., 129 I. C. C. 385.

§ 6¾a. Combinations Subject to Section 4.

(a) Upon contention of complainants that, under an intermediate clause and open routing of the tariffs, where point of destination was intermediate to a named point designated as taking a particular group rate, a shipment could be routed over any lines parties to tariffs, and that hence the rate to any point not specifically named would be that applicable to unnamed intermediate points located between two named points, HELD: Not only destinations named are indexed within meaning of intermediate rule in question, but all points falling with in the descriptions of "all points," "all other points," and "unnamed intermediate points located between two of the above-named points" are likewise indexed; i. e., a point in the higher rated territory covered by the description "all other points" is not to be regarded as located between two named points merely because there is a possible route from one named point to another through such higher rated territory. Pacific Coast Shippers' Asso. v. A., C. & Y., 112 I. C. C. 527.

(b) Commodity tariff on tinware from Chicago, Rockford, and Waukegan, Ill., Milwaukee, Wis., and points taking same rates made St. Louis basis of rates applicable to McIntosh, Mo. Such tariff carried an intermediate clause but index of stations named neither Burlington nor Keokuk, Iowa. HELD: That such tariff authorizes application of the McIntosh and St. Louis basis of rates to Keokuk and Burlington since routing from Milwaukee is specified through Chicago and from Waukegan through Chicago or Sterling, Ill., with no routing specified beyond these junction joints. In absence of routing instructions over direct route, such tariff therefore authorizes application of the McIntosh and St. Louis basis to Burlington and Keokuk as intermediate points over permissible routes through those points. Burlington Shippers' Asso. v. C., B. & Q., 112 I. C. C. 533, 536, 537.

(c) Rate on crushed stone from New Ulm, Minn., to Holstein, Iowa, found not unreasonable as compared with lower rates to Sac City and Lake View, Iowa, farther distant points. While an item in governing tariff carried the so-called intermediate rule which provided for application to unnamed points of rate to next more distant point, Holstein was itself named in the tariff, therefore, rate to next more distant point was not applicable. Everist & Co. v. C. & N. W., 113 I. C. C. 267.

(d) Combination rates charged on grain and products from points in Colorado, Kansas and Nebraska, to destinations in Tennessee, Georgia, and Alabama, found legally assessed. Lower joint rates applied to Greenwood, Miss., and New Orleans, La., farther distant points, and while tariff provided for their application to directly intermediate points, it also carried complete routes, none of which operated through intermediate destinations here involved. Complainant here attempts to ignore such routes and construct unauthorized circuitous routes via which destinations would be intermediate to Greenwood and New Orleans. The naming of specific routes to the farther distant points, however, eliminated all other routes, and conclusion set forth in rule 4 (j) of Tariff Circular 18—A which provides that "When a tariff specifies routing the rates may not be applied via routes not specified," is controlling. Russell Grain Co. v. A. G. S., 113 I. C. C. 701.

(e) Complainant attacked commodity rates on common brick, carloads, on and after Dec. 6, 1924, from Nashville, Tenn., to Moorehead and Ashland, Ky., and points taking same rates as unreasonable, unduly prejudicial and inapplicable. Shipments were routed L. & N—C. & O., by complainant and moved over L. & N. to Winchester, Ky., and C. & O. beyond, excepting one shipment which moved T. C. and Southern to Louisville and C. & O. beyond. Moorehead is 47 miles from Winchester and 335 miles northeast of Nashville via Winchester, about 350 miles via Louisville. Rates charged were combinations on Winchester and Louisville. Six of the shipments moved between Dec. 12, 1924, and May 6, 1925, when a specific commodity rate of 13c applied from Nashville to Maysville, Ky., and under an intermediate clause this rate applied from Nashville to Morehead, via either Louisville or Winchester, shipments overcharged. Under complainant's routing instructions it was the duty of defendant to route the remaining shipments over the cheapest reasonable route, in this instance through Louisville, shipments misrouted. HELD, charges on shipment of Dec. 6, 1924, inapplicable to extent they exceeded 16.4c, and unreasonable to extent they exceeded 15.5c charges on shipments between Dec. 12, 1924, and May 6, 1925, inapplicable to extent they exceeded 13c and subsequent to May 6, 1925, unreasonable to extent they exceeded 15.5c, reparation awarded. Bush & Co. v. L. & N. R. R., 115 I. C. C. 45.

(f) Complainant attacked combination rate charged on one car of lumber shipped Oct. 5, 1921, from Brooksville, Miss., to Chicago, Ill., as illegal, unreasonable and in violation of section four. Brooksville is on the M. & O., shipment moving to Chicago, a distance of 705 miles, in accordance with shipper's routing instructions: Rives, I. C., Paducah, C. B. & Q., Litchfield, Wab., C. M. N. W. dely. Charged combination rate of 38.5c, subsequently collected on joint rate of 39.5c. The rate sought is constructed by use of the combination rule to the factors to and beyond Paducah, Ky., 19c and 21.5c, respectively. In the tariff naming the joint rate there was a restrictive clause reading "will not apply via C. B. & Q. R. R." But under the wording of the tariff this restriction had application only to traffic originating at stations

served by certain named carriers, not including the M. & O. It is clear therefore, that the routing restriction referred to did not apply to the shipment under consideration, and joint rate finally charged was applicable. It is also clear that the existence of the joint rate prohibited the use of the combination rule. HELD, rate charged of 39.5c applicable and not unreasonable or otherwise unlawful, complaint dismissed. Thornton Claney Lumber Co. v. M. & O. R. R., 118 I. C. C. 25.

(g) It is equally clear that the rates as published did not constitute a departure from the aggregate of intermediate clause of the fourth section because the combination rate treated by the socalled combination rule is not an aggregate of the intermediate rates within the meaning of that section. Thornton Claney Lumber Co. v. M. & O. R. R., 118 I. C. C. 25, 26.

(h) The specific joint rates were not rendered inapplicable under the alternative rule in the same tariffs for the intermediate rates did not aggregate less than the joint rates. The product of intermediate rates treated by a rule which results in something less than the aggregate is not the aggregate within the meaning of the alternative rule. McLeod v. T. & P. Ry., 120 I. C. C. 550, 551.

(i) Conference ruling 304 D and fourth section order No. 5 authorize the carriers to absorb switching charges on competitive and not on non-competitive traffic, even though departures from the long and short haul provision of the fourth section may result therefrom, but neither the ruling nor the order authorize this to be done in violation of the aggregate of intermediates provision of the fourth section. Bissinger Co. v. G. N. Ry., 120 I. C. C. 745, 748.

(j) When the assessment of a switching charge in connection with transit results in greater aggregate compensation to the carrier than the sum of the intermediate rates, it can not be considered that section four has thereby been violated, for the services performed are not the same in the two instances. Transit involves an additional service on the part of the carrier for which a separate charge may be made; the switching charge is an additional expense incident to the transit service. Bissinger Co. v. G. N. Ry., 120 I. C. C. 745, 748.

(k) The establishment of a rate subject to rule 77 does not make that rate applicable to intermediate points but is only a holding out that it will be extended to said intermediate points upon reasonable request. Woodward Auto Co., v. C. M. & St. P. Ry., 129 I. C. C. 613, 615.

(l) Complainant alleged that charges collected or which defendants are endeavoring to collect on 190 cars of wrought pipe shipped from Lorain, O., to Kansas during the period from April 1, 1924 to May 9, 1925, were in violation of sections 1, 2, 3 and 4 of the act. Lorain is 25 miles west of Cleveland. 186 of the shipments were charged at the rates to and from Jacksonville, Ill., remaining 4 charged on rate of 35.5c to Mississppi river crossings and 46.5c beyond to Madison and Eureka and 42c to Gridley. Though published in separate tariffs, the basing rates from the river crossings and the local rates from St. Louis territory which included Jacksonville were the same to the destinations, while from Lorain the rate to Jacksonville was 1.5c less than the rate to the river crossings. There were no applicable joint through rates. However, the tariff publishing the basing rates from the river crossing provided that, in the absence of specific through rates, rates from described territories, including that in which Lorain is located, would be made by adding to those basing rates the rates shown in other tariffs on file with the Commission. The through rates made on the river crossings were therefore applicable in preference to the Jacksonville combination. On May 1, 1925 the rates from Jacksonville were increased by placing that point in Peoria territory, with the result that the combination rates made thereon are no longer lower than the combination rates constructed on the river crossings. HELD, prior to May 1, 1925 the rates assailed were unreasonable to extent they exceeded the Jacksonville combination, reparation awarded. National Tube Co. v. A. T. & S. F. Ry., 129 I. C. C. 693.

§6¾b. Combination Rule.

(a) Rate charged under an exception to classification on prepared roofing moving over the Chicago & Eastern Illinois from Chicago to Terre Haute, Ind., found illegal. Legal rate found to be a specific joint commodity rate published in a tariff to which the C. & E. I. was a party from Chicago to Midland City, Ill.,

applicable over its line to Terre Haute and the Pennsylvania beyond. This tariff carried the intermediate rule which provided that rates named therein would apply from or to directly intermediate points not indexed, or if indexed, but with no rate shown, such tariff not naming a specific rate to Terre Haute. Refund of overcharges directed. Elaborated Ready Roofing Co. v. C. &. E. I., 109 I. C. C. 401.

(b) Complainant took advantage of unrestricted combination rules published in local tariffs of intermediate short lines by routing shipments over unusual routes. Shipments could have been billed without intervention of intermediate short lines. Tariffs of originating and delivering carriers specifically prohibited use of such rule and computation of rates by its use would require the intermediate roads to haul traffic for less than nothing. FOUND: Holding out principle laid down in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, is not controlling. In no case applying that principle was a carrier required to protect a rate less than nothing or surrender all its earnings to connections; nor does the act permit or require transportation without any charge or at less than no charge. When, as here, such a result is sought to be accomplished it is to be condemned and the commission may intervene to prevent unwarranted dissipation of carrier revenues regardless of where the responsibility lies. Combination rules here produce a result unlawful per se and are of no effect. Standard Oil Co. v. A., T. & S. F., 113 I. C. C. 597.

(c) Rule 77 was promulgated in order to obviate the necessity of publishing commodity rates from and to intermediate points where shipments may never be made, and has no application where specific commodity rates apply from or to intermediate points. Booth & Flinn v. P. R. R., 113 I. C. C. 613, 614.

(d) The publication of a rate under authority of rule 77 is a substantial compliance with the requirements of the fourth section. Lissberger & Co. v. P. R. R. Co., 115 I. C. C. 521, 525.

(e) Rule 77 is a substantial compliance with the long and short haul clause of the fourth section, and that rates to the intermediate points are unreasonable to extent they exceed the lower rates to the farther distant points, even though there had been no previous request for the establishment of the lower rates to the intermediate points. Atmore Produce Co. v. M. S. B. & P. Ry., 115 I. C. C. 599, 600.

(f) Complainant attacked combination commodity rate charged on two cars of charcoal shipped Oct. 27, 1923, and March 26, 1924, from Gaskins Siding, Fla., to Amsterdam and Wataga, Ga., as unreasonable, unduly prejudicial and in violation of the fourth section. Shipments moved M. & B. to Marianna, Fla., 40 miles, L. & N. to River Jct., 25 miles, and A. C. L. beyond, 39 and 36 miles, total 104 miles to Amsterdam and 101 miles to Wataga, charged commodity rate of $5.29 to Amsterdam and to Wataga, combination of $5.29 to Amsterdam and $2.10 beyond. Wataga is directly intermediate to and 3 miles less distant than Amsterdam. The rate of $5.29 was subject to rule 77, and effective April 30, 1925, a rate of $4.35 was published to both points. HELD, rate attacked unreasonable to extent it exceeded $4.35 per ton, reparation awarded. American Sumatra Tobacco Co. v. A. C. L. R. R., 118 I. C. C. 583.

(g) Rule 77 is a substantial compliance with the long and short haul section of the fourth section. American Sumatra Tobacco Co. v. A. C. L. R. R., 118 I. C. C. 583, 584.

(h) Rates on rough marble moving interstate from New York Harbor points to Buffalo, N. Y., found unreasonable to extent they exceeded lower rates contemporaneously maintained from Long Island City, N. Y., a farther distant point, to same destination, inasmuch as tariff naming lower rates carried a rule conforming to rule 77 of Tariff Circular 18-A. Reparation awarded. Lautz Marble Corp. v. E. R. R., 115 I. C. C. 543.

(i) The commission has uniformly found that when rates to farther distant points lower than to intermediate points are published subject to rule 77 of Tariff Circular 18-A, a substantial compliance with long-and-short-haul provision of section 4 of the act is thus affected and rates to intermediate points are unreasonable to extent they exceed lower rates to farther distant points. Reparation is generally awarded to lower-rate basis even though there have been no previous requests for establishment of lower rates to intermediate points. See 63 I. C. C.

327, 331. Atmore Produce Co. v. M. S., B. & P., 115 I. C. C. 599, 600.

(j) Rate on charcoal from Gaskins Siding, Fla., to Wataga, Ga., higher than to Amsterdam, Ga., a farther distant point, found not in violation of long-and-short-haul clause of section 4 of the act. The lower rate to farther distant point was subject to provision of rule 77 of Tariff Circular 18-A, and although complainant failed to make required request the commission has uniformly found that such a rule in a tariff is a substantial compliance with fourth section, and has awarded reparation on shipments moving to the intermediate point. American Sumatra Tobacco Co. v. A. C. L., 118 I. C. C. 583.

(k) Complainant attacked commodity rate charged on glue stock shipped between June 30, 1922 and March 26, 1924, from Wilmington, Del., to Philadelphia, Pa., as unreasonable and in violation of the fourth section. Distance hauled 36 miles, charged 11.5 cents. Contemporaneously the rate on tannery refuse Wilmington to Camden, N. J., was 10 cents subject to rule 77, and this rate was established to Philadelphia May 16, 1924. HELD, rate attacked unreasonable to extent it exceeded 10 cents, reparation awarded. Tunnell & Co. v. P. R. R., 120 I. C. C. 425.

(l) The tariff naming the rate was subject to rule 77 which is a substantial compliance with the requirements of the fourth section. Tunnell & Co. v. P. R. R., 120 I. C. C. 425, 426.

(m) Complainant attacked commodity rate charged on five mixed cars of bones, horns, and hoofs forwarded during the period Aug. 28, 1922 to Dec. 20, 1923, from El Paso, Tex., to Chicago as unreasonable, inapplicable and in violation of section four. Effective Feb. 8, 1923, defendants provided for a deduction of $7.50 per car in the carload rates on shipments from points beyond the Orient lines which are handled by those lines as intermediate carriers. Charged 78 cents El Paso to Chicago, deducted $7.50. Contemporaneously there was a joint commodity rate of 68 cents on bones, hoofs, and horns, in mixed carloads, from Deming, N. M., to Chicago. This was a fourth section departure, the tariff naming the 68 cent rate being subject to rule 77. HELD, applicable rate of 78 cents unreasonable to extent it exceeded 68 cents, subject to reduction of $7.50 per car, reparation awarded. Tomkins Summer Co. v. C., M. & St. P. Ry., 120 I. C. C. 677.

(n) The publication of a rate under authority of rule 77 is a substantial compliance with the requirements of the fourth section, and equivalent to an admission by defendants that the higher rate from the intermediate point is unreasonable. Tomkins Summer Co. v. C., M. & St. P. Ry., 120 I. C. C. 677, 679.

(o) The publication of rule 77 in a tariff is a substantial compliance with the provisions of section four of the act Grain and Grain Products from North Dakota, 123 I. C. C. 49, 54.

(p) Complainant attacked commodity rates charged on numerous cars of petroleum products from East Chicago, Ind., to Houston, Tex., from July 1, 1922 to Jan. 22, 1924 were illegal to extent they exceeded 71 cents, and from Jan. 1, 1924 to Sept. 1, 1925 unreasonable and unduly prejudicial to extent they exceeded 69 cents, which rate was established on the latter date. With respect to the shipments which moved between Jan. 1, 1924 and Sept. 1, 1925 complainant contended that the rates of 71, 74.5, 78 and 80 cents were unreasonable to extent they exceeded the New Orleans combination of 69 cents using the combination rule. Full New Orleans combination was 74.5 cents. HELD, rates attacked between Jan. 1, 1924 and Sept. 1, 1925 unreasonable to extent they exceeded 69 cents, reparation awarded. Sinclair Refining Co. v. A., T. & S. F. Ry., 123 I. C. C. 537.

(q) The publication of a rule in conformity with rule 77, is a substantial compliance with the requirements of the fourth section, and the publication of a lower rate from a farther distant point under authority of that rule is equivalent to an admission that the publication of a higher rate from an intermediate point in unreasonable. Innis Speiden & Co. v. N. Y., O. & W. Ry., 123 I. C. C. 577, 578.

(r) Fifth-class rate on quebracho tanning extract, from New York Harbor points to Ludlow, Pa., found inapplicable. Contemporaneously a lower commodity rate applied to a farther-distant point and as tariff carried the intermediate rule which provided for application of rates to intermediate points not specifically named in the tariff, such lower rate was also applicable to Ludlow. Reparation awarded. Curtis Leather Co. v. P. R. R., 123 I. C. C. 1.

(s) Publication of rule 77 of Tariff

Circular 18-A, is a substantial compliance with provisions of section 4 of the act. Grain and Products from North Dakota, 123 I. C. C. 49, 54.

(t) Applicable rate on potatoes from Pablo and Whitehall, Mont., to New Orleans, La., found not unreasonable as compared with lower rate contemporaneously in effect to Houston, Tex., a farther distant point. While subsequent to movement tariff naming lower rate was made subject to rule 77 of Tariff Circular 18-A, and such lower rate was made applicable from and to points here involved, neither the subsequent reduction nor the fourth-section violation, in and of themselves, establish unreasonableness of the rate to New Orleans. Moreover, carriers showed that higher rates contemporaneously applied on this traffic between various points in same general territory for comparable distances. Kohlman & Sugarman v. L. & N., 123 I. C. C. 56.

(u) Rates on brick, and articles taking same rates, from designated points in Ohio and West Virginia to Verona, Brackenridge, and Tarentum, Pa., found applicable. While lower rates contemporaneously applied from same points of origin to Glassmere and Butler Junction, Pa., to which Tarentum and Brackenridge are intermediate, and governing tariff carried an intermediate clause which specifically provided that it had application only to points to which specific rates were not named, here the tariff named specific rates to Tarentum and Brackenridge. Globe Brick Co. v. P. R. R., 123 I. C. C. 498.

(v) Where a fourth-section application is on file with commission and pending its disposition the rates from the intermediate and farther distant points are equalized, such equalization removes protection afforded by application, and if thereafter carriers reestablish higher rates from the intermediate than from the farther distant point a new violation of the long-and-short-haul clause of section 4 of the act is created. See 256 U. S. 408, 416. Globe Brick Co. v. P. R. R., 123 I. C. C. 498, 502.

(w) Publication of a rule in conformity with rule 77 of Tariff Circular 18-A, is a substantial compliance with requirements of fourth section of the act, and publication of a lower rate from a farther distant point under authority of that rule is equivalent to an admission that publication of a higher rate from an intermediate point is unreasonable. Innis, Speiden & Co. v. N. Y., O. & W., 123 I. C. C. 577, 578.

(x) Sixth-class rate on lumber from Burks Falls, Ontario, Canada, to Pontiac, Mich., found inapplicable. Contemporaneously tariff carrying an intermediate rule published a lower joint commodity rate from Burks Falls to Owosso, Mich. As Pontiac is intermediate to Owosso over route of movement and as rate was unrestricted in its application, it was therefore applicable to Pontiac and shipments were overcharged. Refund of overcharges directed. Strable Lbr. & Salt Co. v. C. N. Ry., 123 I. C. C. 585.

(y) Shipments of iron pipe and oil-well supplies from Fruita, Colo., and Price, Utah, to Sunburst and Kremlin, Mont., routed Denver & Rio Grande Western via Ogden and Salt Lake City, Utah, respectively, Union Pacific and Great Northern beyond, found not misrouted. Contemporaneously tariff published a lower rate from Pueblo, Colo., a point east of Fruita and Price on the Denver & Rio Grande Western to Helena, Mont., and carried the intermediate rule which provided for application of rates to unnamed points directly intermediate to and on the same line with named stations. However, "on the same line" was interpreted to mean "on the same railroad" in 115 I. C. C. 529, and since there are no points on Denver & Rio Grande Western west of Fruita and Price from which through rates are published to Helena, the lower rate under the intermediate rule did not apply. Carter Oil Co. v. D. & R. G. W., 123 I. C. C. 596.

(z) Rates subject to rule 77 of tariff circular 18-A are in substantial compliance with the requirements of the fourth section. Ogden Grain Exchange v. A. E. R. R., 126 I. C. C. 255, 268.

(aa) The product of intermediate rates treated by a rule which results in something less than the aggregate is not the aggregate within the meaning of the alternative rule. California Dressed Beef Co. v. A. T. & S. F. Ry., 128 I. C. C. 607, 610.

(bb) Complainant alleged sixth class rates charged on wrapping paper, in carloads, shipped on and after Dec. 20, 1923, from Richmond, Va., to Harlem River, N. Y., were and are unreasonable. Sixth class rate of 38c applied until Nov. 25, 1924 when a commodity rate of 30c was published. The rate of 28.5c from Covington to New York, also

applies to Harlem River. This rate was and is subject to rule 77 of tariff circular 18-A, and as it is unrestricted with respect to routing it was and is applicable via Richmond and the routes over which these shipments moved. HELD, rate assailed unreasonable to extent it exceeded 28.5c, reparation awarded. Albemarle Paper Mfg. Co., v. R. F. & P. Ry., 129 I. C. C. 502.

(cc) The Commission has frequently found that rule 77 is a substantial compliance with the fourth section of the act, and awarded reparation on shipments moving from or to intermediate points under rates that were higher than those from or to more distant points where the rates from or to the latter points were subject to rule 77, and the less distant points were intermediate over the route the traffic moved. The publication of that rule does not warrant a finding of unreasonableness where the point which is claimed to be intermediate to the lower rated point is intermediate only via circuitous and unnatural routes over which no shipper could reasonably request transportation under the provisions of section 1 (4) of the act. Woodward Auto Co.. v. C. M. & St. P. Ry., 129 I. C. C. 613, 615.

(dd) Complainant alleged that illegal charges were collected on various carloads of automobiles and parts between June 11, 1918 and Feb. 7, 1920 from Detroit, Flint and Alma, Mich., Chicago, Ill., Cleveland, O., and Racine, Wis., on agricultural implements from Waterloo, Ia., Chicago and Moline, Ill; on wire fencing from Richmond, Ind; on wrought iron pipe from Sharpsburg, Pa., and Youngstown, O., on cast iron radiators from Kansas City, Mo., and Detroit, Mich., and on traction engines from Chicago to Klamath Falls, Ore. Klamath Falls is on the branch of the S. P. extending from Weed, Calif., to Pryor, Ore., and is intermediate between Weed and Ritter or Modoc Point, Ore. Modoc Point was formerly named Lelu and was at the time of movement designated in the tariffs by both names. Joint class rates were published from the points of origin described to Klamath Falls, subject to the aggregate of intermediate rates, but no joint commodity rates were specifically published to that destination. Joint commodity rates were maintained to Modoc Point or Ritter. Charged combination on Weed. The intermediate rule was applicable only when rates were not specifically provided for stations located directly intermediate to stations to which rates were provided. Joint through class rates were published from the points of origin to Klamath Falls and, therefore, the intermediate rule has no application here. Rates charged applicable. HELD, complaint dismissed. Baldwin Hardware Co. v. Director General, 129 I. C. C. 708.

(ee) Complainant alleged rates charged on three carloads of desks and chairs shipped between Nov. 10, 1920 and Feb. 26, 1921 from Evansville, Ind., and Herkimer, N. Y., to San Francisco were inapplicable. Complainant alleged fourth class rates charged on four less carload shipments of rough iron castings, in bags, shipped between Oct. 23, 1920 and April 27, 1921 from Joilet, Ill., to Sunnyvale, Calif., were inapplicable. Charged $3.585 commodity rate from Evansville and $3.755 from Herkimer, from Joliet fourth class rate of $3.455. Complainants interpretation of the intermediate rule item would clearly result in defeating specifically published rates to important destinations by the use of rates applicable to relatively unimportant points, and would result in a maladjustment of rates and discriminatory rate situations. Intermediate rules should not be construed to defeat specifically published rates in the same tariff unless the tariff so provides. HELD, rates assailed applicable, complaints dismissed. Prentice v. S. P. Co., 132 I. C. C. 409.

(ff) The inclusion in a tariff of a provision in accordance with rule 77 is a substantial compliance with the fourth section requirements; that a request for the publication of a rate under that rule prior to movement of the shipments is not essential in order that the shipper may have the advantage of that provision; and damages such as are required in a violation of the fourth section do not have to be shown in such cases. Smith & Sons Co. v. B. & M. R. R., 132 I. C. C. 596, 598.

(gg) A rate made by the application of an intermediate clause in a tariff is as specific as if the points of origin and destination were specifically named in connection with that rate. Fruen Grain Co., v. L. C. & S. E. Ry., 132 I. C. C. 747, 748.

§6⅞. Discrimination and Reasonableness.

See Discrimination; Reasonableness of Rates.

(a) While evidence of departure from long-and-short-haul provision of section 4 of the act does not establish unreasonableness of intermediate rate, it is evidence tending in that direction, particularly when accompanied by subsequent establishment of lower rate at the intermediate point. Lynchburg Chamber of Commerce v. P. R. R., 104 I. C. C. 293, 294.

(b) No set rule or formula can be laid down as to character of evidence that should be submitted to show that rates are reasonably compensatory within requirement of section 4 of the act, any more than to establish that rates are not unreasonable. Many of the means commonly employed to prove that rates are reasonable, such as comparisons of ton-mile and car-mile revenue, comparisons with other rates, evidence relative to traffic density, volume of movement, cost of service, etc., are also adapted to show that depressed rates are reasonably compensatory. Statistics showing average revenue and average operating expense per ton-mile, average haul, and average car loading are also helpful. Class and Commodity Rates between Western Points, 104 I. C. C. 578, 584.

(c) Rates on wrapping paper, l. c. l., from Hartsville, S. C., to Jackson, Miss., found not unreasonable, but unduly prejudicial to extent they exceeded contemporaneous rates to Vicksburg, a farther distant competitive point. Jackson Paper Co. v. A. G. S. Ry., 104 I. C. C. 758.

(d) Rate on overalls, l. c. l., from Middlesboro, Ky., to Tupelo, Miss., found not unreasonable or unduly prejudicial as compared with rate to Memphis, Tenn., a farther distant point. Following 98 I. C. C. 627, the lower rate to Memphis was canceled, leaving in effect a rate higher than that to Tupelo, thus removing alleged undue prejudice and departure from long-and-short-haul provision of section 4. There is no proof of damage because of undue prejudice that may have existed, and it does not follow that an award of damages should be made because of long-and-short-haul violation. Portland Seed Co., 264 U. S. 403. Northeast Miss. Traffic Bureau v. M. & O., 109 I. C. C. 246.

(e) Rate on bulk corn from Jefferson, S. Dak., to Fowler, Colo., found applicable but unreasonable to extent it exceeded a lower rate contemporaneously in effect to Trinidad, a more distant point, to which Fowler is directly intermediate. Tariff carrying lower rate contained an intermediate rule under provision of which rates apply to intermediate points only when they are not named in the tariff. Fowler was named in the tariff, but not in item carrying rates on this commodity between points named, consequently the Trinidad rate was not applicable to Fowler. See 36 I. C. C. 523, and 45 I. C. C. 183. Later carriers provided by addition of a note to the rule for application of Trinidad rate to Fowler and other points; thus the situation presented clearly raises a presumption of unreasonableness which carriers made no attempt to meet. Reparation awarded. Summit Grain Co. v. C., M. & St. P., 109 I. C. C. 763.

(f) Proposal to readjust rates on grain and products from points in Utah and Idaho to destinations in the Southwest and Alabama and Mississippi and to cancel application of such rates over routes through Texas designed for supposed purpose of removing departures from long-and-short-haul provision of section 4 of the act found not justified. There is in issue in a pending proceeding the reasonableness of rates to this destination territory as well as to points in Texas, where rates are now higher than to more distant Louisiana points, and cancellation of joint rates over Texas routes, which are generally shorter than through States north thereof, would result in substantial rate increases which would seriously affect the ability of Texas mills to handle Idaho wheat. Grain and Products from Western Points, 112 I. C. C. 283.

(g) A showing that there was a lower rate in effect to a more distant point on the same route does not in itself establish the unreasonableness of the higher rate to an intermediate point. Booth & Flinn v. P. R. R., 113 I. C. C. 613, 614.

(h) Complainant attacked class rates on carload and less carload rates on candy and confectionery from Salt Lake City, Utah, to destinations on the Mississippi and Missouri rivers, and to St. Paul, Minn., as unreasonable and in comparison with rates from Provo, Utah and California unduly prejudicial, and in violation of section 4. Prior to Feb.

15, 1925, commodity rates from California applied as maxima from Salt Lake City. From that date to Aug. 1, 1925, through an error on the part of the carriers, class rates, second class on less than carloads and third class on carloads, were applicable. This was corrected on the latter date by the establishment from Salt Lake City of commodity rates the same as or lower than from San Francisco. HELD, rates attacked unreasonable and unduly prejudicial during the period from Feb. 15 to July 31, 1925, to extent they exceeded the rates from San Francisco, reparation awarded. McDonald Chocolate Co. v. B. E. R. R. Co., 118 I. C. C. 45.

(i) Complainant attacked commodity rates charged on mixed vegetables, in carloads, shipped since March, 1919, from Los Angeles, Calif., to Salt Lake City and Ogden, Utah, as unreasonable and in violation of section four, in that the shipments were subjected to a switching charge at Los Angeles which was not assessed on shipments originating at points beyond Los Angeles taking the Los Angeles rates. Shipments originated on the Santa Fe and the Pacific Electric at Los Angeles, were there switched to the L. A. & S. L. and moved over that road to Salt Lake City, those destined to Ogden moving over the O. S. L. beyond Salt Lake City. Applicable rates from Los Angeles plus a switching charge were assessed. The only evidence submitted in support of the fourth section allegation is the fact that the L. A. & S. L. absorbed the switching charges of the S. P. at Los Angeles and refused to do likewise for shippers on the Santa Fe and P. E. The S. P., maintains the same rates to Salt Lake City and Ogden on these articles as does the L. A. & S. L. HELD, charges applicable and not unreasonable, complaint dismissed. Frank Produce Co. v. Director General, 118 I. C. C. 88.

(j) The law is plain that regardless of basis upon which relief from the long-and-short-haul provision of section 4 of the act is granted the commission must not permit establishment of a rate to a more distant point that is not reasonably compensatory for service performed. In a territory where rates in general via direct hauls have been passed upon by commission and where there is such a maze of possible routes, making it practically impossible to check and enumerate each route available in published tariffs, the commission must place some general limitations upon relief granted, so that rates via direct routes will not be less than reasonably compensatory when applied via circuitous hauls. Class and Commodity Rates from Pennsylvania, 115 I. C. C. 331, 334.

(k) An order of commission authorizing temporary rate adjustments involving fourth-section departures pending determination of fourth-section applications, is not sufficient justification for new and increased fourth-section departures in an extensive revision of rates which should be justified for permanent establishment. Taylor Produce Co. v. A. C. L., 115 I. C. C. 633, 636.

(l) Rate on charcoal from Gaskins Siding, Fla., to Wataga, Ga., higher than to Amsterdam, Ga., a farther distant point, found not in violation of long-and-short-haul clause of section 4 of the act. The lower rate to farther distant point was subject to provision of rule 77 of Tariff Circular 18-A, and although complainant failed to make required request the commission has uniformly found that such a rule in a tariff is a substantial compliance with fourth section, and has awarded reparation on shipments moving to the intermediate point. American Sumatra Tobacco Co. v. A. C. L., 118 I. C. C. 583.

(m-p) In so far as the departures from the fourth section are concerned, the commission has found that rates which exceed the aggregate of intermediate rates are prima facie unreasonable, but this presumption of unreasonableness may be rebutted. Marshall and Jefferson v. T. & P. Ry., 120 I. C. C. 455, 458.

(q) Complainant attacked combination rate charged on 23 cars of cement shipped between May 10 and June 10, 1922, from Navarro, Pa., to Dunraven, N. Y., as unreasonable and in violation of the fourth section. Navarro is local to the N. & B. Dunraven is served only by the D. & N. Shipments were charged 26 cents composed of 16 cents to East Branch and 10 cents beyond. There was published a joint rate of 22.25 cents from Navarro to points on the U. & D., including Arkville, N. Y., the junction of the D. & N. with the U. & D. This rate junctions mentioned above. Effe
was applicable over the lines and via the 15, 1922 the 22.25 cent rate was made applicable to Dunraven. HELD, rate attacked unreasonable to extent it exceeded 22.25 cents, reparation awarded. Atlas

Portland Cement Co. v. N. & B. R. R., 120 I. C. C. 583.

(r) Apart from statutory enactment it is prima facie unreasonable to charge more for a shorter than for a longer haul. Atlas Portland Cement Co. v. N. & B. R. R., 120 I. C. C. 583, 584.

(s) Complainant attacked commodity rate charged on 17 cars of lubricating oil stock from Chaison and Morgans Point, Tex., to Topeka and Eldorado, Kas., between Dec. 10, 1923 and May 9, 1924, as unreasonable. Charged 42 cents. There was contemporaneously in effect a rate of 32 cents on this commodity from Chaison to Sugar Creek, Mo., over all available routes, including the Santa Fe. Sugar Creek is on the Santa Fe within the switching limits of Kansas City. Over a route of the Santa Fe from Beaumont, Topeka and Eldorado are intermediate to Sugar Creek. This 32 cent rate was restricted so as not to apply to Topeka and Eldorado over any route. Effective Feb. 5, 1925, this rate was restricted so as not to apply over the Santa Fe to Sugar Creek. HELD, rate attacked not unreasonable in the past but for future unreasonable to extent it exceeds 34 cents. Petroleum Oils Corp. v. A., T. & S. F. Ry., 120 I. C. C. 614.

(t) Rate on lumber from Virginia, Minn., to Grafton, Wis., found not unreasonable or otherwise unlawful as compared with lower rates contemporaneously in effect from Virginia to points in Wisconsin farther distant than Grafton; also from other Minnesota points north of Virginia to Grafton. Carriers pointed out that at time of movement numerous fourth-section departures occurred in this territory because of maintenance of depressed rates to Chicago and other Lake Michigan ports. Complainant failed to show damage by reason of such fourth-section departures, and a violation departure from long-and-short-haul clause of section 4, does not alone establish unreasonableness or form a basis for reparation. Moreover, rates assailed compared favorably with corresponding rates from and to various points for comparable distances. Virginia & Rainy Lake Co. v. D., W. & P., 120 I. C. C. 131.

(u) A departure from the long-and-short-haul clause of section 4 of the act does not in itself establish unreasonableness of higher rate to less-distant point or form a basis for an award of reparation. See 50 I. C. C. 719. Virginia & Rainy Lake Co. v. D., W. & P., 120 I. C. C. 131, 133.

(v) Rates on sugar from Yonkers and Brooklyn, N. Y., to Lynchburg, Va., found unreasonable as compared with rates between other points for comparable distances and to extent they exceeded lower rate subsequently established. For a time, lower rates were in effect from points of origin to Lone Jack and South Boston, Va., farther-distant points. Subsequently, rates to South Boston were increased, and those to Lynchburg reduced, thus removing fourth-section departures. Although evidence of a departure from long-and-short-haul provision of fourth section of the act does not establish unreasonableness of the intermediate rate, it is evidence tending in that direction, particularly when, as here, it is accompanied by subsequent establishment of the lower rate. Reparation awarded. See also 104 I. C. C. 293. Lynchburg Chamber of Commerce v. P. R. R., 120 I. C. C. 392.

(w) Although evidence of a departure from long-and-short-haul provision of fourth section of the act does not establish unreasonableness of the intermediate rate, it is evidence tending in that direction, particularly when accompanied by subsequent establishment of the lower rate. See 104 I. C. C. 293. Lynchburg Chamber of Commerce v. P. R. R., 120 I. C. C. 392, 393.

(x) While a departure from the long-and-short-haul provision of fourth section of the act does not establish unreasonableness of intermediate rate, it is evidence tending in that direction, particularly when accompanied by subsequent establishment of the lower rate at the intermediate point. See also 104 I. C. C. 293. Riegel Sack Co. v. C. R. R. Co. of N. J., 120 I. C. C. 405, 407.

(y) Rate on cement from Navarro, Pa., to Dunraven, N. Y., found unreasonable to extent it exceeded a lower rate contemporaneously in effect to farther distant points beyond Dunraven, which lower rate was established to latter-named destination subsequent to movement. This fourth-section violation, unprotected by an appropriate application, created an unlawful situation raising a presumption of unreasonableness. The mere assertion of carriers that rate to the farther-distant points was depressed by reason of competition, and that assailed rate was subsequently reduced for

the same reason, unsupported by evidence as to reasonableness of either of these rates, is insufficient to overcome that presumption. Reparation awarded. Atlas Portland Cement Co. v. N. & B., 120 I. C. C. 583.

(z) Complainant attacked combination rate charged on a car of cabbage shipped April 16, 1925 from St. Elmo, Ala., to Lima, O., as unreasonable and in violation of the fourth section. St. Elmo is on the L. & N., 19 miles south of Mobile, Ala. Lima is on the B. & O., 72 miles south of Toledo, O. Shipment moved L. & N., to Cincinnati, O., B. & O., beyond, 927 miles, charged 56.5 cents to Jeffersonville, Ind., and 26.5 cents beyond. There was contemporaneously in effect from St. Elmo to Toledo a rate of 81 cents and on May 15, 1925 this rate was made effective to Lima. HELD, rate attacked unreasonable to extent it exceeded 81 cents, reparation awarded. Cardosi & Co. v. B. & O. R. R., 122 I. C. C. 1.

(aa) The failure of a shipper to request the publication of a rate so published from or to an intermediate point does not deprive the shipper of the benefit of the lower rate and in such instances have uniformly found that a higher rate charged was unreasonable. Toberman Mackey Co. v. C. B. & Q. R. R., 122 I. C. C. 299, 300.

(bb) A rate in excess of the aggregate of intermediates is prima facie unreasonable. This is true apart from any statutory enactment, but conditions may exist or evidence may be introduced which establishes the reasonableness of the through rate. Lynchburg Traffic Bureau v. N. O. N. E. R. R., 122 I. C. C. 371, 372.

(cc) Complainant alleged sixth class rate of 54 cents charged on a carload of lumber shipped March 3, 1923 from Sundridge, Ont., Can., to Naperville, Ill., was unreasonable, unjustly discriminatory, unduly prejudicial and in violation of section four. Shipment moved as routed Canadian National and G. T. W., to Chicago and Burlington to destination. Contemporaneously there was in effect over route of movement a combination rate of 39 cents, made 34 cents to Chicago and 5 cents beyond, and this was established as a joint commodity rate Sept. 25, 1923. HELD, rate attacked unreasonable to extent it exceeded 39 cents, reparation awarded. Kroehler Mfg. Co. v. C. N. Ry., 123 I. C. C. 555.

(dd) Complainant attacked sixth class rate charged on two cars of sand from Cape May, N. J., to East Radford, Va., as unreasonable and in violation of the fourth section. Shipments moved on June 11, 1924, charged 58 cents sixth class, reparation requested to rate of $4.65 made $1.25 to Philadelphia and $3.70 beyond subject to the combination rule. Effective April 24, 1926 defendants published joint rates of $4.95 on common sand and $5.40 on silica sand from Cape May to East Radford, which were the combination on Philadelphia without reference to the combination rule. HELD, rate charged unreasonable to extent it exceeded $4.95, reparation awarded. Lynchburg Chamber of Commerce v. W. J. & S. R. R., 123 I. C. C. 579.

(ee) A departure from long-and-short-haul provision of section 4 of the act raises a presumption of unreasonableness in the higher rate to the intermediate point, but this presumption is rebuttable. Cardosi & Co. v. B. & O., 122 I. C. C. 1.

(ff) Proportional rates on grain and products from Mississippi River gateways and points west thereof to intermediate destinations on the Gulf & Ship Island R. R., higher than to farther distant points, found not unreasonable or otherwise unlawful. Higher rates to intermediate points were permitted to meet rates of trunk-line competitors at junction points by fourth-section order. Moreover, carriers show that rates to points on the Gulf & Ship Island compare favorably with rates from same points to destinations in Mississippi and Louisiana on the New Orleans Great Northern, Mississippi Central, and Gulf, Mobile & Northern, and are on a lower level than rates to the Southeast. Jackson Traffic Bureau v. A. & V., 122 I. C. C. 387, 388, 389.

(gg) Proposed increased local interstate rate on tanning extract from Lynchburg to Norfolk, Pinners Point, and Portsmouth, Va., higher than from Charlottesville, Va., found not justified. Lynchburg is intermediate to Charlottesville and under the increase proposed a higher rate would apply to former than to latter, in violation of long-and-short-

haul clause of section 4 of the act. Tanning Extract from Lynchburg, 122 I. C. C. 647.

(hh) Rates prescribed to the Mississippi Valley were not designed as standards of reasonable maximum rates but primarily to bring rates in harmony with fourth section, and at same time return to carriers substantially the same revenue as earned under adjustment theretofore maintained. Florence Chamber of Commerce v. I. C., 122 I. C. C. 653, 657, 658.

(ii) Third-class rates on printing and wrapping paper l. c. l., from Niagara Falls, N. Y., to Lynchburg, Va., found not unreasonable or unduly prejudicial as compared with lower l. c. l. rates to Lone Jack, South Boston, and Danville, Va., to which Lynchburg is intermediate. Carriers showed that rates from Niagara Falls to Lynchburg compare favorably with corresponding rates between other points in that territory. Moreover fourth-section departures were protected by appropriate applications, and were subsequently removed by increasing the rates from the farther distant points to level of rates to Lynchburg. Lynchburg Traffic Bureau v. N. Y. C., 123 I. C. C. 15.

(jj) A violation of long-and-short-haul clause of fourth section of the act does not in itself establish unreasonableness of the higher rate to the less distant point, or form a basis for an award of reparation. See 50 I. C. C. 719. Nor does subsequent reduction of a rate in and of itself justify such an award. Kohlman Bros. & Sugarman v. L. & N., 123 I. C. C. 56, 58.

(kk) Rate on cotton from Corinth, Miss., to Monroe, Ga., found not unreasonable or otherwise unlawful as compared with those from Memphis, to which Corinth is intermediate; from New Orleans to Monroe and other Georgia destinations; or with rate subsequently established. Rates from Memphis and New Orleans were depressed and in 89 I. C. C. 47, it was found that rates on cotton to the Southeast departed in many instances from provisions of fourth section. Moreover, comparisons of rates assailed with those from other origins to Monroe for similar distances indicate that rate from Corinth was properly adjusted with relation to general level of rates from other Mississippi points intermediate to the various river crossings, and from points in interior Tennessee and Alabama. Manget Bros. Co. v. G. R. R., 123 I. C. C. 532.

(ll) Proposed readjustment of rates on grain and products from Birmingham, Chattanooga, and Knoxville, to South Atlantic ports and certain intermediate points, to same basis as existing commodity rates from Nashville, found not justified. Grain rates from Birmingham are generally lower than from Nashville and carriers may not undermine this adjustment solely for purpose of removing fourth-section departures created by an attempt to establish interstate class rates in accordance with distance scale of class rates prescribed by Georgia Railroad Commission between Georgia points, for to do so would unduly prejudice Birmingham and its milling interests, especially in view of its shorter haul to the ports. Grain and Products to Southeast, 123 I. C. C. 569.

(mm) Complainant alleged that rates on 183 cars of phosphate rock from Brewster, Bradleys and Achan, Fla., to Gulfport, Miss., between March 22 and Dec. 18, 1920 were unreasonable, unduly prejudicial and in violation of the fourth section. Phosphate rock is not susceptible to damage by fire and water, and loads heavily. The two used routes are the A. C. L. to River Junction, Fla., and L. & N. beyond, 726 miles, and A. C. L. to Montgomery, Ala., L. & N. beyond, 796 miles. Over each of these routes Gulfport is directly intermediate to New Orleans, 66 miles beyond. Rate charged $4.50 prior to August 26, 1920 and $5.625 on and after that date. On Dec. 30, 1920 the rate became $5.65. The rates to New Orleans were $4.10 and $5.125, and became $5.13 Dec. 30, 1920. Since these shipments moved the rate to Gulfport has been reduced to the New Orleans basis. The record shows that phosphate rock from Brewster to Gulfport usually moves by rail to Port Tampa and steamship beyond, and that it was due solely to lack of available ships, owing to the exigencies of the World War, that these shipments were not so moved. It would therefore appear that the water competition during the period of complainants shipments was more potential than actual at both Gulfport and New Orleans. The Commission is not justified in condemning the rates to Gulfport by comparison alone with the rates to New Orleans, even if there was at the time no more actual water competition at New Orleans than at Gulfport. HELD, rates

attacked not unreasonable, complaints dismissed. Gulfport Fertilizer Co. v. A. C. L. R. R., 126 I. C. C. 463.

(nn) Proposed increased rates on sugar from New Orleans and other Louisiana refining points to points in southern and eastern Texas, and from Sugarland and Texas City, Tex., to Shreveport and other Louisiana points and to Vicksburg, Miss., and other Mississippi River crossings south thereof, found not justified in so far as they exceed those that will result from application of maximum reasonable rates prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203. Proposed rates are higher than those under distance scale prescribed in 77 I. C. C. 473 for application in same general territory and proposed rate to Houston without appropriate change in present ocean-and-rail rate from New York via New Orleans to Houston, would create an adjustment contrary to long-and-short-haul provisions of section 4 of the act. Moreover, rates constructed on bases prescribed in Consolidated Southwestern Cases will provide reasonable, nonprejudicial, and nondiscriminatory rates between points involved. Sugar Between Louisiana and Texas Points, 128 I. C. C. 309.

(oo) Mere showing of rates to a point higher than to more distant points over same route does not prove that the former are unreasonable. Memphis Freight Bureau v. A. G. S., 128 I. C. C. 445, 462.

(pp) Rate on brass and copper ingots from East Liberty, Pa., a point within Pittsburgh switching limits, to Detroit, Mich., found unreasonable to extent it exceeded lower rate contemporaneously in effect from Baltimore applicable through East Liberty, and published in accordance with rule 77 of Tariff Circular 18-A. Although that rule as amended April 7, 1924, provides that it is not authority for reducing commodity rates from or to intermediate points on less than statutory notice, and was therefore not applicable in instant case, the rate from East Liberty being a commodity rate, there were departures from the fourth section, and establishment of lower rate from Baltimore subject to the rule is tantamount to an admission by carriers that higher rate from East Liberty was unreasonable. See 66 I. C. C. 611. Federated Metals Corp. v. P. R. R. 128 I. C. C. 757.

(qq) Apart from statutory enactment it is prima facie unreasonable to charge more for a shorter than for a longer haul. To charge more for a through haul than the aggregate of the intermediate rates is likewise prima facie unreasonable. In each case conditions may exist which, if shown, would establish the reasonableness of the rate in question. Lynchburg Traffic Bureau v. E. R. R., 129 I. C. C. 230, 232.

(rr) Complainant alleged sixth class rate charged on two shipments of cast iron pipe fittings, from Jacksonville, Fla., to Brooklyn, N. Y., were and are unreasonable and in violation of section four. Both shipments moved A. C. L. to Norfolk, Va., thence Pennsylvania, 1,036 miles, charged sixth class rate of 75.5c. HELD, the evidence does not warrant a revision of the class rate at this time, or the establishment of a commodity rate, and the rate assailed not unreasonable, complaint dismissed. Morse Dry Dock & Repair Co. v. A. C. L. R. R., 132 I. C. C. 351.

(ss) Complainant alleged that rates on curbing, in carloads, from Granite Hill and Lithonia, Ga., to St. Petersburg, Fla., were and are unreasonable and illegal. It was stipulated at the hearing that complainants claim with respect to the rate of $3.52 collected on the shipments from Granite Hill to St. Petersburgh should be governed by the then pending case of Georgia Quincy Granite Co. v. A. C. L. R. R., 120 I. C. C. 408. The Commission there found that the applicable rate of $3.52 for 482 miles was not unreasonable, unjustly discriminatory or unduly prejudicial and dismissed the complaint. Applicable rate of $3.74 from Lithonia to St. Petersburg, 607 miles via Jacksonville, was constructed by deducting 50c from each of the factors to and from Jacksonville, and adding 50c to the sum of the remainders, under the combination rule. Effective March 1, 1924 this rate was reduced to $3.62 and April 23, 1924 it was restored to $3.74. HELD, rates assailed applicable and not unreasonable, complaints dismissed. Macken v. A. C. L. R. R., 132 I. C. C. 589.

(tt) In view of the purposes of rule 77, it must follow that rates voluntarily established thereunder from the more distant points are prima facie reasonable, and if reasonable from or to the more distant points they must

be deemed reasonable from or to the intermediate points. Smith & Sons Co. v. B. & M. R. R., 132 I. C. C. 596, 598.

(uu) Complainant alleged commodity rates charged on numerous carloads of soft coal screenings from West Frankfort and Christopher, Ill. to Clarinda and Missouri Valley, Ia., and from El Dorado and Harrisburg, Ill., to the latter point, from Feb. 28, 1925 to July 17, 1925 were unreasonable. At the time of movement charged on basis of $3.52 and $3.78 to Clarinda and Missouri Valley. Rates of $3.41 and $3.68 were published effective July 19, 1925. HELD, rates attacked not unreasonable. Complaint dismissed. Nebraska Gas & Electric Co. v. C. B. & Q. R. R., 132 I. C. C. 669.

(vv) Third-class l. c. l. rate, under official classification, on unprinted fruit wrappers from Hamburg, N. J., to Lynchburg, Va., found not unreasonable or otherwise unlawful as compared with fifth-class rate, under southern classification, contemporaneously in effect to Montview and Lone Jack, Va., more distant points. The general level of rates applicable in official territory is extended south of Lynchburg to and including more distant points, and reasons in justification therefor are fully discussed in 31 I. C. C. 145; 107 I. C. C. 249. Rates assailed are same as those from Cincinnati, Ohio, to Lynchburg, and compare favorably with those from Hamburg to various other Virginia districts for comparable distances, and presumption of unreasonableness of rate to Lynchburg is rebutted. See 269 U. S. 1. Moreover, since no movement of fruit wrappers has been shown from Hamburg to Montview, no finding of discrimination or undue prejudice can be made. See 34 I. C. C. 634. Lynchburg Chamber of Commerce v. E. R. R., 129 I. C. C. 230.

IV. COMPETITION AS JUSTIFICATION.

See Competition.

§10. Water Competition.

See Water Competition.

(a) Complainant attacked fourth class rate of 34 cents charged on nine cars of burlap bags, in bales, shipped from Jersey City, N. J., to Baltimore, Md., as unreasonable. Shipments moved Central of New Jersey to Bound Brook, N. J., Reading to Park Jct., and B. & O., beyond, 192 miles. When the shipments moved a commodity rate of 25 cents applied from Jersey City to Norfolk, Va. This was a water competitive rate and while it applied on shipments moving through Baltimore, it was protected by fourth section application. Effective Jan. 10, 1925, a commodity rate of 25 cents was published to Baltimore. HELD, rate attacked unreasonable to extent it exceeded 25 cents, reparation awarded. Riegel Sack Co. v. C. R. R. of N. J., 120 I. C. C. 405.

V. PROCEDURE.

See Procedure Before Commission.

§11. Complaints and Orders.

(a) Complaint alleged unreasonableness and undue prejudice. At the hearing complainant sought to amend complaint with allegation of violation of long-and-short-haul provision of section 4. Upon objection by carriers that such amendment unduly broadens issues presented, HELD: Allegation embraced in amendment is one manner of alleging prejudice and evidence thereon submitted is admissible in support of the issue raised under section 3 of the act. Anderson-Taylor Co. v. A., T. & S. F., 115 I. C. C. 313, 314.

(b) It is desirable in the interest of economy of time and expense wherever practicable to hear and dispose of fourth-section applications in connection with formal complaints or investigations involving same rate under other sections of the act. This policy has been followed for a number of years and so far as practicable will be adhered to in future. The commission shall expect carriers to be ready to proceed in support of their fourth-section applications at time they are set for hearing. Mississippi R. R. Comm. v. A. & V., 120 I. C. C. 569, 573.

§12. Evidence.

(1). Burden of Proof.

See Evidence I.

(a) Burden of proof is upon carriers to prove reasonableness of rates which depart from the long-and-short-haul provision of fourth section. Hope Engineering & Supply Co. v. M. P., 118 I. C. C. 598, 599.

(b) The unlawful rate situation shown by the present record raises a presumption of unreasonableness, and the mere assertion of defendants that the rate to

the farther distant point was depressed by reason of competition and that the rate attacked was subsequently reduced for the same reason, unsupported by evidence as to the reasonableness of either of these rates, is insufficient to overcome that presumption. Atlas Portland Cement Co. v. N. & B. R. R., 120 I. C. C. 583, 584.

(c) A violation of the long and short haul clause of the fourth section does not in itself establish the unreasonableness of the higher rate to the less distant point, or form a basis for an award of reparation. Kohlman Bros. & Sugarman v. L. & N. R. R., 123 I. C. C. 56, 58.

(d) In view of the purposes of Rule 77 it must follow that rates voluntarily established thereunder from the more distant points are prima facie reasonable, and if reasonable from or to the more distant points they must be deemed reasonable from or to the intermediate points. Failure on the part of a shipper to request prior to a shipment a rate to which he is entitled under the rule, through ignorance or otherwise, is not a reason for saying he is not entitled to reparation or that the burden is on him to show that the higher rate paid was unreasonable per se, or that he has suffered damage from undue prejudice. Fosse & Company v. Erie R. R., 128 I. C. C. 553, 554.

(e) Complainant alleged that the carload rates on wool and mohair, in the grease, in sacks, from trans-Mississippi territory to Boston, Mass., are unreasonable, unduly prejudicial and in violation of the fourth section. The wool shipping points here concerned are located in eastern Nebraska and Kansas, and western Missouri, on or within about 100 miles west of that portion of the Missouri river extending from Omaha, Neb., on the north to Kansas City, Mo., on the south. Previous decision Wool Rates Investigation, 1923, 91 I. C. C. 235. The rates in compliance with that decision became effective Dec. 27, 1924. Subsequent to that date it appeared that by the use of the proportional rates from east bank Mississippi river crossings to Boston in combination with proportional fourth class rates from certain points in Kansas, Nebraska, and Missouri to such Mississippi river crossings, rates on wool in sacks, lower than the joint through rates established could be made. Effective July 15, 1925 the proportional rates were restricted so as not to apply on traffic originating at points on and west of the east bank of the Missouri river. This had the effect of eliminating the fourth section departures. It is the view of the Commission that the evidence in this case is sufficient to rebut the presumption of unreasonableness of the joint rates assailed which were attacked by reason of the fact that they exceeded, between Dec. 27, 1924 and July 15, 1925, the aggregate of intermediates. HELD, rates assailed not unreasonable, unduly prejudicial or unjustly discriminatory, complaint dismissed. Boston Wool Trade Asso. v. A. T. & S. F. Ry., 129 I. C. C. 681.

§12. (2) Circumstances of Probative Force.

See Evidence II.

(a) Existence of lower rate from a more distant point on same line or route is not in and of itself sufficient to justify a finding of unreasonableness and an award of reparation by reason of exaction of higher rates from an intermediate point or points. See 50 I. C. C. 719. Ohio Farm Bureau Federation v. N. Y. C., 104 I. C. C. 490, 492.

(b) No set rule or formula can be laid down as to character of evidence that should be submitted to show that rates are reasonably compensatory within requirement of section 4 of the act, any more than to establish that rates are not unreasonable. Many of the means commonly employed to prove that rates are reasonable, such as comparisons of ton-mile and car-mile revenue, comparisons with other rates, evidence relative to traffic density, volume of movement, cost of service, etc., are also adapted to show that depressed rates are reasonably compensatory. Statistics showing average revenue and average operating expense per ton-mile and per car-mile, average haul, and average car loading are also helpful. Class and Commodity Rates between Western Points, 104 I. C. C., 578, 584.

(c) A showing that there was a lower rate in effect to a more distant point on the same route does not in itself establish unreasonableness of higher rate to an intermediate point. Booth & Flinn v. P. R. R., 113 I. C. C. 613, 614.

(d) An order of commission authorizing temporary rate adjustments involving fourth-section departures pending de-

termination of fourth-section applications, is not sufficient justification for new and increased fourth-section departures in an extensive revision of rates which should be justified for permanent establishment. Taylor Produce Co. v. A. C. L., 115 I. C. C. 633, 636.

(e) The commission's decision in Rates to, from, and between Points South of Ohio River, 64 I. C. C. 306, is not to be considered as fixing maximum reasonable rates; that adjustment having been approved merely for purpose of removing fourth-section departures and maintaining as nearly as possible existing revenues of carriers. Capital Grain & Feed Co. v. I. C., 118 I. C. C. 732, 745; Nashville Traffic Bureau v. L. & N., 118 I. C. C. 748, 751.

(f) In view of the purposes of rule 77, it must follow that rates voluntarily established thereunder from the more distant points are prima facie reasonable, and if reasonable from or to the more distant points they must be deemed reasonable from or to the intermediate points. Lawrence Construction Co. v. L. & N. R. R., 120 I. C. C. 316, 318.

(g) Where a fourth-section application has been considered by commission and denied in a previously decided case and effective date of the denial order has been fixed, it would be an idle gesture for a division of the commission to reiterate the denial or to fix a different effective date. Liberty Cooperative & Lbr. Co. v. L. & N., 120 I. C. C. 379, 381.

(h) The publication of a rule subject to rule 77 of tariff circular 18-A, is tantamount to an admission by defendants that the higher rate from the intermediate point from which no specific commodity rate is published is unreasonable. Miles Medical Co. v. B. & O. R. R., 126 I. C. C. 159, 160.

(i) In view of the purpose of rule 77, it must follow that rates voluntarily established thereunder from the more distant points are prima facie reasonable and if reasonable from or to the more distant points they must be deemed reasonable from or to the intermediate points. New York Insulated Wire Co. v. N. Y., N. H. & H. R. R., 128 I. C. C. 698, 699.

(j) The court recognized the presumption that through rates in excess of the aggregate of intermediate rates are prima facie unreasonable, but indicated that such presumption might be rebutted, as it said that "conditions may exist which, if shown, would establish the reasonableness of the rate in question." Hudson Mule Co. v. L. & N. R. R., 129 I. C. C. 365, 368.

(k) While evidence of a departure from the long and short haul provision of section four of the act does not establish unreasonableness of the intermediate rate, it is evidence tending in that direction, particularly when accompanied by a subsequent establishment of a lower rate at an intermediate point. Southwestern Sheet Glass Co. v. St. L. S. F. Ry., 132 I. C. C. 577, 578.

§13. Reparation.

See Reparation.

(a) Contention that subsequent reduction of a rate does not show prior rate to be unreasonable, and that a violation of long-and-short-haul clause of the fourth section without a showing of injury is insufficient to support an award of reparation, sustained. Murphy v. A. C. L., 107 I. C. C. 651, 652.

(b) An award of damages will not be made merely because a rate contravened long-and-short-haul provision of fourth section of the act. Portland Seed Co., 264 U. S. 403. Northeast Miss. Traffic Bureau v. M. & O., 109 I. C. C. 246, 248.

(c) Fact that carriers have charged a higher rate to an intermediate than to a more distant point is not sufficient to entitle a shipper to an award of reparation for a violation of section 4 of the act. Dees v. M. & O., 112 I. C. C. 397, 398.

(d) The commission has, with but few exceptions, awarded reparation in cases where higher rates have been charged from intermediate than from more distant points, where rule 77 of Tariff Circular 18-A has been referred to. Lautz Marble Corp. v. E. R. R., 115 I. C. C. 543, 545.

(e) Failure on part of carriers to comply with fourth-section orders of commission should not be allowed to defeat the right of a shipper to reparation. Colgate & Co. v. P. R. R., 118 I. C. C. 243, 247.

(f) In the absence of proof of damage to the shipper the fact that carriers have charged or received rates which violate the long and short haul rule of the fourth section of the act is not of

itself a sufficient basis for an award of reparation; and also on the fact that the departures from the long and short haul rule were protected at the date of movement. Root Glass Co. v. E. I. & T. H. Ry., 123 I. C. C. 68, 70.

(g) A violation of long-and-short-haul clause of fourth section of the act does not in itself establish unreasonableness of the higher rate to the less distant point, or form a basis for an award of reparation. See 50 I. C. C. 719. Nor does subsequent reduction of a rate in and of itself justify such an award. Kohlman Bros. & Sugarman v. L. & N., 123 I. C. C. 56, 58.

(h) Commission has consistently held that publication of rates subject to Rule 77 of Tariff Circular 18-A constitutes a substantial compliance with long-and-short-haul provisions of fourth section of the act, and affords an adequate basis for an award of reparation on shipments moving to intermediate points at charges higher than those to farther distant points. Burlington Shippers Asso., v. C., B. & Q. 126 I. C. C. 179, 181.

(i) Fifth-class rate on bar steel from Youngstown, Ohio to Lynchburg, Va., governed by official classification, found not unreasonable. While a lower sixth-class rate under southern classification was contemporaneously maintained to Lone Jack, Va., a more distant point, that point is a flag stop at which there is no post office of business of any consequence and rate thereto was subsequently increased to level of the Lynchburg rate, thus removing fourth-section departure. Complainant found not to have been damaged by reason of any undue preference or fourth-section violation that may have existed. Lynchburg Chamber of Commerce v. B. & O., 128 I. C. C. 557.

(j) Motion for further hearing on ground of two alleged errors in original report, 63 I. C. C. 6, viz, statement that departures from aggregate-of-intermediates provision were protected by applications, heard but not determined, and statement that rates found unreasonable appeared not unduly high, denied. Question of whether departures were protected by applications was res adjudicata not because of commission's decision but that of Supreme Court in 269 U. S. 1. Even if question had not been res adjudicata and commission concluded that departures were not protected, complainants would not be entitled to reparation for violation of fourth section, since there was no proof that they suffered any special damage, and no such proof was submitted at further hearing. Hudson Mule Co. v. L. & N., 129 I. C. C. 365, 368, 369.

(k) The commission has frequently found that rule 77 of Tariff Circular 18-A is a substantial compliance with the fourth section of the act and awarded reparation on shipments moving from or to intermediate points under rates that were higher than those from or to more distant points where rates from or to latter points were subject to rule 77 and the less distant points were intermediate over route traffic moved. Woodward Auto Co. v. C., M. & St. P., 129 I. C. C. 613, 615.

§16. Tariffs and Construction.

See Tariffs II.

(a) Carrier incorporated in its tariff a note for purpose of applying the intermediate rule under which rates to farther distant points would apply at intermediate stations. HELD: As commission's tariff rules require publication of rates in clear and specific manner, and include a rule extending rates to intermediate points which is not subject to misinterpretation, tariff should be amended by incorporating therein a rule substantially in accord with that appearing in Tariff Circular 18-A. See also 66 I. C. C. 472, 473. Summit Grain Co. v. C., M. & St. P., 109 I. C. C. 763, 764.

(b) In original report, 88 I. C. C. 543, commission granted fourth-section relief under the distance scale there prescribed on brick and related articles between points in southern territory by authorizing indirect lines to meet direct lines' rates at competitive points and maintain higher rates at intermediate points. Upon a showing by carriers that publication of all routes over which rates apply would impose upon them tremendous labor and expense and result in such an increase in the bulk of tariffs as to render them cumbersome and difficult to use, original finding modified and in the interest of tariff simplicity carriers authorized, in lieu of publication of specific routing between points of origin and destination, to publish a general rule showing rates and maximum distances for routing. Brick and Clay Products in the South, 113 I. C. C. 380.

(c) Complainant attacked combination rates charged on a car of wooden chairs shipped Dec. 24, 1919, from Winston Salem, N. C., and less carload of blankets forwarded Jan. 19, 1920, from Nashua, N. H., to Casper, Wyo., as illegal and unreasonable. Complaint is barred as to unreasonableness because filed more than one year after federal control. Shipments were unrouted. Charged $2.625 on chairs and $4.055 on the blankets composed of factors to and beyond the Mississippi river. There were contemporaneously in effect joint commodity rates of $2.19 on chairs, carloads, from Winston Salem and $2.84 on blankets less carloads from Nashua to San Francisco. The tariff publishing the rates to San Francisco was not restricted as to routing so as to preclude movement via Casper over the Burlington, which hauled the shipments from Paducah, Ky., or Kansas City, Mo., to destination, and lines of other participating carriers beyond. HELD, applicable rate was $2.19 on chairs and $2.84 on the blankets, reparation awarded. Chamberlin Furniture Co. v. Director General, 115 I. C. C. 575.

(d) Complainant attacked combination rates charged on 21 cars of sawed stone and marble shipped between Oct. 22, 1921 and March 12, 1925 form Carthage and Phoenix, Mo., to Indianapolis, Brightwood and St. Mary-of-the-Woods, Ind., as unreasonable and inapplicable. Complainant withdrew the question of unreasonableness leaving for determination only the question of tariff interpretation. Phoenix is a local point on the Frisco between Kansas City and Springfield, Mo. Carthage is on a branch line of the Frisco also served by the M. P. All destinations are served by the Big Four. Charged combinations on St. Louis or East St. Louis. A fair and reasonable conclusion to be drawn from a consideration of the item in its entirety, and of the tariff as a whole, is that the phrase "and intermediate points" as used refers only to points between Chicago and Milwaukee. Stone is rated class E and rates are 30.5c and 33c to Chicago and intermediate points. HELD, applicable rates 30.5c from Phoenix and 33c from Carthage, shipments overcharged, reparation awarded. Gates Marble & Tile Co. v. C. P. & St. L. Ry., 120 I. C. C. 275.

(e) Rates on gasoline, kerosene, naphtha, lubricating oil, and fuel oil, in tank-car loads, from points in Oklahoma to Lawrenceville, Paris, and Farrington, Ill., found inapplicable to certain destinations in Ohio and Indiana on the B. & O., C., C., C. & St. L., and Pennsylvania. Tariff publishing rates attacked contained an intermediate rule, exception thereto providing that rates named therein were not applicable over any routes east of the Illinois-Indiana State Line except on the N. Y. C. R. R, via junctions Danville, Ill., north thereof, or west of Schneider, Ind. However, shipments under consideration did not move via that line. Pure Oil Co. v. A., T. & S. F., 123 I. C. C. 624.

(f) Commission has consistently held that publication of rates subject to Rule 77 of Tariff Circular 18-A constitutes a substantial compliance with long-and-short-haul provision of fourth section of the act, and affords an adequate basis for an award of reparation on shipments moving to intermediate points at charges higher than those to farther distant points. Burlington Shippers Asso. v. C., B. & Q., 126 I. C. C. 179, 181.

(g) Upon contention that rates on grain and products from points in Colorado and Utah to California destinations are in violation of the long-and-short-haul clause of fourth section of the act in that they exceed rates from Denver and other points in the transcontinental west-bound Group J to same destination, HELD: Rates from the more distant points were published subject to provisions of Rule 77 of Tariff Circular 18-A and such provision constitutes a substantial compliance with requirements of the fourth section. See 51 I. C. C. 185. Ogden Grain Exchange v. A. E. R. R. Co., 126 I. C. C. 255, 268.

(h) A through rate for long haul, greater than aggregate of intermediate rates in force and lawful on June 18, 1910, when section 4 of Act to Regulate Commerce was amended by Act June 18, 1910, § 8 (Comp. St. § 8566), by addition thereto of clause declaring it unlawful for carrier to charge any greater compensation as a through rate than the aggregate of the intermediates, remains lawful, provided an application to suspend operation of the section was made and either allowed or remained undetermined. Patterson v. Louisville & N. R. Co., 46 Sup. Ct. 8.

(i) Notation on a tariff provision in accordance with rule 77 is a substantial compliance with requirements of the fourth section. New York Insulated

Wire Co. v. N. Y., N. H. & H. 128 I. C. C. 698, 699.

LOSS AND DAMAGE

I. THE CARMACK AND CUMMINS AMENDMENTS.

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IV. CRIMINAL LIABILITY.

§19. In general.

CROSS REFERENCES

See Bills of Lading; Cars and Car Supply VI; Claims; Consignor and Consignee; Discrimination §15; Export Rates and Facilities §4; Express Companies; Evidence §52; Interstate Commerce Commission VI; Inspection; Passenger Fares and Facilities §10: Perishable Freight; Reconsignment §10; Refrigeration §9; Released Rates; Reparation §3; Telephone and Telegraph Companies IV; Water Carriers VI.

I. THE CARMACK AND CUMMINS AMENDMENTS.

See Act to Regulate Commerce; Carmack Amendment; Cummins Amendment.

§2. Construction in General.

See Act to Regulate Commerce II; Released Rates.

(a) In view of history of legislation, Transportation Act 1920, §§ 400, 437 (U. S. Comp. St. Ann. Supp. 1923 §§ 8563, 8604a), amending Interstate Commerce Act, HELD not to broaden provision of Interstate Commerce Act, § 20, par. II, governing liability of common carriers to shippers for loss or damage to shipments, so as to make it applicable to shipments from United States to nonadjacent foreign countries. A. L. Wolff & Co. v. Missouri, K. & T. Ry. Co. of Texas, (Tex., 1926) 283 S. W. 250.

(b) In view of U. S. Comp. St. §§ 8604a, 8604aa the rights and liabilities in connection with an interstate shipment depend on the applicable congressional acts, bills of lading or receipts issued for shipment, and common-law principles accepted or enforced by federal courts. Ex parte American Ry. Express Co., Farmers' & Merchants' Bank of Samson v. American Ry. Express Co. (Ala., 1925) 105 So. 197.

§4. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) Car was damaged in transit and

lading transferred into another car resulting in degrading commodity and its rejection by consignee. To avoid action for loss and damage carrier purchased shipment but collected demurrage charges which accrued at destination. Shipper contended that such charges were inapplicable under a tariff which provided for their cancellation where there is error of any railroad preventing proper tender of delivery, and that if they were applicable they were unjust and part of the damage suffered by it. HELD: Degradation of a commodity under aforesaid circumstances was not an error but an incident of loss and damage over which commission has no jurisdiction. The demurrage charges were legally assessed and not unreasonable. Atwater & Co. v. M. C. R. R., 107 I. C. C. 491.

(b) Upon complaint alleging that failure of carrier to promptly notify consignor of refusal of a shipment at destination occasioned loss and damage in an amount equal to agreed selling price of shipment to his undue prejudice in violation of section 3 of the act, HELD: Effort to recover value of such shipment is properly a loss and damage claim not covered by provisions of section 3. Such claims and measure of damages applicable thereto are cognizable only in the courts. See 91 I. C. C. 611 and other cited cases. Rinelli v. N. Y., N. H. & H. R. R., 112 I. C. C. 567.

(c) Loss and damage claims and measure of damages applicable thereto are cognizable only in the courts. See 91 I. C. C. 611, and other cited cases. Rinelli v. N. Y., N. H. & H. R. R., 112 I. C. C. 567, 568.

(de) A claim for loss and damage growing out of alleged delay, not shown to have resulted from misrouting, is a matter over which the Commission has no jurisdiction. Kingman Co. v. A. C. L. R. R., 118 I. C. C. 31, 32.

(f) The commission has no jurisdiction over claims of shippers that they paid for a greater quantity of a commodity than they received. Hipskind v. W. Ry., 115 I. C. C. 417.

(g) Complainant sought reparation on a shipment of cucumbers, alleging that failure of carrier to properly divert en route resulted in their deterioration and consequent decline in value; also that manner in which its diversion order was handled was prima facie evidence of negligence and indicated a lack of system in handling of such orders. HELD, the commission may award reparation only for violations of the act, not here shown, and claims for loss and damage and measure of damages applicable thereto are cognizable only in courts. Here the carrier fulfilled its obligation by forwarding shipment over lowest rated route known to it, no routing instructions having been furnished by shipper when diversion was requested. Johnston v. C. & W. C., 118 I. C. C. 19.

(h) Claims for loss and damage to shipments in transit, and measure of damages applicable thereto, are cognizable only in the courts, and it is well settled that commission may award reparation only for damages arising out of violations of interstate commerce act. Johnston v. C. & W. C., 118 I. C. C. 19, 20.

(i) Complainant sought reparation for loss and damage sustained due to deterioration, by reason of alleged failure of carrier to observe routing instructions on shipment of sweet peppers from Fort Myers, Fla., to Boston, reconsigned to Chicago. HELD, evidence establishes that shipment moved in accordance with original instructions given, that no additional routing instructions were furnished at time reconsignment was requested, and that it was handled through to ultimate destination in an expeditious manner. No misrouting can therefore be attributed to carriers, and claim for loss and damage not resulting therefrom presents a matter over which commission has no jurisdiction. Kingman v. A. C. L., 118 I. C. C. 31.

(j) The commission has no jurisdiction over claims for loss and damage growing out of delay in transit not due to a violation of the act. Kingman v. A. C. L., 118 I. C. C. 31, 32.

(k) Complainant seeks reparation for damages alleged to have been sustained by it through the misrouting of a car of strawberries. Shipment was delivered to the A. C. L. at Plant City, Fla., March 19, 1925 consigned to complainant at Jersey City, N. J., routed A. C. L.-R. F. & P.-P. R. R. It moved over A. C. L. and R. F. & P. to Potomac Yard, Va., thence Pennsylvania to Manhattan Produce Yards, N. J., where it arrived at 11 a. m. March 23, 1925. Manhattan Produce yards, which are intermediate to and under the jurisdiction of the agent of the perishable freight delivery

yards of the Pennsylvania at Jersey City, are about 4 miles farther distant from the Jersey City ferry of the Pennsylvania than the yards at Jersey City. No explanation or justification is offered by defendants for their failure to tender delivery at Jersey City, the billed destination. The car was unloaded at Manhattan Produce yards transferred by dray to complainants place of business in New York by its drayman. Charged same to Manhattan Produce Yards as to Jersey City. No claim is made for reparation for the difference between the expense of drayage actually incurred and the expense which would have incurred if delivery had been made at Jersey City. The contention that the shipment was misrouted can not be sustained. There was no deviation from the route named in the bill of lading in the movement of the shipment from point of origin to Manhattan Produce Yards, where delivery was accepted by complainant's agent and where the rail transportation terminated. The situation here is one involving defendant's failure to complete a transportation service which they contracted to perform, and on which no violation of the act can be predicated. Complainant's remedy, if any, lies in the courts. HELD, complaint dismissed. Long v. A. C. L. R. R., 120 I. C. C. 601.

(l) Upon complaint seeking damages due to alleged misbilling of two carloads of watermelons shipped from Sumter and Norman Park, Ga., to Potomac Yard, Va., thus delaying delivery and causing deterioration and decrease in value of the commodity, HELD, Shipments not having been shown to have been misbilled by carriers but forwarded in the usually manner without unnecessary delay and damages sought not being shown to result from any violation of the act, complainant's redress, if any, lies in the courts. See 100 I. C. C. 259. Mossburg v. A., B. & A. 126 I. C. C. 447.

(m) Complainant alleged that failure of delivering carrier to notify it of the refusal at destination of two cars of cabbage shipped August 4 and 5, 1924, from Crockett and Grubb, Va., to Jersey City, N. J., was in violation of section 6, and resulted in damage in the sum of $501, which was the invoice price of the shipments. Points of origin are on the N. & W. Shipments moved under refrigeration, as routed, over the N. & W. to Hagerstown, Md., and Pennsylvania beyond. They were consigned to complainant at Jersey City with instructions to notify Wishnatski & Nathel, New York. Shipments arrived Jersey City on August 7 and 8, 1924. Notice of arrival was mailed to Wishnatski & Nathel by the agent of the Pennsylvania at Jersey City on the date of arrival of each shipment. After telephoning that firm on several successive days in an effort to secure disposition order, the agent at Jersey City telegraphed complainant on August 13 that the shipments were on hand unclaimed and requested advice as to disposition. Subsequent correspondence between this agent and complainant resulted in complainant advising, on August 22, 1924, that the shipments should be disposed of to the best advantage. They were then sold at auction by the Pennsylvania for less than the accrued charges. Complainant contends that defendants should have notified it within 48 hours after arrival of each shipment that they were on hand unclaimed. The effort of the complainant to recover the value of the shipment is properly a loss and damage claim and not covered by the tariff. HELD, complaint dismissed. Independent Produce Shippers v. N. & W. Ry., 129 I. C. C. 747.

(n) Complainant alleged that the Stoppage at Cameron Yard, Va., of three cars of cucumbers shipped from Blackville, S. C., to Potomac Yard, Va., and diverted to New York, N. Y., resulted in delay in arrival of the shipments and deterioration of the commodity, and was unreasonable, unduly prejudicial and in violation of section 15 of the act. Shipments were tendered to the Southern at Blackville billed to Potomac Yard. It was complainants custom to bill cars in that manner and to have his representative file diversion orders with the carriers before arrival of the shipments at Potomac Yard. Complainant contends that the cars were stopped at Cameron Yard, a point intermediate to Potomac Yard, and that the interruption caused delay and consequent deterioration of the cucumbers. His testimony fails to sustain the allegations in the complaint. HELD, complaint dismissed. Pape & Co. v. Southern Ry., 132 I. C. C. 1.

(o) Complainant alleged that collection of freight charges Sept., 16, 1925 from Boston, Mass., to Miami, Fla., but not delivered to complainants, and defendants refusal to refund such charges promptly, violated sections 1, 2, 3, and

10 of the act, the bills of lading act, and the Elkins act. Potatoes were shipped on order notify bill of lading from Boston, Sept. 16, 1925, and moved by Ocean Steamship Company, S. A. L. and F. E. C. to Miami. On Sept. 26, 1925 the car which is alleged to have contained the shipment was placed on the private track of complainants by the F. E. C. without surrender of the bill of lading to the carrier. This car, on the night of Sept. 28, 1925, was removed from complainants track and sent to Hialeah, Fla., where it was loaded with livestock. The evidence is in conflict as to whether or not the car contained the potatoes at the time of removal from complainants track. Complainants state that they did not receive the shipment, and that the charges, which were not collected until Dec. 12, 1925, were paid through error. Defendants urge that complainants received the shipment but failed to make proper entry of its receipt in their record. Whether the basis of the complaint be the recovery of damages incident to the loss of goods or the recovery of money paid through mistake, it is a matter properly within the jurisdiction of the courts. HELD, complaint dismissed. Drake Produce Co., v. F. E. C. Ry., 132 I. C. C. 729.

(p) As the Commission has no jurisdiction of loss claims it is not empowered to prescribe rules and regulations for the payment of such claims. Drake Produce Co. v. F. E. C. Ry., 132 I. C. C. 729, 730.

(q) Any claim for damages due to delay is beyond the jurisdiction of the Commission. Scott Graff Lumber Co. v. C. St. P. M. & O. Ry., 132 I. C. C. 745, 746.

§5. Jurisdiction of Courts.

See Courts §11.

(a) Loss and damage claims, and the measure of damages applicable thereto, are cognizable only in the courts. Rinelli v. N. Y. N. H. & H. R. R., 112 I. C. C. 567, 568.

(b) Loss and damage claims and the measure of damages applicable thereto, are cognizable only in the courts. Independent Produce Shippers v. N. & W. Ry., 129 I. C. C. 747, 748.

II. CARRIER'S LIABILITY.

§5½. In General.

(a) Complainant alleged defendant's failure to give notice as required by the tariff rules of the refusal at destination of a car of onions shipped from Buffalo, N. Y., to Providence, R. I., resulted in undue prejudice in violation of section 3. Shipment originated in California and on June 7, 1924 was reconsigned from Buffalo by complainant to his order, notify F. E. Winsor at Providence. It arrived at destination on June 11 and on June 19 defendant's agent notified complainant by wire that the shipment had been refused by the person for whom it was intended. The effort of complainant to recover the value of the shipment is properly a loss and damage claim and not covered by section 3. HELD: complaint dismissed. Rinelli v. N. Y., N. H. & H. R. R., 112 I. C. C. 567.

(b) It is well established that where an article which has been shipped for sale is lost or damaged in transit by the carrier, the carrier is liable not only for the cost of production, but also for the reasonable and normal profits of the sale of which the vendor has been deprived. Burrough Adding Machine Co. v. M. C. R. R., 120 I. C. C. 19, 20.

(c) Factory cost of an article without addition of any profit can not properly be compared with sales prices of other commodities in which a profit is included, regardless of basis upon which claims are filed against carriers for goods lost or damaged in transit, for it is well established that where an article which has been shipped for sale is lost or damaged in transit by carrier, the latter is liable not only for cost of production but also for reasonable and normal profits of the sale of which the vendor has been deprived. See 13 Fed. (2d) 459. Burroughs Adding Machine Co. v. M. C., 120 I. C. C. 19, 20.

(d) Name of grower was erroneously substituted by carrier in waybill in lieu of consignee's name, thereby necessitating the obtaining of telegraphic advice from originating carrier as to correct consignee before placement of car could be made Upon contention that failure to follow shipping instructions violated section 15 of the act and resulted in delay and deterioration in transit, FOUND: Due to congestion at destination it is not shown that any undue delay was caused by holding car while awaiting proper shipping instructions. Evidence is therefore insufficient to show that failure to follow instructions was

proximate cause of alleged damage. Pearce v. G. N., 129 I. C. C. 253.

§7. Intermediate Carrier.

(a) Under the common law, a connecting common carrier, engaged in interstate commerce, is liable for damages to goods occurring on its line as a result of its negligence, but, in such a case, the burden of proof is upon the plaintiff to show that the damage occurred while the shipment was being transported over such carrier's line. Hansen-Peterson Co., v. Atchison, T. & S. F. Ry. Co., (Minn. 1925) 205 N. W. 605.

§10. Common Law Liability in General.

(2). Limitation of Liability.

See Limitation of Liability.

(a) Under section 20 (11) of the act, all limitations of liability for actual loss, damage, or injury in respect to livestock are prohibited. Bedding Charges for Livestock, 128 I. C. C. 167, 176.

§10¼. Damages in General.

See Reparation §10½.

(a) In action against carrier for damage to hay which ultimate consignee refused to accept, demurrage and return freight charges held not allowable, in absence of showing why hay should not have been disposed of at destination. Texas & P. Ry. Co. v. Beck—Mattox Brokerage Co., (Tex., 1925) 279 S. W. 289.

MAILS

(a) Upon reargument, findings in 95 I. C. C. 204,, 208; 95 I. C. C. 493, 513; and 96 I. C. C. 43, 46, that rates of pay for transportation of United States mails, previously prescribed by commission in original Mail Pay case, 56 I. C. C. 1, and in effect during periods from dates applications for re-examinations were filed to dates of commission's orders establishing increased rates for future, were not fair and reasonable, affirmed. Order entered establishing such increased rates as of dates of filing of applications by carriers. Railway Mail Pay, 104 I. C. C. 521.

(b) The circumstances surrounding transportation of mail are unusual and not in all respects analogous to those surrounding determination by commission of just and reasonable rates for freight or express service. Railway Mail Pay, 104 I. C. C. 521, 523.

(c) From a consideration of the statute as a whole it appears that Congress conferred upon commission full power to determine just and reasonable rates for transportation of mail. The provision for reexamination gives commission power to reexamine, upon application by carriers, mail pay rates previously prescribed and if it is of opinion that rates for services covered by applications were not fair and reasonable as of and following dates the applications were filed, so as to find and to fix and determine rates that were fair and reasonable. Railway Mail Pay, 104 I. C. C. 521, 524.

(d) The charge per mile of car space for transportation of United States mail is a charge against the Government, and forms no measure for charges against shippers. Newspaper in Baggage Cars, 104 I. C. C. 527, 536.

(e) The Government is a carrier of mails and its dealings with the railroads are contractual matters between carriers. Charges for mail space partake more of nature of absorptions upon the Government's part out of revenue derived by it from the public for mail service. Furthermore, charge per mile of car space for mail is a charge against the Government, and forms no measure for charges against shippers. The railway-mail-service pay act provides that this distinction shall be considered by commission in fixing fair and reasonable rates and compensation for transportation of mail by common carriers. The railway-mail service bears one characteristic which is unlike any other form of transportation in that there is but one consignee and one consignor for all mail shipments, in so far as carrier is concerned. Newspapers in Baggage Cars, 104 I. C. C. 527, 536.

(f) In an endeavor to show unreasonableness in rates on newspapers in baggage cars publishers offered extensive studies of revenue from newspapers with revenue derived from the Government for carriage of closed-pouch mail. FOUND: Incidents of this traffic in handling and in methods of computing charges are so different from any other traffic that any comparison with rates for railway-mail service are valueless. Newspapers in Baggage Cars, 104 I. C. C. 527, 536, 537.

(g) Present rate of mail pay received by the Canadian National Ry. over lines in New England, and the Tonopah & Goldfield R. R. in Nevada, originally prescribed by commission in 56 I. C. C. 1,

upon reexamination found not fair and reasonable on and after dated applications for reexamination were filed by respective carriers. Fair and reasonable rates established as of such dates. Railway Mail Pay, 109 I. C. C. 13.

(h) No rates of mail pay may be established by commission as of a period prior to filing by a carrier of an application for reexamination of rates in effect. Railway Mail Pay, 109 I. C. C. 13, 14, 16.

(i) Upon reexamination of facts and circumstances surrounding transportation of mail matter upon line of the Alabama, Tennessee & Northern R. R. Corp., FOUND: That rates of mail pay on and after date of filing of carrier's application were unfair and unreasonable. Fair and reasonable rates on basis of those established in 95 I. C. C. 493 prescribed for services rendered and former report, 56 I. C. C. 1, modified. Railway Mail Pay, 112 I. C. C. 151.

(j) The commission does not regard a cost ascertainment arrived at by a study of space operated during a 30-day period as necessarily conclusive in determining fair and reasonable rates of pay for transporting mails of the United States. Such a cost study does, however, afford a reasonably reliable approximation of the cost upon a car-foot-mile or space basis to which considerable weight should be given. Railway Mail Pay, 112 I. C. C. 151, 153.

(k) This case was reopened, on allegation of carriers that their present rates of pay established by the order in 56 I. C. C. 1 are not fair and reasonable and that higher rates should be established. The applicant carriers are located in the intermountain and Pacific coast territory, the same general territory in which are located 23 short line railroads whose rates of pay were increased in 95 I. C. C. 493. Of the applicant roads two are in Oregon, eight in California, three in Nevada, two in Utah, two in Arizona, one in New Mexico, two in Colorado and one in Montana. Four are narrow gauge roads. HELD, rates of pay now in effect not fair or unreasonable and increased rates prescribed. Railway Mail Pay, 120 I. C. C. 439.

(l) Upon further hearing and a consideration of conditions affecting operations, rates of pay for transportation of mail on certain short lines in intermountain and Pacific coast territory, found unfair and unreasonable and fair and reasonable rates prescribed. Former report, 56 I. C. C. 1. Railway Mail Pay, 120 I. C. C. 439.

(m) Winston Salem Southbound Ry., by application filed April 25, 1925 requests that it be classified as a separately operated railroad not exceeding 100 miles in length and not less than 50 miles in length, as from Dec. 23, 1919, within the meaning of the order in 56 I. C. C. 1; and that, if not so classified, increased rates of mail pay be established for the service rendered by it with special reference to the period beginning on the said date. Winston Salem is 90 miles in length, extending from Winston Salem, N. C., where it connects with the N. & W., to Wadesboro, N. C., at which point it connects with the A. C. L. Road was built with money furnished by the N. & W. and A. C. L. It is clear that the Winston Salem has not a separate administrative organization and hence does not come within the classification of roads for which higher rates of mail pay were established. Its request, therefore, for classification as a separately operated railroad within the meaning of the order is denied. HELD, rates of pay now accorded not fair and reasonable and that increases are justified on and after April 25, 1925 the date it filed its application for reexamination. HELD, further for future will be for each mile of service, by a 15 foot apartment car, 18.75 cents, by a 3 foot closed pouch space 5.625 cents. Railway Mail Pay, 123 I. C. C. 33.

(n) It is proper to repeat that if the carriers make no special effort to utilize space made available by reduced authorizations, the advantages of economizing on space requirements will be lost, the complementary space will be augmented and the ultimate mail space figures will be unduly increased. Railway Mail Pay, 123 I. C .C. 33, 40.

(o) Upon a consideration of space ratios and apportionment of expenses and investment based thereon, rates of pay for transportation of mail matter by the Winston-Salem Southbound Ry., found unfair and unreasonable. Following 104 I. C. C. 521, fair and reasonable rates established, retroactive to date of filing of application for reexamination of its mail-pay rates. Railway-Mail Pay, 123 I. C. C. 33.

(p) Winston-Salem Southbound Ry.,

found not to be a separately operated railroad within meaning of commission's order entered in 56 I. C. C. 1. In defining the term "separately operated" the commission did not limit it to physical operation but it was given a broader meaning to include administration of the affairs of the carrier as well. The Winston-Salem has not a separate administrative organization and hence does not come within the classification of roads for which higher rates of mail pay were established. Railway-Mail Pay, 123 I. C. C. 33.

(q) In ascertaining relative costs of service upon a car-foot-mile basis between mail and other services rendered in passenger-train equipment mixed or combination cars can not be treated as composed of separate unrelated parts. Unused space necessarily operated in such cars should be apportioned to the respective services in proportion to amount of space used by each service in such cars. See 85 I. C. C. 157, 173. Railway-Mail Pay, 123 I. C. C. 33, 37.

(r) Space ratios and apportionment of expenses and investment based on them, while not necessarily conclusive, furnish a substantial basis for conclusions as to reasonableness of rates of pay for transporting mails of the United States. Railway-Mail Pay, 123 I. C. C. 33, 40.

MEXICO

See Adjacent Foreign Country; Through Routes and Joint Rates.

(a) Shipment of whiskey was consigned to shippers' order c/o collector of customs, El Paso, notify a drug store at Juarez, Mex. Upon arrival at El Paso consignee was notified but shipment remained unclaimed and was subsequently stored. Thereafter, by command of United States court, customs collector was notified to detain shipment in his custody. This was done until dismissal of court proceeding when, upon payment of accrued storage charges, shipment was returned to point of origin. Tariff rule provided that no storage charges should be collected for detention due to delay by U. S. customs and that free time lost through such delay shall be allowed. FOUND: While detention here was for purposes other than those incident to customs inspection and clearance for export, terms of the rule, which clearly comprehend any delay by U. S. customs are sufficiently broad to preclude assessment of storage charges under circumstances. Refund of overcharges directed. Sunny Brook Distillery Co. v. A., T. &. S. F., 107 I. C. C. 77.

(b) The Commission is without power or authority to require the establishment of international joint rates for the future, and it can not prescribe for the future through routes and joint rates which would include two rails lines located wholly in Mexico. Spanish River Pulp & Paper Mills v. A. & W. Ry., 120 I. C. C. 251, 253.

MINIMUM CLASS RATE SCALE

See Class Rates §1 (l).

MINIMUM RATES

See Classification §15, §16; Interstate Commerce Commission 10¼.

(a) Each case involving fixing of minimum rates must be judged upon its own particular facts since a rate which may appear unduly low under one set of circumstances may not so appear under another set of circumstances. Ex-Lake Iron Ore from Chicago to Granite City, 120 I. C. C. 75, 83.

(b) Rates charged on cotton fabrics, l. c. l., from North Carolina points to Galveston, Tex., found inapplicable. Governing tariff stated that it was subject to western classification "Except as otherwise provided," and provided for alternative application of rates in section 2 or 3, whichever were lower. No minimum weight was provided in connection with lower rates under section 3, and rates were there applicable to actual weight of shipments. However, since rule 15 of the western classification provided for assessment of separate loading and unloading charges on l. c. l. freight moving at c. l. rates, and rule 13 required a minimum charge of $15 per car, these rules must be considered in determining rates applicable to various shipments. Refund of overcharges directed on basis indicated. Southern Traffic & Audit Asso. v. I.-G. N., 129 I. C. C. 723.

MINIMUMS

I. APPLICATION OF MINIMUM.

§1. In general.
§2. Effect of not publishing.

§3. Furnishing car of minimum ordered.
§4. Larger car furnished than ordered.
§5. Minimum higher than car capacity.
§6. Mixed carloads.
§7. Reasonableness and discrimination.
§8. Two cars for one ordered.
§9. Follow-lot and multiple shipments.
§10. Tank car.
§11. Reparation.
§12. Fourth section violations.
§13. Proposed advances.

CROSS REFERENCES

See Adjacent Foreign Country; Cars and Car Supply; Classification §4, §15, §21; Evidence §65; Express Companies §37½; Weights and Weighing.

I. APPLICATION OF MINIMUM.

§1. In General.

(a) No doubt the power to fix minimum rates can in some situations be employed to advantage and with propriety, for the purpose of averting rate wars, which are always injurious to the carriers and ordinarily, in the long run, to the public interest, or for the purpose of preventing an unjust burden upon other forms of traffic or upon other parts of the country. The Commission believes, however, that the power should be sparingly exercised and only in cases where it clearly appears that its exercise is necessary in order that substantial public injury may be avoided. Ex Lake iron ore from Chicago to Granite City, 120 I. C. C. 75, 83.

(b) The establishment of a minimum weight, irrespective of the size of equipment, is a holding out by the carrier, upon which shipper is entitled to rely, that it will furnish a car capable of holding that minimum. Folly Town Co. v. Erie R. R., 120 I. C. C. 157, 158.

(cd) Practice of assessing charges at published minimum where cars furnished by carriers for their own convenience can not reasonably be loaded to the minimum, is unreasonable. Under "carriers' convenience" rules, carriers are not obliged to furnish cars of size ordered, but are required to protect actual weights where smaller cars furnished are fully loaded. See 74 I. C. C. 747. Folly Town Co. v. E. R. R., 120 I. C. C. 157, 158.

(e) In the case of light and bulky articles the minimum weight represents the maximum loading of this article is commonly fixed with a view to directly affecting the car earnings. Where the minimum carload weight is made with the object of returning not more than a fair earning per car in connection with the carload rate, the rule seems not to apply. The rule meant is that it is unreasonable to assess charges on the basis of a minimum weight to which cars are not capable of being loaded. Rome Metallic Bedstead Co. v. B. & A. R. R., 122 I. C. C. 733, 735.

(f) The carload minimum is a part of the rate. Three Forks Portland Cement Co. v. C. B. & Q. R. R., 129 I. C. C. 107, 116.

(g) One factor of combination rate on a carload of sawmill machinery, shipped in a car 41 feet 4 inches in length, was published as "$61 per car as per classification." Governing classification rated sawmill machinery sixth class, minimum 24,000 pounds, subject to rule 34, and exceptions thereto provided class N rating on "Machines and machinery, c. l., * * * minimum weight 20,000 pounds," for cars 36 feet 6 inches, or under, larger cars being subject to rule 34. Upon contention by carriers that under rule 34 the rate of $61 should be regarded as applicable to a unit of 23,400, the minimum weight for a car of size used, and that excess above such weight should be computed proportionately, HELD: The portion of rule 34 on which carriers rely fits ordinary situation where rates are applicable to specified units of weight, but has no reasonable application where, as here, the rate stated as a flat charge per carload, and charges collected were inapplicable. Reparation awarded. West Florida Lbr. Co. v. G., F. & A., 129 I. C. C. 62.

(h) One factor of combination rate on a mixed carload of sawmill machinery and a power boiler, shipped in a car 41 feet 4 inches in length, was published as "$61 per car as per classification." Governing classification rated both sawmill machinery and power boilers sixth class, minimum 24,000 pounds, subject to rule 34. Exceptions to classification, however, provided class N rating to apply on 'Boilers, steam power * * * in straight or mixed carloads, with machinery and machines,

per car 20,000, excess in proportion," for cars 36 feet 6 inches, or under, larger cars being subject to rule 34. Complainant's contention that the rate of $61 is applicable to 20,000-pounds units of freight with any fractional excess in proportion, sustained, and charges collected found inapplicable to extent they exceeded charges computed by multiplying the rate per car by the weight of shipment and dividing by 20,000 units. Reparation awarded. West Florida Lbr. Co. v. G., F. & A., 129 I. C. C. 62.

(i) Rates charged on cotton fabrics, l c. l. from North Carolina points to Galveston, Tex., found inapplicable. Governing tariff stated that it was subject to western classification, "Except as otherwise provided," and provided for alternative application of rates in section 2 or 3, whichever were lower. No minimum weight was provided in connection with lower rates under section 3, and rates were there applicable to actual weight of shipments. However, since rule 15 of the western classification provided for assessment of separate loading and unloading charges on l. c. l. freight moving at c. l. rates, and rule 13 required a minimum charge of $15 per car, these rules must be considered in determining rates applicable to various shipments. Refund of overcharges directed on basis indicated. Southern Traffic & Audit Asso. v. I.-G. N., 129 I. C. C. 723.

§3. Furnishing Car of Minimum Ordered.

See Cars and Car Supply §8.

(a) Charges applicable on one electric traveling crane, resulting from carrier furnishing three cars each shorter than two cars ordered, found unreasonable to extent they exceeded those which would have accrued based on size of equipment ordered. A tariff rule in effect provided that where a car of specified length is ordered and a longer car is furnished minimum weight for the latter shall be that fixed for car ordered. It was unreasonable for carriers to fail to provide a like rule to cover situations similar to that here presented. Reparation awarded. Metal & Thermit Corp. v. P. R. R., 115 I. C. C. 396.

§5. Minimum Higher Than Car Capacity.

(a) If carriers desire to protect themselves from unduly low charges per car they should do so by regulating rate and not by prescribing arbitrary minimum weights which can be loaded only in cars of unusual size. It is unreasonable to base charges on a minimum to which cars are incapable of being loaded. Swift & Co. v. G. T. Ry., 109 I. C. C. 45.

(b) The commission looks with disfavor upon minimum weights than can not ordinarily be loaded. Carriers should not regulate their revenues by prescribing arbitrary minima that can be loaded only in cars of unusual size, but by adjusting their rates with relation to a reasonable minimum. See also 25 I. C. C. 434. Gille Mfg. Co. v. K. C. S., 109 I. C. C., 408, 412.

(c) A minimum beyond the limit of safe loading will not be prescribed by commission. Protection against unduly low charges per car should be accomplished by regulating the rate and not by arbitrary minimum. A minimum does not contemplate a weight closely approaching the maximum loading possible; due regard should be given to commercial requirements. Heinz Co. v. Director General, 112 I. C. C. 206, 209.

(d) If carriers desire to protect themselves from unremunerative charges per car they should do so by regulating the rate and not by prescribing minimum weights which manifestly can not be loaded. Hauber Cooperage Co. v. A. T. & S. F. Ry., 115 I. C. C. 533, 534.

(e) Complainant attacked rates charged on 56 cars of alfalfa meal shipped from Idaho to Memphis, Tenn., between Oct. 1, 1923, and Jan. 5, 1924, as unreasonable and unduly prejudicial, and also alleged that some of the cars because of lack of capacity could not be loaded to the minimum weight prescribed in the tariffs and that thereby the shipper was subjected to unjust charges. Rates charged were milling in transit rates. Under these rates complainant received hay from the several points of origin and milled it at Pocatello or Gooding. Prior to June 10, 1923, the rates from these origin points to Memphis ranged from 64c to 69.5c, minimum 40,000 pounds. Rates from Firth, Pocatello and Gooding are taken as representative. From Firth and Pocatello the rates to Memphis were 64c; from Gooding 69.5c. The rates contemporaneously in effect from Idaho points to St. Louis were from 59 to 64c, minimum 40,000

pounds. On June 10 and Aug. 30, 1923, the rates from points of origin in Idaho to St. Louis were reduced to rates ranging from 54 to 57c. Rates from the same points to Memphis were not reduced until Jan. 5, 1924, when rates ranging from 62 to 64c were established. On Nov. 28, 1923, the minimum weight on alfalfa meal from Idaho points to St. Louis was reduced from 40,000 pounds to the same basis as that in effect from Colorado; and on Jan. 5, 1924, the minimum weight from Idaho to Memphis was likewise reduced to the Colorado basis. No reason was given by the carriers for the maintenance of a higher minimum weight from Idaho than from Colorado. It is shown that Colorado produces much more alfalfa hay than Idaho, that it is considered the more important of the two states in this respect, and that the selling price of Idaho alfalfa meal is based upon the Colorado price. HELD, rates attacked not unreasonable but minimum weight of 40,000 pounds was unreasonable to extent it exceeded 30,000 for cars 36 ft. 6 inches or under in length and 36,000 pounds for cars over 36 ft. 6 in. in length, reparation awarded. Bailey v. O. S. L. R. R., 115 I. C. C. 745.

(fg) Practice of assessing charges at published minimum where cars furnished by carriers for their own convenience can not reasonably be loaded to the minimum, is unreasonable. Under "carriers' convenience" rules, carriers are not obliged to furnish cars of size ordered, but are required to protect actual weights where smaller cars furnished are fully loaded. See 74 I. C. C. 747. Folly Town Co. v. E. R. R., 120 I. C. C. 157, 158.

(h) The familiar line of cases supporting the rule that it is unreasonable to assess charges on basis of a minimum weight to which cars are not capable of being loaded is subject to important exceptions. See 26 I. C. C. 197; 14 I. C. C. 597; 55 I. C. C. 495; and 91 I. C. C. 598. Rome Metallic Bedstead Co. v. B. & A., 122 I. C. C. 733, 736.

(i) Where there is a uniform minimum for all lengths, the carrier is not required to furnish a car of any specific length, but it is under the duty of establishing a minimum weight that can be reasonably loaded into a car of the size furnished. Barker Bros. v. A., T. & S. F. Ry., 132 I. C. C. 753, 756.

§7. Reasonableness and Discrimination.

See Cars and Car Supply §8; Discrimination; Distance Rates §3; Emergency Rates; Reasonableness of Rates; Reduced Rates §5 (h).

(a) Powder, common black: Proposed increase in minimum carload weight on, from Fairchance, Pa., to Carney's Point, N. J., and points taking same rates, to general basis of that applying to all points within trunk-line territory on connecting lines, found justified. Powder from Fairchance, Pa., 104 I. C. C. 45.

(b) Boxes, battery: Proposed increased c. l. minimum weight on asphalt composition battery boxes in official, southern and western classifications from 20,000 to 24,000 pounds found justified, it being shown that such boxes readily load to the higher minimum. Classification of Asphalt Battery Boxes, 104 I. C. C. 190.

(c) Proposal to decrease minimum weight on salt from eastern shipping points, except Groups B and C rate points, to destinations in Arizona, California, Mexico, Nevada, New Mexico, Oregon and Utah, found justified. Proposed decrease will remove handicap of shippers west of Chicago in marketing their salt in competition with salt produced in Utah and California, and result in less damage to shipments in transit. Minimum Weight on Salt, 104 I. C. C. 631.

(d) Drums, iron or steel, returned empty: Minimum weight on returned empty used iron or steel drums found not unreasonable as compared with minimum weights on same commodity new. The old drums are frequently painted, accumulate more or less dirt and rust in use, and not infrequently contain a small quantity of original contents, features tending to produce variations in weight justifying higher minimum weights on the old drums than on the new. Western Paper Makers' Chem. Co. v. A. A. R. R., 109 I. C. C. 133, 138.

(e) Minimum weight applied on shipments of myrobalans, wattle bark, and divi-divi pods under classification provision "extract, bark and tanning, viz: * * * myrobalans, wattle bark, and divi-divi pods * * * minimum 60,000 pounds," found to have been illegally assessed, and minima of 36,000, 30,000, and 24,000 pounds applicable under governing classification on myrobalans, divi-divi pods, and wattle bark, respectively, found ap-

plicable. Tariff item carrying higher minimum applied only on bark or tanning extracts, and not on unmanufactured extract materials. Applicable minima not shown unreasonable. Adjustment of undercharges and overcharges directed. International Shoe Co. v. B. & O., 109 I. C. C. 641.

(f) Respondents proposed to increase from 12,000 to 16,000 pounds, subject to rule 34 (graduated minima rule), the carload minimum applicable in connection with commodity rates on theater chairs, set up or knocked down, in straight or mixed carload, or in mixed carloads with such articles of furniture as are provided with carload, less carload, or any quantity ratings in western classification under the caption, furniture, and furniture parts (except school desks and seats, iron or steel and wood combined, and household refrigerators) from points in certain defined territories to Texas gulf ports and El Paso, Tex., and points taking same rates, and to Oklahoma and also on like traffic originating at or destined to points in Louisiana, northeastern Texas and Texarkana, Tex. The proposed minimum is the same as the minimum on theater chairs, in straight carloads in the consolidated classification. The evidence indicates that 16,000 pounds of theater chairs can readily be loaded in a standard 36-foot car. No justification is shown for the maintenance of any different provisions governing the shipment of theater chairs in mixed carloads with other furniture from the origin points here considered. HELD: Proposal relates to traffic from these defined territories to Texas gulf ports and El Paso, and points taking the same rates, and to Oklahoma, and to like traffic originating at or destined to points in Louisiana, northeastern Texas and Texarkana. Respondent's evidence is directed to the proposal in its entirety. HELD: Proposed schedules justified except as noted. Theater chairs to southwestern destinations, 113 I. C. C. 313.

(g) In fixing reasonable minima some leeway of course must be accorded for commercial conditions, and the minima should not require the loading of all cars to their utmost capacity. Theater chairs to southwestern destinations, 113 I. C. C. 313, 317.
enough to insure the proper utilization of equipment. Theater chairs to southwestern destinations, 113 I. C. C. 313, 317.

(i) Rates and minimum weights on strawberries and cabbage from points in Kentucky and Tennessee to Kalamazoo, Battle Creek, Sturgis, and Coldwater, Mich., found unreasonable and unduly prejudicial to extent they exceeded those contemporaneously applicable to Grand Rapids, Mich. Reparation awarded. Lewis Co. v. L. & N., 112 I. C. C. 213.

(j) Proposed increased minimum weight on theater chairs, s. u. or k. d., in mixed carloads, from points in certain defined territories to Texas Gulf ports and El Paso, Tex., and points taking same rates, and to Oklahoma, and on traffic originating at or destined to points in Louisiana, northeastern Texas, and Texarkana, Ark.-Tex., found justified. The increased minimum is designed primarily to satisfy complaints made by manufacturers in c. f. a. territory who alleged undue preference of competitors at Illinois, Wisconsin, and North Carolina producing points. Minimum proposed can readily be loaded in standard equipment, is same as that on straight carloads in consolidated classification, and evidence falls short of establishing the extent, if any, to which the minimum should, for commercial reasons, be less than that proposed. Theater Chairs to Southwestern Destinations, 113 I. C. C. 313.

(k) In fixing reasonable minima some leeway should be accorded for commercial conditions, and minima should not require loading of all cars to their utmost capacity. On the other hand, carload minima should be high enough to insure a proper utilization of equipment. Theater Chairs to Southwestern Destinations, 113 I. C. C. 313, 317.

(l) Upon contention that theater chairs compete with portable chairs, church furniture, and wood benches, and that an increase in the minimum on theater chairs would be unduly prejudicial to the latter, HELD: This competition, which is limited, should not be controlling in determination of a reasonable minimum on theater chairs. Theater Chairs to Southwestern Destinations, 113 I. C. C. 313, 318.

(m) Complainant attacked charges on slack wood barrels from Kansas City, Kans., to Enid and Tulsa, Okla., as unjust, unreasonable, unduly prejudicial and in excess of charges under the ag-

gregate of intermediate rates by reason of differing carload minima. Commodity rates on wooden barrels from Kansas City to Oklahoma are grouped as to points of origin and destination. The Kansas City group includes St. Joseph and Springfield, Mo., and Salina, Hutchinson and Kiowa, Kans. Enid is in Oklahoma Group 5 and Tulsa in Group 3. Present rate of 45.5c from the Kansas City group to both destinations applies not only on slack but also on tight wooden barrels, tierces, and kegs, and is subject to minimum of 20,000 pounds. In other cases the Commission has prescribed lower minima for slack than for tight barrels. Complainant's shipments were loaded to the full space or visible capacities of the cars furnished and the actual weights were in every instance considerably less than the tariff minimum, although 50 foot cars were customarily furnished and used. The record is convincing that no transportation or traffic conditions warrant lower rates from the competing Texas manufacturing points than from the Kansas group and the carriers should readjust the rates from the Texas points to the level of those from the Kansas group so as to remove the alleged undue prejudice in rates. HELD, carload minimum attacked unjust on slack wooden barrels to extent it exceeded 10,000 pounds for 36 ft. cars, subject to rule 34. Rates not unreasonable, but charges unreasonable to extent they would exceed those found reasonable under the ordered minima, reparation awarded. Hauber Cooperage Co. v. A. T. & S. F. Ry., 115 I. C. C. 533.

(n) Complainant attacked carload minimum of 22,000 pounds on sheep and lambs, in double deck cars 36 ft. 7 inches and under in length, from South Omaha, Neb., East Buffalo, N. Y., Chicago, Ill., East Louisville, Ky., to Jersey City and Harsimus, N. J., and New York as unreasonable and illegal. The issue was confined to the reasonableness of the minimum from East Louisville and Cincinnati and east of the Mississippi river. Charged proportional commodity rates of 26c to East Clinton, Ill., and 63c beyond minimum 22,000 pounds subject to the combination rule. Effective August 19, 1922, the carload minimum on sheep and lambs from East Clinton to Jersey City was reduced to 18,000 pounds for double deck cars. HELD, minimum attacked unreasonable to extent it exceeded 18,000 pounds from East Clinton to Jersey City, reparation awarded. Seaboard Livestock Bureau v. A. C. & Y. Ry., 115 I. C. C. 687.

(o) The carload minima on sheep and lambs in western territory are so directly and intimately related to the rates per 100 pounds that the propriety of the minima can not be determined without considering the measure of the rates. Seaboard Livestock Bureau v. A. C. & Y. R. R., 115 I. C. C. 687, 690.

(p) Respondents proposed to increase the minimum carload weight on shipments of common brick originating on the Pennsylvania and moving from and to points in central territory. Present tariffs provide that the minimum carload weight on common brick is the "marked capacity of car ordered, but not less than 60,000 pounds." It is proposed to cancel this provision and substitute therefore "marked capacity of car," which is construed by the parties as having reference to the car furnished and loaded. Brick producers always load as heavily as possible, frequently to 10 per cent above the marked capacity. The record in this proceeding clearly shows that there is a real trade need for a minimum on common brick of 60,000 pounds, the capacity of equipment owned by the Pennsylvania. Under the proposed schedules some shippers could be favored over others in being furnished cars of desired capacities. Respondents admitted that no consideration had been given to the reasonableness of a minimum of 100,000 pounds on common brick the practical effect of their proposal on most shipments. HELD, schedules not justified. Minimum weight on brick, 118 I. C. C. 136.

(q) Carload minimum of 20,000 pounds on shipments of slack wooden barrels loaded to full visible capacity, found unreasonable to extent it exceeded 10,000 pounds for 36-foot cars, subject to graduated minima for longer cars. Reasonable minima prescribed and reparation awarded. See also 45 I. C. C. 468; 49 I. C. C. 588. Hauber Cooperage Co. v. A., T. & S. F., 115 I. C. C. 533.

(r) Carload minimum of 36,000 pound on potatoes, in barrels, found not unreasonable as compared with lower mimimum of 30,000 pounds applicable on potatoes in bags or in bulk. The lower minimum in bags or bulk was established as a protective measure for the early

variety of potatoes which have tender skins and are subject to damage if heavily loaded, while the same potatoes may be loaded in barrels to a higher degree without damage, the barrels acting as sufficient protection from abrasion. Moreover, shippers could have availed themselves of the lower minimum by shipping in bags or bulk. Nooney & Co. v. P. R. R., 115 I. C. C. 547.

(s) Minimum weight of 30,000 pounds applicable on old potatoes and applied on new potatoes found unreasonable to extent it exceeded a minimum of 24,000 pounds subsequently established. New potatoes are of an entirely different character from mature or storage potatoes and because of their more tender skin and higher water content would be more subject to abrasion and deterioration en route if loaded to higher minimum. Moreover carriers generally maintain the 24,000-pound minimum on new potatoes during shipping season of this commodity. Reparation awarded. Atmore Produce Co. v. M. S., B. & P., 115 I. C. C. 599.

(t) Minimum weight on meal, alfalfa from Idaho points to St. Louis, Mo., and Memphis, Tenn., found unreasonable to extent it exceeded minimum contemporaneously in effect from Colorado points. No reason was given for maintenance of higher minimum from Idaho than from Colorado points and fact that latter territory is considered the more important producer of alfalfa products strongly indicates that minimum applicable therefrom is the more accurate and reasonable basis for determining minimum loadings. Reparation awarded. Bailey v. O. S. L., 115 I. C. C. 745.

(u) Proposed increased minimum weight on common brick originating on Pennsylvania R. R., and moving from and to points in c. f. a. territory, by canceling present tariff rule providing that minimum is the "marked capacity of car ordered, but not less than 60,000 pounds," and substituting in lieu thereof "marked capacity of car," found not justified. There is real trade need for a minimum of 60,000 pounds, the capacity of equipment owned by Pennsylvania, and under proposed schedules some shippers could be favored over others in being furnished cars of desired capacities. Moreover, in 68 I. C. C. 213, 222, commission prescribed a 60,000-pound minimum on articles in uniform brick list, including face, fire, and paving brick, marked capacity of car to govern if less than minimum. Minimum Weight on Brick, 118 I. C. C. 136.

(v) On imported rattan furniture in bundles, moving from Seattle, Wash., to Cleveland, Ohio, no import c. l. rates were in effect and l. c. l. rates were assessed. Domestic rates provided minimum weights for cars of varying length but carriers elected to load this furniture in smaller cars. HELD, domestic rates were applicable, and action of carriers in loading in smaller cars should not debar shipper from benefit of minimum on cars which presumably would have held shipments. Reparation awarded and original report 104 I. C. C. 255 reversed. Bailey Co. v. I. C., 118 I. C. C. 455.

(w) The propriety of l. c. l. minimum weight on a particular commodity must be judged in the light of loading possibilities of entire line and not by the lightest types of that commodity. Public Service Cup Co., v. A. C. L., 118 I. C. C. 697, 701.

(x) Complainant attacked charges based on minimum weights assessed on seven shipments of candy from Chicago to New York during April and May 1924 as unreasonable. In official classification candy is rated third class, charged third class 94.5c, there being no provision for graduated minimum weights of cars of different sizes. Complainant ordered 50 ft. car, two 36 ft. cars furnished at carriers convenience. The prescribed minimum of 30,000 pounds could not reasonably have been loaded into the cars furnished by defendants. HELD, charges unreasonable to extent they exceeded 94.5c and the actual weight subject to minimum of 30,000 pounds, undercharges waived. Folly Town Co. v. Erie R. R., 120 I. C. C. 157.

(y) Complainant attacked class rates on fiberboard cans carloads from Jersey City, N. J., to Providence, R. I., as unreasonable. Damage claims are negligible. Carload rating is second class, and third class. Although the Commission has condemned the maintenance of minimum weights which ordinarily can not be loaded into cars of standard dimensions, the evidence here does not establish a case of that kind with respect to shipments of fiberboard cans in general. The charges which accrued on complainants shipments, based on the carload rates and minima can not be said to have been unreasonable. HELD, rates attacked not unreasonable, complaint

dismissed. Brownell & Field Co. v. N. Y. N. H. & H. R. R., 120 I. C. C. 229.

(z) The Commission has frequently approved efforts of the carriers designed to bring about a more adequate utilization of their equipment. Minimum weight on pipe and tubing, 120 I. C. C. 657, 661.

(aa) Where there is a uniform minimum for cars of all weights, carriers are not required to furnish a car of any specified length, but are under the duty of establishing a minimum weight that can reasonably be loaded into a car of size furnished. See 55 I. C. C. 17. Folly Town Co. v. E. R. R., 120 I. C. C. 157, 158.

(bb) Establishment of a minimum weight, irrespective of size of equipment, is a holding out by carrier, upon which shipper is entitled to rely, that it will furnish a car capable of holding that minimum. Folly Town Co. v. E. R. R., 120 I. C. C. 157, 158.

(cc) Sixth-class rates and minimum weights on spelter, from Trenton, N. J., to Atlanta, Birmingham, and Chattanooga, and points grouped therewith, found unreasonable as compared with lower commodity rates taking a higher minimum contemporaneously in effect from spelter-producing points in eastern Pennsylvania relatively close to Trenton to same destinations; also with those from and to various other points for comparable distances. Reasonable rates and minimum weights prescribed for future. Federated Metals Corp. v. P. R. R., 120 I. C. C. 181.

(dd) Complainant sought same ratings on l. c. l. shipments of fiberboard cans in paper bags as apply on l. c. l. shipments of same commodity in barrels, boxes, or crates, contending that although it might be proper to penalize shipments of cans in paper bags which do not fill the cars, such a penalty is unreasonable when cars are loaded to capacity, as possibility of damage is no greater than if the cans are boxed or crated. HELD: Although commission has condemned the maintenance of minimum weights which ordinarily can not be loaded into cars of standard dimensions, evidence here does not establish a case of that kind with respect to fiberboard cans in general. Charges accruing on complainant's shipments, based on c. l. rates and minima, can not, therefore, be said to have been unreasonable. Brownell & Field Co. v. N. Y., N. H. & H., 120 I. C. C. 229.

(ee) Minimum of 60,000 pounds on dried seed peas from Grace, Idaho, to Smithfield, Utah, found unreasonable to extent it exceeded a minimum of 40,000 pounds which is usual minimum for commodity rates on dried peas in this territory. Reasonable minimum prescribed for future, and reparation awarded. Morgan Canning Co. v. O. S. L., 120 I. C. C. 466.

(ff) Proposed increased rates and minimum weight on manure from New Orleans, La., to points in Alabama and Mississippi found justified. Proposed rates compare favorably with those on agricultural limestone and various other commodities for similar hauls; also with those in effect between other points on respondent's lines and with those prescribed by commission in other cases. Manure from New Orleans, 120 I. C. C. 525.

(gg) Proposed increased minimum weight on wrought-iron pipe and seamless iron and steel tubing between points in official classification territory from 36,000 to 46,000 pounds, designed to bring about a more adequate utilization of equipment, found not justified. The increased minimum would not furnish any substantial incentive toward increased loading but would result in materially increased charges to small shippers both for space not needed, and on mixed shipments of iron and steel articles now taking same rates and a 36,000-pound minimum. It would also operate to the advantage of the large shipper and to the disadvantage of the small shipper by diverting business from the latter to the former. Moreover, the minimum proposed constitutes a marked exception to the minimum prevailing on practically all articles of iron and steel classified fifth class and moving on class rates, for which no adequate reason is disclosed. Minimum Weight on Pipe and Tubing, 120 I. C. C. 657.

(hh) Complainant alleged that charges based on minimum weights applicable on carloads of metallic bedsteads and springs from Rome, N. Y., to interstate destinations in official territory and to Richmond, Va., are unreasonable and unduly prejudicial. Commodities here dealt with are rated rule 26 or 80% of third class, in the official classification, minimum 20,000 pounds for a 36 ft. car,

subject to rule 34. Rates on this basis are applicable from Rome to all destinations except New York, N. Y., to which point a commodity rate is published. The essence of the complaint is that the assessment of charges upon the basis of the existing minima compels complainant to pay freight charges upon a greater weight than can be loaded in the car. It is clear from the record that complainants shipments do not load to the minimum and that the weight of a car loaded to capacity will vary both with the width of the beds and the character of the packing. The real issue is whether or not the minimum of 20,000 pounds, applied in connection with the existing rule 26 rates results in charges which are unreasonable. The car mile earnings under the existing minimum yielded by this traffic are not excessive, especially when taken in connection with the value of the commodities transported. HELD, minimum weights and rates not unreasonable or otherwise unlawful, complaint dismissed. Rome Metallic Bedstead Co. v. B. & A. R. R., 122 I. C. C. 733.

(ii) In 91 I. C. C. 598, the commission stated that the carload minima were directly and intimately related to the rates per 100 pounds in connection with which they apply, and that the propriety of the minima could not be determined without considering the measure of the rates. Rome Metallic Bedstead Co. v. B. & A. R. R., 122 I. C. C. 733, 736.

(jj) Eastbound rates on flour, minimum 40,000 pounds from points in Colorado, Utah, Idaho, Montana, Oregon, and Wyoming found unreasonable and unduly prejudicial in favor of dealers located at points in Montana and Colorado, to extent they exceed corresponding rates on wheat. Ogden Grain Exchange v. A. & S., 122 I. C. C. 691, 718.

(kk) Minimum weight of 20,000 pounds, and charges based thereon, on metallic bedsteads and springs from Rome, N. Y., to points in official territory found not unreasonable or otherwise unlawful. Complainant contended that as its shipments can not load to 20,000 pounds it was unreasonable to assess charges on that basis. An experiment conducted by carriers, however, shows that cars can be loaded in excess of the minimum and actual shipments made by complainant's competitors of mixed carloads of iron and steel beds. and other articles frequently exceeded the minimum. Moreover, earnings under existing minimum are not excessive, considering value of commodity, this case being an exception to the rule that it is unreasonable to assess charges on basis of a minimum weight to which cars are not capable of being loaded. Rome Metallic Bedstead Co. v. B. & A., 122 I. C. C. 733.

(ll) Complainant alleged substantially that the minimum weights applicable on lumber and other forest products loaded in open cars and shipped from Oregon, Washington and British Columbia to destinations in the United States are unjust, unreasonable and unduly preferential. The prayer is for the establishment of the same minima for shipments in open cars as apply on shipments in closed cars. Open top cars generally are used for transporting rough lumber and timbers, which are considerably heavier than manufactured articles such as molding, columns, and doors, for which closed car equipment generally is used. Open top cars are also used where the articles are of such length as to make it impossible to use closed cars not equipped with end doors. The use of closed car equipment is restricted by its height. Open top car loading has no such restriction, and it has been seen that the latter type affords heavier loading. Manifestly, the wide difference in the two types and their loading possibilities warrant a difference in minima. Obvously, the particular commercial needs or requirements of the relatively few complainants, of whom but one appeared at the hearing, and of the lesser number of interveners, of whom none appeared, should not, in the absence of convincing evidence warrant a change, operate to disturb a minimum weight adjustment that for so long a period apparently has been satisfactory to all other shippers in this extensive origin territory. HELD, minima attacked not unreasonable or otherwise unlawful, complaint dismissed. Coast Fir & Cedar Products Co. v. C. P. Ry., 126 I. C. C. 151.

(mm) Minimum weights applicable on shipments of lumber and other forest products in open cars, from points in Washington, Oregon, and British Columbia, to various destinations in United States, FOUND not unreasonable or otherwise unlawful as compared with lower minimum on closed cars. Use of latter is restricted by their height whereas open cars are not so restricted and carriers show that they are generally loaded above specified minimum. Greater cost of some open types coupled with their loading possibilities warrant a different minima.

Moreover, in 68 I. C. C. 98, present minimum appeared satisfactory to both shippers and carriers and record here is not persuasive that any change in various transportation characteristics of forest products from this territory has since occurred to warrant a different conclusion. Coast Fir and Cedar Products Co. v. C. P. Ry. 126 I. C. C. 151.

(nn) The particular commercial needs or requirements of relatively few complainants and interveners, should not, in absence of convincing evidence warranting a change, operate to disturb a minimum-weight adjustment that for a long period has been satisfactory to all shippers in an extensive territory. Coast Fir & Cedar Products Co. v. C. P. Ry., 126 I. C. C. 151, 158.

(oo) Rate and minimum weights on poles from San Pedro to Thenard, Calif., being part of through movement from interstate points, of shipments reaching San Pedro by water, found not unreasonable or otherwise unlawful as compared with rates accorded competitors at Los Angeles, or with rates and minimum weights on lumber between points in the Los Angeles harbor district. While poles received by competitors are creosoted in the Pacific Northwest, thus reducing weight of poles transported, creosoting is permitted at Thenard and the creosoted poles move at the lower minimum sought on the green poles under the through rates from San Pedro to Los Angeles and other southern California destinations. Although none of shipments involved exceeded the applicable minima, evidence does not establish that cars covered by the complaint were loaded to full capacity or that the applicable minimum could not have been loaded. Moreover, in 87 I. C. C. 1, per-car rate on lumber equal to that here assessed was found reasonable. Baxter & Co. v. S. P. 128 I. C. C. 211.

(pp) Complainant attacked rate and minimum weight on carload shipments of poles and piling from San Pedro to Thenard, Calif., during and since 1922 as unreasonable, unjustly discriminatory and unduly prejudicial. These poles originate in the Pacific northwest and are shipped green in complainants steamers to San Pedro, thence over the S. P. to Thenard. There they are creosoted at complainants plant, losing from 18 to 20% in weight in the creosoting process. From San Pedro to Thenard 4.1 miles, rate 2.5c, subject to minima of 60,000, 84,000 and 108,000 pounds on single, double and triple loads, respectively. The evidence does not establish that the applicable minimum weight could not have been loaded on the cars furnished or that the cars covered by the complaint were loaded to full capacity. HELD, rate and minimum weights assailed not unreasonable, unjustly discriminatory or unduly prejudicial, complaint dismissed. Baxter & Co. v. S. P. Co., 128 I. C. C. 211.

(qq) Complainant alleged that certain practices of defendants incident to the loading of waste paper in cars at their rail terminals result in freight charges which were and are unreasonable, unjustly discriminatory and illegal. Waste paper is classified, carloads, sixth class, minimum 24,000 pounds subject to rule 34. In connection with the transportation of imported waste paper, which likewise is loaded by defendants at New York Harbor, defendants have in their tariffs made an exception to rule 34, under which they apply the carload rate to the actual weight of any consignment equal to or in excess of the minimum carload weight, regardless of the number or size of cars used. Complainant seeks the establishment of a similar exception on domestic waste paper. HELD, tariff rules assailed are, and for the future will be, unreasonable, and that there should be substituted for them a rule or rules providing in substance, that if baled paper in an amount equal to or exceeding the carload minimum weight applicable to a 36 ft. car is tendered to defendants for movement by and transfer from barges and loading by them into cars at their rail terminals, for transportation as a single shipment, freight charges will be collected on the basis of the carload rate and the actual weight, regardless of the size or number of cars used for the transportation. Reparation denied. Blank v. C. R. R. Co. of N. J., 132 I. C. C. 385.

(rr) Complainant alleged that the charges on one shipment of derricks, knocked down, forwarded on May 16, 1922 from Columbus, O., to Reno, Nev., and delivered on June 13, 1922 were illegal. Three cars were used. The bill of lading carried the notation "these three cars must travel together". The derricks were loaded by the shipper into available equipment at Columbus, no request having been made for cars of any

particular size or length. Charged class A rate of $2.70 based on weights of 42,600 pounds each for the first two cars, and 30,000 pounds for idler. Complainants contention, for the application of the less carload rate and actual weight, can not be sustained, because the derricks were loaded by the shipper and, although the cars were not fully loaded, were tendered as a carload shipment, thus clearly coming within the provisions of section 3 of rule 15. The second contention, for the rating and minimum applicable on secondhand contractors or graders outfits, can not be sustained in view of the specific rating on the articles comprising the shipment. HELD, the class A rate of $2.70 per 100 pounds at the actual weight loaded in the first car, and at weights of 42,600 and 30,000 pounds on the second and idler cars was applicable, and shipment undercharged, complaint dismissed. Nevada Dept. of Highways v. B. & O. R. R., 132 I. C. C. 727.

(ss) The carload minimum is a part of the rate. Therefore, where minima differ exhibits introduced for comparison should plainly indicate the fact. Three Forks Portland Cement Co. v. C., B. & Q., 129 I. C. C. 107, 116.

(tt) Rates on Portland cement and plaster in mixed carloads from Hanover, Mont., to western and central portions of North Dakota and South Dakota, found not unreasonable but unduly prejudicial to extent that charges thereunder exceed those which would accrue under mixing rules similar to those contemporaneously maintained from Steelton, Minn., and Des Moines and Gilmore City, Iowa. Mixtures from Hanover move under rates subject to 50,000 pounds minimum, whereas from preferred points cement moves at c. l. rate and actual weight subject to 50,000 pounds minimum, and plaster at actual weight and c. l. rate subject to lowest minimum. No order entered but carriers expected to provide for mixing rules in revising rates. Three Forks Portland Cement Co. v. C., B. & Q., 129 I. C. C. 107, 118.

(uu) Charges collected on shipments of sheep from Chicago, Ill., to Wolverine, Mich., in double-deck cars, minimum weight 22,000 pounds, found unreasonable to extent they exceeded charges which would have accrued on basis of 18,000 pounds, which basis was found reasonable in 69 I. C. C. 125, for application on sheep in double-deck cars of size here involved. Reparation awarded. Calkins Augsbury & Mikan v. M. C., 129 I. C. C. 475.

(vv) Class D rates and switching charges collected on interstate shipments of smithing coal from San Diego to Los Angeles, Calif., originating at Douglas, W. Va., found not unreasonable or otherwise unlawful. Exceptions to governing tariff provided a minimum class scale applicable to the total of the combinations of separately established class rates or class and commodity rates applicable on continuous through movements. Complainant's contention that switching charge, under the tariff, should be considered a commodity rate, and that minimum class scale was applicable to combination of class rates plus switching, charge, not sustained. The switching charge was an incidental one for a special service performed upon completion of the line haul. Romann & Bush Pig Iron & Coke Co. v. A., T. & S. F., 129 I. C. C. 509.

(ww) Rules and regulations providing for the assessment of charges on mixed carloads of livestock at the rate and minimum weight for that kind of stock which on a straight c. l. basis would produce highest charge, with certain exceptions, between points in official classification territory, found not unreasonable as compared with the intrastate traffic rule effective in Ohio, and rates provided in rule 10 of the consolidated freight classification for mixed shipments of other commodities. These interstate rules were prescribed in 69 I. C. C. 125 and 81 I. C. C. 305, and are applicable throughout the United States. Complaint dismissed. Ohio Farm Bureau Federation v. A., C. & Y. Ry. Co. 129 I. C. C. 689.

§8. Two Cars for One Ordered.

See Bills of Lading §5; Cars and Car Supply §8; Classification §21; Follow Lot Shipments.

(a) Carrier for own convenience furnished two small cars in lieu of larger car ordered. Neither classification nor governing tariff provided for graduated minima for cars of different sizes. Upon complaint attacking assessment of charg-

es based on minimum weight for first car and actual weight at c. l. rate on second car, HELD: Record indicates that prescribed minimum could not reasonably have been loaded into cars furnished and therefore charges assessed in excess of applicable rate and actual weight of entire shipment subject to established minimum, were unreasonable. Folly Town Co. v. E. R. R., 120 I. C. C. 157.

§12. Fourth Section Violations.

See Long and Short Hauls.

(a) Rates found to violate the aggregate-of-intermediates provision of section 4 of the act, due to differences in the minima on the through rates and the combinations of locals. Hauber Cooperage Co. v. A., T. & S. F., 115 I. C. C. 533.

§13. Proposed Advances.

See Advanced Rates.

(a) Proposed increased minimum weight on common brick originating on Pennsylvania R. R. and moving from and to points in c. f. a. territory, by cancelling present tariff rule providing that minimum is the "marked capacity of car ordered, but not less than 60,000 pounds," and substituting in lieu thereof "marked capacity of car," found not justified. There is a real trade need for a minimum of 60,000 pounds, the capacity of equipment owned by the Pennsylvania, and under proposed schedules some shippers could be favored over others in being furnished cars of desired capacities. Moreover, in 68 I. C. C. 213, 222, commission prescribed a 60,000-pound minimum on articles in uniform brick list, including face, fire, and paving brick, marked capacity of car to govern if less than minimum. Minimum Weight on Brick, 118 I. C. C. 136.

(b) Respondents proposed to increase the minimum carload weight on wrought iron pipe and seamless iron and steel tubing from and to points in official classification territory, from 36,000 pounds to 46,000 pounds. They usually move in open top equipment. It is apparent that the increased minimum here proposed would not furnish any substantial incentive toward increased loading on the part of large or small manufacturers, jobbers or consumers. The former are, and have been, loading far in excess of not only the present minimum but also the proposed minimum. The latter are undoubtedly loading as heavily as the nature of their business permits, as it is manifestly their interest to do. It would operate to the advantage of the large shipper and to the disadvantage of the small shipper by diverting business from the latter to the former. It would constitute a marked exception to the minimum prevailing on practically all other articles of iron and steel classified fifth class and moving on class rates, an exception for which no adequate reason is disclosed upon this record. HELD, proposed schedules not justified. Minimum weight on pipe and tubing, 120 I. C. C. 657.

MIXED CARLOADS

See Classification §7, §16⅝; Evidence §34¼; Express Companies §16; Minimum §6.

MOTION PICTURE FILMS

(a) Owners of motion picture films, in shipping them from one state into another, to lessees thereof, for purpose of exhibition, are engaged in interstate commerce. Fox Film Corporation v. Turnbull, Governor of Connecticut, 7 Fed. (2d) 715. American Feature Film Co., Inc., v. Same, 7 Fed. (2d) 715.

(b) Laws Conn. 1925, c. 177, prohibiting delivery of motion picture films for purposes of exhibition in the state without having registered them and paid a tax of $10 for each film of 1,000 feet or less, with 50 cents additional for each extra 100 feet, whether regarded as a revenue measure or police regulation, held not a regulation of or unlawful restraint on interstate commerce, as regards films shipped in to lessees for exhibition; it operating alike on films brought into or produced in the state, being concerned only with public exhibition of moving pictures in the state, and only incidentally affecting interstate commerce. Fox Film Corporation v. Trumbull, Governor of Connecticut, 7 Fed. (2d) 715. American Feature Film Co., Inc. v. Same, 7 Fed. (2d) 715.

(c) Transportation company, engaged in transporting moving picture films for theaters and exchanges under special contracts, exclusively operating over fixed routes, but which did not advertise or solicit business, nor hold itself out to transport for public indiscriminately, HELD private carrier, and state Public Utilities Commission will be enjoined from applying Pub. Acts Mich., 1923, No. 209, and particularly section 3, relating to common carriers, thereto, as constitu-

ting a taking of private property for public use without just compensation, in violation of due process clause of Const. U. S. Amend. 14. Film Transport Co., v. Michigan Public Utilities Commission, 17 Fed (2d) 857.

MOTOR BUS

(a) The Connecticut law requiring interstate carriers of passengers by motor bus to pay an annual excise tax of one cent per mile for the total number of miles of highway in the state over which its vehicles operate, HELD not to impose an unlawful burden on interstate commerce, in violation of the commerce clause of the Constitution, but a valid exercise of the taxing power of the state to exact compensation for the use and wear of its highways and contribution to their upkeep. Interstate Busses Corporation v. Blodgett, State Tax Comn'r of Connecticut, 19 Fed. (2d) 256.

(b) A state has power to exercise a reasonable discretion in providing different methods of taxation for use of its highways by intrastate and interstate carriers of passengers by motor bus, provided the classification is reasonable, as where the intrastate carriers are subjected to a comprehensive system of regulation and licensing which is not applied to interstate operators. Interstate Busses Corporation v. Blodgett, State Tax Comn'r of Connecticut, 19 Fed. (2d.) 256.

MOTOR TRUCK COMPETITION

See Evidence §14 (6); Long and Short Hauls §8½.

MOTOR TRUCK SERVICE

(a) The growing use of the private automobile and autobus and truck, which has come with improvement of public highways, has injected a disturbing economic influence into the railroad situation as to both freight and passenger business. Although this influence has been relatively more adverse in the case of passenger traffic, the loss in passenger revenue growing out of this new competition has, to an extent at least, been offset by augmented freight revenues derived from carriage of materials for and products of automobile manufactories, and in carriage of fuel and lubricants used in operation of the automobile. Revenues in Western District, 113 I. C. C. 3, 23.

(b) Since duties of interstate motor stage line do not impose on it obligation to conduct intrastate business, order enjoining it from receiving intrastate passengers until granted permission therefor under Laws N. H. 1919, c. 86, HELD not an interference with interstate commerce, infringing commerce clause of the federal Constitution (article 1, § 8). Haselton Co., v. Interstate Stage Lines, (N. H., 1926) 133 Atl. 451.

(c) Motor Vehicle Act (Acts 1925, No. 70) in which provision is made for taxing motor busses of nonresidents making more than 30 regular trips during current year on highways in state, HELD not unconstitutional as being in violation of interstate commerce clause. State v. Caplan, (Vt., 1927) 135 Atl. 705, 708.

(d) A state may exact a reasonable excise tax for use of its highways by motor vehicles engaged in interstate commerce. State v. Caplan, (Vt. 1927) 135 Atl. 705, 708.

(e) If G. L. Mass. c. 159, § 45, 48a, 49, as amended by St. 1925, c. 280, relative to operation of motor vehicles for hire, directly interferes with or burdens interstate commerce, it cannot be sustained, regardless of purpose for which it was passed. Interstate Busses Corporation v. Holyoke St. Ry. Co., 47 Sup. Ct. 298.

MULTIPLE CAR SHIPMENTS

(a) Rates on timbers, poles, piling, and spars cut from various kinds of wood which, on account of length, require two or more cars for their transportation, found not unreasonable, discriminatory, or unduly prejudicial, the additional expense and hazard incident to movement of multiple shipments of long timbers, etc., warranting charging of higher rates on such shipments than on single carloads of lumber. Dutton Lbr. Corp. v. Director General, 112 I. C. C. 661.

(b) The transportation qualities of multiple carloads of timbers, poles, and piling, on the one hand, and single carloads of fir lumber or poles, on the other, are essentially dissimilar, the carriage of the former requiring of carriers spe-

cial, expensive, and burdensome services, including the furnishing of materials which are not required in the movement of the latter. Moreover, hazards of transportation are materially greater in case of the former, particularly in the mountainous regions, than in the case of the latter. Dutton Lbr. Corp. v. Director General, 112 I. C. C. 661, 669.

(c) Circumstances and requirements surrounding the preparation of equipment, clearances required, bolstering and staking of loads, weighing and switching, hazards of transportation, and readjustment of loads in transit, in transportation of multiple-car shipments of long poles and piling, described. Dutton Lbr. Corp. v. Director General, 112 I. C. C. 661, 669, 673.

NAVIGABLE WATERS

See Car Ferry; Merchant Marine Act.

NON AGENCY STATIONS

(a) It is not uncommon for carriers to provide that shipments destined to a nonagency station shall be billed to an agency station which may take a different rate. American Sand & Gravel Co. v. Director General, 109 I. C. C., 557, 559.

(b) Shipment of lumber from Logan, Ga., to Paintsville, Ky., found not misrouted. omplainant contended that, under an intermediate clause, a lower combination was in effect over an indirect route, but Logan was a nonagency station and even if lower rate was applicable, agent should not be charged with such knowledge. Conf. Rulings 91 and 214 (g) and 98 I. C. C. 451. Pine & Cypress Mfg. Co. v. W. & L., 129 I. C. C. 321.

NOTICE

See Demurrage §16; Evidence §39; Facilities and Privileges §11; Loss and Damage §11; Procedure Before Commission §3; Reconsignment §5½; Tariffs §3 (3); Transportation §6, §6½.

OPERATING CONTRACTS

(a) Contention that paragraphs (1) and (3) of section 3 of the act vitiate an operating agreement providing for joint use of terminal facilities in so far as it provides for an equal division of interest and taxes, not sustained. Those charges are distinctly capital charges, based upon terminal property itself, not upon its use, and are divided among lines in proportions of their equitable titles to or interests in property. For their respective uses of property the lines also severally assume proportionate maintenance and operating expenses. This is not undue prejudice, preference or discrimination within meaning of paragraph (1). Also as essentially capital charges, they have no direct or indirect relation to interchange of traffic between several lines within contemplation of paragraph (3). M.-K.-T.- v. K. C. T., 104 I. C. C. 203, 224.

(b) Carriers seeking, in effect, revision or reformation of an improvident operating agreement governing joint use and operation of terminal facilities, contend that for commission's jurisdiction to attach it need only give effect to section 15a of the act without waiting until a carrier's bankruptcy shall ensue, and find as a fact that operating agreement is so burdensome as to result in inefficient and uneconomical operation, to cause misapplication of funds created for an entirely different purpose, and generally to operate to impair carrier's ability to furnish adequate railway service. FOUND: Neither expressly nor by implication does section 15a embrace a direct or indirect revision or reformation of any such contract, nor is commission able to find requisite power or authority in any other provision of the act. M.-K. T. v- K. C. T., 104 I. C. C. 203, 223, 224.

ORDER NOTIFY SHIPMENTS

See Bills of Lading V; Demurrage §7.

OVERCHARGES

See Claims I, V; Express Companies §27; Freight Charges; Reparation §20½; Tariffs §14; Through Routes and Joint Rates §22.

(a) Upon arrival of shipment at originally-billed destination it was accepted by consignee who unloaded and paid freight and demurrage charges. Becoming dissatisfied with goods they were reloaded and forwarded to a new destination, carrier advancing such consignee demurrage, unloading and reloading charges. These were collected from new consignee who deducted them in settlement with consignor. FOUND: Latter movement being separate and distinct under a new bill of lading, and governing tariff providing that no charges of any

description be advanced, the advancement made to original consignee was illegal. Moreover, in Conf. Ruling 249, commission ruled that outbound charges may not be refunded by a carrier and charged back against consignor. Refund of overcharges directed. Heineman Lbr. Co. v. C., St. P. M. & O., 107 I. C. C. 62.

(b) Shipment of piles moving in two cars from Hadley, Ala., to West Brighton, N. Y., found overcharged. Charges were assessed on basis of an erroneous rate and billed weight, whereas they should have been assessed on basis of applicable rate and actual weight as determined by track scale, the shipment having been weighed on such scale en route. Reparation awarded. Bowers & Co. v. Director General, 107 I. C. C. 305.

(c) Shipments of brick moving from Springfield, Ill., to St. Petersburg, Fla., found overcharged inasmuch as lower combination should have been applied by application of combination rule which provided a method of constructing through rates made on combination. Reparation awarded. Boston Brick Co. v. I. T., 107 I. C. C. 507.

(d) It is not necessary, in complaint alleging overcharges, to name all carriers participating in transportation, since collection of an overcharge is a tort for which they are all jointly and severall liable. Boston Brick Co. v. I. T., 107 I. C. C. 507.

(e) Overcharge claim barred prior to June 7, 1924, found not to have been revised by amendment to section 16 (3) of the act, passed on that date, which extended limitation period for filing such claims with commission. See conference ruling of July 28, 1925. Saxony Mills v. M. P., 107 I. C. C. 640.

(f) Shipments of sulphuric acid, in tank cars, moving over an interstate route from Grasselli, Ind., to Vincennes, Ind., found overcharged, inasmuch as lower rate to Lawrenceville, Ind., applied to Vincennes under provisions of rule 77 of tariff Circular 18-A carried in applicable tariff at time of movement. Reparation awarded. Vincennes Refining Co. v. C. & E. I., 109 I. C. C. 25.

(g) Shipments of sulphuric acid, in tank cars, moving over an interstate route from Grasselli, Ind., to Vincennes, Ind., found overcharged. Conflicting rates were named in separate tariffs, and under uniform findings of commission the rate first established remained in effect and was lawful rate until formally canceled. Reparation awarded. Vincennes Refining Co. v. C. & E. I., 109 I. C. C. 25.

(h) Fourth-class rating and rates in official classification territory on automobile bow sockets assessed under tariff item on "Carriage or wagon iron: * * * Bow sockets," found illegal. Fifth-class rating carried in same tariff on "Automobile parts, n. o. i. b. n.," found applicable. Automobile bow sockets are not carriage or wagon irons. They are designed and manufactured solely for automobiles and are not interchangeable with the analogous parts of horse-drawn vehicles. Tariff description of latter being specific, analogous-article rule could not be applied, hence bow sockets must be considered to have been embraced in item of automobile parts n. o. i. b. n. Refund of overcharges directed. Chevrolet Motor Co. v. B. & O., 109 I. C. C. 185, 186, 187.

(i) Claims for refund of overcharges, which were barred prior to enactment of amendment of June 7, 1924, to section 16 of the act, under which the time for filing such claims was extended to three years, found to fall within provisions of the commission's conference ruling of July 28, 1925, wherein the decision of the Supreme Court in 268 U. S. 633 was construed as prohibiting awards of reparation on claims barred at or prior to the enactment of the new statute of limitations which had the effect of reviving barred claims. American Splint Corp. v. C. P. Ry., 109 I. C. C. 170; Chevrolet Motor Co. v. B. & O., 109 I. C. C. 184, 185; Calumet Baking Powder Co. v. A. & N. R. R., 109 I. C. C. 249.

(j) Intrastate shipments of petroleum made during Federal control moved partly over short lines not under Federal control. No joint rates being in effect, combinations were assessed each factor of which was increased under General Order No. 28 of the director general. Tariffs publishing factors applicable over federally controlled lines contained the combination rule which provided a specific method for constructing through rates made on combination, but no similar rule, or reference thereto, was carried in tariffs of short lines. HELD: The combination rule being unrestricted in its application, the applicable rates were those constructed in conformity therewith. Shipments found overcharged and reparation awarded. Continental Oil Co. v. Director General, 109 I. C. C. 289.

(k) Shipments moved in part over a line not under Federal control. No joint rates being in effect, combinations were assessed each factor of which had been increased under General Order No. 28 of the director general. Tariffs of federally controlled lines carried combination rule which provided a specific method for constructing through rates made on combination, the tariff of the nonfederally controlled line not carrying a similar rule or concurring in or making reference to tariffs in which it was published. HELD: That applicable rates were those constructed in conformity with combination rule, except during period when such rule was specifically restricted so as to apply in connection with rates between points on railroads "under Federal control" during which period the full combinations were applicable. Reparation awarded. Calif. Cotton & Factorage Co. v. Director General, 109 I. C. C. 293.

(l) Rate charged under an exception to classification on prepared roofing moving over the Chicago & Eastern Illinois from Chicago to Terre Haute, Ind., found illegal. Legal rate found to be a specific joint commodity rate published in a tariff to which the C. & E. I. was a party from Chicago to Midland City, Ill., applicable over its line to Terre Haute and the Pennsylvania beyond. This tariff carried the intermediate rule which provided that rates named therein would apply from or to directly intermediate points not indexed, or if indexed but with no rate shown, such tariff not naming a specific rate to Terre Haute. Refund of overcharges directed. Elaborated Ready Roofing Co. v. C. & E. I., 109 I. C. C. 401.

(m) Shipment of coal found overcharged, due to deduction by carrier of 41,000 pounds to cover weight of car, whereas actual weight as shown by carrier's records was 45,000 pounds. Reparation awarded. Monon Lbr. Co. v. Director General, 109 I. C. C. 429.

(n) Shipments moved under combination rates each factor of which was increased under General Order No. 28 of director general. Tariff governing second factor carried the combination rule which provided for application of a single increase to through rates made on combination. First factor contained a similar rule which was restricted in its application. HELD: Following 81 I. C. C. 193, and other cited cases, effect of restricted tariff was tantamount to absence of a rule and rates constructed by application of but a single increase to through rate as contemplated by rule contained in tariff governing second factor found applicable. Reparation awarded for overcharges. White Star Refining Co. v. A., T. & S. F., 109 I. C. C. 577.

(o) Claims for refund of overcharges, which were barred prior to enactment of amendment of June 7, 1924, to section 16 of the act, under which the time for filing such claims was extended to three years, found to fall within provisions of the commission's conference ruling of July 28, 1925, wherein the decision of the Supreme Court in 268 U. S. 633 was construed as prohibiting awards of reparation on claims barred at or prior to the enactment of a new statute of limitations which had the effect of reviving barred claims. American Splint Corp. v. C. P. Ry., 109 I. C. C. 170; Chevrolet Motor Co. v. B. & O., 109 I. C. C., 184, 185; Calumet Baking Powder Co., v. A. & N. R. R. R., 109 I. C. C. 249; Moore Lawless Grain Co. v. M. P. R. R., 109 I. C. C., 588.

(p) Out-of-route charges collected on grain shipped from Ossian and Helmer, Ind., to Jonesville, Mich., there milled in transit and reshipped to other Michigan points, found illegal. Neither tariff publishing the joint through rates with provisions for milling in transit nor transit tariff carried any restrictions as to routing, and term "out-of-route" as carried in transit tariff is not defined. Rates between any given points, where no restrictions are made as to routing, apply over all routes of carriers parties to the tariff naming rates, where such routes are circuitous or not, if there be no back haul. Likewise transit arrangements applicable in connection with such rates, where no special restriction as to transit is contained in the tariff, are co-extensive with routes over which the rates apply, provided routes are not employed which necessitate a back haul. Refund of overcharges directed. Jonesville Milling Co. v. N. Y. C., 109 I. C. C. 601.

(q) Shipment of clean rice from Galveston, Tex., to Bluefield, W. Va., found overcharged to extent that rate assessed exceeded a lower combination via Memphis, Tenn. While shipments did not move through Memphis, lower combination via that point was applicable over routes of movement under the tariffs. Refund of overcharges directed. Seaboard Rice Milling Co. v. A. G. S., 109 I. C. C. 718.

(r) Complainant attacked commodity rate charged on two cars of baled cotton shipped March 29, 1922, from Brownsville, Tenn., to Delano, Tenn., as unreasonable and unlawful in violation of sections 1 and 6. Shipments moved L. & N., to Memphis, Tenn., thence N. C. & St. L. to Cartersville, Ga., and L. & N. beyond, charged 95c. Complainant contends rate should have been 86c composed of 44c to Memphis and 62c beyond, reduced 20c under Kelley U. S. 1. HELD: Applicable rate was 86c, reparation awarded. Gunther & Co. v. L. & N. R. R., 112 I. C. C. 387.

(s) Full combination rates charged on shipment of lumber from Pachuta, Miss., to Homestead, Meadville, Titusville, and Mercer, Pa., found illegally assessed. Applicable rate found to be a through rate constructed by use of combination rule which provided a specific method for constructing through rates made on combination, each factor of the combination being subject thereto. Reparation awarded for overcharges. Moore-Marshall Lbr. Co. v. N. O. & N. E., 112 I. C. C. 33.

(t) Claim for refund of overcharges, which was barred prior to enactment of amendment of June 7, 1924, to section 16 of the act under which the time for filing such claims was extended to three years, found to fall within provisions of the commission's conference ruling of July 28, 1925, wherein decision of the Supreme Court in 268 U. S. 633 was construed as prohibiting awards of reparation on claims barred at or prior to the enactment of a new statute of limitations which had the effect of reviving barred claims. Memphis Freight Bureau v. C. & O. Ry., 112 I. C. C. 55.

(u) Claim was first filed with commission informally in the form of an overcharge. Formal complaint, seasonably filed after complainant had been notified that claim was not susceptible of informal adjustment, contained additional allegations, predicated on ground of misrouting. HELD: The basis of an informal claim can not be broadened or otherwise varied by a formal complaint subsequently filed unless such formal complaint itself be filed within statutory period. See 49 I. C. C. 649. Harman & Hulsey v. Director General, 112 I. C. C. 275.

(v) Scrap steel rails from Detroit to Kenosha, Wis., purchased "f. o. b. Chicago" moved under through bills of lading at joint rates. Upon complaint alleging overcharges due to failure of director general to refund charges down to basis of lowest published rate from Chicago to Kenosha, upon theory that movements from Detroit to f. o. b. point was separate and distinct from those beyond, HELD: Complainant would have been entitled to lowest rate from Chicago to Kenosha had shipments originated at Chicago or had billing indicated that rails were "company material" entitled to free transportation to that point. However, shipments originated at Detroit, moved on through bills of lading correctly describing commodity without indicating that it was company material. Moreover, through movements were intended by consignor and nothing indicates that movement to Chicago was to be a nonrevenue haul or that transportation should begin there. Claim arises out of terms of contract of sale over which commission has no jurisdiction. Joint rates assessed found applicable. Briggs & Turivas v. Director General, 112 I. C. C. 313.

(w) Complainant attacked commodity rates charged on cement, carloads, from Security, Md., to destinations in Maryland served by the W. B. & A. Electric Line, as unlawful and in excess of rates specified in tariffs during the period from Jan. 1, 1922, to Jan. 4, 1923; and unjust and unreasonable between Jan. 5, 1923, and May 15, 1925. Security is on the main line of the W. M., just east of Hagerstown. W. M., is not named as defendant. Within recent years the B. & O., has built into Security and all shipments here considered moved over the latter carrier through the District of Columbia to Camp Meade Jct., and thence Electric line. It is to be noted that during the period from Jan. 1, 1922, to Jan. 4, 1923, and to March 30, 1923, inclusive, the Electric did not concur in, refer to, or otherwise make effective the combination rule. The B. & O., did refer to it. Considering the facts that the Electric is what is known as a short line, essentially a suburban line, and that rates from Security to its stations compare favorably with rates from complainant's immediate competitors, Lehigh, York, and Union Bridge. HELD, shipments between Jan. 1. 1922, to Jan. 4, 1923, and to March 29, 1923, overcharged, balance rates attacked not unreasonable, reparation awarded. Se-

curity Cement & Lime Co. v. B. & O. R. R., 113 I. C. C. 579.

(x) Complainant attacked charges collected on nine cars of anthracite coal between October 1, 1920, and Jan. 13, 1921, from Crested Butte, Colo., to McDonald, Oberlin and St. Francis, Kas., and Curtis and Republican, Neb., as illegal. Shipments moved D. & R. G. W. to Denver, Burlington beyond. $8.40 rate was based on proportional commodity rate of $2.65 to Denver and local commodity rate of $3.15 beyond, in effect prior to June 25, 1918, plus 50c authorized under G. O. 28 and $2.10 which reflects an increase of 33⅓% under the general increases of August 26, 1920. The combination rule fixed a definite basis or formula for constructing combination rates. HELD, rate applicable $6.30 per ton. Reparation awarded. Foster Lumber Co. v. C. B. & Q. R. R., 113 I. C. C. 734.

(y) Complainant attacked rate of $4.17 charged on four cars of cottonseed meal shipped from Greenwood to Angola, La., during Jan. and Feb., 1925, as illegal and unreasonable. Shipments moved from Greenwood over the Y. & M. V., through Jackson and Harriston, Miss., to Baton Rouge, La., thence L. R. & N., charged $3.15 to Baton Rouge and $1.02 beyond. A joint rate of $3.60 per ton is in effect from Memphis, Tenn., to Angola, applicable over Y. & M. V., to Baton Rouge and L. R. & N. beyond. Nothing in the tariff precludes the routing of a shipment from Memphis to Angola over the Y. & M. V. through these points and over this route the distance 443 miles, is only 30 miles longer than the shortest route of the Y. & M. V. through Vicksburg, Miss., and Baton Rouge. HELD, shipments overcharged, reparation awarded to basis of $3.60, Planters Oil Mill v. Y. & M. V. Ry., 115 I. C. C. 21.

(z) Complainant attacked rates charged since Oct. 9, 1920, on automobiles, carloads, from Detroit, Flint, and North Flint, Mich., and on plumbers supplies, carloads, from Noblesville, Ind., to Birmingham, Ala., as unreasonable and inapplicable. There were no joint through rates on automobiles prior to Jan. 15, 1921, from Detroit and Flint, and from North Flint prior to Aug. 20, 1922. On the dates shown joint through rates on automobiles were established equal to or slightly less than the Jeffersonville, Ind., combination. There were and are no joint through rates on plumbers' supplies. Prior to the dates above shown, as to automobiles and during the entire period as to plumbers' supplies, rates were assessed on basis of the two factor Ohio river combination. Complainant contends that in the absence of a joint through rate the three factor combination basing on Louisville, and Water Works, Ky., when lower than the above mentioned combination, is the applicable rate. HELD, two factor combinations inapplicable, legal rate three factor combinations as shown, refund of overcharges to be made, applicable rates not unreasonable, complaint dismissed. Birmingham Traffic Bureau v. Director General, 115 I. C. C. 33.

(aa) Complainant attacked rate charged on a car of iron roofing shipped Oct. 29, 1923, from Delphos, O., to Springfield, Tenn., as unreasonable and in excess of applicable rates. Shipment moved over Pennsylvania to Cincinnati and L. & N. via Bowling Green to Amqui, Tenn., which is 10 miles north of Nashville. Charged 62.5c, 45c to Amqui and 17.5c beyond. A 45c rate was specifically named from Delphos to Bowling Green and Nashville. Defendant operates a line from Memphis Junction, Ky., 5 miles south of Bowling Green to Memphis which intersects its Henderson division at Guthrie, Ky. Springfield is intermediate on the Henderson division between Guthrie and Amqui. The 45c rate was unrestricted as to routing. HELD, 45c rate applicable, reparation awarded. Cincinnati Sheet Metal & Roofing Co. v. Pennylvania R. R., 115 I. C. C. 133.

(bb) Complainant attacked combination rate of $4.33 charged on lime, carload, from Knoxville, Tenn., to Braithwaite, La., during November and Dec., 1924, and Jan., 1925, as inapplicable. They moved Southern to New Orleans, La., and La. Sou. beyond. Rate charged $2.93 per ton to New Orleans and $1.40 per ton beyond. The $2.93 rate was subject to the combination rule and likewise the $1.40 rate. HELD, rate charged inapplicable to extent it exceeded 40c per ton less, reparation awarded. Traffic Bureau of Knoxville v. Southern Ry., 115 I. C. C. 187.

(cc) Complainant attacked charges

collected on various shipments of bars of steel or steel bars, carloads, made June 4, 1923, and thereafter, from Alabama City, Bessemer, East Birmingham and Fairfield, Ala., to New Orleans, La., as inapplicable. The shipments consisted of steel bars, round, square, and bent, used for concrete reinforcements. HELD, rates on sheet bars or bars of steel applicable, overcharges to be refunded, complaint dismissed. Olsen v. A. G. S. R. R., 115 I. C. C. 195.

(dd) Complainant attacked commodity rates charged on two cars of molding sand, shipped from Rockport and Sandale, Ind., to Nashville, Tenn., on Feb. 6, 1923, and Aug. 13, 1924, as inapplicable. One of the shipments moved from Rockport over E. & O. V., to Evansville, Ind., and L. & N. beyond. Other from Sandale over same route to Evansville, thence Southern, C. N. O. & T. P. and T. C. beyond. Charged 48c to Evansville and $1.58 beyond. Tariffs from Evansville to Nashville made reference to the combination rule. HELD, rates charged inapplicable, rate applicable from Rockport $1.76 and from Sandale $1.73, reparation awarded. Allen Mfg. Co. v. L. & N. Ry., 115 I. C. C. 739.

(ee) While the complaint does not in specific terms allege a violation of section 6, it is therein stated that the rates were unreasonable and otherwise unlawful, and that complainant paid and bore illegal excess charges over and above those which were just, proper and reasonable. HELD, allegations sufficient to cover overcharges. Crerar Clinch Coal Co. v. A. A. R. R., 118 I. C. C. 171, 172.

(ff) Complainant attacked combination rate of 27c, composed of 16c to Dawkins and 11c beyond, charged on six cars of cement shipped during June and Sept., 1923, and Dec., 1924, from Fordwick, Va., to Ivyton, Royalton and West Royalton, Ky., two reshipped to Painesville, Ky., as unreasonable and inapplicable. Shipments moved C. & O. to Dawkins, Ky., and B. S. & K. R. beyond. Two shipments reshipped to Paintsville moved B. S. & K. R. from Royalton to Dawkins and C. & O. beyond. Tariffs of the C. & O. naming the rates to Dawkins and from Dawkins to Paintsville made reference to the combination rule. HELD, rates charged inapplicable, applicable rate to Ivyton, Royalton and West Royalton 24.5c, Royalton to Paintsville, $2.96 per ton, reparation awarded. Lehigh Portland Cement Co. v. B. S. & K. R. Ry., 118 I. C. C. 507.

(gg) Refunds to which shippers are entitled upon compliance with provisions of bunching rules are in no sense overcharges. Manassa Timber Co. v. L. & N., 115 I. C. C. 421, 423.

(hh) Shipments of crude oil blended with a small quantity of casing-head gasoline and assessed gasoline rates found overcharged. Such shipments found to consist of crude oil, it being shown that the material here considered as shipped, when subjected to usual tests, showed characteristics well within range of those exhibited by crude oils to which no casing-head gasoline had been added. Moreover, while oil originally contained a substantial percentage of casing-head gasoline, in view of highly volatile character of the commodity and opportunities that were afforded for its evaporation between time of its production and time it was loaded into the cars, the oil as tendered for shipment did not contain a sufficient quantity of casing-head gasoline to render it different in any essential respect from crude oil as covered by tariffs. Reparation awarded. National Refining Co. v. L. & N., 118 I. C. C. 177.

(ii) Complainant attacked combination rate charged on a car of building brick shipped Aug. 10, 1923 from Shawnee, O., to St. Petersburg, Fla., as inapplicable. Shipment moved N. Y. C. to Bannon, O., N. & W. to St. Paul, Va., C., C. & O. to Yemassee, S. C., and A. C. L. beyond, 1,360 miles, charged $1.90 per ton to Cincinnati, 21.5c to Jacksonville and 9.5c beyond, under authority of rule 5b. The 9.5c component was subject to the rule for constructing combination rates. HELD, applicable rate was 35.5c, shipment overcharged, reparation awarded. Dann Gerow Co. v. A. C. L. R. R., 120 I. C. C. 123.

(jj) Complainant attacked combination rate on one car of sugar shipped June 21, 1920 from Oklahoma City, Okla., to Indianapolis, Ind., as unreasonable and illegal. Shipment moved Rock Island to St. Louis, Mo., Big Four beyond, charged fifth class of 79c to St. Louis and 22.5c beyond. Contemporaneously there was in effect a joint commodity rate on sugar of 55c from Sugarland, Tex., to Indianapolis. Oklahoma City is intermediate. HELD, applicable rate was 55c, reparation awarded. Williams, Halsell Frazier Co. v. C. R. I. & P. Ry., 120 I. C. C. 125.

(kk) Complainant attacked combination rate charged on six cars of common building brick from Shawnee, O., to St. Petersburg, Fla., as illegal. Rate charged 9.5c to Cincinnati, 21.5c to Jacksonville and 9.5c beyond. The 9.5c rate was subject to the combination rule. HELD, applicable rate was 35.5c, reparation awarded. Dann Gerow Co. v. A. C. L. R. R., 120 I. C. C. 163.

(ll) Complainant attacked combination rate charged on 44 cars of logs during July and August 1923 from spur S 30 Mich., to Peshtigo, Wis., as unreasonable and illegal. Shipments were routed by Mineral Range and C., M. & St. P. Shipments appear to have moved by M. R. to Riddle Jct., Mich., thence C., M. & St. P., and C. & N. W. Charged 16.2 cents, but refund made later to 14 cents. The latter was a specific rate applicable to pulpwood. Refund is sought to basis of combination of 11.3 cents. Complainant submits an affidavit that the shipments were originally cut as saw logs, but that on account of market conditions they were sold to a paper company at Peshtigo which converted them into pulp. No other conclusion is possible than that the shipment consisted of saw logs and were subject to the saw log rate. Complaint only attacks the factor to Riddle Jct. Applicable rate on saw logs was 13 cents, composed of 3.5 cents to Riddle Jct., 7 cents to Marinette, Wis., and 2.5 cents to destination, shipments overcharged 1 cent. HELD, rates charged inapplicable, applicable rate was 13 cents not unreasonable, defendant to refund outstanding overcharges, complaint dismissed. Menasha Woodenware Co. v. D. S. S. & A. Ry., 120 I. C. C. 415.

(mm) Complainant attacked combination rate charged on one car of textile machinery shipped Sept. 18, 1924 from Tallassee, Ala., to Natchez, Miss., as unreasonable. Shipment moved B. & S., to Milstead, Ala., W. of A. to Selma, Ala., Southern to Meridian, Miss., A. M. V., to Jackson, Miss., and T. & M. V., beyond, 382 miles, applicable rate sixth class 16 cents to Milstead and 59.5 cents beyond. HELD, sixth class rate applicable not unreasonable, overcharge to be refunded complaint dismissed. Cotton Mills Products Co. v. A. & V. Ry., 120 I. C. C. 473.

(nn) Complainant alleged overcharges on numerous cars of scrap iron, shoveling steel, bushings and scrap borings, shipped during federal control, as unreasonable and in violation of section four. HELD, shipments overcharged, reparation awarded. Hyman Michaels Co. v. Director General, 120 I. C. C. 617.

(oo) Complainant attacked combination rate charged on a car of uncompressed cotton linters, shipped from Cooper, Tex., to Pittsburgh, Pa., and reconsigned to Newburgh, N. Y., as unlawful in violation of section six. Shipment was forwarded from Cooper on March 15, 1924 over T. M. and St. L. S. W., to St. Louis, Mo., thence over B. & O., to Pittsburgh. Upon arrival the shipment was not delivered, but was held on the B. & O. tracks at Allegheny Jct. (Pittsburgh) until April 5, 1924 when it was reconsigned to Newburgh, B. & O. and Erie, charged $1.505 to Pittsburgh and 39.5 cents beyond. Complainant contends a combination rate of $1.785 made up of 95.5 cents to Marion, Ind., 43.5 cents to Allegheny and 39.5 cents beyond to Newburgh should have been assessed. As there was no joint rate in effect the three factor combination was applicable. HELD, applicable rate $1.785, reparation awarded. Fraser Jr. v. B. & O. R. R., 120 I. C. C. 675.

(pp) Complainant attacked combination rate charged on two cars of broom handles shipped in August and Sept., 1922 from Pellston, Mich., to Wichita, Kans., as unreasonable to extent it exceeded 59 cents. Shipments moved Pennsylvania, E. J. & E., and Santa Fe. Rate sought is proportional rate of 21.5 cents on lumber to Chicago plus 40.5 cents on lumber from Chicago to Wichita, subject to combination rule or 57.5 cents plus arbitrary of 1.5 cents. Present rate is 76.5 cents made fifth class 34.5 cents to Chicago plus commodity of 42 cents beyond. HELD, rate attacked unreasonable to extent it exceeded the rates on lumber by more than 1.5 cents, reparation awarded. Wichita Chamber of Commerce v. A., T. & S. F. Ry., 123 I. C. C. 520.

(qq) Complainant attacked combination rate charged on one car of piling shipped on June 30, 1924 from Minong, Wis., to Dakota, Minn., as inapplicable and unreasonable. Minong is on the Omaha 120 miles north of St. Paul, Minn., Dakota is on the Milwaukee 120.7 miles southeast of St. Paul, shipments moving Omaha to Minnesota Transfer and Milwaukee beyond, charged combination of 11.5 cents to St. Paul and 11 cents beyond. A 11 cent rate was published in a tariff to which the defendants

are named as participating carriers. HELD, rate assessed inapplicable to extent it exceeded 11 cents, overcharge to be refunded, complaint dismissed. Finch Bros. v. C., St. P., M. & O. Ry., 123 I. C. C. 541.

(rr) Complaint attacked through commodity rate charged on 3 cars of fire brick shipped between Feb. 27 and July 30, 1925 from Mineral City, O., to Miami and Tampa, Fla., as unreasonable and inapplicable. Two of the shipments moved to Miami over B. & O., Southern, Georgia Southern & Florida and F. E. C., charged 43.5 cents and 44.5 cents, respectively. The other shipment moved to Tampa over B. & O., L. & N., and A. C. L., charged 39.5 cents. The allegation of unreasonableness was not supported by any evidence and will not be considered further. No joint rates were in effect. None of the factors were subject to the combination rule. HELD, rates applicable were 43.5 cents to Miami and 39.5 cents to Tampa, overcharge to be refunded, complaint dismissed. Federal Clay Products Co. v. A. C. L. R. R., 123 I. C. C. 557.

(ss) Complaint alleging overcharges was filed January 6, 1926. Citing 107 I C. C. 136, carriers contended that limitation provision of the statute barred from consideration shipments moving more than two years prior thereto. HELD: As oldest shipment under consideration was delivered in April, 1923, and amendment of June 7, 1924, extended period for filing overcharge claims to three years, none of shipments are barred. Curtis Leather Co. v. P. R. R., 123 I. C. C. 1, 3.

(tt) An overcharge, if proved, is a tort for which all participating carriers are jointly and severally liable. See 107 I. C. C. 507. Kohlman Bros. & Sugarman v. L. & N., 123 I. C. C. 56, 57.

(uu) Where action against carriers to recover overcharges had been barred by limitation under Interstate Commerce Act. Feb. 4, 1887, as amended by Transportation Act Feb. 28, 1920 (U. S. Comp. St. § 1007¼ et seq.) cause of action was not revived by Act. Cong. June 7, 1924, § 16. par. 3, subsec. (h), being U. S. Comp. St. § 8584, removing bar in case suit should be brought within six months after enactment, as construction of statute to revive liability after its destruction by limitation would deprive carriers of their property without due process, in violation of Const. U. S. Amend. 5. Peninsula Produce Ex. v. N. Y. P. & N. R. Co., (Md., 1927) 137 Atl. 350.

(vv) Interstate Commerce Act. U. S. Feb. 4, 1887, § 22, par. 1 (U. S. Comp. St. § 8595), providing nothing in act shall abridge existing remedies and that provisions in addition to such remedies did not operate to permit revival of outlawed action against carriers for overcharges under provisions of Act Cong. June 7, 1924, § 16, par. 3, subsec. (h) being U. S. Comp. St. §8584 in view of Const. U. S. Amend. 14, though action was brought in state court. Peninsula Produce Ex. v. N. Y., P. & N. R. Co., (Md., 1927) 137 Atl. 350.

(ww) Shipper may recover overcharge from carrier with whom he made contract for carriage, and subsequent enforcing of ultimate liability with connecting carriers are matters within ruling of Interstate Commerce Commission for enforcing rights of carriers between themselves. W. L. Shepherd Lumber Co. v. Atlantic Coast Line R. Co., (Ala., 1927) 112 So. 323.

(xx) Complainant attacked combination rates charged on 28 cars of potatoes shipped from Idaho, Colorado, Nebraska and Utah to Nashville, Tenn., between Aug., 25, 1921 and Dec. 11, 1924 as unreasonable and in violation of section four in that they exceeded the rates to New Orleans. Charged rates to and beyond East St. Louis, Ill., or Evansville, Ind. Defendants state that rates to New Orleans were not applicable over routes passing through Nashville, except on two shipments. HELD, rates attacked not unreasonable or otherwise unlawful, overcharges and undercharges to be adjusted, complaint dismissed. Boyle Commission Co. v. C. B. & Q. R. R., 128 I. C. C. 51.

(yy) Under Federal Control Act, § 10 and Transportation Act, § 206 (a), (c), a shipper, charged excessive freight rates during federal control of railroads, was entitled to recover so-called interest on the reparation award ordered by the Interstate Commerce Commission to be paid pursuant to Interstate Commerce Act, § 16 despite Judicial Code, § 177, but was not entitled to recover the costs and attorney's fees ordered by the Commission to be paid. Wilson & Co., of Okla. v. Davis, Director General of Railroads, 8 Fed. (2d.) 484.

PANAMA CANAL ACT

See Evidence §42; Facilities and Privileges §16; Water Carriers; Water Competition.

(a) Application of Northern Pacific and Minneapolis, St. Paul & Sault Ste. Marie railways, under section 5 of the act, for authority to establish a joint passenger-train service between Minneapolis and St. Paul, Minn., and Duluth, Minn., and Superior, Wis., and to divide earnings therefrom, approved. Proposed arrangement found to be in interest of economy of operation, not to unduly restrain competition, and to be upon just and reasonable terms and conditions. Joint Passenger Train Service, 107 I. C. C. 493.

(b) Under Interstate Commerce Act, § 6, subd. 13, as amended by Panama Canal Act 1912, § 11, and Transportation Act 1920, §§ 412, 413 (Comp. St. § 8569), giving commission authority to establish physical connection between lines of rail carrier and docks of water carrier, and providing that it "may * * * determine what sum shall be paid to or by either carrier," Commission, in proceeding by the state of New York, owning and maintaining Erie Barge Canal, though not a carrier, HELD to have power to compel railroad already having a physical connection with barge terminal to provide transportation service, between such terminal and shippers along its tracks or lines of other railroads, with which it could interchange traffic; the quoted language not being a requirement that two carriers be before Commission. United States v. New York Cent. R. Co., 47 Sup. Ct. 130.

(c) Under Interstate Commerce Act, § 6, subd. 13, as amended by Panama Canal Act 1912, § 11, and Transportation Act, 1920, §§ 412, 413 (Comp. St. § 8569), order of Interstate Commerce Commission, requiring railroad to furnish transportation service between public terminal of Erie Barge Canal and shippers in its own and connecting lines. HELD not invalid, because transportation so required would include intrastate as well as interstate traffic, in view of definition of transportation contained in Interstate Commerce Act, § 1, subd. 3, as amended by Transportation Act 1920, § 400 (Comp. St. § 8563). United States v. New York Cent. R. Co., 47 Sup. Ct. 130.

PARTIES

See Courts §12½; Loss and Damage §17; Procedure Before Commission V; Reparation §6, §19; Routing and Misrouting §10.

PASSENGER FARES AND FACILITIES

I. CONTROL AND REGULATION.
- §½. In general.
- §1. Jurisdiction of Commission.

II. REASONABLENESS AND DISCRIMINATION.
- §2. In general.
- §3. Basing fares.
  - (1) Combination on state fares.
  - (2) State fares.
- §3a. Caretakers.
- §4. Certificate plan.
- §4½. Burden of proof.
- §5. Commutation fares.
- §5¼. Compartments and drawing rooms.
- §5½. Excess fares.
- §6. Mileage, excursion rates and scrip.
- §7. Party rates.
- §7¼. Reduced rates.
- §7½. Roundtrip tickets.
- §7¾. Special trains and services.
  - (1) Surcharges.
- §7⅞. Transfers.
- §8. Validation.

III. FACILITIES.
- §9. Regulations in general.
- §10. Baggage and baggage car service.
- §11. Colored passengers.
- §11½. Divisions.
- §12. Free transportation and passes.
- §13. Stations.
- §13½. Stopovers.
- §14. Through routes and rates.
- §14½. Tourist cars.

IV. CLAIMS FOR DAMAGES.
- §14¾. In general.
- §15. Errors of ticket agents.
- §16. Lost tickets.
- §16½. Redemption of tickets.

V. OPERATION.
- §17. In general.
- §18. Publication and tariffs.

CROSS REFERENCES

See Caretakers; Crimes III; Electric Lines; Personal Injuries; Sleeping Car Companies.

I. CONTROL AND REGULATION.

See Control and Regulation.

§½. In General.

(a) Even though purely intrastate carriage of passengers by an interstate carrier may be within the commerce clause of the federal Constitution (article, 1, § 8), such clause is not self-executing and in absence of federal legislation, the state may regulate intrastate business of such carrier. Haselton Co., v. Interstate Stage Lines, (N. H., 1926) 133 Atl. 451.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission..

(a) Upon contention of defendant that since summer excursion fares to Boulder, Colo., which complainant claims were unduly prejudicial and preferential, expired, any decision would be of a moot question. HELD: Complainant's prayer is for future relief and the jurisdiction of commission is ample to provide such relief. See also 52 I. C. C. 255. Boulder Chamber of Commerce v. A., T. &. S. F., 107 I. C. C. 49, 52.

II. REASONABLENESS AND DISCRIMINATION.

§2. In General.

See Discrimination; Reasonableness of Rates.

(a) Summer excursion fares from Chicago, Omaha, St. Louis, and Kansas City to Boulder, Colo., found unduly and unreasonably prejudicial to Boulder to extent they exceeded and exceed fares contemporaneously in effect to Colorado Springs and Pueblo. Boulder Chamber of Commerce v. A., T. & S. F., 107 I. C. C. 49.

(b) A public duty rests upon managements of carriers, individually and collectively, carefully to survey the passenger situation and to exert every legitimate effort to place this branch of their operations on a more compensatory basis. Revenues in Western District, 113 I. C. C. 3, 23.

(c) The growing use of the private automobile and autobus and truck, which has come with improvement of public highways, has injected a disturbing economic influence into the railroad situation both as to freight and passenger business. Although this influence has been relatively more adverse in the case of passenger traffic, the loss in passenger revenue growing out of this new competition has, to an extent at least, been offset by augmented freight revenues derived from carriage of materials for and products of automobile manufactories, and in carriage of fuel and lubricants used in operation of the automobile. Revenues in Western District, 113 I. C. C. 3, 23.

(d) The commission does not subscribe to proposition that where freight rates are producing, on the property devoted to freight service, the rate of return which has been fixed as fair, the commission can as a matter of law authorize no increases in such rates to correct deficiencies in aggregate earnings growing out of inability of passenger business to meet its full share of revenue burden. Freight and passenger services are both essential and both may be subjected to reasonable rates and charges to produce the fair aggregate return authorized by law even though thereby a higher rate of return may be exacted from the one than from the other. Revenues in Western District, 113 I. C. C. 3, 22, 23.

§3a. Caretakers.

See Caretakers.

(a) Collection of passenger fares for transportation of attendants accompanying shipments of live poultry from points in various States to Hoboken, N. J., found unreasonable. For many years it has been general practice of carriers to furnish transportation to attendants accompanying shipments of live poultry without charge, because carrier is thereby relieved of caring for poultry. Here the charges were apparently published in error and remained in effect for a short time only. Werner v. Director General, 107 I. C. C. 363.

§6. Mileage, Excursion Rates and Scrip.

See Distance Rates.

(a) Summer excursion fares from Chicago, Omaha, St. Louis and Kansas City to Boulder, Colo., found unduly and unreasonably prejudicial to Boulder to extent they exceeded and exceed fares contemporaneously in effect to Colorado Springs and Pueblo. Boulder Chamber of Commerce v. A., T. & S. F., 107 I. C. C. 49.

(b) Upon contention of defendant that since summer excursion fares to Boulder, Colo., which complainant claims were unduly prejudicial and preferential, expired, any decision would be of a moot question. HELD: Complainant's prayer is for future relief and jurisdiction of the commission is ample to provide such relief. See also 52 I. C. C. 255. Boulder Chamber of Commerce v. A., T. & S. F., 107 I. C. C. 49, 52.

III. FACILITIES.

See Facilities and Privileges.

§10. Baggage and Baggage Car Service.

See Baggage Car Service.

(a) Proposed schedules denying to owners of traveling tent-shows who engage special baggage cars the right to check, in regular passenger service, the usual 150 pounds of baggage allowed on each adult ticket found not justified. Baggage from and between Southern Points, 112 I. C. C. 717.

(b) The wide application of schedules which deny to owners of traveling tent-shows who engage special baggage cars the right to check, in regular passenger service, the usual 150 pounds of baggage allowed on each adult ticket, is not conclusive proof of their reasonableness. Baggage from and between Southern Points, 112 I. C. C. 717, 721.

(c) Rates and charges of a railroad can not be based entirely on cost for each particular character of service rendered. If such were the case, the passenger with baggage would pay more than the passenger without baggage, and rates to large industrial centers would vary dependent upon character of terminal service employed, including connecting switching. Cost of service is an important element but not the only or necessarily the controlling one by which to measure a rate or charge for a particular service. Rates on Cotton to Gulf Ports, 123 I. C. C. 685, 702.

(d) Public Service Commission Law, § 38, in so far as it authorizes carriers to make reasonable charge for transporting passenger's baggage in excess of $150 in value, in conflict with schedule of rates approved by Interstate Commerce Commission providing a minimum of $100, is ineffective, and is superseded by such tariff even as respects intrastate journeys. Minturn v. New York Cent. R. Co., 220 N. Y. S. 789.

(e) Railroad Law, § 67 , providing that employee of common carrier recklessly or willfully damaging passenger's baggage, or railroad which knowingly keeps any such willful or reckless person in its employment, or which permits such an injury through failing to provide sufficient help and facilities for handling thereof, shall pay $50 to person injured thereby, is penal, and must be strictly construed. Minturn v. New York Cent. R. Co., 220 N. Y. S. 789.

(f) Congress, through agency of Interstate Commerce Commission, having determined limitation of carrier's liability for damages to passenger's baggage by approval of its tariffs, such determination is controlling, and if any provisions of Railroad Law, § 67, or Public Service Commissions Law, § 40, attempt to create greater liability in case of willful inquiry to passenger's baggage, they are in effective minturn v. New York Cent. R. Co., 220 N. Y. C. 789.

(g) Interstate passengers are charged with notice of the rates and liabilities of common carriers of checked baggage as disclosed by published tariffs on file with the Interstate Commerce Commission pursuant to the acts of Congress. Robidoux v. Chicago & N. W. Ry. Co., (Neb., 1925) 204 N. W. 870.

(h) Under published tariffs on file with the Interstate Commerce Commission, interstate passengers have the alternative of two rates for the transportation of 150 pounds of checked baggage, one based on a value of $100 as a carrying liability, without any compensation beyond the price of the passenger's ticket, and the other an additional charge of 10 cents for each increase of $100 in value, or fraction thereof. Robidoux v. Chicago & N. W. Ry. Co., (Neb., 1925) 204 N. W. 870.

§11. Colored Passengers.

(a) Upon complaint seeking an award of damages due to alleged undue prejudice against, and unreasonable regulations affecting, persons of colored race in favor of persons of the white race, in the furnishing of unequal train and station accommodations, FOUND: That commission has no jurisdiction to award punitive or exemplary damages as here sought, and while evidence is not sufficient to warrant findings of undue prejudice to complainant in particular, and to the colored race in general, nevertheless

it strongly points to unsatisfactory conditions in several instances, which should be promptly corrected. Crosby v. St. L.-S. F., 112 I. C. C. 239.

(b) Complainant alleged that on July 7, 1923, defendant refused to furnish him Pullman accomodations from Atlanta, Ga., to Chicago, Ill., in violation of section 2. Complainant offered no evidence in support of his claim for damage. The refusal alleged would not constitute unjust discrimination in violation of section 2 which prohibits charging one person more than another for a like and contemporaneous service. HELD complaint dismissed. Harden v. Pullman Co., 120 I. C. C. 359.

(c) Upon complaint alleging a violation of section 2 of the act, and seeking damages due to unjust discrimination against colored passengers in favor of persons of the white race in furnishing of Pullman accommodations, HELD: That commission had no jurisdiction to award punitive or exemplary damages as here sought. See 112 I. C. C. 239. Undue prejudice in violation of section 3 of the act was not alleged or established by proof, and refusal to sell Pullman accommodations to colored passengers as alleged does not constitute unjust discrimination within the meaning of section 2 of the act, which prohibits charging one person more than another for a like and contemporaneous service. Harden v. Pullman Co. 120 I. C. C. 359.

§11½. Divisions.

See Divisions §3 (s).

§12. Free Transportation and Passes.

See Crimes III; Express Companies §5; Free Transportation.

(a) Free transportation within exceptions of Interstate Commerce Act, as amended by Hepburn Act (34 Stat. 584), is not free in popular sense, but in name only, and is part of consideration of shipment. Miller v. Maine Cent. R. Co., (Me., 1926) 133 Atl. 907.

§13. Stations.

See Stations.

(a) Complainant alleged that the failure of defendants to provide passenger station facilities on their lines in the west end of Cleveland, Ohio, subjected their patrons who reside in that section of the city to great inconvenience and hardship. Defendants are the N. Y. C. and Big Four. HELD, Commission is without power to require carriers to construct passenger stations under conditions such as are presented here, complaint dismissed. Witt v. N. Y. C. R. R., 115 I. C. C. 108.

(b) Upon complaint praying that the New York Central and Big Four railroads be compelled to erect passenger stations on their tracks in west end of Cleveland, Ohio, based primarily upon inconvenience and hardships suffered by patrons living in that section of the city who are obliged to journey a distance of five miles or more to carrier's downtown passenger station to board through trains, and upon alleged discrimination due to maintenance of outlying stations in east end of the city, HELD: Following Los Angeles Passenger Terminal Cases, 100 I. C. C. 421, commission is without power to require carriers to construct passenger stations under conditions such as are here presented. Witt v. N. Y. C., 115 I. C. C. 108.

§14. Through Routes and Rates.

See Through Routes and Joint Rates.

(a) Application of Northern Pacific and Minneapolis, St. Paul & Sault Ste. Marie railways, under section 5 of the act, for authority to establish a joint passenger-train service between Minneapolis and St. Paul, Minn., and Duluth, Minn., and Superior, Wis., and to divide earnings therefrom, approved. Proposed arrangement found to be in interest of economy of operation, not to unduly restrain competition, and to be upon just and reasonable terms and conditions. Joint Passenger Train Service, 107 I. C. C. 493.

(b) Upon further hearing, modified joint passenger-train service and division of earnings therefrom between the Twin Cities and the head of the Lakes, proposed by the Northern Pacific Ry. Co. and the Minneapolis, St. Paul & Sault Ste. Marie Ry. Co., found not unduly to restrain competition, to be upon just and reasonable terms and conditions, and to meet the requirements imposed by section 5 of the act. Prior report, 107 I. C. C. 493. Twin Cities and Head of the Lakes Joint Passenger Train Service, 112 I. C. C. 403.

(c) On further hearing, finding of original report, 96 I. C. C. 116, that

operation of joint passenger-train service between Seattle and Tacoma, Wash., and Portland, Oreg., and division of earnings therefrom will be interest of better service to the public, will promote economy of operation, and will not unduly restrain competition; and that terms and conditions under which such division is proposed to be made are just and reasonable, affirmed, and new contract extending terms and conditions of original contract for three years and amendment thereto eliminating requirement that one pool train be operated daily between Portland and Centralia, Wash., approved upon showing that pool trains were being operated at a loss and upon arrangement for additional stops or flags of through trains. Puget Sound-Portland Joint Passenger-Train Service, 128 I. C. C. 149.

(d) On Dec. 22, 1924, N. P. G. N. and O. W. R. R. & N., submitted to the Commission for approval a certain contract which provided for the establishment of a joint passenger train service between Seattle, Wash., Tacoma, Wash., and Portland, Ore., and for a division of earnings therefrom. Original decision Puget Sound-Portland Joint Passenger-Train Service 96 I. C. C. 116. The amendments to the prior contract now proposed will not in any way affect the service to be rendered. One amendment provides, in effect, that special trains operated over all or any portion of the tracks used by regular pool trains shall be considered as pool trains and taken into pool accounts. Another amendment relates to regular trains that have runs only in part over tracks regularly used by pool trains. These are not to be considered pool trains and are not taken into pool accounts. The discontinuance of trains Nos. 456 and 457 is the subject of another amendment. HELD, proposed contract approved. Puget Sound-Portland Joint Passenger-Train Service, 128 I. C. C. 149.

(e) In 107 I. C. C. 493 and 112 I. C. C. 403, the Commission found that the joint passenger train service between the Twin Cities and the head of the Great Lakes proposed by the N. P. and the Soo Line and proposed division of earnings therefrom would meet the conditions imposed by section 5 (1) of the act. The pooling arrangement was subsequently put into effect. Under the proposed arrangement, whereby the G. N. and N. P. will each discontinue a train each way per day, a saving of 116,800 train miles per annum for each road, or a total of 233,600 train miles, will result. The proposed arrangement was not opposed at the further hearing. HELD, the proposed joint service and division of earnings between the applicants will be in the interest of economy in operation and will not unduly restrain competition, and the terms and conditions under which division is proposed to be made are just and reasonable. Joint Passenger Train Service, 132 I. C. C. 413.

V. OPERATION.

§17. In General.

See Evidence §18.

(a) In 107 I. C. C. 493 the proposed joint passenger train service between the Twin Cities and the Head of the Lakes, by the N. P. Ry. and Soo Line, was found to meet the conditions imposed by section 5 of the act. The pooling arrangement thus authorized was not made effective. Instead, on March 30, 1926, the carriers filed an application for an amended order to approve a proposed modified train service and division of the earnings therefrom on the basis set forth in a copy of the contract between the applicants attached to the latter application. The modification of the original plan is that, instead of a withdrawal of two trains daily in each direction, but one will be withdrawn from the service. The train so to be discontinued is the Soo night train in each direction, the N. P. night train to continue in service. A late afternoon fast nonstop train will be operated by the N. P., instead of by the Soo, as first planned, and both lines will operate early afternoon fast trains. Each line will operate a morning train to care for local traffic. HELD: Proposed modified plan just and reasonable. Twin Cities and Head of the Lakes joint passenger train service, 112 I. C. C. 403.

(b) Upon further hearing, modified joint passenger train service and division of earnings therefrom between the Twin Cities and the head of the lakes, proposed by the Northern Pacific Ry. Co. and the Minneapolis, St. Paul & Sault Ste. Marie Ry. Co., found not unduly to restrain competition, to be upon just and reasonable terms and conditions, and to meet the requirements imposed by

section 5 of the act. Prior report, 107 I. C. C. 493. Twin Cities and Head of the Lakes Joint Passenger-Train Service, 112 I. C. C. 403.

PAST RATES

See Evidence §29, §43; Reasonableness of Rates §25.

PEDDLER CAR SERVICE

See Cars and Car Supply §9¾.

(a) Class rates on fresh meats, packing-house products, and other articles, in peddler cars, from Chicago and East St. Louis, Ill., to points on the C. & O. east of Gauley, W. Va., found unreasonable to extent they exceeded aggregate of intermediates to and from Gauley. Reasonable class rates prescribed for future, and reparation awarded. Wilson & Co. v. C. & O., 104 I. C. C. 641.

(b) Class rates on fresh meats, packing-house products, and other articles, in peddler cars, from Chicago and East St. Louis, Ill., to certain interstate destinations on the C. & O., found not unreasonable or otherwise unlawful. Wilson & Co. v. C. & O., 104 I. C. C. 641.

(c) Class rates on fresh meats, packing-house products, and other articles, in peddler cars, from Chicago and East St. Louis, Ill., to branch-line points on Big Sandy and Logan divisions of C. & O., found unreasonable and unduly prejudicial to extent they exceeded rates to main-line junctions plus differentials for hauls beyond, computed under distance scale prescribed herein. Reasonable and nonprejudicial class rates prescribed for future and reparation awarded. Wilson & Co. v. C. & O., 104 I. C. C. 641.

(d) Proposed increased minimum charges on articles in peddler cars, from East St. Louis, Ill., to points on C. & O., in Kentucky and West Virginia, designed to place such charges on a basis similar to that from Chicago to same points, found not justified. The loading of peddler cars is dependent upon consuming ability of destination territory. Territory served by the C. & O. especially branch lines, is thinly settled, and limited refrigeration facilities render storage of perishable articles for extended periods impossible. Wilson & Co. v. C. & O., 104 I. C. C. 641.

(e) Peddler Car Minimum Charges: Minimum charges on fresh meats, packing-house products, and other products, in peddler cars, from Chicago and East St. Louis, Ill., to points on C. & O. in Kentucky, West Virginia, and Virginia found unreasonable and unduly prejudicial to extent they exceeded charges on 20,000 pounds of freight at 3 cents per 100 pounds less than fourth-class rates from point of origin to final destination of car. Reasonable and nonprejudicial minimum charges prescribed for future and reparation awarded. Wilson & Co. v. C. & O., 104 I. C. C. 641.

PENALTY CHARGES

See Classification §16a; Demurrage §7½, §16½.

(a) Complainant alleged the socalled penalty charge exacted on grain originating on the Santa Fe, milled at Dallas, Texas, and destined to points on the T. & P. north and west of Fort Worth, Texas, as unjust and unreasonable and unduly prejudicial to complainant and unduly preferential of Fort Worth. The charge is 2c. The line haul rates are not in issue. There is no penalty charge on shipments from and to the same territory which are accorded transit at Fort Worth. The assessment of the penalty charge is due to the fact that the Santa Fe is unwilling to accept any less division to Dallas than to Fort Worth, while the T. & P. demands a greater division for its 32 mile longer haul from Dallas than from Fort Worth. Each carrier is willing to have the charge removed if the other will bear the consequent reduction in the total charges. HELD, There is no evidence upon which to base a finding that the charge is unlawful, charges attacked not unreasonable or unduly prejudicial, complaint dismissed. Pearlstone Mill & Elevator Co. v. A. T. & S. F. Ry., 115 I. C. C. 551.

(b) Applicable charges and tariff rule which provided for assessing of double the c. l. rate on excess weight of overloaded cars when moved through to destination, or for levying a charge for reloading into suitable equipment where such shipments are discovered en route, found not unreasonable or otherwise unlawful. Complainant here operated under a weight agreement whereby his weights were accepted by carriers tariffs providing that such shipments need not be reweighed either at point of origin or en route. Moreover, while a carrier is obliged to furnish proper equipment for safe transportation of goods, shipper's duty is to load properly and to

observe tariff rules, noncompliance with which affords no basis for finding legally applicable charges unreasonable or otherwise unlawful. See also 95 I. C. C. 525; 51 I. C. C. 99. Memphis Frt. Bureau v. St. L. S. W., 115 I. C. C. 409.

(c) Maintenance of penalty charge for out-of-line haul on grain from points on A., T. & S. F., milled in transit at Dallas, Tex., and destined to points north or west of Fort Worth, while failing to exact such charges on similar traffic at Fort Worth, found not unreasonable or unduly prejudicial. The out-of-line haul when traffic moves through Dallas is substantially greater than distance through Fort Worth, the penalty charge here assailed not being shown unreasonable for extra service performed. Moreover, failure of other carriers to maintain similar penalty charges at Dallas does not establish unlawfulness of those here assailed. Pearlstone Mill & Elevator Co. v. A., T. & S. F., 115 I. C. C. 551.

(d) Carriers assessed sixth-class rate applicable on rosin in bulk in barrels on shipments of rosin in boxes without tops. Governing classification which rated rosin in boxes at second class, defined a box as a closed container. It also provided for charging of rates one class higher where improperly closed containers are inadvertently accepted for transportation. HELD: While first-class rate was legally applicable, there is a general rate parity on dry and solid articles in barrels and in boxes and no reason appears why this parity should not obtain on rosin. Accordingly, rosin in barrels being rated sixth class, the applicable first-class rate on rosin in boxes was unreasonable to extent it exceeded fifth class which would apply under penalty provision for failure to comply with packing requirements. Adjustment of charges directed. Hyman-Michaels Co. v. A. C. L., 120 I. C. C. 127.

(e) Upon contention that as shippers are charged with a knowledge of classification provisions but having for some reason elected to ship a commodity in a manner which did not comply with packing requirements they should not be heard to complain of resulting penalty charges occasioned thereby, HELD: This view can not be sustained. Even if shippers knowingly subject themselves to higher rates, clearly they are not estopped thereby from complaining that charges exacted for service performed were excessive. Hyman-Michaels Co. v. A. C. L., 120 I. C. C. 127, 128.

(f) Railroad's so-called penalty charge of $10 per day, exacted pursuant to tariff duly filed, for detention of car containing interstate shipment of lumber awaiting reconsignment, HELD in essence an additional demurrage charge, properly exacted, having been found reasonable by Interstate Commerce Commission. Turner, Dennis & Lowry Lumber Co., v. Chicago, M. & St. Paul Ry. Co., 46 Sup. Ct. 530.

PER CAR RATES

(a) One factor of combination rate on a mixed carload of sawmill machinery and a power boiler, shipped in a car 41 feet 4 inches in length, was published as "$61 per car as per classification." Governing classification rated both sawmill machinery and power machinery and power boilers sixth class, minimum 24,000 pounds subject to rule 34. Exceptions to classification, however, provided class N rating to apply on "Boilers, steam power * * * in straight or mixed carloads, with machinery and machines, per car 20,000 excess in proportion," for cars 36 feet 6 inches, or under, larger cars being subject to rule 34. Complainant's contention that the rate of $61 is applicable to 20,000-pound units of freight with any fractional excess in proportion, sustained, and charges collected found inapplicable to extent they exceeded charges computed by multiplying the rate per car by the weight of shipment and dividing by 20,000 units. Reparation awarded. West Florida Lbr. Co. v. G., F. & A., 129 I. C. C. 62.

PER DIEM CHARGE

See Cars and Car Supply §11¾, §11⅞; Demurrage §18¼; Switch Tracks and Switching §9b; Tap Lines §12½.

PERCENTAGE RATES

See Advanced Rates §7 (8); §9½ (f); Blanket Rates §12½ (m); Evidence §43¼; Express Companies §23.

(a) Rates on fresh meats from Chicago, St. Louis and other packing points in c. f. a. territory to trunk-line and New England territories found unrea-

sonable for future. Reasonable rates and percentage relationships, based on the Chicago-New York rates, which will not result in undue prejudice in their relation to present rates on livestock, prescribed. Morrell & Co. v. N. Y. C., 104 I. C. C. 104, 135.

(b) Rates on flaxseed from South Dakota points to Minneapolis, Duluth, Chicago, Milwaukee, Des Moines, Omaha, and Kansas City, found unduly prejudicial and preferential. Nonprejudicial basis of rates bearing a uniform percentage relationship to corresponding wheat rates prescribed. South Dakota R. R. Commrs. v. C. & N. W., 107 I. C. C. 35.

(c) Upon reargument, finding in original report, 95 I. C. C. 181, that rates on rig irons from Parkersburg, W. Va., to destinations in Louisiana, Arkansas, Oklahoma, Kansas, Montana, and California were and for the future will be unreasonable to extent they exceed 85 per cent of rates on oil-well outfits and supplies, affirmed as to rates for future, but as to unreasonableness in the past, reversed, and reparation denied. Parkersburg Rig & Reel Co. v. C., R. I. & P., 107 I. C. C. 182.

(d) Rates on fabricated-steel tank material and rig-iron outfits from Parkersburg, W. Va., to Riverton, Wyo., found unreasonable to extent they exceeded, on fabricated-steel tank material, lower contemporaneous rate on structural iron and steel, fabricated or unfabricated, and on rig-iron outfits, to extent they exceeded 85 per cent of rates contemporaneously in effect on oil-well outfits and supplies. Reasonable rates prescribed for future and reparation awarded. Parkersburg Rig & Reel Co. v. C. & N. W. Ry., 107 I. C. C. 187.

(e) Upon reconsideration, rates on zinc dross from Ashland, Ky., to Newport News, Va., found unreasonable to extent they exceeded 85 per cent of contemporaneous sixth-class rates prescribed in 78 I. C. C. 469; 81, I. C. C. 645. Reparation awarded. Original report, 101 I. C. C. 23, modified. Lissberger & Co. v. C. & O., 107 I. C. C. 308.

(f) Rates on copper-clad steel scrap from Swissvale and Rankin, Pa., to Norfolk and West Norfolk, Va., found unreasonable to extent they exceeded 85 per cent of sixth class. Reasonable rate from Rankin prescribed for future and reparation awarded. Copperweld Steel Co. v. B. & O., 109 I. C. C. 99.

(g) Rates on plumbago and graphite from New York Harbor, N. Y., free lighterage limits to Delano Junction, N. J., destined to Ticonderoga, N. Y., over an interstate route, found unreasonable to extent they exceeded rate contemporaneously in effect from Jersey City, N. J., by more than 3 cents. Reparation awarded and reasonable rate prescribed for future. Dixon Crucible Co. v. D. & H., 109 I. C. C. 380.

(h) Rate on imported wood pulp from Baltimore, Md., to Baltimore, Ohio, found not unreasonable or unduly prejudicial as compared with rates from Gulf ports to destinations in same general territory. Fact that present rate is not 78 per cent of New York-Chicago rate, less the differential from Baltimore, is not evidence that rate in effect is unreasonable or unduly prejudicial. The percentage formula is not a hard and fast rule but is merely a guide. And further, the practice of not scaling back the New York-Chicago rate to 78 per cent territory is not confined to wood pulp, but applied to rates on many commodities. Fairfield Paper Co. v. B. & O., 109 I. C. C. 514.

(i) Rates on agricultural and fluxing lime having no commercial value for building or chemical purposes found unreasonable for the future to extent they exceed 80 per cent of rates on common lime, hydrated, quick, or slaked, except agricultural and fluxing lime having no commercial value for building or chemical purposes. Eastern Lime Mfrs. Traffic Bureau v. A. & B. B., 112 I. C. C. 7, 26.

(j) Rates on paper boxes found unreasonable to extent they exceeded 110 per cent of rates on newsprint paper. Reparation awarded. Beatrice Creamery Co. v. A., T. & S. F., 112 I. C. C. 113.

(k) Sixth class rate on logs from Cottage Grove, Ind., to Hicksville, Ohio, found unreasonable to extent it exceeded 89 per cent of sixth-class contemporaneously in effect under the c. f. a. log-mileage scale for same distance. Reparation awarded. Crook, Son & Co. v. C. I. & W., 112 I. C. C. 399.

(l) Group rates on fuel oil and other low-grade petroleum products from points in midcontinent field of Missouri, Kansas, Oklahoma, Arkansas, Louisiana, and Texas to destinations in western trunk-line territory, Illinois, Indiana, and northern peninsula of Michigan, found unreasonable to extent they exceed 80

per cent of contemporaneous rates on gasoline between same points, fractions of a cent to be resolved to the nearest half cent. Mid-continent Oil Rates, 1925, 112 I. C. C. 421, 474.

(m) Rate equal to 90 per cent of sixth class on box board from Halltown, W. Va., to Lynchburg, Va., found not unreasonable as compared with lower commodity rate on wood-pulp board from Covington, Va., to Richmond. While these commodities are comparable from a transportation standpoint, the movement from Halltown to Lynchburg is over two or more roads. Carriers show that boxboard rates from Halltown to various destinations for comparable distances produce greater ton-mile earnings than under rates assailed, and while to certain points ton-mile earnings on box board from Halltown are lower than to Lynchburg, there is no showing that rate to Lynchburg is above general level in similar territory. Lynchburg Chamber of Commerce v. B. & O., 115 I. C. C. 465.

(n) Following Lissberger & Co., 81 I. C. C. 645, rates on spelter by-products between points in New England and eastern trunk-line territories and on zinc by-products from points in Canada to points in New England and eastern trunk-line territories, found unreasonable to extent they exceeded 85 per cent of sixth class, except between points where commodity rates are maintained on spelter, lower than 85 per cent of sixth class rates in which cases they are unreasonable to extent of such lower commodity rates. Reasonable basis of rates prescribed and reparation awarded. Lissberger & Co. v. P. R. R., 115 I. C. C. 521.

(o) Following Crescent Bed Co., 102 I. C. C. 419, rate on metallic couch frames found unreasonable to extent it exceeded 75 per cent of corresponding rate on furniture. Reparation awarded. Memphis Furniture Mfg. Co. v. I. C. R. R., 115 I. C. C. 554.

(p) Sixth-class rate applicable on lumber and assessed on logs from Adrian, Mich., to Hicksville, Ohio, found unreasonable to extent it exceeded a lower rate contemporaneously in effect from Adrian to other destinations in same general territory as Hicksville, such lower rate being equivalent to 74 per cent of contemporaneous sixth-class rate. Reparation awarded. Crook Son & Co. v. W. Ry., 118 I. C. C. 285.

(q) Sixth-class rate applicable on lumber and assessed on logs from Arcola, Ind., to Montpelier, Ohio, found unreasonable to extent it exceeded a lower log rate equal to 65 per cent of sixth class contemporaneously in effect from and to points in c. f. a. territory for like distances and found reasonable as maxima in 85 I. C. C. 533. Reparation awarded. Liberty Cooperage & Lbr. Co. v. P. R. R., 118 I. C. C. 505.

(r) Rates on envelopes, in straight carloads, from West Carrollton, Ohio, and Waukegan, Ill., to Wichita, Kans., found unreasonable to extent they exceeded 150 per cent of contemporaneous rates on newsprint paper from and to same points, minimum 40,000 pounds. Reasonable rate prescribed for future and reparation awarded. Western Newspaper Union v. A., T. & S. F., 118 I. C. C. 692.

(s) Complainant sought rates on cotton-pulp board from Nitro, W. Va., to Marcus Hook and Lewistown, Pa., and Roanoke, Norfolk, and Newport News, Va., lower than 90 per cent of sixth class, the basis prescribed for all kinds of paper-boards in 52 I. C. C. 84, contending that rates therein were prescribed as maximum only, instances being cited where carriers have departed therefrom and published lower commodity rates on some of these articles. HELD: Rates established in case cited have been maintained quite generally throughout this territory and an effort to secure a lower rate on strawboard in 101 I. C. C. 273, was not sustained. As no exception was made in that case, an exception in favor of higher grade of pulpboard here involved would be still less justifiable. Viscose Co. v. N. Y. C., 120 I. C. C. 352.

(t) Upon reargument, statement in original report, 104 I. C. C. 104, that fresh-meats rate from St. Louis to New York is a marked exception to the adjustment prevalent, and that 117 per cent is the standard relationship on almost every other commodity, found to be in error. Finding that local and proportional rates on fresh meats from St. Louis and other Mississippi River crossings to destinations in trunk-line and New England territories should be based upon 117 per cent of the Chicago-New York rate, withdrawn, and rates based upon specific differentials over Chicago prescribed for future. Morrell & Co. v. N. Y. C., 120 I. C. C. 537.

(u) Sixth-class rates on cement roofing slabs, reinforced with metal, from Wampum, Pa., to Toronto, Ontario, Canada, found unreasonable to extent they exceeded 75 per cent of sixth class, which lower basis was contemporaneously in effect from Chicago and other producing points to destinations in c. f. a. territory, and from Chicago to Sarnia, Windsor, and Toronto, Ontario, Canada, for comparable hauls. Reparation awarded. American Cement Tile Mfg. Co. v. P. R. R., 120 I. C. C. 611.

(v) Rates on cement building or roofing slabs reinforced with metal, in straight carloads or mixed with roofing cement (other than liquid) and/or asphaltum, from Lincoln, N. J., to points in trunk-line and New England territories, found not unreasonable in past, but for future found unreasonable to extent they exceed 75 per cent of contemporaneous sixth-class rates, minimum 50,000 pounds. This basis is generally applicable from and to points in c. f. a. territory and was also found justified in 107 I. C. C. 335, from Chicago and points grouped therewith, and Terre Haute, Ind., to points in c. f. a. territory. Reasonable basis prescribed for future. American Cement Tile Mfg. Co. v. A. & A. R. R. Corp., 120 I. C. C. 730.

(w) Complainant alleged that rates on rig irons, carloads, from Parkersburg, W. Va., to Louisiana, Arkansas, Oklahoma, Kansas, Montana and California were unreasonable. Original report in 95 I. C. C. 181 wherein commission found the rates applicable, being those on oil well outfits and supplies, unreasonable to extent they exceeded 85% of the rates on oil well outfits and supplies, minimum 40,000 pounds. In 107 I. C. C. 182, the original finding was affirmed as to the future but not as to the past. HELD, on and after July 1, 1922 and to the effective date of the order, rates to Louisiana and Arkansas unreasonable to extent they exceeded 85% of the oil well supplies. To Oklahoma and Kansas on and after July 1, 1922 unreasonable to extent they exceed 85% of oil well supplies; the same situation is true as to Montana and California, reparation awarded. Parkersburg Rig & Reel Co. v. C. R. I. & P. Ry., 123 I. C. C. 79.

(x) Rates on common brick from Harrisonville, Mo., to Kansas City, Kans., and Argentine, Kans., found unreasonable to extent they exceeded via various routes, 80 per cent of rates on other brick, which rates are equal to those prescribed for similar distances in Ballou Brick case, 77 I. C. C. 4, considered in connection with the General Brick case, 68 I. C. C. 213. Reparation awarded. Harrisonville Brick & Tile Co. v. A., T. & S. F., 122 I. C. C. 489.

(y) Proposed increase in basis of rates on paving and roofing pitch, paving and roofing tar, coal tar, and oil tar from 70 to 80 per cent of sixth class in c. f. a. territory, the basis applicable on asphalt, found not justified. While a review of conclusions in 61 I. C. C. 719, wherein 80 per cent of sixth class was prescribed in official classification territory on these commodities justifies carriers' attempts to replace the pitch and tar rates on a parity with those on asphalt in so far as reasonableness of rates is concerned, such an adjustment would produce a disparity in rates between producers at Cincinnati, and St. Louis and Chicago in favor of competing plants at latter points, resulting in undue prejudice to Cincinnati producers. Pitch and tar in C. F. A. Territory, 122 I. C. C. 573.

(z) On reconsideration, former finding that rates on rig irons from Parkersburg, W. Va., to destinations in Louisiana, Arkansas, Oklahoma, Kansas, Montana, and California were unreasonable for future but not for the past, modified so as to provide that rates to Oklahoma and Kansas were unreasonable to extent they exceeded 85 per cent of rates on well-boring outfits composed of rate from Parkersburg to St. Louis, the same in amount as that applicable on shipments destined to Louisiana and Arkansas, plus rates beyond St. Louis constructed in accordance with distance scale prescribed in 77 I. C. C. 473, minimum 40,000 pounds, and rates to Montana and California to extent they exceeded rates herein found reasonable, minimum 40,000 pounds. Reasonable rates prescribed and reparation awarded. Former reports 95 I. C. C. 181; 107 I. C. C. 182. Parkersburg Rig & Reel Co. v. C., R. I. & P., 123 I. C. C. 79.

(aa) Sixth-class rate on lumber assessed on logs moving from Huntertown, Ind., to Hicksville, Ohio, found unreasonable to extent it exceeded rate for similar distance under the c. f. a. log scale prescribed in 88 I. C. C. 533, approximating 70 per cent of sixth class. Reparation awarded. Cook Son & Co. v. N. Y. C., 123 I. C. C. 93.

(bb) In so far as considerations which

govern class percentages are concerned there are no differences in conditions as between the Southwest and western trunk-line territory. Accordingly, substantially same class percentages should apply in both these territories. Consolidated Southwestern Cases, 123 I. C. C. 203, 234.

(cc) Generally speaking, same class percentages should apply throughout any one classification territory, and as rapidly as may be possible progress should be made to harmonize classification ratings and class percentages throughout the country. Consolidated Southwestern Cases, 123 I. C. C. 203, 233, 234.

(dd) Following 95 I. C. C. 181; 107 I. C. C. 182, rates on rig irons in straight carloads should be about 15 per cent lower than rates on oil-well supplies. Consolidated Southwestern Cases, 123 I. C. C. 203, 331.

(ee) Rates on flaxseed from points in South Dakota to Fredonia, Kans., constructed by adding proportionals to local rates to Missouri River, found unreasonable and unduly prejudicial as compared with rates contemporaneously in effect to Minneapolis, Des Moines, Chicago, and St. Louis, competing points, and to extent they exceeded corresponding rates to Omaha, Nebr., by more than 16 cents. Reasonable and nonprejudicial rates prescribed for future and reparation awarded. Fredonia Linseed Oil Works Co. v. A., T. & S. F., 123 I. C. C. 525.

(ff) Rates on building and roofing material, from Chicago, Ill., and St. Louis, Mo., and points taking same rates, and from Lockland, Ohio, to Colorado common-point territory, found not unreasonable. Contention that above rates should not exceed 95 per cent of rates contemporaneously in effect on newsprint paper, not sustained. See also 95 I. C. C. 296. Rates on prepared roofing to destinations here involved range from 100 to 135.6 per cent of rates on newsprint paper. Moreover, present rates on building and roofing material and prepared roofing are on a comparable basis with rates on other building materials. Mountain States Roofing Co. v. A., T. & S. F., 126 I. C. C. 475.

(gg) Rates on face brick from Wooster, Ohio, to eastern points found not unreasonable as compared with lower rates contemporaneously in effect from Canton and Massillon, Ohio, competing producing points, but unduly prejudicial to extent they exceed those from the latter points. Rates assailed are generally based upon a percentage of Chicago-New York rates prescribed in 68 I. C. C. 213, although the percentage bases are not rigidly observed. Since carriers have accorded same rates from all three points to destinations in all directions in a large expanse of surrounding territory it is unjust to subject Wooster to a disadvantage to more distant destinations in the East. Nonprejudicial basis of rates prescribed for future. Medal Brick & Tile Co. v. B. & O., 128 I. C. C. 241.

(hh) Rates on furniture from Memphis, Tenn., to destinations in c. f. a., Buffalo-Pittsburgh, and southern territories, found unreasonable to extent they exceed: In case of mixed furniture, minimum 12,000 pounds, 60 per cent of the corresponding first-class rates; in case of iron beds and articles classified therewith minimum 12,000 pounds, the fourth-class rates and minimum 30,000 pounds the sixth-class rates, all of which are to be established under Southern Class Rate Investigation 100 I. C. C. 513; 109 I. C. C. 300; 113 I. C. C. 200; and in the case of l. c. l. rates on all articles of furniture, the class rates so established applicable under the southern classification. Reasonable bases of rates prescribed for future. Memphis Freight Bureau v. A. G. S., 128 I. C. C. 445.

(ii) The percentage formula can not be accepted as a measure of reasonableness of rates or as a criterion of their lawfulness in other respects. See 93 I. C. C. 271. Knoxville Iron Co. v. L. & N., 128 I. C. C. 513.

(jj) Complainant alleged that rates on bed springs or spring beds compressed, in carloads, from Carthage, Mo., to Oklahoma and Texas since Dec. 1, 1922 have been and are unjust, unreasonable and unduly prejudicial. The rates on bed springs, compressed, in carloads, from the points of origin named are mostly commodity rates, minimum 12,000 pounds, subject to rule 34, alternating with commodity rates, minimum 30,000 pounds, and with class C rates, minimum of 30,000 pounds. Oklahoma exceptions provide third class, minimum 12,000 pounds, on bed springs rated fourth class in western classification. HELD, assailed rates prior to Nov. 27, 1923, not unreasonable and complain-

ants not damaged by any undue prejudice which may have existed prior to that date. On and after that date the assailed rates to Oklahoma and Texas were, are, and for future will be, unreasonable and unduly prejudicial to extent they exceed rates which are 55 and 41% of the first class rates from and to the same points prescribed in Consolidated Southwestern cases, 123 I. C. C. 203, minimum weights of 12,000 and 30,000 pounds, reparation awarded. Leggett & Platt Spring Bed & Mfg. Co. v. A., T. & S. F. Ry., 129 I. C. C. 219.

(kk) Complainant alleged rates charged on scrap brass and brass ingots from Pittsburgh to Newark and Jersey City, N. J., and Baltimore, Md., during 1922, 1923 and 1924 were unreasonable and inapplicable. Charged to Newark and Jersey City 34c and to Baltimore 35c prior to July 1, 1923 and 31.5c thereafter. The rates from 60% territory west of Pittsburgh to Newark and Jersey City was 22.5c, to Baltimore 22c prior to July 1, 1922, 20c from that date to Sept. 15, 1922 and 19c thereafter. On and after that date, June 1, 1922, defendants maintained from Zanesville, O., a 74% group point, rates of 28c to Jersey City and 25c to Baltimore subject to a clause which authorized the application of these rates from Pittsburgh as an intermediate point. Shipments overcharged. HELD, rates applicable were 28c and 25c, refund to be made; rates attacked to Newark and Jersey City unreasonable to extent they exceeded 22.5c, and to Baltimore 22c prior to July 1, 1922, 20c on and after that date to Sept. 15, 1922 and 19c thereafter, reparation awarded. Hausman & Sons Co. v. Pennsylvania R. R., 129 I. C. C. 233.

(ll) Complainant alleged that commodity rates charged on sash, doors window and door screens, and building wood work, in carloads, from Clinton, Dubuque and Muscatine, Ia., to central territory, including the western termini of eastern trunk lines are unreasonable and as compared with rates from Oshkosh and other points in Wisconsin unduly prejudicial. Points of origin are upper Mississippi river cities. Present rates on sash and doors from Oshkosh to destinations in central territory are 3c over the lumber rates from and to the same points where the rate on lumber is 28.5c or less and 2.5c over the lumber rates where the rate on lumber is over 28.5c. The rates on sash and doors from Oshkosh to central territory range from 107 to 113% of the lumber rates from and to the same points. Commodity rates apply on sash and doors from Mississippi river points to most of central territory, but full class rates, fifth, apply generally to the eastern portion of that territory. The commodity rates bear no fixed relation to the lumber rates from and to the same points. To points in trunk line territory the present rates on sash and doors are, from Mississippi river and Wisconsin cities, 125% of the lumber rates from the Pacific coast 115% of the lumber rates. Generally speaking the rates on sash and doors from both Wisconsin and Mississippi river points to central territory are higher than from the same origin points to western trunk line territory. HELD, rates from Clinton, Dubuque, Muscatine and Davenport, Ia., and Rock Island, Ill., to points in central territory, except to points in Michigan, including the western termini of eastern trunk lines and points taking the same rates or arbitraries higher, except Buffalo, N. Y., are unreasonable and unduly prejudicial to extent they exceed the rates from Oshkosh, Wis. HELD, further, rates to Buffalo and Bay City and Grand Rapids, Mich., are and for future will be unreasonable and unduly prejudicial to extent they exceed 37, 32 and 29c, respectively. Farley & Loetscher Mfg. Co. v. A. C. & Y. Ry., 129 I. C. C. 645.

(mm) Rates on millet seed from points in Colorado, Kansas, Nebraska, North Dakota, and South Dakota to Minneapolis, Minn., found unreasonable as compared with rates contemporanerously in effect on corn, coarse grains, and flaxseed, and to extent they exceeded by more than 12 per cent the contemporaneous rates on wheat. In 107 I. C. C. 35, rates on flaxseed were found unreasonable to extent they exceeded wheat rates by more than 12 per cent, and since from a traffic standpoint millet seed resembles flaxseed in many respects, although of less value, and the two seeds have been maintained on same rate basis in the past, this relationship, for convenience, should be preserved. Reasonable rates prescribed for future and reparation awarded. Northrup, King & Co. v. A., T. & S. F., 129 I. C. C. 125.

(nn) Rates on bed springs or spring beds, compressed, from Carthage, Mo., to points in Oklahoma and Texas, found unreasonable and unduly prejudicial as compared with lower rates contemporaneously in effect from Chicago, Kansas City, St. Louis, and various other points and to extent they exceeded 55 and 41 per cent of first-class rates to Oklahoma and Texas, respectively, prescribed in 123 I. C. C. 203, between same points. Reasonable maximum basis of rates prescribed for future and reparation awarded. Leggett & Platt Mfg. Co. v. A., T. & S. F., 129 I. C. C. 219.

(oo) Rates on common unglazed doors from points in Oregon to destinations in trunk-line and New England territories found unreasonable to extent they exceeded 115 per cent of rates on lumber found reasonable in 78 I C. C. 495, 513, between same points on same commodity. Reparation awarded. M. & M. Wood Working Co. v. O.-W. R. & N., 129 I. C. C. 329.

PERISHABLE FREIGHT

See Inspection; Protective Service; Refrigeration.

(a) Upon contention that charges on l. c. l. mixed shipments of fruits, vegetables, and perishable freight, covered by one bill of lading, from one consignor to one consignee at one destination, should be based on the lowest instead of the highest-rated article in car, to compensate carrier for any deficit in minimum weight, HELD: To authorize charges on basis contended for might encourage shippers loading less than the minimum to place in car a low-rated article and thereby defeat very purpose of the minimum loading. Charges on Refrigerator Equipment, 115 I. C. C. 198, 201, 202.

PERSONAL INJURIES

See Caretakers; Employers' Liability Act; Safety Appliance Acts; Telephone and Telegraph Companies.

(a) Employee of railroad, injured while arranging and remodeling bins used to store spare railroad repair parts used in intra and interstate commerce, HELD not engaged in interstate commerce so as to be entitled to recover under federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665). Phillips v. Baltimore & O. R. Co., (Pa., 1926) 135 Atl. 102.

(b) In determining whether employee is engaged in interstate commerce and within scope of federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), question is whether employee at time of injury was engaged in interstate commerce, or in work so closely related to it as to be practically part of it. Smith v. Philadelphia & R. Ry. Co., (Pa., 1927) 135 Atl. 648.

(c) To be within "interstate transportation," employment or instrumentality must be reasonably close to movement in interstate transportation, a train movement in some form, and it must not be acts in preparation for, or expectation of, but in actual furtherance of, interstate transportation, in view of federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665). Smith v. Philadelphia & R. Ry. Co., (Pa., 1927) 135 Atl. 648.

(d) One unloading coal from railroad car for purpose of storage is not employed in "interstate commerce," even if the coal is subsequently used in interstate commerce. Smith v. Philadelphia & R. Ry. Co., (Pa., 1927) 135 Atl. 648.

(e) To come within scope of operation of federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), thing on which, or about which, injury takes place must have actually been thrown into interstate transportation or movement, and not merely preparatory to, or intended to be later used in such movement. Smith v. Philadelphia & R. Ry. Co., (Pa., 1927) 135 Atl. 648.

(f) A railroad employee, employed in interstate commerce, does not lose that status, within the meaning of Employers' Liability Act (Comp. St. §§ 8657-8665), because during a rest period, and when injured or killed, he was engaged in an act which, though not required in performance of his duty, was in intent not inconsistent with his duty to resume work at the appointed time. Brown's Adm'r. v. Norfolk & W. Ry. Co., 12 Fed. (2d) 319.

(g) Plaintiff's intestate was a member of a mason's crew employed in repairing bridges, etc., along the track of defendant's railroad, used in both interstate and intrastate commerce, and which used a train as headquarters and in moving from one place of work to another. The duty of plaintiff's intestate included keeping the kitchen and dining cars

supplied with coal and water. While the train in moving to a new place of work, was stopped at an intermediate station, he crossed some tracks and filled a sack from a car of commercial coal there standing, and while on his way back was struck and killed by a passing train. He had been forbidden by the foreman to take coal from commercial cars, and such was a minor rule of the company, not in its printed rules, but its violation was not a serious offense. HELD, that, regardless of the purpose for which he took the coal, he was, when killed, employed in interstate commerce, within Employers' Liability Act, § 1 (Comp. St. § 8657) Brown's Adm'r v. Norfolk & W. Ry. Co., 12 Fed. (2d) 319.

(h) Where employee's services are intimately related to interstate commerce, and there is an element of interstate commerce in a traffic or employment, it determines employee's remedy. Salno v. New York Cen. R. Co., 215 N. Y. S. 645.

(i) Plaintiff, who accepted free pass, which released carrier from liability for personal injuries arising from any cause, assumed all risks while she was using facilities afforded for her transportation, including slipping on floor or railroad station before she boarded train, notwithstanding station was maintained by separate corporation sued as joint tort-feasor with carrier. Wilder v. Pennsylvania R. Co., 217 N. Y. S. 56.

(j) Terminal railroad, adjudged by United States Supreme Court to be a common carrier by railroad within federal Hours of Service Act (U. S. Comp. St. §§ 8677-8680), must be held to be "common carrier" within federal Employers' Liability Act. (U. S. Comp. St. §§ 8657-8665), in view of Transportation Corporations Law N. Y. §§ 155-157, as added by Laws 1911, c. 778, §1. Busch v. Brooklyn Eastern District Terminal, Inc., 218 N. Y. S. 516.

(k) In action under federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), for wrongful death of fireman killed on work train in collision with locomotive, fireman HELD engaged in interstate commerce at time of injury, which occurred when train was returning to base after movements toward state line gathering up scrap iron for purpose of transportation into another state, train having same crew on return, as entire movement of work train was continuous operation in interstate commerce. Wabash Ry. Co., v. Whitcomb, (Ind., 1927) 154 N. E. 885.

(l) To bring case within federal Employers' Liability Act (U .S. Comp. St. §§ 8657-8665), plaintiff, at time of injury, must have been engaged in interstate commerce, or work directly related to or so closely connected with it, as to be part of it. Conway v. Southern Pac. Co., (Utah, 1926) 248 Pac. 115.

(m) Employe, injured while blasting rock from employer's quarry, 10 or 15 miles from where it was used to fill up employer's railroad track, used in interstate commerce, HELD not engaged in such commerce, within federal Employers, Liability Act. (U. S. Comp. St. §§ 8657-8665). Conway v. Southern Pac. Co., (Utah, 1926) 248 Pac. 115.

(n) To be liable for employee's injury, under federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), railroad must have accepted and designated for interstate use one or more units of train on which he worked. Johnson v. Southern Pac. Co., (Calif., 1926) 248 Pac. 501.

(o) In suit under federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), there is presumption that railroad, while operating within state, was engaged in intrastate commerce. Johnson v. Southern Pac. Co., (Calif., 1926) 248 Pac. 501.

(p) Empty, private owned cars being moved to certain yard where they were to be inspected, after which owners of incoming oil, who had leased such cars, intended to ship oil to other states in them, HELD neither vehicles nor parcels of interstate commerce, so as to permit action under federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665) for death of brakeman on train of which they were part, notwithstanding statement as to their intended use by traffic manager of lessor to railroad's car clerk. Johnson v. Southern Pac. Co., (Calif., 1926) 248 Pac. 501.

(q) Question of railroad's negligence in selection of physician for treatment of injured section hand HELD for jury, whether case was within federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), or not. Crawford v. Davis, Director General of Railroads as Agent, (S. C., 1926) 134 S. E. 247.

(r) Federal Employers' Liability Act

(U. S. Comp. St. §§ 8657-8665), applies only when particular service in which employee is engaged is part of interstate commerce. Crawford v. Davis, Director General of Railroads, as Agent, (S. C., 1926) 134 S. E. 247.

(s) Act of railroad in choosing doctor to treat employee was purely intrastate matter, as respected application of federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665) to action for negligence in selecting incompetent physician. Crawford v. Davis, Director General of Railroads, as Agent, (S. C., 1926) 134 S. E. 247.

(t) Petition stating cause of action in favor of personal representative of flagman, employed in interstate commerce to protect trains engaged therein, HELD within federal Employer's Liability Act (U. S. Comp. St. §§ 8657-8665). Sears v. Texas & N. O. Ry. Co., (Tex., 1924) 266 S. W. 400.

(u) While under Employers' Liability Act, § 4 (U. S. Comp. St. § 8660), contributory negligence is abolished as complete defense, if negligence of employee succeeds that of employer and is sole proximate cause of his injury or death, there can be no recovery. Sears v. Texas & N. O. Ry. Co., (Tex., 1924) 266 S. W. 400.

(v) To be within federal Employers' Liability Act (U. S. Comp. St. 8657-8665) employee must be engaged in work interstate in character or so nearly related thereto as to be practically part of it, as in repairing instrumentality then in use in interstate transportation. Brock v. Chicago, R. I. & P. Ry. Co., (Mo. 1924) 266 S. W. 691.

(w) Refusal of instruction, in action under federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), that, if plaintiff was performing no duty in or incidental to his general employment, but was engaged in going after water for his own personal use and comfort at time of injury, he could not recover, HELD not reversible error, in view of instructions that he must have been engaged in interstate commerce or work incidental thereto, and not engaged with his own private concerns. Brock v. Chicago, R. I. & P. Ry. Co., (Mo., 1924) 266 S. W. 691, 692.

(x) Action for injuries to employee while unloading mail from interstate car at distributing point was properly brought under federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665). Missouri Pac. Ry. Co., v. Baldwin, (Tex., 1925) 273 S. W. 834.

(y) Generally, where applicability of the federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665) is uncertain, the character of employment in relation to commerce may be adequately tested by inquiring whether at the time of injury employee was engaged in work so closely connected with interstate transportation as practically to be a part of it. Missouri Pac. Ry. Co., v. Baldwin, (Tex. 1925) 273 S. W. 834.

(z) Section hand HELD to have assumed risk under federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), where injured while slipping into an unfilled space between railway ties while putting motor car on track, where he knew the track had not been reasonably safe for two years. Odell v. St. Louis-San Francisco Ry. Co., (Mo., 1926) 281 S. W. 456.

(aa) Appellate court may not weigh the testimony on whether there was complaint and promise to repair dangerous place so that employee did not assume the risk under federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), but only determine whether any substantial evidence supports the judgment. Odell v. St. Louis-San Francisco Ry. Co., (Mo., 1926) 281 S. W. 456.

(bb) Section hand, whose duties required him to repair and inspect railroad track over which interstate commerce was carried, was engaged in interstate commerce, within federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665). Odell v. St. Louis-San Francisco Ry. Co., (Mo., 1926) 281 S. W. 456.

(cc) Where section hand complained to foreman of condition of track in front of section house at various times during two years, but received no definite promises to repair, evidence that section hand relied on promise to repair, and so did not assume risk under federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), HELD insufficient for jury. Odell v. St. Louis-San Francisco Ry. Co., (Mo., 1926) 281 S. W. 456.

(dd) Where an employee knows of a defect, and appreciates the risk, if he continues in the employment without objection or assurance of its remedy, he

assumes the risk, though it arises from master's breach of duty, unless there be promise of reparation, and then an employee, relying thereon, does not assume risk during a reasonable time for, or until time specified for, performance, unless the danger be so imminent that no ordinarily prudent man would rely on the promise, under federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665). Odell v. St. Louis-San Francisco Ry. Co. (Mo., 1926) 281 S. W. 456.

(ee) Under Federal Employers' Act (U. S. Comp. St. §§ 8657-8665), the common-law doctrine of assumed risk applies to injury to trucker in freight depot while engaged in interstate commerce. Gulf C. & S. F. Ry. Co. v. Young, (Tex. 1926) 284 S. W. 664.

(ff) Trucker in freight depot, injured while handling shipment being transported from Dallas, Tex., to Monterey, Mexico, HELD engaged in interstate commerce, within federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), notwithstanding, because of revolution in Mexico, shipment was moved on local bill of lading from Dallas to Laredo, Tex., and shipment moved across border by truck, where new bill of lading was procured. Gulf C. & S. F. Ry. Co. v. Young, (Tex., 1926) 284 S. W. 664.

(gg) Railroad employee, at time of injury assisting in placing grates between rails for purpose of draining water off main lines used in interstate commerce HELD engaged in "interstate commerce," within federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), making defense of assumed risk applicable. Galveston, H. & S. A. Ry. Co., v. Contonis, (Tex., 1926) 288 S. W. 154.

(hh) Employee of common carrier, engaged in interstate commerce, must also have been engaged therein at time of injury, to recover, under federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665). Williams v. Carolina C. & O. Ry. Co., (Tenn., 1926) 289 S. W. 520.

(ii) Employee HELD engaged in interstate commerce, within meaning of federal Employers' Liability Act, § 1 (U. S. Comp., St. § 8657), where repairing upper deck of bridge, which deck was used by wagons, automobiles, pedestrians, street car lines, and electric interurban cars, and which deck was immediately above deck used by employer in transporting interstate commerce, since failure to keep the upper deck in repair would endanger interstate commerce on the lower deck. Swain v. Terminal R. R. Ass'n of St. Louis, (Mo., 1927) 291 S. W. 166.

(jj) That one of two railroad tracks on bridge extending from one state to another and used in interstate commerce was withdrawn from use during repair of bridge until 4 o'clock in the afternoon HELD not to prevent employee, engaged in repair of bridge, from being engaged in interstate commerce, within meaning of federal Employers' Liability Act, § 1 (U. S. Comp. St. § 8657). Swain v. Terminal R. R. Ass'n of St. Louis, (Mo., 1927) 291 S. W. 166.

(kk) Employee HELD engaged in interstate commerce, within meaning of federal Employers' Liability Act, § 1 (U. S. Comp. St. § 8657) where engaged in unloading, at destination, interstate shipment of girders, which had been transported by employer over its interstate railroad line from another state. Swain v. Termnial R. R. Ass'n of St. Louis, (Mo., 1927) 291 S. W. 166.

(ll) Employee held engaged in interstate commerce, within the meaning of federal Employers' Liability Act, § 1 (U. S. Comp. St. § 8657), where engaged in repairing deck of bridge, for use of which deck employer received toll under contract or running agreement with electric interurban railroad companies engaged in transporting passengers in interstate commerce. Swain v. Terminal R. R. Ass'n of St. Louis, (Mo., 1927) 291 S. W. 166.

(mm) It is not necessary that an employee know the interstate character of the movement which he is aiding at the time of his injury, in order for him to be within the federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665.) La Lone v. St. Louis Merchants' Bridge Terminal Ry. Co., (Mo., 1927) 293 S. W. 379.

(nn) Where switchman was killed in the discharge of his duties during the movement of a train of empty cars toward a freight house, and where jury might have found that previous to the movement of the cars at least four of them had been designated to be used in interstate commerce after they were loaded at the freight house, whether switchman was engaged in interstate

commerce, within the meaning of the federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), at the time of his death, HELD a question for the jury. La Lone v. St. Louis Merchants' Bridge Terminal Ry. Co., (Mo., 1927) 293 S. W. 379.

(oo) Brakeman with duty of determining time spent in partly unloading car shipped in interstate commerce, prior to its being taken to its ultimate destination, HELD employed in interstate commerce for the purpose of determining whether injury received was within federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665). Clark v. Wheelock, (Mo., 1927) 293 S. W. 456.

(pp) Assistant claim agent, who was injured in wreck on interstate train, while returning to headquarters for further orders, after having completed settlement of claim, HELD not engaged in "interstate commerce," within purview of federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), so as to come within two-year limitation therein. Gulf M. & N. R. Co., v. Myer, (Miss., 1926) 110 So. 444.

(qq) Where employee was injured while repairing instrumentality of interstate commerce, and thus his claim for damages arose exclusively under federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), compromise of claim was binding without having been submitted to and approved by district judge, as required by Act La. No. 20 of 1914, § 17. Hamilton v. Louisiana Ry. & Nav. Co., In re Louisiana Ry. & Nav. Co., (La., 1926) 111 So. 184.

(rr) Hauling empty freight cars from one state to another is "interstate commerce," within federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), interstate character of which begins when and not until car has been designated therefor and has begun to move for such purpose. Gulf & S. I. R. Co., v. Curtis, (Miss., 1927) 111 So. 587.

(ss) Where empty freight cars for use in interstate commerce were delivered by one railroad to another in accordance with interchange agreement, use in interstate commerce, within federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665, HELD not to begin prior to time switching crew commenced to move them for delivery to other railroad pursuant to orders required before delivery was to be made. Gulf & S. I. R. Co. v. Curtis, (Miss., 1927) 111 So. 587.

(tt) Kind or amount of evidence required to establish liability under federal Employers' Liability Act (Comp. St. §§ 8657-8665) is not subject to control by states. Chicago, M. & St. Paul Ry. Co., v. Coogan, 46 Sup. Ct. 564.

(uu) On writ of certiorari to review judgment of state court in action under federal Employers' Liability Act (Comp. St. §§ 8657-8665), Supreme Court will examine record, and, if it finds evidence insufficient as a matter of law to sustain findings of carrier's negligence, will reverse judgment against it. Chicago, M. & St. P. Ry. Co. v. Coogan, 46 Sup. Ct. 564.

(vv) Federal Employers' Liability Act (Comp. St. §§ 8657-8665) supersedes state laws affecting employers' liability to employees in interstate transportation by rail. Chicago, M. & St. Paul Ry. Co., v. Coogan, 46 Sup. Ct. 564.

(ww) Employer is liable for injury or death resulting in whole or in part from negligence specified in federal Employers' Liability Act (Comp. St. §§ 8657-8665). Chicago, M. & St. P. Ry. Co., v. Coogan, 46 Sup. Ct. 564.

PHYSICAL VALUATION

See Advanced Rates §10½; Evidence §43½a, §49, §50; Finance Dockets §8; Interstate Commerce Commission §8; Reasonableness of Rates §39½.

PIPE LINES

I. CONTROL AND REGULATION.
- §1. In general.
- §2. Constitutionality of legislation.

II. AS COMMON CARRIER
- §3. In general.
- §4. As interstate carrier.

III. TARIFFS AND CONSTRUCTION
- §5. In general

IV. RATES AND CHARGES.
- §6. In general.

V. OPERATION.
- §7. In general.

CROSS REFERENCES

See Equalization of Rates §4 (1½); Evidence §14 (2½); Gas and Electric Companies.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. In General.

(a) Holding oil in tanks located on pipe lines extending from oil fields to refinery in another state, some of which remained in storage for several months in tanks which were of greater capacity than required for continuous operation of pipe lines, and at all times contained large quantity of oil, HELD to break continuity of interstate journey, and subject oil to local taxation. Gulf Refining Co., of Louisiana v. Phillips, Tax Collector, 11 Fed. (2d) 967. Same v. Sandlin, Tax Collector, 11 Fed. (2d) 967.

(b) Pipe line company, purchasing oil from lessee, HELD charged with notice of lessor's reserved title to one-eighth of oil and liable for conversion thereof, notwithstanding division order which was confined to part only of the land leased. Shreveport-el Dorado Pipe Line Co., Inc., v. Bennett, (Ark. 1927) 290 S. W. 929.

(c) Special assessment on pipe line, used in interstate commerce, as real property, for construction of drainage and highway districts, HELD not tax which is forbidden by interstate commerce clause of the United States Constitution (article 1 § 8). Standard Pipe Line Co., v. Index-Sulphur Drainage Dist. (Ark., 1927) 293 S. W. 1031.

(d) Assessment against pipe line for road and bridge improvement is not unlawful burden on common carrier for hire in interstate commerce, but is general improvement tax, which may be levied against all real property of corporation having situs within state, irrespective of use, so long as it is all treated alike. Miller County Highway & Bridge Dist. v. Standard Pipe Line Co., Inc., 19 Fed. (2d) 3.

II. AS COMMON CARRIER.

See Common Carrier.

§3. In General.

(a) Shipments of crude oil from certain Kentucky points to Owensboro, Ky., moved from latter point by pipe line to Lawrenceville, Ill. Upon contention that the pipe-line company was not a common carrier but a plant facility and that shipments were local to Owensboro and movement beyond constituted a reshipment, HELD: Owensboro was never considered as the destination for any shipments. There were no storage facilities or refineries at that point, the oil passed from carrier's possession to the pipe line as a matter of necessity, and none was sold locally. Circumstances of movement, therefore, imparted an interstate character to shipments. Indian Refining Co. v. L. & N. 126 I. C. C. 543, 544.

IV. RATES AND CHARGES.

See Reasonableness of Rates.

§6. In General.

(a) Local rate on crude petroleum oil from certain Kentucky points to Owensboro, Ky., for movement by pipe line to Lawrenceville, Ill., FOUND not unreasonable, unduly prejudicial, or otherwise unlawful, as compared with local rates contemporaneously in effect from same and various other points to Evansville, Ind., and Louisville, Ky.; or with proportional rates to Evansville and Louisville, and to Jeffersonville and New Albany, Ind., more distant points. If proportional rates had been established to Owensboro for application in connection with the pipe line, no reason appears why they should have been higher than those to Louisville and Evansville. However, local rates assessed appear not to have exceeded maximum reasonable rates for service performed. Indian Refining Co. v. L. & N. R. R. 126 I. C. C. 543.

POOLING OF TRAFFIC

(a) Application of Northern Pacific and Minneapolis, St. Paul & Sault Ste. Marie railways, under section 5 of the act, for authority to establish a joint passenger-train service between Minneapolis and St. Paul, Minn., and Duluth, Minn., and Superior, Wis., and to divide earnings therefrom, approved. Proposed arrangement found to be in interest of economy of operation, not to unduly restrain competition, and to be upon just and reasonable terms and conditions. Joint Passenger Train Service, 107 I. C. C. 493.

(b) Where law of a State prohibits pooling of revenues by competing rail carriers, and only a small portion of such revenues proposed to be pooled is from intrastate traffic, commission has jurisdiction in the matter under section 5 of the act, paragraph (1) of which gives it authority to enter orders approving certain pooling arrangements, and paragraph (8) of which provides that carriers so affected shall be relieved of all

restraints or prohibitions by law, State or Federal, in so far as may be necessary to enable them to do anything authorized or required by such orders. Joint Passenger Train Service, 107 I. C. C. 493, 495.

(c) Eastern car pool, under which coal cars were pooled with object of attaining maximum efficiency, was created by carriers and during Federal control was operated under direction of the car-service section of the U. S. Railroad Administration. Its function was to distribute cars between operating units so that all shippers in each unit might be equitably served. Northern W. Va. Coal Asso. v. P. R. R., 109 I. C. C. 604, 607.

PORT DIFFERENTIALS

See Import Traffic §2 (3o).

(a) Rates on cottonseed and vegetable cake and meal from points in Texas to Galveston, for export, differentially higher than rates on same commodities to Houston and other Gulf ports, found not unduly prejudicial to Galveston or unduly preferential of Houston and such other ports in their relation to distance scale of rates prescribed in Oklahoma case, 98 I. C. C. 183. Galveston Commercial Asso. v. A. & S., 109 I. C. C. 114.

(b) Port Differentials: Contention that since carriers have equalized rates to Gulf ports on cotton fabrics, bagging and ties, soap, and other commodities, they should be required to do so as to cottonseed cake and meal, not sustained. No competition was shown between commodities instanced and cottonseed cake and meal, undue prejudice alleged being against one port to advantage of another in rates on same commodities, i. e., cake and meal, which issue does not include undue prejudice as between various commodities. Galveston Commercial Asso. v. A. & S., 109 I. C. C. 114, 121.

(c) Upon further hearing in 95 I. C. C. 539, all rail-rates on grain and products from Illinois, Wisconsin, Minnesota, the Dakotas, Montana, Iowa, Nebraska, Kansas, Arkansas, and Oklahoma, to Boston and New York, for export, FOUND not unreasonable or otherwise unlawful as compared with lower contemporaneous rates to Philadelphia and Baltimore. Complainants agree with all other parties that present method of constructing rates from western points to Atlantic ports is best that has been devised. Moreover, as larger portion of export grain now moves through Philadelphia and Baltimore, to require carriers to establish equal reshipping rates from primary markets on grain originating in Northwestern States, in accordance with recommendation in former report, would undoubtedly complicate the grain-rate structure, and might create some difficulties in handling grain at primary markets. Maritime Asso., Boston Chamber of Commerce v. A. A. R. R. 126 I. C. C. 199.

(d) Upon further hearing in 95 I. C. C. 539, carriers attempt to justify ex-lake differentials on grain and products from Buffalo to New York and Boston for export, over those to Baltimore and Philadelphia, contending that most ex-lake grain comes from c. f. a. territory; that there are all-rail routes through Buffalo reflecting the full differential, and that mere substitution of lake for rail movement should not deprive Baltimore and Philadelphia of their differentials. HELD: Record indicates that most ex-lake grain is not domestic but Canadian, and the differential adjustment of ex-lake grain rates to north Atlantic ports is an exception to general rule with respect to export rates from Buffalo, since both export class and commodity traffic moves therefrom to Boston, New York, Philadelphia, and Baltimore on identical rates. Maritime Asso., Boston Chamber of Commerce v. A. A. R. R., 126 I. C. C. 199, 208, 211.

(e) Proposal to add a differential to the intrastate rate at Mobile, Ala., in order to place that port on a parity with Gulfport, Miss., and New Orleans, found justified. Similar differential was adopted at Gulfport in favor of Alabama, the same as prescribed at New Orleans, in order to preserve this rate parity on coal from Illinois-Kentucky mines, and on this long-haul traffic for substantially equal distances, it is believed the parity of these ports should be maintained. Coal from Illinois, Kentucky, and Alabama, 128 I. C. C. 113, 120.

(f) Rates on petroleum and products in export and coastwise movement from southern Kansas, Oklahoma, and Texas to Galveston and other Texas ports taking same rates, and on grain and products from southern Kansas, same as to New Orleans and other Louisiana ports, found not unduly prejudicial, but like rates on various other commodities found unduly prejudicial to Texas ports,

with certain exceptions. While parity of rates results in substantially greater service for same rate to Louisiana ports than to Texas ports between interior points from which the short-line distance to New Orleans exceeds that to Galveston by more than 25 per cent, it does not result in substantial injury except as designated. Findings in original report reversed in some respects and modified in others, and nonprejudicial basis of rates prescribed for future. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349.

(g) The principal issue is one of prejudice against the Texas ports and preference of Louisiana ports on some 14 commodities or commodity descriptions moving export, import, or coastwise through the Gulf ports, from or to interior points in southern Kansas, Oklahoma, Texas, Arkansas and Louisiana. Original report, Galveston Commercial Asso. v. G. H. & S. A. Ry., 100 I. C. C. 110. The Texas ports, with unimportant exceptions, have long enjoyed the same rates from and to points in Texas on and north of the T. & P., referred to as northern Texas, Oklahoma and southern Kansas, hereinafter referred to as the affected territory, on foreign and coast wise traffic moving in substantial volume through two or more of those ports. This is also true of the Louisiana ports. The difference in distance to any two of the Texas ports or to any two of the Louisiana ports is in no instance greater than 100 miles. The present equalization as between the Texas ports or as between the Louisiana ports is not here in issue, and in considering the relative conditions at these ports the two sets of ports will be considered together, so far as possible, unless otherwise indicated. The fact must not be lost sight of, however, that Galveston is the principal complainant and New Orleans the principal protesting intervener, so that the relative conditions affecting these two ports with respect to the traffic herein concerned merit particular attention. From southern Kansas to New Orelans 898 miles, to Galveston 755 miles, difference 143 miles; excluding points in equalized territory, 930 and 768 miles, respectively, difference 162 miles. From Oklahoma to New Orleans 691 miles, to Galveston 545 miles, difference 146 miles; excluding points in equalized territory, 720 and 546 miles, respectively, difference 174 miles. From northern Texas to New Orleans 644 miles, to Galveston 444 miles, difference 200 miles; excluding points in equalized territory, 670 and 457 miles, difference 213 miles. The foregoing differences in distance are reasonably accurate for all commodities moving export, import or coastwise, with the exception of petroleum and petroleum products, and if the differences were determined from the same origin points to all the Texas ports through which there is a movement of general cargo, on the one hand, and New Orleans on the other, the average differences would vary little from those given. Summarized, generally speaking, except on coastwise shipments, New Orleans as a port has held its own in percentage of increase in total tonnage handled as compared with all the Texas ports combined; that the progress of New Orleans has been substantially greater than that of Galveston, particularly in commodities moving in steady volume; that while a substantial portion of the difference between the percentages of increase at New Orleans and Galveston is attributable to the faster progress made by other Texas ports, particularly Houston, a large part of that difference is traceable to the more rapid increase in tonnage during the same period enjoyed by New Orleans. The total tonnage of the Texas ports, particularly the Sabine Pass ports, is swollen by the large volume of petroleum and products which they handle. The tonnage handled at New Orleans is distinguished by its diversification and the fact that it is less seasonal in character than that of the Texas ports. The evidence bearing upon the facilities at the various ports indicates that at the Lousiana and Texas ports the facilities are adequate to handle without serious difficulty the peak movements which are now offering and would be likely to offer through any of those ports under the present adjustment of rates, with the single exception of grain. It leaves no doubt also that with the same exception, no serious congestion or delay would be likely to result at any of the Texas ports if the differentials prescribed in the original report were to become effective. With respect to the handling facilities for export grain at the Texas ports particularly Galveston, the record indicates that the establishment of differentials from all points in differential territory

as defined in the original report would threaten serious congestion, especially at the port of Galveston during a substantial portion of the annual period of normal export movement. Congestion at the port and consequent embargo usually entail great losses because of deterioration of the grain enroute, tying up of railroad equipment, cancellation of old and the making of new contracts, diversions and accrued demurrage; and these losses are suffered, not by the port interests, but by interior shippers whose contracts call for delivery at the coastal elevators. Nothing can be found upon this record which would indicate that the establishment of differentials would be detrimental in any substantial degree to any of the steamship lines serving any of the Gulf ports, or to the barge lines operating on the Mississippi and Missouri rivers. While the tonnage of the federal barge line operating on the Mississippi river is an important factor in the total foreign and coastwise movement through New Orleans, a very small portion of its tonnage originates at or is destined to points in differential territory. The testimony leaves little doubt that the differential prescribed in the original report, or even smaller differentials on most of the commodities, would in time divert to the Texas ports a substantial portion of most of the commodities having origin or destination in the affected territory that are now moving through New Orleans. On several of the commodities, however, green coffee for instance, the movement that would be diverted from New Orleans would probably be small. The establishment of differentials would seem more certain to divert from New Orleans practically all of the movement of grain and grain products and petroleum and products originating in differential territory than of any of the other commodites. Several interveners take the position that no matter what differentials may be prescribed against New Orleans on certain commodities, Galveston never was and never will be a port of any consequence as to those commodities. But Galveston is entitled to a fair opportunity to secure foreign and coastwise traffic on such commodities, and the Commission is certainly not justified in predicting a failure on the part of Galveston to take advantage of such opportunity. Still less would it be justified in using such a forecast as a reason for withholding what it would otherwise accord. A port is neither the destination nor the origin of traffic passing through it. It levies toll on the traffic, in substantially the same manner as do common carriers, in its charges for use of its facilities in the transfer of traffic between the rail and water carriers. Healthy competition is no less important between ports than between rail and water carriers. There is, however, a limit beyond which the disregard by rail carriers of the geographical advantages of one port in favor of another will impair rather than promote healthy competition between the ports. There is much ground for believing that a policy of port equalization, if carried beyond reasonable limits, has the effect of strengthening unduly, at the expense of others, those ports which by reason of natural or acquired advantages have attained commanding positions in the export and import trade. Such a policy also encourages waste in rail transportation. HELD, the Texas & Pacific is an independently operated carrier and is not to be regarded as a part of the Missouri Pacific system. Since the T. & P, therefore, does not serve any Texas port, and has no controling voice in fixing the level of the assailed rates to any of the Texas ports it can not be held guilty of undue preference or prejudice under the circumstances in this case. This is also true of the Louisiana Railway & Navigation system. What has just been said, of course applies only to traffic originating at, or destined to, points on the lines of those two carriers. There is a clear distinction between a situation under the fourth section, under which differences in distance over direct and circuitous routes are in effect disregarded, and a situation like this one. Where a circuitous route is permitted to meet a short line rate, the latter rate exists in any event over the short route, and no locality or shipper is deprived of the benefit of location if longer routes are permitted to meet this competition and share in the traffic. Here the Commission has quite a different question, namely, whether carriers which are responsible for the rates between common destinations or origin points and these rival ports can lawfully, under section 3, discriminate between the ports by giving materially more service for the same charge to one than they give to another. If the parity in rates would in any event continue to exist by reason

of the independent action of a carrier or carrier serving only one of the ports and responsible only for its rates, there would be the same justification for permitting the carriers which serve both New Orleans and one or more of the Texas ports to meet this competition as exists where the Commission permits circuitous routes to meet short line rates between the same points. This the Commission finds to be the situation as to points directly served by the T. & P. and the L. R. & N. system. The Commission can not concede to the view that distance is not one of the most important factors which should be considered in determining whether or not port adjustments are unlawful. However, it is by no means the only factor. HELD, the present parity of rates as between the Texas and Louisiana ports results in substantially greater service for the same rate to the Louisiana ports than to the Texas ports from and to interior points from which the short line distance to New Orleans exceeds that to Galveston by more than approximately 25%; that this parity of rates does not result in substantial injury to the Texas ports in respect of petroleum and its products, but does result in substantial injury to and prejudice against the Texas ports in respect of the other commodities considered, except on grain and grain products from points in southern Kansas north of the Rock Island, from the Kansas Oklahoma state line through Liberal to Hutchinson, Kas; HELD, in 12798 that the present relationships of the assailed carload rates on export, import and coastwise traffic in the commodities enumerated in the findings on page 123 of the original report. excepting petroleum and its products, rosin from Texas points, green coffee to points other than Texas, and grain and grain products from points in southern Kansas as hereinbefore defined, north of the line of the Rock Island from the Kansas Oklahoma state line through Liberal to Hutchinson and west of the M. P. from Hutchinson through Sterling and Lyons to Kanapolis, from or to points in southwestern Louisiana, as hereinbefore defined, Arkansas, Texas, excepting points on the T. & P. and L. R. & N. system. Oklahoma, and southern Kansas, and in bagging, cotton bale ties, and buckles to points to Oklahoma, are, and for the future will be, unduly prejudicial to Galveston and the other Texas ports taking the same rates and unduly preferential of New Orleans. HELD, further, this undue prejudice should be removed by establishing, from or to interior points from which the short line distances to New Orleans do not exceed those to Galveston by more than about 25%, rates to or from Galveston and the other Texas ports taking the same rates, as the case may be, which do not exceed the rates on the same commodities to or from New Orleans; and by establishing, from or to interior points from which the short line distances to New Orleans exceed those to Galveston by more than approximately 25%, rates to or from Galveston and the other Texas ports taking the same rates, as the case may be, which do not exceed rates which are less than the rates on the same commodities to or from New Orleans by certain differentials. SUSPENDED SCHEDULES. On bagging (cotton bale covering), cotton bale ties, and buckles, differentials are prescribed herein only to southwestern Louisiana, Texas and Oklahoma. The Commission expects respondents to publish import and coastwise rates on these commodities from New Orleans and Texas ports, and which will conform to fourth section requirments. HELD, suspended schedules not justified without prejudice to the filing of new schedules in conformity with foregoing conclusions. THE ISSUES [N 17850. Complainant alleged that rates on petroleum and its products in export and coastwise movement from refining points in north Central Texas to New Orleans and Galveston and points taking the same rates as unreasonable, and to Louisiana ports are unduly prejudicial because higher for like distances than are the rates from refining points in southern Arkansas, northern Louisiana and southern Texas to the same ports; and the refusal of defendants to permit blending in transit of petroleum products at interior Texas refining points while permitting such blending in transit at refineries located at Texas and Louisiana ports is unduly prejudicial to the former. Rate attacked is 20.5c. Under the present extensively grouped and highly competitive adjustment, both in the interior and at the ports, a reduction in the rate from any one important group should be made with caution and only for the strongest reason. There is a clear distinction between the circumstances under which this blending provision applies at the ports and the circumstances under which it would apply

at interior refining points. While the rule is designated as a blending in transit provision and is applicable to shipments in transit to an export or coastwise destination, the shipments upon which it applies has in fact reached its destination, so far as the rail carrier is concerned, upon its delivery to the coastal refiner for unloading into his storage tank. The blending rule is necessary in order to insure protection of the export or coastwise rate, and the protection of that rate appears to be proper because the carrier performs no greater service in delivering to the storage tank than it does on like shipments delivered direct to the vessel. At the interior refining point, however, transit arrangements such as those at the port would involve two separate and distinct movements, and no necessity therefore such as that pointed out at the ports exists at the interior points. No transit service of any kind is now permitted at interior points on export, coastwise or domestic petroleum or its products, and no such arrangements are in effect on domestic shipments at the ports. It is apparent that under the present extensive grouping of shipping points transit arrangements such as those here sought at interior points would have the effect in most instances of requiring the carriers to perform the inbound haul without charge; and if such arrangements were established at refining points in north central Texas similar provisions would have to be established throughout the entire southwestern refining territory. HELD, attacked rate not unreasonable or unduly prejudicial, and that the attacked provision for blending in transit at Gulf ports is not unduly prejudicial. Galveston Commercial Asso. v. G. H. & S. A. Ry., 128 I. C. C. 349.

(h) Upon contention that no matter what differentials may be prescribed against New Orleans on certain commodities, Galveston never was and never will be a port of any consequence as to those commodities, FOUND: Galveston is entitled to a fair opportunity to secure foreign and coastwise traffic in such commodities, and commission is not justified in predicting a failure on part of Galveston to take advantage of such opportunity, still less use such a forecast as a reason for withholding what would otherwise be accorded. Galveston Commercial Asso. v. G. H. & S. A., 128 I. C. C. 349, 368.

(i) Upon contention that since differentials of New Orleans and other Gulf ports and south Atlantic ports under New York and other north Atlantic ports are now in effect on all European and African import traffic destined to points north of Ohio River, in order to follow Gulf ports to compete on a fair basis because of superior steamship service at north Atlantic ports, differentials at Texas ports under New Orleans are justified for same reason, FOUND: While such commercial advantages can not be determinative of rate relationships and ordinarily can not be taken into consideration when passing upon question of undue prejudice, they serve to show that advantages of New Orleans are superior to those of Texas ports and that differentials mentioned would not likely cause serious injury to New Orleans. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349, 368.

(j) Healthy competition is no less important between ports than between rail or water carriers. There is, however, a limit beyond which disregard by rail carriers of geographical advantages of one port in favor of another will impair rather than promote healthy competition between the ports. There is ground for believing that a policy of port equalization, if carried beyond reasonable limits, has the effect of strengthening unduly, at expense of others, those ports which by reason of natural or acquired advantages have attained commanding positions in export and import trade. Such a policy also encourages waste in rail transportation. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349, 369.

(k) Contention that establishment of differentials against New Orleans and in favor of Texas ports would violate both the letter and spirit of the Constitutional prohibition against preference by any regulaton of commerce to the ports of one State over another not sustained, following 209 U. S. 56, and 95 I. C. C. 539. Galveston Commercial Asso. v. G. H. & S. A., 128 I. C. C. 349, 378.

(l) Upon contention of carrier that rail rates on export and coastwise traffic are in essence proportional rates, constituting merely factors of aggre-

gate through rates between interior points and foreign or coastwise destinations beyond, and that in determining matter of port equalization consideration should be given to both water and rail factors entering into these aggregates, FOUND: Similar contention advanced in 73 I. C. C. 384 was found without merit. Equalization of port rates on basis advocated would require consideration, in every instance of port relationship, of water rates not on file with commission and over which, except on coastwise traffic under certain circumstances, it has no jurisdiction. This does not mean, however, that because a port is not the origin or destination of traffic passing through it, such port is not entitled to consideration in countenancing greater disregard of distance in import, export, or coastwise rates than in corresponding domestic rates. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349, 379, 380.

(m) Suspended schedules filed in purported compliance with findings in original report 100 I. C. C. 110, wherein relationships between rates on certain commodities in export, import and coastwise movement from points in Kansas, Oklahoma, and Texas to Galveston and New Orleans and ports taking same rates, were found unduly prejudicial and ordered removed by establishment of differentials prescribed, found not justified, without prejudice to filing of new schedules conforming with findings herein. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349, 392, 393.

(n) Proposed import rates on iron and steel articles from Texas Gulf ports to St. Louis, Mo., and Little Rock and Pine Bluff, Ark., based on distance scale prescribed in 77 I. C. C. 473, in purported compliance with 115 I. C. C. 373; 118 I. C. C. 482, found not justified. While Houston objects to present equalization of Texas ports on ground that distances to various destinations are less from that port than from Galveston, thus depriving it of its natural advantage of location, two ports named are and have been equalized as to import and export rates on various traffic; ocean rates are same to both ports; and no justifications appears for disturbance of existing parity of rail rates on import traffic. See 101 I. C. C. 116. Import Iron and Steel Articles, 129 I. C. C. 350, 355, 356.

PORT HANDLING CHARGES

(a) Contention that port handling charges are in violation of section 1 of the act, in that carriers did not give affected shipping and receiving public an opportunity to understand effect of increased charges before arriving at a definite agreement, not sustained. While some public hearings were held prior to filing of proposed changes, failure to inform intervener of contemplated action or the effect of changes does not constitute such a violation. Philadelphia Commercial Traffic Managers v. B. & O., 104 I. C. C. 173, 177.

PORT-TO-PORT RATES

See Barge Lines; Coastwise Traffic.

(a) Upon application of certain independent short lines in southern territory for authority to continue to charge lower rates on lumber and other forest products to trunk-line and New England territories from junction points with trunk-line connections than from intermediate points on their lines, relief sought being based solely on ground of water competition. FOUND: Considering the great difference between all-rail and water rates from south Atlantic ports to eastern port cities, and small volume of movement via eastern ports to interior destinations, the continued maintenance of lower rates from these ports than from intermediate points would divert or retain little if any, traffic to rail carriers. Fourth section relief denied and original report, 85 I. C. C. 270, affirmed. North Carolina Pine Asso. v. A. C. L., 107 I. C. C. 190, 192, 193.

(b) Cost of transportation per mile by water is comparatively high for short distances and very small for long distances. See 24 I. C. C. 570. Wool Rates Investigation, 1923, 120 I. C. C. 493, 503.

(c) Port-to-port rates, even when including terminal services at ports, are not subject to the act, except as provided in section 5 (11). Consolidated Southwestern Cases, 123 I. C. C. 203, 376.

PORTO RICO

See Adjacent Foreign Country; Through Routes and Joint Rates.

(a) In 37 I. C. C. 470, 472; 224 U. S. 547; and 227 U. S. 145 Porto Rico was declared to be an organized territory

appurtenant to, but not incorporated in, the United States. However, after the cases were decided, Congress in an act to provide a civil government for Porto Rico declared that 'The interstate commerce act and amendments thereto, * * * shall not apply to Porto Rico." Fernandez & Co. v. S. P., 104 I. C. C. 193, 194.

PRECOOLING

See Refrigeration.

PREVIOUS DECISION OF COMMISSION

See Advanced Rates §14¾; Differentials §6; Discrimination 3½; Equalization of Rates §4; Evidence V, §44¼, §44⅞; Reasonableness of Rates §26½; Reparation §8½.

PRIVATE CARS

See Cars and Car Supply §4, §10½, §12½, §13, §31, §32, §32⅓; Demurrage §10; Tank ments.

PROCEDURE BEFORE COMMISSION

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VIII. DEFENSES AND EVIDENCE.
- §20. In general.
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CROSS REFERENCES

See Advanced Rates VI; Allowances I; Blanket Rates VI; Cars and Car Supply VI; Claims; Classification §19; Courts VI; Crimes IX; Differentials VI; Discrimination IV, V; Divisions §10; Express Companies XIII; Interstate Commerce Commission III; Long and Short Hauls V; Reasonableness of Rates §1½; Reconsignment V; Reparation V; §23; Routing and Misrouting §10½; Switch Tracks and Switching IV; Tap Lines V; Through Routes and Joint Rates §23.

I. PRACTICE.

§1. In General.

See Reasonableness of Rates §1½.

(a) Case presented in accordance with modified procedure under which parties submitted in writing facts and arguments upon which they rely, oral hearing being had only with respect to such matters as were not agreed to or which were agreed to in part, parties arguing case before examiner at conclusion of taking of testimony which was not briefed. Union Bag & Paper Corp. v. B. & M., 104 I. C. C. 327.

(b) Upon contention of defendant that since summer excursion fares to Boulder, Colo., which complainant claims were unduly prejudicial and preferential, expired, any decision would be of a moot question. HELD: Complainant's prayer is for future relief and the jurisdiction of commission is ample to provide such relief. See also 52 I. C. C. 255. Boulder Chamber of Commerce v. A., T. &. S. F., 107 I. C. C. 49, 52.

(c) Complaint filed on behalf of receiver of complainant firm. Upon objection to testimony of witnesses, on the ground that they were not authorized to represent receiver, HELD: Such authorization is unnecessary. Columbia Steel Co. v. B. & O., 109 I. C. C. 46, 50.

(d) Where a carrier introduces evidence entirely beyond scope of a proceeding in an endeavor to establish that certain statements in a report of the commission were incorrect, such evidence can not be considered where objected to by complainant. Northern W. Va. Coal Asso. v. P. R. R., 109 I. C. C. 604, 608.

(e) Section 8 provides that whenever a common carrier does any matter, act, or thing in the act required to be done or prohibited or declared to be unlawful, such common carrier shall be liable for the full amount of damages sustained in consequence of any such violation. In section 9 it is provided that any person claiming to be damaged may make complaint to the commission or may sue for the recovery of damages in any district or circuit court of the United States. The terms of the above section plainly permit the aggrieved person to select the commission as the forum in which his complaint is to be heard and establishes the right of the Commission to award damages for the violations complained of. Standard Oil Co. v. A. C. L. R. R., 115 I. C. C. 239, 241.

(f) Complaint alleging overcharges because of failure of carriers to make dunnage allowance on lumber shipments as provided in the tariff, dismissed for lack of sufficient proof. Evidence failed to show that allowance was not made on any specific shipment or that stakes or braces were used on all shipments. While carrier's records show that in a few instances allowance was made, they do not show whether it should have been allowed in instances where it was not. As the case has stood submitted for more than five years and record is still deficient, no sufficient reason appears for holding it open on the docket for a longer period. Parry & Co. v. B. M. Ry., 118 I. C. C. 193.

(g) Piecemeal revision of rates is not desirable except in unusual circumstances. Horses and Mules from Chicago, 120 I. C. C. 607, 610.

(h) The obvious purpose of Rule III (s) of the Rules of Practice is the prevention of piecemeal litigation. Nelson Fuel Co. v. C. & O., 120 I. C. C. 723, 728.

(i) Upon contention that commission has no power to reopen an I. & S. proceeding where its order requiring the cancellation of a proposed schedule is a final order; that when such order is complied with "nothing remains for consideration," and nothing "which is the subject of a lawful order" can be before commission, HELD: The commission's authority to reopen a case is not affected by whether or not an order was entered in connection with the decision. See 39 I. C. C. 523, 535. Lignite Coal from North Dakota, 126 I. C. C. 243, 245.

(j) Upon contention that in an I. & S. proceeding the only issue before commission is as to lawfulness of suspended schedules which commission is called upon either to condemn or approve; that commission has no authority to approve a basis intermediate between the existing rates and basis sought to be made effective; and that where the proposed schedules are disapproved, a finding that present rates are too low is "irrelevant," "gratuitous," and "not binding on anyone," HELD: This contention is wholly untenable and in conflict with numerous decisions of the commission and with specific provisions of the act. See Section 15 (7) of the act; 20 I. C. C. 307, 314, and other cited cases. Lignite Coal from North Dakota., 126 I. C. C. 243, 245.

(k) As a prerequisite to the commission's approval of rates under section 1 of the act it is only necessary for carriers to show, as it is in all suspension proceedings where the commission approves rate changes, that the rates are within the limits of reasonableness, i. e., not more than reasonable maxima nor less than reasonable minima. Federated Metals Corp. v. C. R. R. Co., of N. J., 126 I. C. C. 703, 709.

§1a. Joint State Hearings.

(a) Contention that commission has no jurisdiction to require carriers to in-

crease intrastate rates in order to remove alleged undue prejudice where complainants do not specifically allege a violation of section 13 of the act, not sustained where complaints sufficiently set forth facts putting both defendant carriers and State authorities, as required by the act, upon notice that maintenance of lower intrastate rate as compared with interstate rate is challenged, and where State authorities are also notified of hearings. Four States Grocery Co. v. K. C. S. Ry., 107 I. C. C. 485, 489.

(b) Complainant attacking interstate rates heard jointly with similar complaint assailing intrastate rates filed with state public utilities commission, a member of state commission sitting with the Interstate Commerce Commission in argument. Ohio Farm Bureau Federation v. A. & W., 120 I. C. C. 361.

II. COMPLAINT.

See Allowances §8 (2¼) (a); Blanket Rates §15; Claims §7; Discrimination §18; Long and Short Hauls §11; Reparation §21; Switch Tracks and Switching IV; Through Routes and Joint Rates § 13a (a).

§2. Form and Issues Tendered.

(a) Where formal complaint brings in issue claims on additional shipments, not covered by informal complaint previously filed, such additional claims are barred unless presented within statutory period. Werner v. Director General, 107 I. C. C. 363, 364.

(b) In an issue, provable by a preponderance of evidence, as between two parties, one of whom alleges an affirmative which it establishes by the best obtainable evidence, other of whom introduces no evidence but rests its case solely upon alleged insufficiency of its adversary's showing, the doubt, if there be a doubt, must be resolved in favor of the former. Wertheim Coal & Coke Co. v. L. V., 112 I. C. C. 513, 518.

(c) Objection to the receiving of evidence tending to prove damages on shipments originating at points located on rails of carriers not named as defendants in complaint, sustained, the language of complaint not being sufficiently broad to cover shipments originating on those lines. South Carolina Cotton Mfrs. Asso. v. C., C. & O., 112 I. C. C. 683, 685.

(d) A complaint which merely alleges that rate charged on a shipment was in excess of rate applicable does not involve an issue of misrouting, and unless an allegation with respect to the latter is brought in issue within statutory period of limitation provided by the act, it can not be considered. See also 87 I. C. C. 130. Armour & Co. v. Director General, 113 I. C. C. 1.

(e) Complaint alleged straight overcharges under section 6 of the act. Upon motion of one defendant carrier asking that commission determine the proper rates and divisions thereof to be applied as between the several defendants on each of the shipments involved, HELD: Motion denied since it seeks to broaden the issues. Standard Oil Co. v. A., T. & S. F., 113 I. C. C. 597, 598.

(f) An allegation of overcharges does not embrace an issue of misrouting damages for the latter not being "overcharges above the legal tariff charges." See also 87 I. C. C. 130. Tidal Osage Oil Co. v. Director General, 115 I. C. C. 237, 238.

(g) Complaint which did not specifically allege a violation of section 6 of the act, but stated that rates were "unreasonable and otherwise unlawful" and that complainant paid and bore "illegal excess charges" over and above those which were "just, proper, and reasonable," held sufficient to cover overcharges. Crerar Clinch Coal Co. v. A. A. R. R., 118 I. C. C. 171, 172.

(h) Failure of complaint to allege a violation of section 6, or that charges were inapplicable, does not affect jurisdiction of commission to determine applicable charges. See 102 I. C. C. 355, 357. Western Bridge & Construction Co. v. St. L.-S. F., 118 I. C. C. 607.

(i) Upon further hearing, finding in former report, 88 I. C. C. 747, that rates on roofing and paving material from St. Louis and Kansas City, Mo., Cleveland and Lockland, Ohio, and Chicago, Aurora, Madison, Marseilles, and East St. Louis, Ill., to Little Rock, Ark., were not unreasonable or otherwise unlawful, affirmed. Complainants point out that reparation has been awarded on commission's special docket covering claims on similar shipments. However, such awards were based upon admission of carriers that rates charged were unreasonable. There is no such admission in this case, record is more complete and fails to establish that rates charged were

unreasonable. Cooperative Oil & Paint Co. v. Director General, 122 I. C. C. 227.

(j) Informal complaint seasonably filed alleged only overcharges. Formal complaint filed more than two years after delivery or tender of delivery of shipments contained additional allegations of unreasonableness and prejudice. HELD: Aside from claim of overcharge, formal complaint is barred. See 115 I. C. C. 105. North Ontario Packing Co. v. O. W. R. R. & Nav. Co., 122 I. C. C. 360, 364, 365.

(k) Complaint alleged that rates were unreasonable and unjustly discriminatory. Evidence at first hearing disclosed that the gist of the complaint was that such rates were "unjustly discriminatory." Testimony, however, gave color to the thought expressed in complainant's petition for rehearing that an allegation of undue prejudice under section 3, rather than one unjust discrimination under section 2, was intended, such petition seeking also to present further evidence upon allegation of unreasonableness under section 1. Upon contention of carriers that, inasmuch as complainant alleges unreasonableness, the case in reality concerns only this issue, and as this was the only matter which complainant attempted to prove at the original hearing, it should have been held to this particular kind of proof at the further hearing, HELD: Such contention is not sound, since allegations of complaint are broad enough to cover both sections 1 and 3 of the act. Farrell Foundry & Machine Co. v. A., B. & A., 123 I. C. C. 127, 128.

(l) The commission is without authority to pass upon lawfulness of intrastate rates where the only issues raised in complaint are violations of sections 1, 2, and 3 of the act. Chicago Fire Brick Co. v. C. & N. W., 123 I. C. C. 164.

(m) Complainants have a right to limit the issues in their complaint but such limitation does not preclude the Commission from considering the rates from, to, and through adjacent territories or over routes of carriers not parties defendant but shown of record, particularly if it appears, as it does not here, that such carriers operate the rate making routes. Southwestern Millers League v. A. T. & S. F. Ry., 126 I. C. C. 23, 30.

(no) Commission's finding in former report 118 I. C. C. 85, were confined to rates on compressed cotton. However, except that uncompressed cotton is compressed by and at expense of carriers, circumstances surrounding its movement and that of compressed cotton are identical. Accordingly original report modified and rates on uncompressed cotton moving rail-water-and-rail from Opelousas and Bunkie, La., to destinations in New England and New York, FOUND unreasonable to extent they exceeded rates contemporaneously maintained from Shreveport and Alexandria, La., to same destinations. Reparation awarded. Manget Bros. Co. v. A. C. R. R. 126 I. C. C. 403.

(p) Complaint did not specifically ask for reparation on shipment moving subsequent to filing of complaint but did allege that rates "were and are unjust and unreasonable," and prayed for reasonable rates for future and for "reparation for unlawful charges hereinbefore alleged, such sum as in view of evidence to be adduced herein the commission shall determine that complainants are entitled to." At time of original hearing, complainants had uncut timber and were operating their mill. It would be doing less of violence to consider that shipments made during pendency of this proceeding are within scope of pleadings than to assume that complainants did not intend to ask for full relief, or to deny them that relief for want of use of particular words. Moreover, carrier has not been misled to its disadvantage and an award of reparation under circumstances would be in accord with similar finding in 21 I. C. C. 45. Reparation awarded. Burns & Knapp v. B. S. & K. R., 126 I. C. C. 410, 411, 412.

(q) Carriers filed a motion to dismiss a complaint alleging undue prejudice upon ground that it failed to show when shipments moved, points of origin, routes, rates applied, or wherein provisions of the act were violated. HELD: Commission has repeatedly said that technical pleading is not necessary in complaints filed with it and the courts have sustained this position. Statements "that these rates were when exacted and still are unduly preferential or prejudicial in violation of Section 3," and "that they are unreasonable in and of themselves, unduly prejudicial to complainant, and unduly preferential of shippers at other points," are sufficient to place carriers upon notice to defend their rates. Motion

is therefore denied. Rogers-Wade Furniture Co. v. A., C. & Y., 126 I. C. C. 460, 461.

(r) It is not essential to specify by number or to use the specific words of the section of the act which is alleged to have been violated if from the context of the complaint it becomes apparent that defendants are apprised of the nature of the violation they are called upon to answer. Michigan Bean Co. v. D. G. H. & M. Ry., 128 I. C. C. 207, 209.

(s) Failure to allege violation of section 6 does not affect the jurisdiction of the Commission to determine the applicable charges. Michigan Bean Co. v. D. G. H. & M. Ry., 128 I. C. C. 207, 209.

(t) A shipper is entitled to a reasonable rate on his traffic and where he attacks the reasonableness of a rate, whether class or commodity, that issue must be decided on its merits. See 100 I. C. C. 411. Davies & Thomas Co. v. C. R. R. Co. of N. J., 128 I. C. C. 241, 242.

(u) Every shipper is entitled to a reasonable rate on his traffic and where he attacks the reasonableness of a rate, that issue must be decided upon its merits. Curtiss Aeroplane & Motor Co. v. P. R. R., 129 I. C. C. 174, 176.

§4. Amendment.

See Claims §5.

(a) Carrier serving alleged preferred points was not named as defendant; nor was it served with a copy of complaint, as required by the act, or represented at hearing. Trial examiner found to have been in error in allowing a motion by complainant to add such carrier as a party defendant. Louisville Cement Co. v. S. Ry., 104 I. C. C. 455, 456.

(b) Original complaint alleged a violation of section 6 of interstate commerce act and of section 10 of Federal control act. Amended complaint alleged a violation of section 1 of interstate commerce act, to which director general objected on ground that it stated a new cause of action which was barred. HELD: The words "just and reasonable" as used in the control act obviously bear a similar or closely analogous meaning to that attaching to their use in the interstate commerce act. See 51 I. C. C. 250, 258. Moreover, in 100 I. C. C. 223, 224 the commission said it is not essential to specify by number or to use specific words of sections of the act alleged to have been violated if from context of complaint it is apparent carriers are appraised of nature of violation they are called upon to answer. North Packing & Provision Co. v. Director General, 104 I. C. C. 607, 608.

(c) Complainant sought to amend its complaint so as to include shipments moving on and after March 1, 1920, referring to amendment to section 16 of the act, as approved June 7, 1924. However, on July 28, 1925, a conference ruling was adopted construing decisions of the Supreme Court as prohibiting awarding of reparation on claims barred by the statute prior to that amendment. Shipments sought to be included, not being covered by complaint seasonably filed; found barred. Great Northern Paper Co. v. B. & A., 113 I. C. C. 463, 466.

(d) Complaint alleged unreasonableness and undue prejudice. At the hearing complainant sought to amend complaint with allegation of violation of long-and-short-haul provision of section 4. Upon objection by carriers that such amendment unduly broadens issues presented, HELD: Allegation embraced in amendment is one manner of alleging prejudice and evidence thereon submitted is admissible in support of the issue raised under section 3 of the act. Anderson-Taylor Co. v. A., T. & S. F., 115 I. C. C. 313, 314.

(e) Where specific shipments are named in a complaint filed within statutory period, additional shipments may not be subsequently included unless presented within limitation period required by the act, and burden of proof to show that such shipments were seasonably filed is upon complainant. Duluth Boiler Works v. A., T. & S. F., 118 I. C. C. 161, 162.

(f) Complainant in its complaint erroneously referred to a shipment as moving from and to specified points, whereas in fact, it moved in reverse direction. Shipment was fully described by car number, initials, date of movement, and weight of contents. Amended complaint was offered at hearing to correct this error and was allowed by presiding examiner over objection of carriers. HELD: Under the circumstances, complaint as amended considered on its merits. Bender Iron & Supply Co. v. K. C. S., 118 I. C. C. 661, 662.

(g) Carrier sought dismissal of supplemental complaint on ground that reparation was not specifically prayed for in original complaint, citing rule III (s) of Rules of Practice which provides that reparation will not be awarded upon a complaint in which it is not specifically prayed for, or upon a new complaint by or for same complainant which is based upon any finding in original proceeding. HELD: This rule has no application where, as here, prayer for reparation is not a new complaint but an amendment of one already filed. See 96 I. C. C. 124. Hollingshead Co. v. Director General, 120 I. C. C. 55, 56.

(h) Claim for damages found barred by statute of limitations, supplemental complaint not having been filed within statutory period. See Rule III (u) of Rules of Practice. Hollingshead Co. v. Director General, 120 I. C. C. 55, 56.

(i) Original report, finding that rates "are and for the future will be unreasonable," was reopened upon petition of carriers. Thereafter complainants were permitted to amend their complaint with an allegation of damages. Report on further hearing reiterated the original finding and in addition awarded reparation. Upon contention that wording of commission's reports did not cover unreasonableness in past, HELD: While the word "were" was omitted from finding of unreasonableness in report awarding reparation, the question of past unreasonableness entered into the proceeding when amended complaint was filed. Evidence upon which original report, later affirmed, was made, being presented some months prior to beginning of reparation period, and second report making provision for proof in affidavit form as to shipments moving subsequent to date of second hearing, shows inconsistency of any attempts to construe the finding as operative only on and after date of decision in second report. Nelson Fuel Co. v. C. & O., 120 I. C. C. 723.

(j) The obvious purpose of Rule III (s) of the Rules of Practice is the prevention of piecemeal litigation. Nelson Fuel Co. v. C. & O., 120 I. C. C. 723, 728.

(k) Complainant's statement of facts under shortened procedure sought reparation to a basis lower than that specified in its complaint, and because of such variance carriers declined to handle the case further under such procedure, and it was accordingly set for oral hearing. At the hearing complainant was granted leave to amend its complaint by asking for reparation to a lower basis, to which carriers objected on ground that they were unprepared to defend any rate lower than that specified in the complaint. HELD: That if any amendment was necessary carriers were not taken by surprise at the offer and their objection thereto was properly overruled. Luten Bridge Co. v. A. C. L., 123 I. C. C. 612.

§8. **Rehearing.**

(a) Upon further consideration, findings in previous report, 93 I. C. C. 85, that rates on crude oil from Irvine and Beattyville, Ky., to Blue Island, Ill., were unreasonable, corrected to include, as points of origin, all oil-producing points in eastern Kentucky. Both the complaint and evidence were broad enough to cover entire eastern Kentucky fields, and findings should not have been limited to Irvine and Beattyville. Reparation awarded. Barnett Oil & Gas Co. v. Director General, 122 I. C. C. 651.

(b) Contention that because no application for further hearing was made by any of the parties to the proceeding the commission is without power to reopen the case, not sustained. Statements requesting a further hearing were submitted by various parties to the proceeding, and, even if there had been no such request, commission has authority and has frequently reopened cases for further hearing on its own motion. Lignite Coal from North Dakota, 126 I. C. C. 243, 245.

(c) Upon contention that commission has no power to reopen an I. & S. proceeding where its order requiring the cancellation of a proposed schedule is a final order; that when such order is complied with "nothing remains for consideration," and nothing "which is the subject of a lawful order" can be before commission, HELD: The commission's authority to reopen a case is not affected by whether or not an order was entered in connection with the decision. See 39 I. C. C. 523, 535. Lignite Coal from North Dakota, 126 I. C. C. 243, 245.

(d) The rules of the Interstate Commerce Commission fixing no time for filing petition for rehearing after order denying reparation, a one-year limit on time within which to do so cannot be implied from Interstate Commerce Act, § 16 (Comp. St. 8584), providing that suit

on order granting reparation can only be brought within one year after entry of order, and order denying reparation is not irrevocable after one year, nor will delay of Commission in disposing of application for rehearing deprive it of jurisdiction. Louisville & N. R. Co. v. Sloss-Sheffield Steel & Iron Co., 46 Sup. Ct. 73.

(e) Upon further hearing, original report 95 I. C. C. 104, reversed in part, following 118 I. C. C. 725. Rates on scrap brass and copper from certain points in New York and New Jersey to East Liberty and Pittsburgh, Pa., found unreasonable with certain exceptions. Reparation awarded. Union Smelting & Refining Co. v. C. R. R. of N. J., 128 I. C. C. 129.

(f) Complainant alleged rates on nitrate of soda and certain allied commodities, in carloads, from New Orleans, La., and other Gulf ports to points on and north of the Ohio River were unreasonable. Original report, 126 I. C. C. 293. Santa Fe, Rock Island, M. P. and Frisco which operate west of the Mississippi river filed a petition in which they request that the order entered in these proceedings be modified so as to eliminate petitioners from the operation of its provisions. HELD, rates assailed as applied over the lines of the petitioning carriers not unreasonable or otherwise unlawful. Egyptian Powder Co. v. I. C. R. R., 132 I. C. C. 153.

(g) Upon reconsideration in former reports 88 I. C. C. 747 and 122 I. C. C. 227, restatement of two recitals therein, for purpose of accuracy, found not to affect or modify conclusions therein reached. Cooperative Oil & Paint Co. v. Director General, 129 I. C. C. 213.

III. MOTIONS.

§9a. In General.

(a) Complaint alleged straight overcharges under section 6 of the act. Upon motion of one defendant carrier asking that commission determine the proper rates and divisions thereof to be applied as between the several defendants on each of the shipments involved, HELD: Motion denied since it seeks to broaden the issues. Standard Oil Co. v. A., T. & S. F., 113 I. C. C. 597, 598.

(b) Carrier sought dismissal of supplemental complaint on ground that reparation was not specifically prayed for in original complaint, citing Rule III (s) of Rules of Practice which provides that reparation will not be awarded upon a complaint in which it is not specifically prayed for, or upon a new complaint by or for same complainant which is based upon any finding in original proceeding. HELD: This rule has no application where, as here, prayer for reparation is not a new complaint but an amendment of one already filed. See 96 I. C. C. 124. Hollingshead Co. v. Director General, 120 I. C. C. 55, 56.

§10. Dismissing Complaint.

(1). In General.

(a) By letter the commission requested complainant to supplement record by furnishing bills of lading in order to determine whether certain shipments were misrouted or whether, in absence of misrouting, a reasonable rate should be measured by service over route of actual movement or over a more direct route. No reply having been received to that letter, or a tracer, complainant was advised that unless bills of lading were made a part of record or good reason shown why they could not be submitted on or before a certain date, an order would be entered dismissing complaint for lack of prosecution. Complainant's failure to comply with request and furnish additional evidence found tantamount to an abandonment of its complaint and shipments covered thereby not further considered. Raleigh Chamber of Commerce v. N. S., 109 I. C. C. 52, 53.

(b) Motion to dismiss compiaint on ground that complainant did not maintain an office at destination point, denied. Whether complainant does or did maintain an office at destination point is immaterial. Holt Co. of Texas v. S. P. 128 I. C. C. 555.

(c) Complaint filed within statutory period but twice returned for correction was not resubmitted until almost five years after receipt of original complaint. Upon contention that complainant's failure to prosecute the claim amounts to abandonment thereof and complaint should therefore be dismissed under doctrine of laches. FOUND: Abandonment as recognized by the commission, occurs where a formal complaint is not filed within the six-months' period following notification to parties of termination of informal proceedings. Here, receipt of original complaint constituted a filing

thereof, although no complaint was docketed and served until almost five years thereafter. Circumstances of case do not warrant dismissal on grounds alleged. See 92 I. C. C. 63, 66. Peters Mill Co. v. Director General, 129 I. C. C. 331.

§10(3). Interveners.

See Discrimination §13½ (a); Interveners; Reparation §7 (a).

(a) Petitions of intervention filed subsequent to original complaint seek reparation on shipments made under rate alleged to be unreasonable in complaint. Contention that petitions of intervention should not be considered because they unduly broaden issues in that reparation is sought in intervening petitions but not in complaint, not sustained. See 28 I. C. C. 332, 335. Becker, Moore & Co. v. N. Y. C., 104 I. C. C. 11.

(b) Original petition in intervention did not seek reparation but amended petition included such claim. Date of filing of amended petition governs with respect to limitation period. Becker, Moore & Co. v. N. Y. C., 104 I. C. C. 11, 12, 15.

(c) Complainant, the consignor, filed intervening petition purporting to be on behalf of consignees who paid unreasonable freight charges. Consignor was not definitely authorized to file such petition, and did so without consulting consignees, stating that such authorization was not obtained because it guaranteed rates which consignees were to pay. HELD: Filing of reparation claim on behalf of consignees can not be regarded as having been authorized. Rocbond Co. v. A., T. & S. F., 104 I. C. C. 517, 519, 520.

(d) An intervening petition which names points of origin or destination not covered by the complaint constitutes a broadening of the issues and can not be permitted. White Eagle Oil & Refining Co. v. D. & R. G. W., 112 I. C. C. 605, 606.

(e) Complaint filed by an association for and in behalf of its members failed to name one member as a party complainant. Such member filed an intervening petition but same was not received by commission until after expiration of statutory period of limitation. HELD: As to shipments on which reparation is claimed by this particular member statute of limitations was not tolled by the complaint as filed by association. See 27 I. C. C. 302. South Carolina Cotton Mfrs. Assn. v. C., C. & O., 112 I. C. C. 683, 686.

(f) Intervening petition was offered at hearing with statement that it did not broaden the issues, but in so far as it embraced rates to three points not mentioned in the complaints under consideration it did in fact broaden them. No objection, however, was interposed to receipt of petition upon presiding examiner's inquiry respecting it, and to examiner's subsequently proposed relief to two of the three points named no exception was taken by carriers. HELD: Under the circumstances rates to the three additional points may therefore be deemed to be properly in issue. Nebraska State Ry. Comm. v. A. & W., 113 I. C. C. 467, 469.

(g) Upon objection of carriers to a petition of intervention in a proceeding involving undue prejudice by a shipper located at a point not named in complaint, upon ground that it unduly broadens the issue. HELD: To some points same rates now prevail from the two points involved and to deny petition and at the same time permit a reduction in rates from the point named in complaint would have the effect of sanctioning an unwarranted rate situation as between competing manufacturers. Accordingly, petition in intervention allowed. Sonoco Products Co. v. A. C. L., 113 I. C. C. 553, 554.

(h) Where an intervening petition does not ask for affirmative relief none will be accorded by commission. Paragraph (1) of Rule II of Rules of Practice provides that where affirmative relief is sought by an intervener in any proceeding before commission the intervening petition "should conform to the requirements of a formal complaint." Iola Cement Mills Traffic Asso. v. A. V. I., 115 I. C. C. 49, 61.

(i) Where a complainant alleges that a rule incorporated in a specific tariff is unreasonable but intervener alleges that same charge published in another tariff is likewise unreasonable, this does not unduly broaden the issues presented in complaint. U. S. Industrial Alcohol Co. v. C. & N. W., 118 I. C. C. 674.

(j) A separate wrong to a shipper other than the complainant, although founded upon the imposition of the same unlawful freight rate, is a distinct issue, and the redress of that wrong by an award of reparation must depend upon

competent evidence particularly relating thereto. To assume in this case that the defendants, had they been seasonably forewarned of the additional issue, would have been unable to develop evidence to controvert the interveners claim of reparation due would be to deny defendants their day in court. This the commission may not do. Concrete Steel Co. v. B. & O. R. R., 123 I. C. C. 677, 678.

(k) Commission has rejected a contention that certain intervening petitions seeking reparation, two of which were filed at the hearing, unduly broadened the issues, similar relief not having been sought in the complaint. Concrete Steel Co. v. B. & O. R. R., 123 I. C. C. 677, 678.

(l) In accordance with Rule III (s) of Rules of Practice, reparation awarded upon a new complaint to complainants and interveners not parties to the proceeding prescribing reasonable rates to basis of which reparation is sought, upon showing of good cause and unusual circumstances. Decker & Sons v. U. P., 123 I. C. C. 621, 622, 623.

(m) Intervening petition seeking reparation, filed at hearing by parties newly come into the case, found to unduly broaden the issues presented by complaint, within contemplation of Rule II (1) of Rules of Practice. Even though reparation was sought in original complaint, a separate wrong to a shipper other than complainant, founded upon imposition of same unlawful freight rate, is a distinct issue and redress of that wrong by an award of reparation must depend upon competent evidence particularly relating thereto. To assume that carriers, had they been seasonably forewarned of the issue, would have been unable to develop evidence to controvert interveners' reparation claim, would be to deny carriers their day in court and this the commission may not do. However, objection of intervening petition may be waived, failing in which interveners may petition for further hearing upon the issue of which carriers have now had abundant notice. Concrete Steel Co. v. B. & O., 123 I. C. C. 677, 678, 679.

(n) Complainants failure to intervene in another case does not constitute an estoppel. McKeesport Tin Plate Co. v. A. A. R. R. Co., 128 I. C. C. 259, 260.

(o) Petition of intervention filed after hearing but prior to oral argument by purchaser of complainant's business and property, asking to be accorded under original issues any relief which might otherwise have been accorded to its predecessor in interest on causes of action accruing subsequent to date of purchase, allowed at oral argument. Harbor Coaling Corp. v. B. & O., 128 I. C. C. 747, 748.

IV. ORDERS OF COMMISSION.

See Advanced Rates §2½; Interstate Commerce Commission §17.

§11. Modification, Validity and Effect.

(a) The Interstate Commerce Commission within narrow limits may, on its own motion or on request, correct any order still under its control, without notice to a party, who cannot possibly suffer by reason of the modification made. Louisville & N. R. Co., v. Sloss-Sheffield Steel & Iron Co., 46 Sup. Ct. 73.

V. PARTIES.

See Association; Crimes §24; Parties.

§13. Necessary and Proper Parties.

See Loss and Damage §17.

(a) Regardless of who complains about rates or who would use them, shippers are entitled to reasonable rates. Cattle & Horse Raisers Asso. v. N. P., 104 I. C. C. 51, 60.

(b) Carrier serving alleged preferred points was not named as defendant; nor was it served with a copy of complaint, as required by the act, or represented at hearing. Trial examiner found to have been in error in allowing a motion by complainant to add such carrier as a party defendant. Louisville Cement Co. v. S. Ry., 104 I. C. C. 455, 456.

(c) Contention that, because of change in complainant's name, it is not a proper complainant in respect of shipments which moved prior to date of such change, not sustained. An authorized change in name of a corporation does not affect its rights or lessen or add to its obligations. See 141 U. S. 520. Copperweld Steel Co. v. B. & O., 109 I. C. C., 99.

(d) Formal complaint filed within six months after notice that claim could not be adjusted informally was returned for correction. In corrected complaint received after expiration of six months, an additional party defendant was named. HELD: Under Rule III (g) of Rules of Practice claim against additional party

defendant is barred. See 92 I. C. C. 29. Remaining carriers, however, are jointly and severally liable for any damage resulting from assessment of an unreasonable joint rate. See 66 I. C. C. 627, and cases there cited. Bunte Bros. v. C. & N. W., 112 I. C. C. 557, 558.

(e) Points of origin and destination are located on lines of carriers not named in the complaint, but rates found unlawful were joint through rates in which carriers not named participated. Upon objection to introduction of evidence tending to prove damage on shipments moving over lines of carriers not named as defendants in original complaint. HELD: Following 295 Fed. 53, the participation by initial carriers in a violation of the act by exacting unreasonable rates is enough to make such carriers liable for full amount of damages sustained in consequence of such violation, liability against such carrier resulting from its unlawful action in charging unreasonable rates, that liability being enforceable against defendants though other parties to such joint rates were also liable but were not proceeded against. South Carolina Mfrs. Asso. v. C., C. & O., 112 I. C. C. 683, 685.

(f) Complaint filed by an association for and in behalf of its members failed to name one member as a party complainant. Such member filed an intervening petition but same was not received by commission until after expiration of statutory period of limitation. HELD: As to shipments on which reparation is claimed by this particular member statute of limitations was not tolled by the complaint as filed by association. See 27 I. C. C. 302. South Carolina Mfrs. Asso. v. C., C. & O., 112 I. C. C. 683, 686.

(g) Formal complaint received within statutory period of limitation was returned to complainants for correction of errors in names of defendants, attention also being called to omission of reference to informal complaint, and to fact that statements of shipments were attached to only a limited number of copies of complaint. The complaint, as corrected, was refiled after statutory period had expired. HELD, there being no substantial error in names of defendants against which complaint is principally directed, and omissions referred to not being of vital importance, original receipt of complaint operated to stay limitation provisions of the act. Ryan Fruit Co. v. Director General, 120 I. C. C. 206, 207.

(h) A failure to name one participating carrier as a party defendant in a complaint is not fatal where rate in which such carrier participated was a joint rate under which liability of the participants is joint and several. Russellville Compress Co. v. G., M. & N., 120 I. C. C. 481, 482.

(i) Upon further hearing, additional defendant carriers objected to being made parties to amended complaint, contending that in being brought into the case after considerable testimony had been taken they were denied a full hearing in contemplation of law and that no valid order could, therefore, be entered against them. HELD: This contention is without merit since substantially all previous evidence was reintroduced at further hearing and complainants made it plain that they did not rely upon original record as to such carriers. Maritime Asso., Boston Chamber of Commerce v. A. A. R. R., 126 I. C. C. 199, 202.

(j) Under Interstate Commerce Act, § 13, as amended by Act June 18, 1910, § 11 (Comp. St. §8581,) a state, when its interests are concerned, whether a carrier or not, may file a complaint with the Interstate Commerce Commission. United States v. New York Cent. R. Co., 47 Sup. Ct. 130.

(k) Carriers point to defect in pleadings in that a certain carrier was not named as party defendant in the complaint. FOUND: As shipments moved under joint rates omission is not fatal, although no order can be entered against carrier not named. Practical Drawing Co. v. C. & N. W. 128 I. C. C. 540, 541.

(l) Both shipments moved in connection with the Burlington and the inclusion of the Santa Fe as a party defendant is not necessary when reparation only is sought. Nebraska v. C. B. & Q. R. R., 132 I. C. C. 717, 718.

(m) Upon contention that under doctrines laid down in 42 I. C. C. 396; 46 I. C. C. 343, complaint must fail because one originating carrier was not named as a defendant and because total through rates were not set forth. HELD: Through rates were not in issue, but commission has jurisdiction to examine and pass upon alleged unlawfulness of factors making up through rate. Dawkins Lumber Co. v. C. & O., 129 I. C. C. 415, 418.

VII. ADMISSION OF EVIDENCE.

See Evidence §3.

§14½. In General.

(a) Protestants objected to consideration of certain testimony in original record on ground that it was "relevant, competent, and material" only to intrastate rates and that that portion pertaining to interstate rates was not segregated and again offered at second hearing, asserting that they were thus deprived of opportunity to object to admissibility of such testimony and were left in ignorance of evidence to be considered. HELD: Even if testimony received at original hearing should not properly be considered in determination of interstate rates, counsel making objection did not demand segregation of that testimony prior to rendition of previous report and at last oral argument stated that he did not even then move to strike such testimony. Moreover, commission's attention is not directed to any testimony which is not relevant and material to issues involved. Lignite Coal from North Dakota, 126 I. C. C. 243, 245.

(b) Carriers objected to including in an exhibit certain shipments which moved over routes embracing carriers not named as defendants. HELD: Objecton is without merit. Testimony was not limited to any particular route or routes; rates under attack applied at time of movement over all routes shown on exhibit; and several of named defendants paticipated in each movement set forth. Where carriers participate in an unreasonable joint rate they are jointly and severally liable for the unlawful assessment. See 21 I. C. C. 20. Boston Wool Trade Asso. v. B. & A., 128 I. C. C. 185, 186.

(c) Possession of paid freight bills coupled with witness's knowledge of customary method of payment and his personal investigation of particular claims involved is sufficient to support a finding that complainants paid and bore the the charges under review. Bakeries Service Corp. v. B. & M., 128 I. C. C. 695, 696.

§15¼a. Modified Procedure.

(a) Case presented in accordance with modified procedure under which parties submitted in writing facts and arguments upon which they rely, oral hearing being had only with respect to such matters as were not agreed to or which were agreed to in part, the parties arguing case before examiner at conclusion of taking of testimony which was not briefed. Union Bag & Paper Corp. v. B. & M., 104 I. C. C. 327.

(b) In a shortened procedure proceeding, evidence was supported by agent's affidavit. Upon contention that admission of the affidavit was improper and demanding further proof, HELD: Shortened procedure is predicated on affidavit form of proof, and such statements standing undenied are competent and convincing evidence. Brooks Bros. v. N. Y., N. H. & H., 123 I. C. C. 607, 608.

§16. Judicial Notice or Other Decision.

See Evidence III.

(a) Upon reconsideration, rate on paper from Orange, Tex., to Hutchinson, Kans., prescribed in former report, 95 I. C. C. 457, and equal to rate from St. Louis and Kansas City to Houston and other Texas points, found not unduly prejudicial because it exceeded 110 per cent of rate from Orange to Kansas City. Rates from St. Louis and Kansas City, referred to were based on rates found reasonable and prescribed in Minnesota & Ontario Paper case, 66 I. C. C. 571, and rate from Orange to Kansas City is shown to be depressed by market competition, and is not a maximum reasonable rate. Former finding of unreasonableness adhered to. Hutchinson Paper Co. v. T. & N. O., 112 I. C. C. 49.

(b) Upon further hearing, taking into consideration development of the flaxseed industry in this country, the conditions which have demanded importation of flaxseed from abroad, the early rates on this commodity, comparisons with other rates, and comparative earnings thereunder, finding in American Linseed Co., 91 I. C. C. 663, wherein rates on flaxseed from New York Harbor points to Buffalo, N. Y., were found unreasonable and reparation awarded, affirmed, and converse finding in the Kellogg case, 77 I. C. C. 249, reversed. In addition, similar rates from same origin points to Chicago and Toledo, and from Philadelphia to Toledo found unreasonable and reparation awarded. Spencer Kellogg & Sons v. D., L. & W., 112 I. C. C. 629.

§17. Res Adjudicata.

See Evidence V, §69.

(a) Case submitted upon pleadings

by stipulation of counsel agreeing that it should be disposed of on issue of unreasonableness applied on basis of commission's decision in another decided case. Glidden Co. v. C. R. R. Co. of N. J., 118 I. C. C. 59.

§18½. Reparation Statements and Pleadings.

See Reparation.

(a) Complaint seeking reparation on shipments of fertilizer and fertilizer materials from Jackson, Miss., to Arkansas and Louisiana destinations, predicated upon findings in Jackson Traffic Bureau, 102 I. C. C. 129, wherein reparation was not sought, dismissed, rule III (s) of Rules of Practice providing that "Except under unusual circumstances, and for good cause shown, reparation will not be awarded upon a complaint in which it is not specifically prayed for, or upon a new complaint by or for same complainant which is based upon any finding in original proceeding." Jackson Traffic Bureau v. A. & V., 118 I. C. C. 217.

VIII. DEFENSES AND EVIDENCE.

See Evidence.

§20. In General.

(a) On shipments moving during Federal control informal complaint alleged only overcharges. Formal complaint subsequently filed brought in additional issue of unreasonableness. Allegation of unreasonableness not having been presented within statutory period of one year after Federal control terminated, found barred. Rohan Co. v. Director General, 118 I. C. C. 83.

(b) Lapse of time is an important element in laches, but doctrine does not, like statute of limitations, rest on time alone, but is founded also on the inequity of permitting claim to be enforced because of some intervening change in conditions. Peters Mill Co. v. Director General, 129 I. C. C. 331, 332.

PROHIBITION

See Intixcating Liquors; Special Rates and Services.

(a) Policing charge of $25 per car on shipments of ethyl alcohol, designed to cover cost of protection against pilferage, found not unreasonable. Carriers showed that pilferage of intoxicating liquors has greatly increased since national prohibition act became effective and that cost of furnishing protection now necessary for this commodity has radically changed; also that cost of furnishing this protection frequently exceeds transportation charges received. Moreover, in numerous cases commission has approved separately stated charges for special service rendered by carriers. See 61 I. C. C. 680 and other cited cases. U. S. Industrial Alcohol Co. v. C. & N. W., 118 I. C. C. 674.

PROPORTIONAL RATES

I. APPLICATION.
II. DISCRIMINATION AND REASONABLENESS.
III. LEGALITY.
IV. EVIDENCE AND PROCEDURE.
V. CONTROL AND REGULATION.
  §1. Jurisdiction of Commission.
VI. TARIFFS AND CONSTRUCTION.
VII. REPARATION.
VIII. RESTRICTED RATES.

CROSS REFERENCES

See Advanced Rates §9½; Evidence §13 (5), §14 (5); Through Routes and Joint Rates §13½.

I. APPLICATION.

See Divisions §8 (a); Through Routes and Joint Rates §18.

(a) Proportional rates are but parts of through rates and are in nature of divisions rather than of rates. Where joint through rates are reasonable and free from undue prejudice shippers are not concerned with whether divisions up to or beyond a given gateway are higher on their traffic than on traffic of their competitors. Morrell & Co. v. N. Y. C., 104 I. C. C. 104, 128.

(b) Proportional rates, unrestricted in their application, are intermediate rates within meaning of the aggregate-of-intermediates provision of section 4 of the act. Hulsey-Bessent Co. v. S. A. L., 109 I. C. C. 389, 390.

(c) Complainant attacked combination charged of 52.5c on a car of portland cement shipped May 19, 1924, from York, Pa., to Cape Girardeau, Mo., as unreasonable and inapplicable. Shipment moved Pennsylvania to St. Louis, Mo., thence Frisco, charged 52.5c. There was in effect over route of movement a

local commodity rate of 31.5c also a proportional commodity rate of 30.5c applying on cement from York to St. Louis, and a local rate of 11.5c beyond. The local rate to St. Louis was subject to combination rule, but the proportional rate to, and the local rate applying beyond St. Louis were not. The proportional rate applied only on shipments destined to points beyond, to which no joint through rates were in effect. HELD: The applicable component to St. Louis was the proportional rate of 30.5c which, added to the local rate beyond, makes a total of 42c. HELD: Applicable rate was 42c, reparation awarded. Sandusky Portland Cement Co. v. Pennsylvania R. R., 112 I. C. C. 737.

(d) Proportional rates ordinarily are lower than local rates from and to same points. Capital Grain & Feed Co. v. I. C., 118 I. C. C. 732, 743.

(da) Proportional rates on wheat and flour from Missouri River points, when from beyond, to points in Indiana, Ohio, Pennsylvania, West Virginia, and Kentucky, found unduly prejudicial to extent they exceed those contemporaneously maintained from Minneapolis, and points taking same rates, to same destinations. Level of rates is higher from Kansas City than from Minneapolis, notwithstanding great difference in distance. While from latter point rates on wheat and flour are the same, rates on flour from Kansas City are generally higher than on wheat thus permitting millers at Minneapolis to compete on a more favorable basis. Moreover, principles announced in 113 I. C. C. 3; 122 I. C. 235, in construing the Hoch-Smith resolution with reference to advancing rates on products of agriculture to rectify inequalities could here well be given application by carriers in removing undue prejudice found to exist, as rates from Kansas City not exceeding those from Minneapolis, appear to be reasonable. Southwestern Millers' League v. A., T. & S. F., 126 I. C. C. 23.

(e) Upon contention that commission has no jurisdiction over rates on traffic moving to Lake Erie ports for transshipment by vessel, upon theory that because of lack of control over the water carriers which handle traffic beyond the ports, commission has no authority to deal with or prescribe proportional rates on traffic over which it does not have jurisdiction for the entire movement from point of original shipment to point of ultimate destination, HELD: Where transportation to the port is interstate or foreign in character, it is subject to commission's jurisdiction under general provisions of section 1 of the act, irrespective of the mode of transportation beyond the port. Lake Cargo Coal Rates, 1925, 126 I. C. C. 309, 313, 314.

(f) Lake-Cargo rates are in the nature of proportional rates, and commission has frequently prescribed such rates on a lower basis than corresponding local rates. Lake Cargo Coal Rates, 1925, 126 I. C. C. 309, 361.

(g) Rule 5 (b): Provision of Tariff Circular 18-A, providing that tariffs publishing proportional rates must specifically refer to tariffs naming other rates used in conjunction therewith in making through rates, is restricted to "basing rates." Armour & Co. v. Director General 126 I. C. C. 539, 540.

(h) Tariff published two sets of rates from Peoria, one without restriction, and the other a lower rate applicable on traffic "when from beyond." Upon contention that lower rates are not proportional rates because when added to rates inbound to Peoria from shipping points generally "through rates" are not thereby secured inasmuch as joint rates on lower basis are maintained from such points through Peoria, HELD: Contention is without merit. The "when from beyond" rates could be used in constructing combination rates from points from which no through rates were published. Moreover, in 81 I. C. C. 688, the commission held that the word "beyond" implies a line-haul movement "beyond" the rate-breaking point. Armour & Co. v. Director General, 126 I. C. C. 539, 540, 541.

(i) Contention that as proportional rate is but part of a through rate it is impossible to determine an issue of undue prejudice to one market and undue preference of another solely with respect to proportional rate unless evidence of through rates based on each market is available, not sustained, since each of such rates must be judged upon its own merits. See 46 I. C. C. 343, 350. This is especially apt where inbound rates to prejudiced or preferred markets are upon a distance scale. Des Moines Board of Trade v. F. D., D. M. & S., 129 I. C. C. 138, 145.

(j) The incorrect description of a rate as a proportional rate when as a matter of fact it was an arbitrary did not change the character of the rate. National Pole Co. v. G. N., 129 I. C. C. 697, 699.

II. DISCRIMINATION AND REASONABLENESS.

See Advanced Rates §8½a (i), §14¾ (ja); Discrimination; Reasonableness of Rates; Reduced Rates §4½ (x) (cc); Restricted Rates (h); Through Routes and Joint Rates §24 (a).

(a) Shipments of matches moving from Chico, Calif., to destinations in Washington were assessed a rate to Portland, Oreg., higher than proportional rate applicable over a route other than route of movement to St. Johns, situated within corporate and switching limits of Portland. Lower rate was restricted to destinations other than those here involved and carried a switching charge at Portland also restricted to switching service performed in connection with a line haul. There was no switching in connection with a line haul via route of movement, and an out-of-line haul would have resulted had traffic moved through St. Johns. FOUND: Rates assessed were not unreasonable or otherwise unlawful. Diamond Match Co. v. Director General, 104 I. C. C. 147.

(b) Proposed cancellation of proportional rates on anthracite coal from Erie, Pa., and Brocton, Buffalo, and Buffalo Junction, N. Y., to Sparland, Ill., thereby making applicable higher combination rates based on Chicago through increase of factor beyond these junction points, found justified on ground that such higher rates will compare favorably with rates on like traffic from and to other points for comparable distances. Coal from Erie to Sparland, 104 I. C. C. 188.

(c) Rates on wool, in the grease, in sacks, from points in Missouri to Boston, Mass., found unreasonable to extent they exceeded sum of proportional fourth-class rates to west bank of the Mississippi River and proportional commodity rate beyond. Reasonable rates prescribed for future. Former report, 77 I. C. C. 431, corrected. Boston Wool Trade Asso. v. B. & A. R. R., 107 I. C. C. 497.

(d) Upon further hearing, rate on wrapping paper from Madison, Me., to New Hope, Pa., found unreasonable to extent that proportional rate comprising factor to Brunswick, Me., exceeded lower proportional rate from Enfield, Howland, Montague, and Lincoln, Me., farther distant points, which lower rate was established from Madison subsequent to movements here involved. Reparation awarded. To this extent former report, 88 I. C. C. 593, reversed. Universal Paper Bag Co. v. M. C., 107 I. C. C. 661.

(e) Respondent, C. I. & L., proposed certain changes in the application of proportional rates between New Albany, Ind., and Louisville, Ky., effecting increased rates on carload and less carload traffic. Present schedules name proportional rates on carload and less than carload traffic between New Albany, on traffic passing through that point over respondent's line, and Louisville, to be used in making through rates to and from Louisville proper and points beyond. The schedules further provide that where the lines north of the Ohio river publish rates to or from New Albany, but not Louisville, through rates to or from Louisville will be made by adding the proportionals mentioned in the rates to or from New Albany, and where the lines south of the Ohio river publish rates to or from Louisville but not New Albany through rates will be the sum of the rates to or from Louisville and the rates to or from New Albany plus the proportionals. By the suspended schedules respondent proposed to cancel the application of the proportionals in constructing through rates to or from Louisville, and to confine the application of the proportionals to the construction of proportional rates to or from Louisville or New Albany on traffic originating at or destined to points in the southeast. Respondent introduced no evidence to justify the resulting increase of 6.5c. HELD: Schedules not justified. Proportional rates between New Albany and Louisville, 113 I. C. C. 243.

(f) Conditions surrounding proportional and local rates are dissimilar. Nooney & Co. v. P. R. R., 112 I. C. C. 35, 36.

(g) On shipments of crude and refined petroleum from points in Kentucky, Kansas, and Oklahoma to Lawrenceville, Ill., and Findlay, Ohio, no joint rates were in effect. Combinations of proportional and local rates to and from certain intermediate points, subject to combination rule produced lower charges than combinations of proportional rates

to and from same intermediate points, not subject to the rule. Contention that under 5 (c) of Tariff Circular 18-A, there being no joint rate in effect, shipper was entitled to lowest combination over the routes of movement, not sustained. Rule relied upon provided that where a combination is to be used it shall be the lowest combination of applicable rates and here the applicable rates were the combinations of proportionals. Indian Refining Co. v. L. & N., 112 I. C. C. 732, 735.

(h) The commission's tariff rules authorize publication of proportional rates and are silent as to necessity for canceling local rates between same points for application on through traffic, and since the rules do not provide that proportional rates conflict with local rates, it follows that establishment of a proportional commodity rate removes application on through traffic of a local community rate on same article between same points. Indian Refining Co. v. L. & N., 112 I. C. C. 732, 736.

(i) On a carload of cement from York, Pa., to Cape Girardeau, Mo., a combination of two local rates to and from an intermediate point, subject to combination rule, produced a lower charge than a combination of a local and a proportional rate to and from same intermediate point, not subject to said rule. Following Indian Refining Co., 112 I. C. C. 732, FOUND: That the higher combination of the local and the proportional rate was applicable. Sandusky Cement Co. v. P. R. R., 112 I. C. C. 737.

(j) Rates charged on one car of poles originally shipped from Colville, Wash., to Minneapolis, Minn., there stored and subsequently reforwarded to Zwingle, Iowa, found not unreasonable, discriminatory, or unduly prejudicial; except that local rate from Minneapolis to Zwingle was unduly prejudicial to extent it exceeded a lower proportional contemporaneously in effect on similar traffic shipped from territory west of the Montana-Dakota State line to Minnesota Transfer and Cologne, Minn., for storage and reforwarding to same ultimate destination. Lindsley Bros. Co. v. G. N. Ry., 113 I. C. C. 166.

(k) Proposed increased through rates on grain and products from Omaha and South Omaha, Nebr., and Council Bluffs and Des Moines, Iowa, when from beyond and from Illinois Central stations to Arkansas destinations, found not justified. Present proportionals from Des Moines to Arkansas are on a parity with those from Omaha and competition between these markets is keen since both draw from same territory. If proposed rates are permitted the disparity will prevent Des Moines from competing with Omaha. Moreover, in 102 I. C. C. 186, rates on grain originating beyond Des Moines were found unduly preferential and prejudicial to extent they exceeded contemporaneous rates on grain originating beyond Omaha to same destinations, and in 104 I. C. C. 742 the commission stated that through rates should be somewhat less than the sum of rates to and from an intermediate point and to urge that combinations are the general basis for constructing rates is not sufficient to justify proposed increases. Grain and Products to Arkansas, 113 I. C. C. 209.

(l) Proposed changes in application of proportional rates between New Albany, Ind., and Louisville, Ky., effecting increases on c. l. and l. c. l. traffic, found not justified. Schedules propose to cancel proportionals in effect in constructing through rates, and to confine their application to construction of rates to or from Louisville or New Albany on traffic originating at or destined to points in certain southern states. Under proposed change the combination rate from Kansas and Oklahoma to Louisville based on New Albany would be increased. Carriers introduced no evidence to justify resulting increase, the proposal being actuated by desire of certain lines to eliminate this one remaining so-called bridge tariff in interest of uniformity. Proportional Rates Between New Albany and Louisville, 113 I. C. C. 243.

(m) Generally speaking a proportional rate is lower than a local rate between same points and ordinarily there should be no reason for a through rate composed of a local and a proportional in excess of combination of two locals, it being obvious that cost of handling a through shipment is less than cost of handling a shipment into and out of some point intermediate to final destination. Alabama-Georgia Syrup Co. v. A. C. L., 113 I. C. C. 283.

(n) Complainant attacked combination rates charged on 51 cars of celery from Sanford, Crippen, Sipes, Brisson, Moores, Cameron City and Beardall, Fla.,

and two cars from Palmetto, Fla., to Chicago, Ill., all under refrigeration, as unreasonable, unjustly discriminatory and unduly prejudicial. All the points of origin except Palmetto are included in what is known as the Sanford group and took the same rates to Jacksonville. Palmetto, farther south, took higher rates. The distances to Chicago are 1,193 miles from Sanford and 1,300 miles from Palmetto. Applicable combinations of proportionals of 16.5c per crate to Jacksonville from the Sanford group and 23c from Palmetto plus $1.20 per 100 pounds was charged. A joint rate was finally published on a uniform per crate basis of 60c effective March 27, 1923. HELD, rates attacked not unreasonable or otherwise unlawful. Complaint dismissed. Ahern Brokerage Co. v. A. C. L. R. R., 113 I. C. C. 651.

(o) Combinations of proportional commodity rates on celery from points in Florida to Chicago, composed of so-called gathering charges to Jacksonville plus proportionals beyond, found not unreasonable or discriminatory. In support of reasonableness of the resulting charges carriers compare earnings on celery with those on tomatoes, cucumbers, and citrus fruit. Allegations of discrimination and undue prejudice rest upon collection of rates to Chicago based on a higher component to the Ohio River than that charged for delivery at Cincinnati and other Ohio River points, but record establishes that these differences resulted from general percentage territorial increase to Cincinnati and interterritorial increase to Chicago. Moreover, such comparable rates between Florida points and Chicago offered by carriers tend strongly to disprove unreasonableness of rates assailed. Ahern Brokerage Co. v. A. C. L., 113 I. C. C. 651.

(p) Respondent K. C. S., in connection with the T. & F. C., T. & P. and L. R. & N., proposed to reduce the proportional rate on grain and grain products, in carloads, from Kansas City, Mo., to Beaumont and Port Arthur, Tex., and New Orleans, Gretna, Port Chalmette, and Westwego, La., for export. The proposed rates are not published to apply to Galveston, Houston, Texas City, or Orange, Tex., for the reason that the lines serving these ports apparently declined to concur in the proposed reduction. Respondent, in an endeavor to attract export grain to its line at Kansas City, has for several years maintained socalled open proportional export rates from Kansas City to Port Arthur, New Orleans, and other Gulf ports. It has also maintained variable proportional rates from Kansas City to the Gulf ports applicable on grain from points on the Rock Island and the M. P., which rates are substantially the equivalent of the transit balances from Kansas City to the Gulf over the Rock Island or the M. P., dependent upon the point of production. The proposed Kansas City combinations to the Gulf ports would be lower than the present joint rates from 510 out of a total of 774 origins on those lines, and from 248 of those 510 origins the combinations would be less than the joint rates by 3c. While the rates here proposed do not seem to be violative of sections 1 or 3 of the act applying the usual standards, the Commission must of necessity consider the probable consequences of the action. The record before the Commission is narrow. The proceeding is submitted without oral argument, and, because of its nature, must by law be disposed of expeditiously. Approval of the schedules will inevitably lead to a disruption of the grain rate structure, and have marked effects upon distribution and marketing, the extent of which the Commission can not adequately foresee, and must of necessity impair the revenues of the carriers and their ability to render satisfactory service. HELD, suspended schedules not justified. Grain and grain products, 115 I. C. C. 153.

(q) Complainant attacked commodity rate on crushed slate carloads from Whiteford and Slate Hill, Md., to New Orleans, La., and Mobile, Ala., since October 1, 1923, as unreasonable, unjustly discriminatory and unduly prejudicial as compared with commodity rates in effect to New Orleans and Mobile from Esmont, Va. Whiteford and Slate Hill are local to the M. & P., 42.4 and 45.6 miles, north of Baltimore, Md. Shipments moved via Cincinnati. A commodity rate of $8.24 was applied. Prior to May 11, 1923, a class rate of 74c applied from Whiteford to New Orleans, applicable via either Potomac Yard, Va., or the Ohio river crossings. On that date provision was made for the non-application of the class rate from eastern cities to New Orleans, Mobile and other Mississippi valley points. Concurrent with this action a proportional rate of $4.38 was established from Cincinnati. This rate, in combination with a commodity rate of

$3.86 from Whiteford and other slate producing points in eastern Pennsylvania to Cincinnati made a through rate of $8.24. Subsequent to the filing of these complaints the $8.24 rate was made applicable via Potomac Yard. HELD, rate attacked not unreasonable but unduly prejudicial to extent it exceeded rate from Esmont by more than $1.50 per ton, reparation denied. Staso Milling Co. v. M. & P. R. R., 115 I. C. C. 605.

(r) Respondents, L. & A. and V. S. & P. proposed to increase the proportional rates on structural iron and steel articles, carloads, from Natchez and Vicksburg, Miss., to Shreveport, La. A proportional rate of 27.5c had been in effect, through error a rate of 13.5c was established, and proposed rate 27.5c. HELD, proposed schedules justified. Iron and Steel to Shreveport, 115 I. C. C. 612.

(s) Complainant attacked commodity rates on coal, carloads, of $2.39 from Clincho, Va., and $2.64 from Clinchfield and Dante, Va., to Toledo and Toledo Dock, Ohio, for transshipment by vessel, as unduly prejudicial to extent they exceed $1.91 from Clincho and $2.06 from Clinchfield and Dante. Clinchfield is on the Dumps Creek branch of the C. C. & O., about 3 miles north of Carbo, Va., the junction of that branch with the N. & W. Westerly from Carbo to St. Paul, Va., about 9 miles, the C. C. & O. operates under trackage rights. Connection is made at St. Paul with its main line, which runs north and south. Dante and Clincho are on the main line of the C. C. & O., about 7 and 25 miles, north of St. Paul. Rates on lake cargo coal from this general region are lower than the rates on commercial coal, but this is not true of complainants mines, from which the commercial coal rates apply also on lake cargo coal. Generally speaking, rates of $1.91 and $2.06 apply on lake cargo coal to Toledo and Toledo dock from districts in the Inner and Outer Crescent, from which the commercial coal rates are $2.39 and $2.64. The rates for lake cargo coal are in the nature of proportional rates, and, with some exceptions, they are the same to all Lake Erie ports. HELD, rates attacked for transshipment by vessel are unduly prejudicial to the extent they exceed the lake cargo coal rates by more than 15c per ton. Clinchfield Coal Corp. v. C., C. & O. Ry., 118 I. C. C. 79.

(t) Complainant attacked local and proportional or reshipping rates on grain and grain products, carloads, from Memphis, Tenn., St. Louis, Mo., and Ohio river crossings and local rates from intermediate points since April 1, 1922, as unreasonable and unduly prejudicial to extend the rates from St. Louis and Ohio river crossings to Nashville exceed the local and proportional rates from the crossings to Memphis and to extent the rates from Memphis exceed the rates sought from St. Louis to Nashville. The short line distance from Omaha to Memphis is 666 miles over lines operating west of the Mississippi river, and through rates are published over these lines which are 25c on traffic originating at points beyond Omaha and 31c on traffic from Omaha proper. Distance over routes operating through St. Louis is 725 miles. The proportional rate from Omaha to St. Louis is 13.5c, and in order to participate in the traffic and permit grain interests at St. Louis to do business in Memphis, the lines operating from St. Louis maintain a proportional rate from that crossing to Memphis of 11.5c which is the balance of the rate of 25c from Omaha to Memphis. The rates over the west side lines from Omaha to Cairo and Evansville are 3c higher than those to St. Louis, and the proportional rates from these points to Memphis are accordingly made 3c less than the rate from St. Louis, or 8.5c. The general basis for making rates on classes and commodities from western points to Nashville and Chattanooga, Atlanta, Birmingham and other southeastern points is and for many years has been the combination on Ohio or Mississippi river crossings; and the rates on grain and other commodities from western points to Nashville are and always have been higher than to Memphis. HELD, rates attacked on grain and grain products, in carloads, to Nashville are unreasonable and unduly prejudicial to extent they exceed 20c from Memphis and St. Louis, 17c from Cairo and Evansville, 14.5c from Louisville and 21.5c from Cincinnati on traffic originating beyond and 22, 23, 20, 18, 20 and 24c on traffic originating at those points. The local rates herein prescribed will set the level of the maximum rate which may be maintained from intermediate points to Nashville for the future. Nashville Traffic Bureau v. L. & N. R. R., 118 I. C. C. 748.

(u) Complainant attacked rates on

grain and grain products in carloads, from Memphis, Tenn., to Birmingham, Ala., as unreasonable unjustly discriminatory and unduly prejudicial in favor of Meridian, Miss., and in violation of the fourth section. Generally speaking, grain and grain products, in any quantity, move in the south on class D rates or the equivalent thereof. During federal control carload rates were published to points in the southeast from the Ohio and Mississippi river crossings because of a provision of G. O. 28 which limited the increase in carload rates on grain and grain product to a maximum of 6c. No finding of undue prejudice can be made because the sole defendant does not control the rates to the territory alleged to be preferred. The rates from crossings other than Memphis are not under attack, and the Commission can make no findings as to those rates, but it anticipates that the interests of other carriers and of grain dealers at the other crossings served by them will cause the continuance of the existing relative adjustment of through rates to Birmingham via the several crossings. HELD, rates attacked on grain and grain products, carloads, from Memphis to Birmingham unreasonable to extent it exceeds 20c on traffic originating beyond Memphis and 22c from Memphis proper. Birmingham Traffic Bureau v. St. L. S. F. Ry., 118 I. C. C. 756.

(v) Proposal of the Frisco to cancel proportional rates on grain and products from Omaha, South Omaha, Des Moines, Council Bluffs, and Kansas City, when from beyond, on traffic moving via East St. Louis to destinations in Arkansas on that portion of its line formerly operated by the Jonesboro, Lake City & Eastern Ry., designed to place these destinations on same rate basis maintained to other near-by stations on the Frisco system and to confine routing from these origins to its own line and to the Kansas City gateway, found not justified. If proposed rates are permitted, combinations from Omaha to Arkansas points involved on shipments moving beyond St. Louis or East St. Louis would be higher than on shipments moving beyond Kansas City, and grain operators at St. Louis be prevented from competing with those at the Missouri River points. Moreover, no evidence was submitted to show that present rates are unduly low. Grain and Products to Arkansas, 115 I. C. C. 457.

(w) Proposed increased proportional rate on iron and steel articles from Natchez and Vicksburg, Miss., to Shreveport, La., found justified. Carriers cancelled proportional formerly in effect upon assumption that by so doing higher distance rates prescribed in 77 I. C. C. 473 would become effective. Proportional rates, however, were not considered in cited case and carriers now propose to restore preexisting rates. In justification thereof carriers show that they compare favorably with rates on same commodities from other important Mississippi River crossings to destinations west thereof; also that continuance of present low westbound rates which became lower than those eastbound through printer's error, would result in breaking down joint rates in effect from principal iron and steel producing centers to Shreveport. Iron and Steel to Shreveport, 115 I. C. C. 612.

(x) Proportional rates ordinarily are lower than local rates from and to same points. Capital Grain & Feed Co. v. I. C., 118 I. C. C. 732, 743.

(y) Proportional or reshipping and local rates on grain and products from Ohio and Mississippi River crossings to Nashville, Tenn., found unreasonable and unduly prejudicial in their relation to corresponding rates from same crossings to Memphis. Reasonable and nonprejudicial rates prescribed for future and reparation denied. Nashville Traffic Bureau v. L. & N., 118 I. C. C. 748.

(z) The principle that proportional rates may be lower than local rates because they apply to portions of much longer total hauls has long been recognized in rate making. Ex-Lake Iron Ore from Chicago to Granite City, 120 I. C. C. 75, 78.

(aa) Where proportional rates and joint rates are contemporaneously effective and proportionals would apply in absence of joint rates, such proportional rates are intermediate rates within meaning of section 4 of the act. See 37 I. C. C. 591 and other cited cases. Ryan Fruit Co. v. Director General, 120 I. C. C. 206, 213.

(bb) Upon reargument, statement in original report, 104 I. C. C. 104, that fresh-meats rate from St. Louis to New York is a marked exception to the adjustment prevalent and that 117 per cent is the standard relationship on almost every other commodity, found to be in error. Finding that local and proportional rates on fresh meats from St.

Louis and other Mississippi River crossings to destinations in trunk-line and New England territories should be based upon 117% of the Chicago-New York rate withdrawn and rates based upon specific differentials over Chicago prescribed for future. Morrell & Co. v. N. Y. C., 120 I. C. C. 537.

(cc) Complainant attacked the rates on grain and grain products from points in Indiana to Chicago, Ill., when reshipped over lake or lake and rail lines, are unjust, unreasonable, unjustly discriminatory and unduly prejudicial to its members. The rates assailed apply only on inbound grain when reshipped from Chicago by lake or lake and rail routes. There is no evidence of unjust discrimination. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Indianapolis Board of Trade v. C. I. & L. Ry., 122 I. C. C. 289.

(dd) Complainant alleged that rates on flaxseed, carloads, from South Dakota to Fredonia, Kas., are unreasonable and unduly prejudicial. In 107 I. C. C. 35, the Commission found rates on flaxseed from South Dakota to the points named were unreasonable to the extent they exceeded 112% of the wheat rates. Fredonia is about 153 miles southwest of Kansas City, served by the Santa Fe, M. P., and Frisco. The movement of flaxseed to Fredonia from South Dakota is through Sioux City, Ia., Omaho or Kansas City, the greater part moving through Omaha. The rates are made up of the local rates to these points and proportional rates beyond in the same manner as the rates on wheat. Proportional rate from Omaha to Fredonia is 22.5c on wheat and on flaxseed 24c. The Commission has in former decisions passed upon both the level and the relation of flaxseed rates from South Dakota to various points, including Omaha and Kansas City, and a consideration of the present record does not convince it that there was error in such findings. Rates prescribed, especially to Omaha and Kansas City, may appropriately be used in the construction of rates to Fredonia. The construction of rates to Fredonia by the addition to the rates to the Missouri river points of the present proportional rates results in through rates which are excessive and which unduly prejudice complainant and unduly prefer flaxseed crushers located at competing points. HELD, rates attacked unreasonable and unduly prejudicial to extent they exceed the rates to Omaha by more than 16c, reparation awarded. Fredonia Linseed Oil Works Co. v. A. T. & S. F. Ry., 123 I. C. C. 525.

(ee) Proportional rates on grain and products from Mississippi River gateways and points west thereof to intermediate destinations on the Gulf & Ship Island R. R., higher than to farther distant points, found not unreasonable or otherwise unlawful. Higher rates to intermediate points were permitted to meet rates of trunk-line competitors at junction points by fourth-section order. Moreover, carriers show that rates to points on the Gulf & Ship Island compare favorably with rates from same points to destinations in Mississippi and Louisiana on to New Orleans Great Northern, Mssissippi Central, and Gulf, Mobile & Northern, and are on a lower level than rates to the Southeast. Jackson Traffic Bureau v. A. & V., 122 I. C. C. 387, 388, 389.

(ff) Proposed reduced proportional rates from Minneapolis and Duluth, Minn., and points grouped therewith, applicable over the Minneapolis & St. Louis and Soo Line, respectively, and their eastern rail connections, to points in trunk-line and New England territories, on grain and products originating in Montana, the Dakotas, and northwestern Minnesota, designed by above-named carriers in an effort to secure some of the traffic now moving via rail-lake-rail routes through Duluth and Buffalo, N. Y., found not justified. Such rates would lead directly to a disruption of the grain-rate structure, have marked effects on marketing and distribution, and of necessity impair revenues of carriers and their ability to render satisfactory service. Moreover, Minneapolis already has more favorable rates than competing western markets, and rates proposed would increase the preference. Grain and Products to Eastern Points, 122 I. C. C. 551.

(gg) Complainant attacked the proportional rates on wheat and wheat flour, carloads, from Kansas City, Mo., St. Joseph, Mo., Leavenworth, Kan., and Atchison, Kan., and Omaha, Neb., when from beyond, to points to certain portions of Indiana, Ohio, Pennsylvania and West Virginia and Kentucky as unreasonable and, as compared with the proportional rates on the same commodities from Minneapolis, Minn., and points taking same rates when from beyond, to the

same destination territory, unduly prejudicial. The rates from the Missouri river cities to the destination territory are made either combination on St. Louis, Peoria, Ill., or Chicago and from Minneapolis and Duluth are based on the Milwaukee, Wis., Chicago or Peoria combinations. Such combination rates are composed of proportional rates from origin territories, on traffic from beyond, to the rate breaking points plus proportional or reshipping rates beyond. It is sufficient to say that the general level of rates on both wheat and flour is from 0.5 c to 5 c higher from Kansas City than from Minneapolis, notwithstanding the distances from Kansas City are generally from a few miles to as much as 250 miles less than from Minneapolis. There are no conditions affecting the transportation of this traffic to this territory which justify a different level of rates from Minneapolis than is applied from the Missouri river points. HELD proportional rates on wheat and flour, in carloads, from the Missouri river cities to points in the destination territory involved are unduly prejudicial to these points to the extent they exceed or may exceed the rates maintained on like traffic from Minneapolis and points taking same rates to the same destinations. It would appear that the establishment of rates from the Missouri river cities to points in the destination territory here involved not in excess of the rates that now apply from Minneapolis would result in rates from the Missouri river cities which will be both reasonable and lawful. The present parity of rates on wheat flour and compound flours should be maintained. Southwestern Millers League v. A. T. & S. F. Ry., 126 I. C. C. 23.

(hh) Respondents propose to increase the rates on crushed slate, carloads from Esmont, Arvonia, Dutch Gap, and Rockfish, Va., to Mobile, Ala., New Orleans, La., and Vicksburg, Miss. Arvonia and Dutch Gap are on the C & O and Esmont is on the C & O and N & A. Respondents proposed to increase the present rate of $4.77 from Esmont, Arvonia and Dutch Gap to $6.74. A proportional rate of $4.50 is applicable from Rockfish over the Southern on traffic originating on the N & A. The local rate of the N & A to Rockfish is 27 c. Proposed to increase the proportional rate from Rockfish to $6.47, presumably in compliance with Staso Milling Co. v. M. & P. R. R. 115 I. C. C. 605. HELD, proposed rates justified. Slate from Virginia points, 126 I. C. C. 70.

(ii) Proportional rates on wheat and flour from Missouri River points, when from beyond, to points in Indiana, Ohio, Pennsylvania, West Virginia, and Kentucky, found unduly prejudicial to extent they exceed those contemporaneously maintained from Minneapolis, and points taking same rates, to same destinations. Level of rates is higher from Kansas City than from Minneapolis, notwithstanding great difference in distance. While from latter point rates on wheat and flour are the same, rates on flour from Kansas City, are generally higher than on wheat thus permitting millers at Minneapolis to compete on a more favorable basis. Moreover, principles announced in 113 I. C. C. 3; 122 I. C. C. 235, in construing the Hoch-Smith resolution with reference to advancing rates on products of agriculture to rectify inequalities could here well be given application by carriers in removing undue prejudice found to exist, as rates from Kansas City not exceeding those from Minneapolis appear to be reasonable. Southwestern Millers League v. A. T. & S. F., 126 I. C. C. 23.

(jj) Upon further hearing in 95 I. C. C. 539, all rail rates on grain and products from Illinois, Wisconsin, Minnesota, the Dakotas, Montana, Iowa, Nebraska, Kansas, Arkansas, and Oklahoma, to Boston and New York, for export, found not unreasonable or otherwise unlawful as compared with lower contemporaneous rates to Philadelphia and Baltimore. Complainants agree with all other parties that present method of constructing rates from western points to Atlantic ports is best that has been devised. Moreover, as larger portion of export grain now moves through Philadelphia and Baltimore, to require carriers to establish equal reshipping rates from primary markets on grain originating in Northwestern States, in accordance with recommendation in former report, would undoubtedly complicate the grain-rate structure, and might create some difficulties in handling grain at primary markets. Maritime Asso., Boston Chamber of Commerce v. A. A. R. R. 126 I. C. C. 199.

(kk) Complainant alleged that the proportional rates on grain and grain products, carloads, from Des Moines, Ia., to Louisiana, applicable on traffic originating beyond Des Moines, are unreasonable and, in comparison with lower proportional rates on like traffic from Omaha, Neb., and Council Bluffs, Ia., unduly

prejudicial. The complaint arises from the disparity in the proportional rates from Des Moines and Omaha to Louisiana. Des Moines has three principal bases of rates on grain to Louisiana. It may operate on transit, either under one factor through rates from country stations to Louisiana or under one factor rates from those stations to Kansas City and proportional rates beyond, or it may use combinations of local rates to Des Moines and proportional rates beyond. The average distance from Des Moines to the Louisiana destinations generally is almost exactly the same as that from Omaha. HELD, proportional rates assailed not unreasonable but unduly prejudicial to extent they exceed the proportional rates from Council Bluffs or Omaha. Des Moines Board of Trade v. Ft. D. M. & S. Ry., 129 I. C. C. 138.

(ll) It can not properly be argued that a proposal to increase unremunerative reshipping rates could be denied upon the ground that the through charge composed of an excessive inbound rate and the unremunerative reshipping rate is just and reasonable. The converse must also be true, namely, that shippers may not on like grounds be denied relief from unreasonable or unduly prejudicial reshipping rates. Each of such rates must be judged upon its individual merits. Des Moines Board of Trade v. Ft. D. D. M. & S. Ry., 129 I. C. C. 138, 145.

(mm) Respondents, M. P. Santa Fe, and Rock Island, proposed to establish proportional rates on grain and grain products from stations on their lines in Colorado, Kansas, and Nebraska to Kansas City, Mo-Kas., and from points on their lines in Kansas to Wichita, Kas., destined to Gulf ports for export, for application from Kansas City is over the K. C. S., C. & A., M. K. T. or Frisco and their connections and the movement from Wichita is over the K. C. M. & O. or Midland Valley and their connections. The proposed rates are in excess of the corresponding local rates and would result in increases in the through rates over these routes by amounts ranging from 0.5c to 7.5c. For many years Kansas City has been one of the most important primary markets and the rates through that market very generally have been combinations of rates to and from that point. Prior to 1924 the applicable rates under which this traffic moved via Kansas City were combinations of the inbound locals and the outbound standard proportional, the latter applicable over the lines now maintaining the varying proportionals as well as over respondents lines. There is no question in the mind of the Commission but what there have been and are at least implied arrangements for the through carriage of this traffic sufficient to constitute all of these routes through routes within the meaning of the act, and their status would not be affected by the suspended inbound proportionals here considered. Respondents have made no attempt to justify the proposed inbound proportional rates in and of themselves. The routes via Kansas City over which the proposed inbound proportional rates would increase the through charges are in many instances shorter than the routes via that point over which the rates would not be increased. HELD, schedules not justified. Grain and Grain Products, 129 I. C. C. 261.

(nn) Under the provisions of paragraph 13 (c) of section 6 of the act, the Commission is authorized to prescribe proportional rates to ports applicable to traffic moving beyond by water, and such rates may differ from the corresponding local rates. They are not restricted to cases where the rates beyond by water are filed with the Commission. Washington Coal Producers Asso. v. U. P. R. R., 129 I. C. C. 499, 500.

(oo) Rates on cotton and linters for export or coastwise movement from points west of Mississippi River to Mobile, Ala., by rail to Alabama ports on Warrior River and barge beyond, found not unduly prejudicial as compared with rail-and-barge rates contemporaneously in effect from same points to New Orleans via Memphis, Tenn., or Vicksburg, Miss. Evidence submitted fails to show similar transportation costs over route sought via Cordova Ala., or that traffic would move over that route if established. However, certain carriers have agreed and will be expected to publish rail-and-barge rates from western Tennessee, western Kentucky, and Mississippi through Cordova, or some other Warrior River port to Mobile, based on principles laid down in 77 I. C. C. 317; 100 I. C. C. 491. Mobile Chamber of Commerce v. A. & V., 129 I C. C. 103.

(pp) Proportional rates on grain and products from Des Moines, Iowa, to Louisiana destinations west of Mississippi River, originating beyond Des Moines, found not unreasonable but unduly prejudicial to extent they exceed corresponding rates contemporaneously maintained from Council Bluffs or Omaha on traffic originating beyond those points. Undue prejudice ordered removed. Des Moines Board of Trade v. F. D., D. M. & S., 129 I. C. C. 138.

(qq) Proposed increased proportional rates on grain and products inbound to Kansas City, Mo.-Kans., and Wichita, Kans., destined to Gulf ports for export, applicable only when movement beyond Kansas City or Wichita is over certain routes, found not justified. Previously, rates over all lines consisted of locals to Kansas City plus standard proportionals beyond, but to meet lower through one-factor rates established by respondents, other lines published varying proportional rates beyond Kansas City. Contention that respondents are entitled to long haul on traffic which they originate, and that through routes do not exist over their lines in connection with varying proportional rates, not sustained, since implied arrangements are sufficient to constitute all these routes through routes. Moreover, mere desire to retain long haul is not sufficient to justify rates proposed. Grain and Products, 129 I. C. C. 261.

(rr) Local rates from Dawkins, Ky., a point on the C. & O. Ry., to points in central and eastern trunk-line territories on lumber originating at Royalton, Ky., a branch-line point, found not unreasonable but unduly prejudicial to shippers at Royalton and unduly preferential of competing shippers located on the Sewell Valley R. R., which connects with C. & O. at Meadow Creek, W. Va., to extent they exceded rates made the same differential under contemporaneous local rates from Dawkins as proportional rates to same destinations from Meadow Creek are made under contemporaneous local rates from latter point. Undue prejudice ordered removed. Dawkins Lbr. Co. v. C. & O., 129 I. C. C. 415.

III. LEGALITY.

See Legality of Rates; Tariffs §14.

(a) Proportional rates, unrestricted in their application, are intermediate rates within meaning of the aggregate-of-intermediates provision of section 4 of the act. Husley-Bessent Co. v. S. A. L., 109 I. C. C. 389, 390.

IV. EVIDENCE AND PROCEDURE.

See Evidence; Procedure Before Commission.

(a) Although local rates are not necessarily controlling in determining measure of proportional rates from and to same points, they are not without probative value. Lake Cargo Coal Rates, 1925, 126 I. C. C. 309, 334.

V. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) A proportional rate is defined as one which applies to part of a through transportation which is entirely within the jurisdiction of the act; that is, the balance of the transportation to which the proportional rate applies must be under a rate filed with the Commission. A rate to a port for shipment beyond by a water carrier not subject to the provisions of this act would not be a proportional rate. Grain and grain products, 122 I. C. C. 235, 270.

(b) Commission is authorized, under provisions of paragraph 13 (c) of section 6 to prescribe proportinal rates to ports applicable to traffic moving beyond by water, and such rates may differ from corresponding local rates and are not restricted to cases where rates beyond by water are on file with commission. Washington Coal Producers Asso. v. U. P., 129 I. C. C. 499, 500.

VI. TARIFFS AND CONSTRUCTION.

See Tariffs.

(a) Section 6 of the act deals with two classes of rates, joint through rates and, in the absence thereof, application of separately established rates factors applicable to through movement over through route. In addition to the two methods of rate making the commission has in rule 5 (b) of Tariff Circular 18-A outlined another plan of making through rates. FOUND: That the so-called Flo-

rida basis book containing proportional rate factors used for making through combination rates on Jacksonville and other Florida junction points does not conform to rule 5 (b), nor are carriers serving a large part of origin territory here involved named as participating carriers. The basis book, therefore, can only be considered as containing proportional rates, which may be used in combination when such combinations are lower than other lawfully established combination rates applicable over route of movement. Lumber from or to Florida Points, 112 I. C. C. 133, 138.

(b) The commission's tariff rules authorize the publication of proportional rates and are silent as to the necessity for canceling the local rates between the same points for application on through traffic, and since the rules do not provide that proportional rates conflict with local rates, it follows that the establishment of a proportional commodity rate removes the application on through traffic of a local commodity rate on the same article between the same points. Spencer Kellogg & Sons, Inc. v. D., L. & W. R. R. Co., 112 I. C. C. 629, 637.

(c) On shipments of crude and refined petroleum from points in Kentucky, Kansas, and Oklahoma to Lawrenceville, Ill., and Findlay, Ohio, no joint rates were in effect. Combinations of proportional and local rates to and from certain intermediate points, subject to combination rule produced lower charges than combinations of proportional rates to and from same intermediate points, not subject to the rule. HELD: The combination rule not being at any time applicable in connection with combinations of proportionals, but only in connection with locals from the intermediate points, and since a proportional commodity rate takes precedence over a local commodity rate on through traffic on same article between same points, the combination of proportionals was legally applicable. Indian Refining Co. v. L. & N., 112 I. C. C. 732.

(d) Complainant attacked combination of proportional rates charged on 444 cars of gasoline, kerosene, naphtha, lubricating oil and fuel oil shipped between July 16, 1923 and March 9, 1924 from Oklahoma to Uniontown, Pa., Luray, Va., Youngstown, Cleveland, Cincinnati and other destinations in Ohio and Indianapolis and Logansport, Ind., as unreasonable and illegal. Complainants introduced no evidence to show that the rates were unreasonable. The only issue to be determined is whether the rates from the points of origin to Lawrenceville, Ill., on the B. & O., Paris, Ill., on the Big Four and Farrington, Ill., on the Pennsylvania were applicable to certain destinations on those lines in Indiana and Ohio. The line of the N. Y. C. from Danville to Chicago is the only line of that carrier east of the Illinois-Indiana state line on which the tariff containing the claimed rates shows specifically named destinations, and the shipments under consideration did not move via that line. It is unnecessary to look to the intention of the framers of the tariff. Even under the literal interpretation urged by complainants it sufficiently appears that the tariff containing the claimed rates did not apply over any route east of the Illinois-Indiana state line except that of the N. Y. C. between Danville and Chicago. HELD, rates to Lawrenceville, Paris and Farrington not applicable from Oklahoma to Ohio and Indiana, complaint dismissed. Pure Oil Co. v. A. T. & S. F. Ry., 123 I. C. C. 624.

(e) The at-and-east rates are proportional rates from the lake ports and apply only on grain which is moved to lake ports by water. They include a charge of 1 cent a bushel for elevation and transfer of lading to cars. Birkett Mills v. D., L. & W., 123 I. C. C. 63, 64.

(f) Charges assessed on wheat, reforwarded under proportional rates from Kansas City, Mo., to various interstate destinations and accorded transit at Leavenworth, Kan., and Sweet Springs, Mo., found applicable and not unreasonable or otherwise unlawful. Under transit tariff, proportional rates applied with transit at points in direct line of shipment, but since movement to Leavenworth necessitated an out-of-line haul, transit at that point and Sweet Springs was not authorized. Moreover, in 91 I. C. C. 58; 100 I. C. C. 303, contention that carrier's tariff authorized protection of proportional rates from Kansas City, with transit at Leavenworth and Sweet Springs, was not sustained, and record in instant case does not warrant a different conclusion. Moore Lawless Grain Co. v. M. P., 123 I. C. C. 647.

(g) The words "when from beyond" implies a line haul movement "beyond" the rate breaking point. Armour & Co. v. Director General, 126 I. C. C. 539, 542.

(h) Provisions of Tariff Circular 18-A, providing that tariffs publishing proportional rates must specifically refer to tariffs naming other rates used in conjunction therewith in making through rates, is restricted to "basing rates." Armour & Co. v. Director General, 126 I. C. C. 539, 540.

(i) Seattle-Portland factor of combination rates on wooden poles from Washington points to California was described in the governing tariff as a proportional rate but was, nevertheless, an arbitrary. Tariff authorized the application of the combination rule "except as otherwise indicated" and restricted use to "separately established commodity (or class) rate factors," thus precluding the use of the rule in connection with the Seattle-Portland arbitrary. Rates assessed found applicable except that overcharge, not due to inapplicable rate, was assessed on one shipment. Complaint dismissed. National Pole Co. v. G. N., 129 I. C. C. 697.

VIII. RESTRICTED RATES.

See Restricted Rates.

(a) Proposal to restrict proportional rates on anthracite coal from Niagara frontier to East Burlington, Ill., via the New York, Chicago & St. Louis R. R. and its western connections, so as not to apply on traffic destined to Burlington, Iowa, found justified. Iowa R. R. Commrs. v. C. R. R. Co. of N. J., 109 I. C. C. 273.

(b) Proportional rates, unrestricted in their application, are intermediate rates within meaning of the aggregate-of-intermediates provision of section 4 of the act. Husley-Bessent Co. v. S. A. L., 109 I. C. C. 389, 390.

(c) Complainant attacked combination rate of 64c charged on table sirup, packed in tin, in carloads, from Montgomery, Ala., to Tampa, Fla., as unjust and unreasonable. Rates on sirup, and commodities in general, from Montgomery to Tampa are constructed by using the rate to Jacksonville, Fla., and a proportional or basing rate beyond. In the present case the through rate of 64c is composed of local of 28.5c to Jacksonville plus 35.5c basing rate beyond. The local rate from Jacksonville to Tampa is 22.5c or 13c less than the proportional rate. The 22.5c rate is published as an interstate rate, but its application is restricted so as not to apply as a basing rate where, as here, a basing rate is specified in Glenns I. C. C. A368. Generally speaking, a proportional rate is lower than the local rate between the same points, and ordinarily there should be no reason for the through rate to exceed the combination of locals for it is obvious that the cost of handling a through shipment is less than that of handling a shipment into and out of some point intermediate to final destination. Thus it is presumptively unreasonable to require the complainant in the instant case to pay a through rate of 64c where under the tariffs it is permissible to ship a carload of sirup into Jacksonville, unload and reload the contents into another car and reship it to Tampa at a cost of 13c less than the rate charged. HELD: Rate attacked unreasonable to extent it exceeded 51c, reparation awarded. Alabama Georgia Sirup Co., v. A. C. L. R. R., 113 I. C. C. 283.

(d) Proposal of the Frisco to cancel proportional rates on grain and products from Omaha, South Omaha, Des Moines, Council Bluffs, and Kansas City, when from beyond, on traffic moving via East St. Louis to destinations in Arkansas on that portion of its line formerly operated by the Jonesboro, Lake City & Eastern Ry., designed to place these destinations on same rate basis maintained to other near-by stations on the Frisco system and to confine routing from these origins to its own line and to the Kansas City gateway, found not justified. If proposed rates are permitted, combinations from Omaha to Arkansas points involved on shipments moving beyond St. Louis or East St. Louis would be higher than on shipments moving beyond Kansas City, and grain operators at St. Louis would be prevented from competing with those at the Missouri River points. Moreover, no evidence was submitted to show that present rates are unduly low. Grain and Products to Arkansas, 115 I. C. C. 457.

(e) In 50 I. C. C. 531, the commission found the application of proportional rates was limited to traffic to those points to which no through rates were published either in the tariff containing the proportional rates or another tariff to which it made specific reference, and the commission found that in view of this limitation the proportional rates were not intermediate rates which would have become effective in the absence of

joint rates and that no violation of section four had been shown. Ryan Fruit Co. v. Director General, 120 I. C. C. 206, 213.

(f) Respondents proposed to restrict the proportional commodity rate of 29 cents on horses and mules, in carloads, from Chicago to Ohio River crossings so as not to apply on shipments routed over or in connection with the Big Four. In 1922 the carriers in central territory ascertained that the I. C. had established a rate of 32 cents on horses and mules from Chicago to Cairo, Ill. To meet this rate there was published for account of these carriers, including the Big Four, a proportional rate of 32 cents from Chicago the crossings applicable on traffic destined to certain points in the Southeast, including Atlanta. These rates became 29 cents in 1922. The Big Four asserts that the rate was made applicable over its line without its sanction, that it does not desire to meet the competition of the I. C. on this traffic, and that it now desires to withdraw from participation therein. Horses and mules are rated second class and if suspended schedules are allowed to become effective the second class rate will apply. The record indicates that the proposed restriction contained in the suspended schedules is only a temporary expedient, there now being under consideration an adjustment which, made effective, will either materially increase the 29 cent rate or result in its cancellation over certain other routes. Piecemeal revision of rates is not desirable except in unusual circumstances not present in this case. HELD, suspended schedules not justified. Horses and Mules from Chicago, 120 I. C. C. 607.

(g) Proposal to restrict proportiona' commodity rate on horses and mules from Chicago to Ohio River crossings so that it will not apply on shipments routed over or in connection with the C., C., C. & St. L. Ry., found not justified. This rate was originally established to meet a rate of the Illinois Central R. R., but the Big Four does not desire to meet competition of that carrier. No justification, however, was shown for higher second-class rates which would result on this traffic from both Chicago and intermediate points. Moreover, the record indicates that proposed restriction is only a temporary expedient, there now being under consideration an adjustment which, if made effective, will either materially increase present rate or result in its cancellation over certain routes. Piecemeal revision of rates, however, is not desirable except in unusual circumstances, not here present. Horses and Mules from Chicago, 120 I. C. C. 607.

(h) Respondents propose to increase their rate on coarse grain, in carloads, from points in Texas to points in Mississippi and Alabama, and propose to restrict the application of rates to certain routes. The present and proposed rates are made on the basis of locals or proportionals to Memphis, Tenn., Vicksburg, Miss., or other lower Mississippi river cities, and locals or proportionals beyond, and under appropriate tariff provision the rates so made through any of these gateways are generally applicable through all of them. The proposed factors east of Vicksburg, 14 c to most of the points in Mississippi, equal or approximate the present reshipping rates east of Memphis, although the distances from Vicksburg are quite generally only third or one fourth as great. Respondents propose to route the traffic via Fort Worth, Tex., which would deprive Waco interests of opportunity to transit. HELD, suspended schedules not justified except those canceling the routing of traffic via McGregor and Waco. Grain and grain products, 126 I. C. C. 454.

PROTECTIVE SERVICE

See Facilities and Privileges §10½; Heater Car Serivce; Perishable Freight; Precooling; Refrigeration.

(a) Tariff rule providing for assessment of a charge of $2 per day for heater service on shipments of potatoes moving under carriers' protective service against cold, and which are held at shipments of potatoes in refrigerator cars from points in Minnesota and other Northwestern States to interstate destinations. Such charge is uniformly applied throughout entire territory where carriers' protective service against cold is effective, and applies not onlv to potato shipments but on fruits and other vegetables as well. The evidence lacks that degree of conviction which should appear before commission attempts to disrupt a uniform and widespread practice. Moreover, shippers may avoid imposition of charge either by placing reconsignment instructions prior to arrival of cars at hold points or by availing themselves of shippers' protective serv-

ice. Northern Potato Traffic Asso. v. B. & O., 113 I. C. C. 511.

(b) Tariff rule providing for carrier's refusal to accept instructions to manipulate side doors of box cars in transit to meet changes in temperature, in connection with shipments of potatoes, found not unreasonable or in violation of section 20 of the act. Assailed rule contains no disclaimer of liability and if carriers prefer to run the risk, if any, entailed by refraining from manipulating doors in transit and expressly disavow any attempt to evade their common-law liability in so doing, it is not seen how present rule could result in ultimate damage. Northern Potato Traffic Assn. v. B. & O., 113 I. C. C. 511.

(c) Upon contention that inasmuch as heater service is not ordinarily necessary during October, November, March, and April, a tariff rule providing for assessment of a charge of $2 per day for heater service on potato shipments moving under carriers' protective service, and held at intermediate points for reconsignment, should be qualified by a provision that no charge will be made unless one or more heaters are fired when the outside temperature is at or below 17 degrees above zero, HELD: The commission does not regard such a qualification practicable. Heater service is primarily a matter of protection and certain fixed expenses, such as constant maintenance of a working crew, are necessary, irrespective of weather. The mere fact that during some days, or portions of days, it is unnecessary to fire the heaters is not sufficient in and of itself to condemn present charge or to warrant a finding that no charge should intermediate points for reconsignment, found not unreasonable as applied to apply. Northern Potato Traffic Assn. v. B. & O., 113 I. C. C. 511, 517.

(d) Complainant alleged rate charged on one car of top iced lettuce shipped August 16, 1924, from Granger, Colorado, to Jacksonville, Fla., was unreasonable and that the assessment of commodity rates on the ice in the packages with lettuce is unjustly discriminatory and unduly prejudicial. Granger is on the D. & R. G. W. about 170 miles southwest of Pueblo, shipment moving over D. & R. G. W. to Pueblo, M. P. to East St. Louis, Ill., L. & N. to Nashville, G. S. & F. and S. A. L. Rate charged combination of $1.84 composed of 80c to Cairo, Ill., and $1.04 beyond. The record does not disclose that the circumstances and conditions surrounding the transportation of iced lettuce are similar to those in respect of fresh fish, fresh meat and other commodities, or that lettuce is sold in competition with fresh fish and fresh meats. HELD, rate attacked not unreasonable or unduly prejudicial, complaint dismissed. Hulsey Bessent Co. v. D. & R. G. W. Ry., 118 I. C. C. 707.

(e) The mere showing that a practice exists with respect to transportation of ice with shipments of certain commodities which differs from that applicable to the transportation of ice with lettuce is not sufficient to establish unjust discrimination or undue prejudice. Hulsey Bessent Co. v. D. & R. G. W. Ry., 118 I. C. C. 707, 709.

(f) Complainant's order for refrigerator cars stated "Shipments to move under full-tank refrigeration," no other instructions being given. Car furnished was iced for loading and was forwarded under standard refrigeration, being reiced at four points en route. Contention that because no instructions were given other than to furnish a car iced for loading shipments should have started with bunkers loaded and moved without further icing en route, not sustained, the applicable tariff providing that when shipments are received from shipper without instructions as to character of service desired, shipments would be handled under full tank refrigeration. Johnston v. A. C. L., 118 I. C. C. 1.

(g) Shipper ordered a half-tank refrigerator car but on date order was placed no car of this type was available. Carrier furnished a full-tank car which was accepted, loaded, and forwarded, bills of lading bearing notation "Full tanks ice." HELD: Under applicable tariffs and circumstances of this case shipper had option of either accepting the full-tank car, or waiting until a car of type ordered became available, but having elected to follow former course, the published tariff charge covering full-tank refrigeration assessed was applicable. Moreover, record fails to establish that carrier received reasonable advance notice, to which it was entitled under its tariffs, of type of car desired. Chase & Co. v. A. C. L., 118 I. C. C. 289.

PUNITIVE DAMAGES

See Interstate Commerce Commission §14 (a).

PURE FOOD LAW

(a) Federal Pure Food Law (Act June 30, 1906, as amended by Act Aug. 23, 1912, Act March 3, 1913 [U. S. Comp. St. § 8724], and Act July 24, 1919), prohibiting transportation of adulterated foods in interstate commerce, do not cover the same field as state pure food laws (St. 1923, §§ 4600, 4601), which are valid regulations of commerce in foodstuffs within the state. Day-Bergwall Co., v. State, (Wis., 1926) 207 N. W. 959.

QUARANTINE REGULATIONS

See Cars and Car Supply §32¼.

(a) Various regulations issued by the Secretary of Agriculture relative to quarantine of diseased animals, pursuant to Act, Feb. 2, 1903 (Comp. St. §§ 8698-8700), and Act March 3, 1905 (Comp. St. § 8701 et seq.), are matters of which Supreme Court may take judicial notice. Thornton v. United States, 46 Sup. Ct. 585.

(b) Passage of diseased cattle by ranging from one state into another constitutes interstate commerce, and is prohibited by Act March 3, 1905 (Comp. St. § 8701 et seq.) Thornton v. United States 46 Sup. Ct. 585.

(c) Act May 29, 1884 (23 Stat. 31), providing for disinfection and quarantine measures to prevent disease of animals spreading from one state into another, HELD not unconstitutional, under Const. Amend. 10, as authorizing federal employees to dip cattle and suppress disease among cattle within state, since, in view of the act and subsequent legislation by Act Feb. 9, 1889 (Comp. St. § 789 et seq.), Act. Feb. 2, 1903 (Comp. St. §§ 8698-8700), and Act March 3, 1905 (Comp. St. § 8701 et seq.), everything authorized to be done was expressly intended to prevent spread of disease from one state to another by passage of diseased cattle in interstate commerce. Thornton v. United States, 46 Sup. Ct. 585.

(d) In action by shipper of cattle against carrier, under Carmack Amendment of Hepburn Act of June 29, 1906, for damages resulting from inaccurate information concerning quarantine regulations of Secretary of Agriculture, authorized under Act Feb. 2, 1903, § 1 and Act March 3, 1905, § 2, no recovery could be had, in absence of fraud, where shipper had access to regulations, and where contract limited carrier's liability for inaccurate information thereon. Manieri v. Seaboard Air Line Ry. Co., (Va., 1927), 137 S. E. 496, 497.

(e) In action under Carmack Amendment of Hepburn Act of June 29, 1906, where shipper had access to rules and information was given gratuitously, carrier was under no duty to inform shipper that live stock from quarantined section could be shipped for immediate slaughter, under Regulation of Secretary of Agriculture, No. 2, § 1; shipment from quarantined section being prohibited generally by Act March 3, 1905, § 2. Manieri v. Seaboard Air Line Ry. Co. (Va., 1927), 137 S. E. 496, 497.

(f) Carrier's agreement with shipper that carrier should not be liable for any mistakes in information furnished concerning quarantine regulations held valid, as outside inhibition of contracts against carrier's negligence, under Carmack Amendment of Hepburn Act of June 29, 1906; carrier not being under duty to furnish such information. Manieri v. Seaboard Air Line Ry Co. (Va., 1927), 137 S. E. 496, 497.

(g) In action against carrier, under Carmack Amendment of Hepburn Act of June 29, 1906, for damages for misinformation given concerning quarantine regulations, no relation of trust or confidence exisited between parties, making carrier liable, in view of contract limiting liability for such misinformation. Manieri v. Seaboard Air Line Ry. Co. (Va. 1927), 137 S. E. 496, 497.

(h) Act Feb. 2, 1903, § 1, authorizing publication of quarantine regulations concerning transportation of live stock and giving such regulations force of law. HELD to charge shipper of cattle with notice thereof, in action under Carmack Amendment of Hepburn Act of June 29, 1906, against carrier for damages for misrepresenting regulations. Manieri v. Seaboard Air Line Ry. Co. (Va. 1927), 137 S. E. 496, 497.

RADIO

(a) If there is conflict between provision in license for operating radio station and regulations established by Act Aug. 13, 1912, c. 287, § 1, latter must control. United States v. Zenith Radio Corporation, 12 Fed. (2d.) 614.

RAIL-AND-PIPE TRANSPORTATION

See Pipe Lines.

(a) Local rate on crude petroleum oil from certain Kentucky points to Owensboro, Ky., for movement by pipe line to Lawrenceville, Ill., FOUND not unreasonable, unduly prejudicial, or otherwise unlawful, as compared with local rates contemporaneously in effect from same and various other points to Evansville, Ind., and Louisville, Ky.; or with proportional rates to Evansville and Louisville, and to Jeffersonville and New Albany, Ind., more distant points. If proportional rates had been established to Owensboro for application in connection with the pipe line, no reason appears why they should have been higher than those to Louisville and Evansville. However, local rates assessed appear not to have exceeded maximum reasonable rates for service performed. Indian Refining Co. v. L. & N. 126 I. C. C. 543.

(b) Shipments of crude oil from certain Kentucky points to Owenboro, Ky., moved from latter point by pipe line to Lawrenceville, Ill. Upon contention that the pipe-line company was not a common carrier but a plant facility and that shipments were local to Owensboro and movement beyond constituted a reshipment, HELD: Owensboro was never considered as the destination for any shipments. There were no storage facilities or refineries at that point, the oil passed from carrier's possession to the pipe line as a matter of necessity, and none was sold locally. Circumstances of movement therefore, imparted an interstate character to shipments. Indian Refining Co. v. L. & N., 126 I. C. C. 543, 544.

RAIL-AND-WATER RATES

See Bills of Lading §3; Differentials §8 (4f); Equalization of Rates §4 (3); Evidence §13 (7), §14 (4); Lighterage; Panama Canal Act; Port-to-Port Rates; Routing and Misrouting §6½; Through Routes and Joint Rates; Water Carriers.

(a) Water-and-rail rate on green coffee from New York to Denison, Fort Worth, Dallas, and Austin, Tex., found unreasonable as compared with rates on like traffic from New York to other destinations and from and to other points for comparable distances. Reparation awarded. Findings in original report, 92 I. C. C. 14, modified. Alexander Grocery Co. v. B., S. L. & W., 104 I. C. C. 155.

(b) Although commission has used a ratio of water miles to rail miles for purpose of comparing rail-and-water and all-rail rates, before this is done careful analysis should be made of conditions surrounding transportation of different lines. Under rail-and-water rates traffic must be unloaded from ship and reloaded into cars; and cost of operating a ship is practically same whether it carries full cargo or no cargo, and much depends upon ability of ship to obtain a proper load and return cargo. Moreover, transportation conditions in connection with both rail hauls and water hauls change from time to time. Alexander Grocery Co. v. B., S. L. & W., 104 I. C. C., 155, 161.

(c) Rate on bituminous coal from Allyn's Point to Sterling, Conn., as part of a through interstate movement from Virginia mines by rail and water, found not unreasonable as compared with contemporaneous rates on like traffic between points in same general territory for comparable distances and with rates found reasonable in 83 I. C. C. 563. United States Finishing Co. v. N. Y., N. H. & H., 107 I. C. C. 412.

(d) Contention that commission is without jurisdiction over an intrastate movement as part of through rail-and-water movement from an interstate point of origin where there is no common control, management or arrangement for continuous carriage or shipment, not sustained. Where there is an original and continuing intention to ship goods from a point in one State to a point in another State the commerce is interstate and its character, as such, is not changed by mere accidents or incidents of billing. See 260 U. S. 166, and 88 I. C. C. 447. United States Finishing Co. v. N. Y., N. H. & H., 107 I. C. C. 412, 413.

(e) Joint rail-and-water rate via New York City on canned fruit, in tins, from Red Creek, N. Y., to Jacksonville, Fla., found unreasonable to extent it exceeded lower combination rail-and-water rate contemporaneously in effect. Reparation awarded. Smith, Richardson & Conroy v. N. Y. C., 107 I. C. C. 553.

(f) Rates on logs for movement from Cooper's Point to Victor Talking Machine Company's siding, both points within the switching district of Camden, N. J., the original movement having been

by barge from James River landings, Va., found unreasonable as compared with charges on various commodities for similar hauls between points within the Philadelphia industrial district, and to extent they exceeded lower switching charge contemporaneously in effect for the same movement on logs but restricted in its application so as not to apply on shipments arriving at or moved from Camden by water. Reparation awarded. Rickards v. P. R. R., 109 I. C. C. 297.

(g) Rate on building paper from Downingtown, Pa., to Jacksonville, Fla., on shipments moving by rail to Philadelphia, thence by water beyond, found not unreasonable as compared with lower rate contemporaneously in effect on like traffic from York, Pa., moving by rail to Baltimore, thence water to Jacksonville, or with lower rail-and-water rate subsequently established from Downingtown to Jacksonville through Philadelphia in order to place complainant in a better position to compete in the Jacksonville market. Baker & Homes Co. v. P. R. R., 109 I. C. C. 396.

(h) Refusal of rail carriers to establish through routes and joint or proportional rates with the Nelson S. S. Co. on same basis and to same extent as contemporaneously maintained with the Pacific S. S. Co and McCormick S. S. Co., competing water lines, found to result in undue prejudice. The Nelson company transports same classes of freight at same time between same ports at same rates under substantially similar circumstances and conditions as its competitors, its service is satisfactory, and it is financially responsible. While service rendered by the competing lines is also satisfactory, this fact alone is insufficient under the law to warrant undue prejudice found in view of the express language of section 3 of the act. The through routes and rates prayed for found desirable in the public interest and ordered established. Nelson S. S. Co. v. B., A. & P., 109 I. C. C. 529.

(i) The commission has repeatedly declined to sustain pleas of rail carriers that their existing water-line connections were ample and satisfactory as a reason for not requiring them to make similar arrangements with another water line. The national policy has been declared to be that a navigable river is a public highway, a natural avenue of commerce, and public interests demand that its advantages be utilized to the fullest extent. The same language is applicable to the ocean. See 31 I. C. C. 281, and other cited cases. Nelson S. S. Co. v. B., A. & P., 109 I. C. C. 529, 536.

(j) Class rate on window glass moving rail and water from Jeanette, Pa., to Jacksonville, Fla., found not unreasonable, discriminatory, or unduly prejudicial as compared with rail and water commodity rates from the same origin point to Savannah, Ga. Allegations of complaint rest solely upon fact that on certain other commodities the two ports are accorded same rates. However, no showing was made that any of the commodities upon which rate parity is maintained compete with window glass, or that assessment of a class rate on window glass and a commodity rate on a competing commodity results in undue prejudice. Towers Hardware Co. v. P. R. R., 109 I. C. C. 651.

(k) Complainant attacked through rail and water rates charged on 24 cars of small arms ammunition between July 25, 1922, and June 9, 1924, from Bridgeport and New Haven, Conn., to Texas destinations as unreasonable, unduly prejudicial and in violation of the fourth section. Shipments moved New Haven to New York, S. P., or Mallory Steamship Lines coastwise to Galveston, Tex., thence rail lines. Allegation of violation of the fourth section is due to the fact that rates to points beyond such as Shreveport, La., Texarkana, Ark., Little Rock, Ark., are lower. The fourth section departures are protected by appropriate fourth section applications. HELD: Rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Herrick Hardware Co. v. N. Y. N. H. & H. R. R., 112 I. C. C. 565.

(l) Complainant attacked class rate charged on one less carload of iron bolts and nuts, from Millsdale, Conn., to Little Rock, Ark., as unreasonable and inapplicable, moving in July 1922. Shipment routed New Haven, Clyde Steamship, Southern and Rock Island. Rated fifth class in southern and fourth in western, rate charged fifth class rate of $1.14. Complainant contended that the applicable rate was fourth class of $1.065 governed by western classification. Both rates were published in Lelands I. C. C. 1418. Class rates from New York and other eastern points were published in that tariff on page 99. These rates were governed by western classification and fourth class was provided. Milldale

was shown as taking New York rate basis. HELD: Applicable rate was $1.065, reparation awarded. Fones Bros. Hdw. Co. v. C. R. I. & P. Ry., 112 I. C. C. 611.

(m) Complainant attacked combination rate charged on a car of canned vegetables in tin and glass shipped on Oct. 18, 1924, from Albion, N. Y., to Jacksonville, Fla., as unreasonable, unjustly discriminatory and unduly preferential. Shipment moved as routed by consignor over the N. Y. C., and Pennsylvania to Baltimore, Md., and M. & M. Transportation Co. beyond, charged 62.5c, composed of fifth class rate of 32c to Baltimore and commodity rate of 30.5c beyond. Complainant is contending for a rate of 57c apparently on the ground that the rate from Albion to Jacksonville should not exceed the commodity rate from Brocton, Fredonia, Ripley and Westfield via Baltimore to Savannah. HELD: Rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Zaring Co. v. N. Y. C. R. R., 112 I. C. C. 621.

(n) Complainant attacked all rail and rail and water rates on tanning extracts and materials, carloads, from New York, N. Y., and other eastern seaboard cities to Buford, Ga., all rail and rail and water since April 1, 1921, as unreasonable, unduly prejudicial and in violation of section four. Buford is on the main line of the Southern Ry., 37 miles northeast of Atlanta. The all rail movement is by way of Potomac Yard, Va., and rail and water movement is through the ports of Norfolk, Va., Charleston, S. C., or Savannah, Ga. Complainant is mainly interested in the rates on quebrache extract and wattle bark, most of its shipments of tanning materials in recent years consisting of these two commodities. Present rates apply uniformly on the different kinds of extracts and materials. No testimony was offered by defendants to justify different rates in the past. Prior to July 1, 1922 an all rail rate of 75.5c was in effect on wattle bark and divi divi pods from New York to Rome, Ga. This rate applied through Buford, and was published subject to rule 77. HELD: Rates attacked on and since Aug. 1, 1924, not unreasonable but prior to that date unreasonable to extent they exceeded from New York prior to July 1, 1922, all rail 60c, lake and rail 59.5c, subsequent to that date 54c all rail and 53.5c lake and rail, reparation awarded. Bona Allen v. B. & M. R. R., 113 I. C. C. 215.

(o) Failure of carriers to establish joint rail-and-water commodity rates on plain iron wire, c. l. and l. c. l., from Fostoria, Ohio, to Savannah, Ga., and Jacksonville, Fla., while contemporaneously maintaining such joint rates from Pittsburgh, Pa., and from Youngstown, Cleveland, and Greenwich, Ohio, to same destinations, found unduly prejudicial. Nonprejudicial relationship prescribed. Seneca Wire & Mfg. Co. v. B. &. O., 112 I. C. C. 95.

(p) Proposed increased translake rate on salt from Ludington and Manistee, Mich., to Chicago, Ill., and intermediate points, applicable over car-ferry route of the Pere Marquette to Milwaukee, and the C., M. & St. P., beyond, found justified. In Salt Cases of 1923, 92 I. C. C. 388, commission fixed minimum translake rate 1 cent under all-rail rates. The Pere Marquette has its own rails from Ludington and Manistee to Chicago, but the differential in favor of translake route attracts all the traffic and in order to secure the entire haul it desires to maintain same rate over both routes. In the general cases carriers were specifically authorized to apply all-rail rate over translake route and commission sees no reason for changing the finding made therein to effect that a translake rate equal to all-rail rate is justified. Salt from Ludington Group, 112 I. C. C. 255.

(q) Upon further argument findings in original report, 100 I. C. C. 127, with respect to a proposed general revision of all-rail and rail-and-water rates on furniture from southern manufacturing points to trunk-line and New England territories, affirmed, and proposed increases embodied therein found justified. Furniture from Southern Points, 112 I. C. C. 302.

(r) Rail-water-and-rail rates on small arms ammunition from Bridgeport and New Haven, Conn., via Galveston, to Texas points, found not unreasonable or otherwise unlawful as compared with lower rates via same route to Shreveport and other farther distant points in Arkansas and Oklahoma. The fourth section departures were protected by appropriate application and lower rate to Shreveport is due to the fact that ratemaking route is via New Orleans and not Galveston. The rate to Shreveport is

made to meet competition of routes through south Atlantic ports and the lines composing south Atlantic port routes are not parties to the complaint. Moreover, the bulk of movement is through the south Atlantic ports, records of carriers failing to show any movement through Galveston except to the Texarkana group. Herrick Hardware Co. v. N. Y., N. H. & H., 112 I. C. C. 565.

(s) Rate on canned vegetables in tin and glass, moving by rail from Albion, N. Y., to Baltimore, thence via water to Jacksonville, Fla., found not unreasonable, as compared with rates on like traffic when moving rail-and-water through New York. Existence of lower rates over other available routes does not of itself warrant a condemnation of the rate charged over route of movement. Zaring & Co. v. N. Y. C., 112 I. C. C. 621.

(t) Rate on canned vegetables, in tin and glass, from Albion, N. Y., to Jacksonville, Fla., moving rail-and-water through Baltimore, found not unreasonable or otherwise unlawful, as compared with lower rates on like traffic when moving rail-and-water through New York, or with joint rates contemporaneously in effect from Mount Morris and other New York points to Savannah and Jacksonville, when moving by rail to Baltimore and water beyond. Zaring & Co. v. N. Y. C., 112 I. C. C. 621.

(u) The mere fact that there has been a considerable movement of a commodity by water from and to certain points is no proof that all-rail rates on same commodity from and to same points were or are depressed or subnormal. Dutton Lbr. Corp. v. Director General, 112 I. C. C. 661, 674.

(v) Respondents proposed to restrict the rates on class traffic and various commodities from Duluth, Minn., and several Michigan points to destinations on the New Haven, so as not to apply in connection with the Grand Trunk by way of the Niagara frontier. The route in question is by way of the Minnesota Atlantic Transit Co., a boat line, to Port Huron, Mich., the Grand Trunk from that point to the Niagara frontier, thence various trunk lines to junctions with the New Haven, and thence over that line of that carrier. That portion of the route from Port Huron to the Niagara frontier is wholly in Canada. Three other routes are available. The first is in connection with the same boat line to Port Huron, thence main line of the Grand Trunk through Montreal, Que., or Swanton, Vt., and C. V. thence to Willimantic, Conn., where connection is made with the New Haven. The second is identical with the route under consideration except that the intermediate carrier from Port Huron to the Niagara frontier is the P. M. The third differs from the route sought to be eliminated in that the entire transportation from Duluth to Buffalo is by way of the Great Lakes Transportation Corporation, another boat line. The jurisdiction of the Commission with respect to the divisions accruing to the New England carriers out of joint rates with their Canadian connections obtains only in so far as the transportation takes place in the United States. Thus, although the joint rates are now in effect over the route sought to be eliminated and the use of that route is of material importance to shippers, the principle referred to as ordinarily controlling a situation of this kind has no application here. The Commission has no authority either to require the establishment of joint rates over this route or to prevent their cancellation. HELD, proposed schedules not justified. Elimination of Grand Trunk Ry. from certain routes, 115 I. C. C. 609.

(w) Jurisdiction assumed by commission over an intrastate rail haul where such movement was part of a through rail-and-water movement. Kay County Gas Co. v. G., C. & S. F., 115 I. C. C. 736.

(x) Rates on compressed cotton over all-water-and-rail routes from Opelousas and Bunkie, La., to destinations in New England and New York found unreasonable to extent they exceeded rates contemporaneously maintained on like traffic from Shreveport and Alexandria, La., to same destinations. Reasonable rates for future prescribed and reparation awarded. Manget Bros. Co. v. A. C., 118 I. C. C. 85.

(y) Rail-water-and-rail rates on newsprint paper from Berlin, N. H., to Birmingham, Ala., which exceeded or exceed similar rates contemporaneously maintained to Memphis and Nashville, found unreasonable and to subject Birmingham to undue prejudice. Reparation awarded and undue prejudice ordered removed. Birmingham News Co. v. A., B. & A., 118 I. C. C. 205.

(z) Respondents, The St. Louis &

Tennessee River Packet Co. and connecting rail carriers proposed to change the rates and description on cotton from landings on the Tennessee River between Florence, Ala., and Paducah, Ky., served by respondent to New Orleans from $3.80 in bales, uncompressed, per bale, average weight 500 pounds to 94.5 cents per 100 pounds in bales, compressed or uncompressed, with privilege to carrier of compressing at origin or in transit when delivered to the carrier uncompressed. Both the present and the proposed tariffs provide for interchange with respondent rail carriers at a number of points, including Riverton, Ala., and Johnsonville and Danville, Tenn., through which the bulk of the traffic moves. The rates on cotton, carriers privilege, from these points to New Orleans are 84, 81 and 81 cents, respectively. The proposed rates will remove the possibility of fourth section violations, which would occur when, if ever, cotton should move uncompressed from the intermediate points to New Orleans. Apparently the water hauls are short. From many of the rail points the rates apply over two or more lines. The evidence fails to show any justification for maintaining rates from the boat landings on a higher basis than the joint line rates applicable from rail points in the same territory. HELD, proposed schedules not justified, but that the carriers privilege description and rates no higher than the 84 cent rate applicable from Riverton would be reasonable for application on cotton from the Tennessee River landings west of Florence to New Orleans. Cotton from Tennessee River Landings, 120 I. C. C. 51.

(aa) The provisions of the act relating to water-and-rail transportation to foster and preserve in full vigor both rail and water transportation do not tie the hands of the commission in dealing with proposals of rail carriers to establish unreasonably low ex lake rates. Ex Lake Iron Ore from Chicago to Granite City, 120 I. C. C. 75, 78.

(bb) Paragraph 13b of section 6 confers upon the commission power to establish through routes and maximum joint rates between and over the rail and water lines and with respect to the transportation referred to in the opening paragraph of paragraph 13 of section 6. Wool Rates Investigation, 1923, 120 I. C. C. 493, 496.

(cc) The commission has recognized that the cost of transportation per mile by water is comparatively high for short distances and very small for long distances. In a comparison of water transportation, with rail transportation, where a ratio is used for the water haul, the ratio used can not be supposed to be the exact equivalent of the water haul expressed in terms of rail mileage. A comparison of such dissimilar services can not be made with mathematical accuracy Wool Rates Investigation, 1923, 120 I. C. C. 493, 503.

(dd) Proposed reduced rate on ex-lake iron ore from Chicago to Granite City, Ill., found justified. Carriers showed that they carry a large volume of coal from mines near Granite City to Chicago with a practically complete empty-return movement due to present rate proving too high to attract the ore traffic. The rate proposed, which is not less than a reasonable minimum, will enable a furnace at Granite City to share in ore movement by lake and enable it to increase its output in competition with rival plants located in Chicago district and elsewhere. Rail carriers will not be deprived of any important traffic and the extremely low all-rail rates now in effect offset the probability of a rate war. Moreover, the rail-lake-and-rail route to Granite City is a natural one possessed of marked economic advantages, and its increased utilization seems clearly in public interest. Ex-Lake Iron Ore from Chicago to Granite City, 120 I. C. C. 75.

(ee) The commission has not interpreted various provisions of the act relating to water-rail transportation, presumably enacted by Congress in furtherance of its stated policy "to foster and preserve in full vigor both rail and water transportation," as tying its hands in dealing with proposals of rail carriers to establish unreasonable low ex-lake rates. See also 69 I. C. C. 589. Ex-Lake Iron Ore from Chicago to Granite City, 120 I. C. C. 75, 78.

(ff) Shipment specifically routed rail-and-water was refused by water carrier because of damaged condition. Complainant, upon learning of refusal to transport, wired carrier, "If you can not cooper so acceptable ship all rail * * * with understanding claim filed difference rate and other charges." Carrier thereupon diverted shipment to destination via all-rail route. HELD, it was carrier's duty to forward over route designated by shipper. Necessity for change

in routing resulted from damaged condition, and telegram sent by complainant was intended merely to mitigate damages and did not order diversion or relieve carrier of duty of forwarding as routed. Shipment was therefore misrouted. Reparation awarded. Lewis-Chitty Consolidated v. B. & O., 120 I. C. C. 384.

(gg) Establishment of through routes and joint rail-and-water rates on wool and mohair from interior points on shipments moving via Pacific ports and Panama Canal to Boston and other north Atlantic ports found not necessary or desirable in public interest, and failure of carriers to establish same and issue through bills of lading found not unreasonable or otherwise unlawful. The commission has never required establishment of joint rail-and-water rates when, as here, both the rail and water carriers are opposed thereto and no such rates are in effect on any commodity over routes here involved. While the time may not be far distant when their establishment on many commodities will become a reality, the record is not convincing that as yet the public interest, considered broadly, requires that such joint rates be prescribed on wool. Wool Rates Investigation 1923, 120 I. C. C. 493.

(hh) The commission has power to establish through routes and prescribe maximum joint rail-and-water rates on wool and mohair from interior points on shipments moving via Pacific coast ports and Panama Canal to Boston, Mass., and other north Atlantic ports. See 87 I. C. C. 392 and other cited cases. Wool Rates Investigation, 1923, 120 I. C. C. 493, 495, 497.

(ii) The ratio in favor of water transportation as compared with rail transportation increases with the length of water haul, but what the ratio may be in case of long hauls between the costs through Panama Canal is purely speculative. Wool Rates Investigation, 1923, 120 I. C. C. 493, 503.

(jj) In cases involving prescription of through routes and joint rates for rail-and-water movements, expense of transfer between rail carrier and water line is a factor which must be taken into consideration. Wool Rates Investigation, 1923, 120 I. C. C. 493, 506.

(kk) While commission has frequently prescribed joint rates lower than the aggregate of intermediate local rates both for all-rail and for rail-and-water movements, it does not follow that in all cases such rates should be prescribed. Wool Rates Investigation, 1923, 120 I. C. C. 493, 506.

(ll) Complainant attacked commodity rates charged on cocoa beans, carloads, from New York, N. Y., to Salt Lake City, Utah, applicable over ocean and rail routes as unreasonable, and in comparison with rates to Los Angeles and San Francisco, Calif., Portland, Ore., and Seattle and Spokane, Wash., unduly prejudicial. On Sept. 1, 1923 a rate of $1.35 was published over the ocean and rail lines from New York to California points and intermediate points and as the D. & R. G. W., through error, was shown as a participating carrier it was applicable to Salt Lake City until by an amendment to the tariff on Dec. 1, 1924 the concurrence of that line was eliminated. The S. P., did not participate in the $1.35 rate over the route through Salt Lake City, and its application was limited to the route of the Mallory line and rail connections. The $1.35 rate was the basis applicable from Chicago and other points in group D. The ocean and rail rates on cocoa beans from New York to Salt Lake City bear the usual relationship to the rail rates between the same points. HELD, rate attacked not unreasonable, complaint dismissed. McDonald Chocolate Co. v. A., T. & S. F. Ry., 122 I. C. C. 493.

(mm) Complainant alleged less carload rate on cotton factory products from Mobile, Ala., to Rockland, Md., applying over the Mallory Steamship Line and Pennsylvania is unreasonable. Rockland is on the Pennsylvania 7 miles north of Mount Vernon station, Baltimore, Md. Prior to Oct. 15, 1925 the applicable rate was 93.5 cents made up of commodity rate of 70.5 cents to Baltimore and 23 cents beyond. Effective Oct. 15, 1925 a joint commodity rate of 86.5 cents was established. HELD, rate for future unreasonable to extent it exceeds 75 cents, overcharges to be refunded. Cotton Mills Products Co. v. Mallory Steamship Co., 123 I. C. C. 25.

(nn) Complainant attacked commodity rate charged on three cars of redwood lumber shipped from Pittsburgh, Calif., Sept. 8 and 27, 1923 to Hayden, Ariz., as unreasonable and unduly prejudicial. Shipments originated at Casper, Calif., a waterlocked port north of San Fran-

cisco Bay. They moved to Pittsburg by steamship and beyond that point over S. P., to Maricopa, Ariz., thence A. E. Distance Pittsburg to Hayden, 963 miles, charged local rate of 64.5 cents. At the same time there was in effect a proportional rate of 49.5 cents from Pittsburg to Phoenix, 884 miles, and to Mesa, about the same distance, applicable on lumber originating at Casper and certain other California ports and moving to Pittsburg by water. When the shipments moved there was no ex water rate from Pittsburg to Hayden but a rate of 55 cents became effective Dec. 11, 1923. The subsequent reduction of the rate is not conclusive of the unreasonableness of the higher rate, HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Redwood Mfg. Co. v. S. P. Co., 123 I. C. C. 30.

(oo) The nonconcurrence plan of publishing ocean-rail rates should be continued and joint through rates substituted therefor. The commission has repeatedly disapproved similar through rates applied to all rail routes. Consolidated Southwestern Cases, 123 I. C. C. 203, 380.

(pp) Rate on cocoa beans, from New York, N. Y., to Salt Lake City, Utah, applicable over ocean-and-rail routes through Galveston, Tex., found not unreasonable or unduly prejudicial as compared with rates to Los Angeles, San Francisco, Portland, Seattle, and Spokane. Rates assailed bear the usual relationship to rail rates between same points and comparisons made by complainant do not justify a finding that rates attacked are out of line with rates on comparable commodities. McDonald Co. v. A., T. & S. F., 122 I. C. C. 493.

(qq) No necessity therefor being shown, request for establishment of additional ocean-and-rail routes on cocoa beans from New York to Salt Lake City, denied. McDonald Chocolate Co. v. A., T. & S. F., 122 I. C. C. 493.

(rr) Commission can not fix freight rates or transit charges so as to preserve a fixed relationship between through charges by all-rail and rail-lake-rail routes. Birkett Mills v. D., L. & W., 123 I. C. C. 63, 67.

(ss) Owing to difficulty of ascertaining accurate ratio of water miles to rail miles, it is difficult to compare ocean-rail rates with all-rail rates. Consolidated Southwestern Cases, 123 I. C. C. 203, 289, 290.

(tt) There appears to be no generally accepted ratio of water to rail miles but carriers have frequently estimated comparatively short water distances from north Atlantic to south Atlantic ports on basis of approximately 2.5 statute water miles to 1 rail mile. In 81 I. C. C. 312, in considering the ocean distance from New York to Galveston, commission adopted a ratio of 3 miles of water haul to 1 mile of rail haul, and in an earlier case, 24 I. C. C. 570, a ratio of 6 to 1 was used between the same points. Consolidated Southwestern Cases, 123 I. C. C. 203, 369.

(uu) It is generally accepted that where water hauls are long the ratio of water miles to rail miles may properly be greater than where hauls are comparatively short. Consolidated Southwestern Cases, 123 I. C. C. 203, 370.

(vv) Generally speaking, terminal services are relatively more expensive in connection with water service than with rail service. On other hand, what may be termed line-haul expenses of ocean carriers are relatively low for long hauls. Consolidated Southwestern Cases, 123 I. C. C. 203, 370.

(ww) Ocean-rail rates between north Atlantic ports and interior trunk-line and eastern defined-territory points, on the one hand, and points in Kansas and in the Southwest, including Texas differential territory, on the other, via south Atlantic and Gulf ports, found unreasonable and unduly prejudicial. Reasonable and nonprejudicial rates prescribed for future and findings in 95 I. C. C. 188, that ocean-rail rates via Gulf ports should not exceed 80 per cent of the combinations on those ports and should include marine insurance, overruled. Consolidated Southwestern Cases, 123 I. C. C. 203, 377, 378.

(xx) Tariffs naming one-factor through ocean-rail rates between interior trunkline and eastern defined-territory points and the Southwest and Kansas-Missouri territory without concurrence of rail lines to north Atlantic ports, found unlawful. Such rates required to be published as joint through rates in accordance with provisions of section 6 of the act and commission's tariff rules promulgated pursuant to that act. Consolidated Southwestern Cases, 123 I. C. C. 203, 380.

(yy) Refusal of rail carriers at Duluth to accord the Minnesota-Atlantic Transit Co., increased divisions for handling carload freight between cars and floor of its privately owned docks, found not unjustly discriminatory, unduly prejudicial, nor in violation of section 1 (4) of the act. The law does not require defendants to perform service sought merely because they perform them at their own docks so long as no discrimination is practiced. Here defendants perform no loading or unloading at any private dock, at any dock leased by it to steamship lines or shippers, or at docks of other carriers to which, for convenience of shipper to steamship line, it switches cars. Moreover, the issue of divisions has not been presented with sufficient particularity to warrant a finding as to their reasonableness. Minnesota-Atlantic Transit Co. v. C., St. P., M. & O., 123 I. C. C. 485.

(zz) In Manget Bros. v. A. C. R. R. Co. 118 I. C. C. 85, the Commission found that the rates on compressed cotton, over rail water and rail routes from Opelousas and Bunkie, La., to New England and New York which had exceeded or might exceed the rates from Shreveport and Alexandria, La. to the same destinations, had been and were unreasonable and awarded reparation. The findings, through oversight, were confined to rates on compressed cotton, although the complaints attacked the rates on both compressed cotton and uncompressed cotton, the latter being compressed by and at the expense of carriers. HELD, rates attacked unreasonable to extent they exceeded rates from Alexandria and Shreveport, reparation awarded. Manget Bros. Co. v. A. C. R. R., 126 I. C. C. 403.

(3a) Rail-water-and-rail rates on finished wall paper from Niagara Falls, N. Y., to Dallas, Tex., FOUND not unreasonable as compared with all-rail rates between the same points; with those from Kansas City, Mo., and Chicago, Ill., or with rates contemporaneously in effect on wrapping paper. Carriers point out that wall paper is more susceptible to damage than wrapping paper, and there is no relationship or analogy between that commodity and wall paper. Moreover, in 122 I. C. C. 333, rates on wall paper from Joliet, Ill., to Dallas were found not unreasonable as compared with those on wrapping paper. Tex-Mex-Jobbing House v. L. V., 126 I. C. C. 175.

(3b) Upon contention that commission has no jurisdiction over rates on traffic moving up to Lake Erie ports for transshipment by vessel, upon theory that because of lack of control over the water carriers which handle traffic beyond the ports, commission has no authority to deal with or prescribe proportional rates on traffic over which it does not have jurdisdiction for the entire movement from point of original shipment to point of ultimate destination, HELD: Where transportation to the port is interstate or foreign in character, it is subject to commission's jurisdiction under general provisions of section 1 of the act, irrespective of the mode of transportation beyond the port. Lake Cargo Coal Rates, 1925, 126 I. C. C. 309, 313, 314.

(3c) Commission's finding in former report 118 I. C. C. 85, were confined to rates on compressed cotton. However, except that uncompressed cotton is compressed by and at the expense of carriers, circumstances surroundings its movement and that of compressed cotton are identical. Accordingly, original report modified and rates on uncompressed cotton moving rail-water-and-rail from Opelousas and Bunkie, La., to destinations in New England and New York, FOUND unreasonable to extent they exceeded rates contemporaneously maintained from Shreveport and Alexandria, La., to same destinations. Reasonable rates prescribed for future and reparation awarded. Manget Bros. Co. v. A. C. R. R. 126 I. C. C. 403.

(3d) Shipments of linseed oil, in tank-car loads, previously imported, from San Francisco to Los Angeles, found to have been intrastate and beyond the commission's jurisdiction. The oil arrived from England, was pumped directly into complainant's storage tanks near the wharf, and subsequently reloaded into tank cars and moved to destination. Complainant's contention that movement was in foreign commerce is based solely upon fact that oil originated in England. However there was no connection between ocean transportation to the United States port and subsequent rail movement beyond. Oil passed into possession and control of complainant at San Francisco and remained part of its general stock for commercial distribution. Moreover, complainant does not contend that the stoppage at San Francisco was merely a transportation incident between receipt from water carriers and subsequent rail

movement. See 6 Fed. (2d) 911; 209 U. S. 211; 102 I. C. C. 363. Fuller & Co. v. S. P., 128 I. C. C. 199.

(3e) Rate and minimum weights on poles from San Pedro to Thenard, Calif., being part of through movement from interstate points, of shipments reaching San Pedro by water, found not unreasonable or otherwise unlawful as compared with rates accorded competitors at Los Angeles, or with rates and minimum weights on lumber between points in the Los Angeles harbor district. While poles received by competitors are creosoted in the Pacific Northwest thus reducing weight of poles transported, creosoting is permitted at Thenard and the creosoted poles move at the lower minimum sought on the green poles under the through rates from San Pedro to Los Angeles and other southern California destinations. Although none of shipments involved exceeded the applicable minimum, evidence does not establish that cars covered by the complaint were were loaded to full capacity or that the applicable minimum could not have been loaded. Moreover, in 87 I. C. C. 1, per-car rate on lumber equal to that here assessed was found reasonable. Baxter & Co. v. S. P., 128 I. C. C. 211.

(3f) All-rail and river-and-rail rates on refined sugar from Louisiana refining points to Shreveport or Monroe, La., to extent they are lower, distance considered, than corresponding contemporaneous rates maintained on interstate traffic from same points to Wilmot, Texarkana, and Hope, Ark., or from Sugarland or Texas City, Tex., to Shreveport, found to result in undue preference and advantage of competing shippers in intrastate commerce at said Louisiana points, in undue prejudice and disadvantage to Arkansas and Texas points, and in unjust discrimination against interstate commerce. Manner of removing undue prejudice and discrimination prescribed. Sugar Between Louisiana and Texas Points, 128 I. C. C. 309.

(3g) All-rail rates on refined sugar from New Orleans and other Louisiana refining points to points in Arkansas, found unreasonable as compared with lower rates contemporaneously in effect to numerous points in southern territory; to various points on the Mississipi and Ohio Rivers for comparable distances; and to extent they exceed rates that will result from application of distance rates prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203. Although evidence is inadequate to determine maximum reasonable river-and-rail rates, unless there are circumstances and conditions not revealed by the record, river-and-rail rates related differentially to all-rail rates on usual bases should be established. Sugar between Louisiana and Texas Points, 128 I. C. C. 309.

(3h) Complainant alleged that the all rail and rail water rates on furniture and household furnishings, in straight and mixed carloads and in less carloads, from Memphis, Tenn., to specified rate subdivisions of southern and official territories are unreasonable and unduly prejudicial; and that the all rail rates on these commodities to certain intermediate Virginia and West Virginia points which are higher than the rates to Virginia cities beyond, are unreasonable and in violation of the fourth section. Mixed furniture, in carloads, is rated second class in official classification and third in southern. Chattanooga, Tenn., and Atlanta, Ga., are the chief competitors of Memphis in southern territory, but it also meets the competition of North Carolina points, Little Rock and other Arkansas points, and furniture manufacturing centers in official territory. RATES TO VIRGINIA AND EASTERN CITIES. The rates from Memphis to trunk line and New England territories are commodity rates published on the same basis as the former class rates governed by the official classification, a method of publicatoin by which increased rates on furniture were avoided when the class rates from Memphis to those territories were revised on Jan. 15, 1922, following 64 I. C. C. 107. In the reverse direction class rates apply on furniture which complainants say would be prohibitive if established from Memphis, in view of the lower rates maintained from Chattanooga and Atlanta. Class rates are in general applicable on furniture, in carloads and l. c. l. between points in trunk line territory and between trunk line and central territories. Class rates are also applicable from trunk line territory to the south which are higher than the commodity rates in the reverse direction. It appears that these rates are for the most part relatively lower than the rates which the Commission has found reasonable from central territory manufacturing points to destinations in trunk line territory, and also lower than rates in the reverse direction and that on the

whole they compare well with rates to eastern port cities from Atlanta and Chattanooga, except in the cases of the l. c. l. rates on mattresses. No reason appears why the commodity rates on the mattresses should not be canceled, so that the lower first class rates under the southern classification may apply. RATES TO CENTRAL AND BUFFALO PITTSBURGH TERRITORIES. The rates between Memphis and Buffalo Pittsburgh territory are joint rates; but Ohio river combinations apply to central territory, whereas in the reverse direction joint rates are maintained. Shippers of furniture between points in central territory pay class rates on all less carload shipments and second class rates in nearly all instances on carload shipments. The fact that furniture moves on class rates within central territory and that the Commission has found this reasonable, is not proof that furniture should move on class rates from Memphis to central territory destinations. The revised class rates between southern and central territories will be governed by the southern classification and will be much higher in level than the central territory class rates. Rates made on the basis of 60% of the revised first class rates will be reasonable for application on mixed furniture, in carloads, from Memphis to central territory destinations. No justification has been offered for the disparity as between the northbound and southbound rates. RATES TO OHIO RIVER CROSSINGS AND ST. LOUIS. It has not been shown that the rates assailed on furniture from Memphis are unreasonable. It has been shown, however, that certain of the rates to these destinations from competing points of production in southern territory and from Chicago are improperly related to the rates from Memphis. RATES TO THE SOUTHEAST. RATES TO THE MISSISSIPPI VALLEY. Complainants seek rates to the Mississippi valley from Memphis "which do not exceed relatively" the rates from the alleged preferred points. Commodity rates apply from Memphis on carloads and class rates on less carloads. The evidence bearing upon the rates to Birmingham, Ala., will not support a finding on the allegation of undue preference of Little Rock, Ark. RATES TO NORTH CAROLINA AND VIRGINIA. In respect of these rates undue preference is alleged of manufacturing points in North Carolina and Virginia to the extent that the rates from Memphis to such points exceed the rates in the reverse direction. RATES TO CERTAIN VIRGINIA AND WEST VIRGINIA POINTS. Complainants show that the rates to certain Virginia and West Virginia points on the C. & O. and N. & W. exceed the rates to the more distant Virginia cities over the same routes. From Memphis all Virginia cities take the Norfolk basis, but to the designated intermediate points the carload rates are made on Cincinnati combinations and the less than carload rates on the nearest Virginia city combination. Memphis Freight Bureau v. A. G. S. R. R., 128 I. C. C. 445.

(3i) Complainant assailed rates charged on certain less carloads of food products and merchandise shipped between April 1 and May 29, 1924, from Hoboken, N. J., to Norfolk and Richmond, Va., as unreasonable, unduly prejudicial and illegal. Shipments were loaded in trap cars at complainants warehouse on the Hoboken Mfrs. R. R., at Hoboken, and moved over that line D. L. & W. and old Domino Steamship Co. at Norfolk. Shipments moved to Richmond-Hoboken Mfrs., Lackawanna, Richmond-New York Steamship Lines. Charged combination to and beyond New York. On Jan. 5,1925, subsequent to the movement here considered, defendants amended the provision in the terminal tariff in such a manner as to make the rates applying in connection therewith inapplicable over the lines of the steamship lines. If it was intended that the rates should not apply from New York Lighterage station, Hoboken, on traffic originating on the Hoboken Mfrs. and routed over the steamship lines, the tariff should have contained appropriate provisions in terms that could not give rise to a reasonable doubt as to this intention. HELD, rates applicable were class rates, reparation awarded, complaint dismissed. Jewell Tea Co. v. D. L. & W. R. R. 129 I. C. C. 424.

(3j) Complainant alleged fifth class rate charged on 16 cars of quebracho extract from New York and Brooklyn, N. Y., to St. Louis, Mo., was unreasonable. Shipments moved between July 12, 1924, and June 10, 1926. Thirteen moved over Ocean Steamship Co. to Savannah, Ga., thence C. of Ga., I. C. and the three remaining shipments moved Old Dominion Steamship Co. to Norfolk, Va., thence rail over N. & W., Pennsylvania, Terminal delivery, rate charged 62c. The rates assailed are made 4c less than the all rail fifth class rate. An all rail sixth class

rate of 52.5c applied from Glenn Falls, N. Y., to St. Louis, and 40c from Norfolk to St. Louis. On July 20, 1926, an all rail commodity rate of 52.5c was established on dry and liquid tanning extract from New York and Brooklyn to St.Louis. On Aug. 31, 1926, a commodity rate of 50.5c was established from New York rate points to St. Louis over both routes of movement, based on a differential of 2c under the all rail commodity rate. HELD, rate assailed not unreasonable, complaint dismissed. Herman Oak Leather Co. v. C. of G. Ry., 129 I. C. C. 725.

(3k) Rates on cotton and linters for export or coastwise movement from points west of Mississippi River to Mobile, Ala., by rail to Alabama ports on Warrior Rver and barge beyond, found not unduly prejudicial as compared with rail-and-barge rates contemporaneously in effect from same points to New Orleans via Memphis, Tenn., or Vicksburg, Miss. Evidence submitted fails to show similar transportation costs over route sought via Cordova, Ala., or that traffic would move over that route if established. However, certain carriers have agreed and will be expected to publish rail-and-barge rates from western Tennessee, western Kentucky, and Mississippi through Cordova, or some other Warrior River port to Mobile, based on principles laid down in 77 I. C. C. 317; 100 I. C. C. 491. Mobile Chamber of Commerce v. A. & V., 129 I. C. C. 103.

(3l) Receivers of coal by the rail-and-water route from Pennsylvania anthracite fields fix selling price of anthracite at Boston and the determinative factor in that selling price is the rail-and-water rate. Chadwick Coal Yard Co. v. N. Y., N. H. & H., 129 I. C. C. 165, 172.

(3m) Rates on finished wall paper from points in Illinois, Missouri, New York, and Pennsylvania to Dallas and Fort Worth, Tex., via all-rail, rail-water-and-rail, and water-and-rail routes, found not unreasonable as compared with rates on same and various other paper articles between same and various other points for comparable distances. All-rail rate assailed in 122 I. C. C. 333, was found not unreasonable as was the rail-water-and-rail rate under consideration in 126 I. C. C. 175, from Niagara Falls, N. Y., to Dallas, which was higher than rates here under consideration. Moreover, rates assailed are lower than fourth-class rate on wall paper n. o. i. b. n., and are generally lower than those prescribed in 123 I. C. C. 203, for application in same general territory. Apex Co. v. A. & V., 129 I. C. C. 283.

(3n) If a shipper desires his shipment to move over a rail-and-water route, which is cheaper than the all-rail route, he must specify such routing. See 68 I. C. C. 485; 83 I. C. C. 483. South Alabama Grocery Co. v. C. of G., 129 I. C. C. 327, 328.

(3o) Rate on bituminous coal from Castle Gate group mines in Utah to Seattle, Wash., and other north Pacific coast ports for transshipment beyond by water to Alaska or foreign countries, found not unreasonably low or otherwise unlawful. Complainant contends that since rate assailed is lower than rates prescribed in 80 I. C. C. 383; 89 I. C. C. 666, between same points, the rate relationship between the mines established by prescribed rates has been disturbed and burden is upon carriers to justify the reduced rate. However, rate assailed applies only for transshipment beyond by water and was not considered in those cases, nor is there anything to indicate that it is not remunerative or impairs other rate structures. Washington Coal Producers Asso. v. U. P., 129 I. C. C. 499.

(3p) Class D rates and switching charges collected on interstate shipments of smithing coal from San Diego to Los Angeles, Calif., originating at Douglas, W. Va., found not unreasonable or otherwise unlawful. Exceptions to governing tariff provided a minimum class scale applicable to the total of the combinations of separately established class rates or class and commodity rates applicable on continuous through movements. Complainant's contention that switching charge, under the tariff, should be considered a commodity rate, and that minimum class scale was applicable to combination of class rates plus switching charge, not sustained. The switching charge was an incidental one for a special service performed upon completion of the line haul. Romann & Bush Pig Iron & Coke Co. v. A., T. & S. F., 129 I. C. C. 509.

(3q) Contention that commission has power to prescribe maximum reasonable joint rates only, and that inasmuch as all-rail rates are depressed they can not

properly be used as a yardstick for measuring maximum reasonable rail-barge rates, not sustained. Obviously if another through route is sought between certain points in competition with existing through routes, joint rates prescribed over the new through route must be comparable with those over existing through routes or they will be of no avail. Under section 15 (3) of act commission is empowered to establish through routes and joint rates "or the maxima or minima, or maxima and minima, to be charged (or, in case of a through route where one carrier is a water line, the maximum rates, fares, and charges applicable thereto)," which is an alternative to preceding provision empowering commission to establish through routes and joint rates without specifying that latter must be on either maximum or minimum level. Doubtless rates must be reasonable but must not necessarily reach pinnacle of reasonableness. See 92 I. C. C. 528, 546 and other cited cases. Inland Waterways Corp. v. C. G. W., 129 I. C. C. 521, 529, 531.

(3r) All-rail and water-and-rail rates on sugar from San Francisco and Crockett, Calif., to Missoula, Mont., found unreasonable as compared with lower rates, distance considered, contemporaneously in effect from San Francisco to Utah, Colorado, and various other points; and rates from Portland, Oreg., Seattle and Tacoma, Wash., to Missoula, found unreasonable and unduly prejudicial to extent they exceed corresponding rates from Seattle, Tacoma, and Portland to Spakone, Wash., by more than 20 cents per 100 pounds. Reasonable rates prescribed for future and reparation awarded. M'Clintock-Trunkey Co. v. McCormick S. S. Co., 129 I. C. C. 591.

(3s) Joint water-and-rail rate on sugar from San Francisco, Calif., and points taking same rates, to Spokane, Wash., through ports of Portland, Oreg., and Seattle and Tacoma, Wash., found not unreasonable or otherwise unlawful as compared with rates contemporaneously in effect from Salt Lake City and Ogden, Utah, and elsewhere, but local rate from Portland, Oreg., to Spokane, Wash., found unreasonable as compared with rates between various points for comparable distances. Reasonable rates prescribed for future and reparation awarded. M'Clintock-Trunkey Co. v. McCormick S. S. Co., 129 I. C. C. 591.

(3t) All-rail and water-and-rail rates on canned goods from San Francisco, and points taking same rates to Missoula, Mont., found not unreasonable as compared with rates contemporaneously maintained to various other Montana, Idaho, and Utah points for comparable distances, but unduly prejudicial to extent they exceed those contemporaneously in effect to Spokane, Wash., by more than 20 cents per 100 pounds. M'Clintock-Trunkey Co. v. McCormick S. S. Co., 129 I. C. C. 591.

(3u) Fifth-class water-and-rail rates on quebracho tanning extract from New York and Brooklyn to St. Louis, Mo., found not unreasonable as compared with lower all-rail sixth-class rates from Glenn Falls, N. Y. and all-rail commodity rates from Norfolk, Va., to same destination, or with lower commodity rates applicable all-rail or rail-and-water, subsequently established. In 120 I. C. C. 711, fifth-class rates on liquid tanning (quebracho) extract, from Brooklyn to Winchester and Peabody, Mass., were found not unreasonable and evidence of record does not warrant a different conclusion with respect to rates assailed. Herman Oak Leather Co. v. C. G., 129 I. C. C. 725.

RAILROAD COMPETITION

See Differentials; Discrimination §8 (3), §8 (4); Equalization of Rates §4 (2); Evidence §14 (3); Long and Short Hauls §4, §4¼, §9; Rail-and-Water Rates. Reasonableness of Rates §8 (2), §27½, §37; Through Routes and Joint Rates.

RATE SCALES

(a) In view of particular circumstances and conditions surrounding transportation and marketing of cement the commission is becoming more and more persuaded that there is substantial merit in the destination-scale principle for more general application to cement rates in western territory. Iola Cement Mills Traffic Asso. v. A. V. I., 115 I. C. C. 49, 63.

REASONABLE RATES

See Absorption of Charges IV; Advanced Rates §17; Allowances V; Any Quantity Rates I; Basing Points and Lines III; Bills of Lading VII; Blanket Rates §11, §12, IV; Branch

Lines I; Bridges and Tolls I; Class Rates II; Compress Companies and Charges; Demurrage §10½; Differentials IV; Distance Rates II; Divisions V; Export Rates and Facilities VI; Import Traffic II; Long and Short Hauls §6⅞; Passenger Fares and Facilities II; Pipe Lines §6, IV; Proportional Rates IV; Reconsignment III; Reduced Rates §4½; Refrigeration III; Released Rates IV; Switch Tracks and Switching; Terminal Facilities §5; Through Routes and Joint Rates IV; Water Carriers II.

REASONABLENESS OF RATES

I. CONTROL AND REGULATION.

§1. In general.
§1½. Procedure in general.

II. ELEMENTS DETERMINING REASONABLENESS.

§2. In general.
§2½. Absorption.
§3. Actions of state commissions.
§4. Attractiveness of traffic.
§5. Capitalization.
§6. Car-mile or train-mile revenue.
§7. Changed circumstances.
§7¼. Combination of rates.
§7½. Comparisons.
§8. Competition.
(1) In general.
(1½) Market competition.
(2) Railroad competition.
(3) Rail - and - water competition.
(4) Water competition.
(5) Wagon or motor competition.
§8½. Concerted action.
§8¾. Congestion.
§9. Cost of service and operation.
§10. Distance.
§10½. Divisions.
§11. Earnings.
§12. Economical management.
§12½. Equalizing commercial conditions.
§13. Equipment furnished.
§13a. Erroneous rate.
§14. Investment relying on rate.
§15. Investment of carrier.
§15½. Loading.
§16. Long continued adjustment.
§16½. Low prior rate.
§17. Manufactured product.
§18. Mineral lands owned by carrier.
§18½. Motive of carrier.
§19. Natural advantages.
§20. Need for revenue.
§21. Obsolescence.
§22. Origin of traffic.
§23. Ownership or use of commodity.
§24. Paper rate.
§25. Past rates.
§26. Permanent improvements.
§26½. Prior adjudication.
§27. Profit of shipper.
§27¼. Public interest.
§27½. Rate via competing route.
§27¾. Rate in opposite direction.
§28. Relativity of the rate.
§29. Reproduction value of road.
§30. Revenues from facilities.
§30½. Risk.
§31. Special service.
§32. Standard for carriers.
§32½. Subsequent reduction.
§33. Surplus.
§34. Terminal facilities.
§35. Time for changing rate.
§36. Ton-mile revenue.
§37. Two-line haul.
§38. Value of commodity.
§39. Value of service.
§40. Volume of traffic.
§41. Weight.

CROSS REFERENCES

See Evidence; Express Companies §10; Minimums §7; Proportional Rates II, IV; Reconsignment III; Reduced Rates §4½; Refrigeration III; Released Rates IV; Storage §2; Switch Tracks and Switching III; Terminal Facilities §5; Through Routes and Joint Rates IV.

II. ELEMENTS DETERMINING REASONABLENESS.

§2. In General.

(a) Regardless of who complains about rates or who would use them, shippers are entitled to reasonable rates.

Cattle & Horse Raisers Asso. v. N. P., 104 I. C. C. 51, 60.

(b) Section 15a of the act requires or authorizes commission to fix remunerative reasonable rates in circumstances which embrace honest, efficient, and economical management as a condition or limitation. Commission should have information in that respect which will aid an effective exercise of its duty and authority, but it is not commanded to insure or empowered to enforce such management, responsibility for which at all times rests upon carriers. M. K. T. v. K. C. T., 104 I. C. C. 203, 224.

(c) Shipments of coal from Grants, Ala., to Florence, Ala., originally unrouted, were moved over an interstate route. Due to a strike at time of movement traffic over short-line intrastate route was delayed, so shipper gave instructions that cars be moved via L. & N. from Birmingham. Upon contention that such instructions did not constitute routing over interstate route, but that movement was expected via an intrastate route through Decatur, FOUND: Instructions constituted complete routing and shipments were therefore not misrouted. Moreover, had they moved via intrastate route through Decatur, charges would have exceeded those applicable via route of movement. Florence Chamber of Commerce v. C. of G. Ry., 104 I. C. C. 373, 374, 375.

(d) Rates on sporadic shipments of fruit-wrapping paper from Los Angeles to Ordway and Rocky Ford, Colo., found unreasonable as compared with rates from paper-producing points in Washington, Oregon, Wisconsin and Minnesota to same destinations, and to extent they exceeded lower rate subsequently established. Reparation awarded. Crown Willamette Paper Co. v. U. P. R. R., 104 I. C. C. 399.

(e) Proposal to readjust interstate rates on flaxseed from Minnesota, South Dakota, and certain North Dakota points to western trunk-line destinations, resulting in both increases and decreases, and establishment of a different level of rates from specified points in the Dakotas than applies from other North Dakota points, found not justified. Proposed rates are admitted by all parties concerned to be unduly prejudicial to South Dakota shippers. South Dakota R. R. Commrs. v. C. & N. W., 107 I. C. C. 35.

(f) Rates proposed by carriers must be shown to be not only reasonable but otherwise lawful. South Dakota R. R. Commrs. v. C. & N. W., 107 I. C. C. 35, 47.

(g) Upon further hearing, rates on asphalt, in barrels, c. l., from Richmond, Calif., to El Paso, Tex., found not unreasonable or otherwise unlawful as compared with lower rates from point of origin to Albuquerque, N. Mex., and Denver, Colo., which lower rates were subsequently established to El Paso. Shipments from Richmond originated on the Richmond Belt Railroad, maintained partly by the Southern Pacific and partly by the Santa Fe, maintenance and operating expenses amounting to approximately 20 cents per ton, and were twice classified before reaching El Paso. Moreover, defendants pay the Richmond Belt a rental charge of 5 cents per ton. Original report, 85 I. C. C. 425, reversed. El Paso Bithulithic Co. v. E. P. & W. R. R., 109 I. C. C. 42.

(h) The reasonableness or unreasonableness of a rate is a question to be determined upon governing facts. Pressed Steel Car Co. v. Director General, 109 I. C. C. 75, 79.

(i) Fact that one point has a decided advantage in distance to specific destinations does not establish unreasonableness of rates from the former. Bliss Syrup Refining Co. v. A., T. & S. F., 109 I. C. C. 391, 393.

(j) Evidence tending to show low earnings derived from the transportation of a particular commodity, as compared with other traffic, can not be accepted as the sole criterion in measuring the reasonableness of the rates thereon. Rates applying on same commodity in same general region must also be looked to. Sioux Falls Live Stock Exchange v. A., T. & S. F., 109 I. C. C. 501, 511.

(k) Rates on fresh tomatoes from Silver Creek, N. Y., district to Pittsburgh, Pa., found not unreasonable and findings in 91 I. C. C. 358, reversed. Evidence does not indicate that rates assailed are too high to move traffic or that they are unreasonable per se. There are no commodity rates on this traffic from Silver Creek district to any destination, or from any point of origin to Pittsburgh. Assailed rates are those prescribed and approved in numerous cases, and while various commodity rates are in effect both in c. f. a. and trunk-line territories, but few apply for dis-

tances comparable to the haul here considered, ripe tomatoes generally moving short distances under commodity rates made with reference to truck competition. Here traffic moves in considerable volume only during an annual 60-day period, which fact does not entitle it to a commodity rate since commodities may move in considerable volume and yet remain on a class-rate basis. Heinz Co. v. Director General, 112 I. C. C. 206.

(l) Mere fact that two rates reflect varying general changes does not conclusively establish that each is on a proper level, and fact that rates on one commodity may not be on a proper level does not prove that rates on other commodities which reflect same general changes also are not on a proper level. Nat'l Council of Furniture Assos. v. A. A., 112 I. C. C. 289, 309.

(m) Combination class rates to and beyond York, Pa., or Baltimore, Md., charged on l. c. l. shipments of marble moving from Cardiff, Md., to destinations in eastern and New England States found not unreasonable or unduly prejudicial as compared with rates on same classes from such noncompetitive points as Baltimore, York, Philadelphia, and New York City, or with rates from Westfield, Mass., and Roxbury, Vt., from which latter point Cardiff is said to meet its principal competition. Traffic and transportation conditions in connection with shipments from Cardiff, in so far as initial part of movement is concerned, are materially different from and less favorable than those obtaining between trunk-line points with which comparison is made, and whatever rate disadvantage complainant may be laboring under in marketing of its products appears to be principally due to location of its quarry on an independently owned and operated short line of light traffic density and unfavorable operating conditions. Cardiff Green Marble Co. v. M. & P., 113 I. C. C. 655.

(n) The law imposes upon the carriers the duty of initiating their rates, under the injunction of the statute that they shall be reasonable and just. In the performance of the duty by the carriers they must exercise judgment and discretion by a like resort to existing facts, circumstances, and conditions in the first instance just as the commission must later do when the rates are brought in question before it. The carriers are presumed to act in good faith in their exercise of discretion and judgment under this somewhat indefinite standard of the statute in its practical application, and therefore rates established by the carriers can not be condemned except upon investigation and full hearing. A rate reasonable in view of the circumstances and conditions when it is established may in course of time become unreasonable by virtue of changed circumstances and conditions. It is manifestly impracticable for the carriers or the commission in such a case to determine at what exact time in the gradual process of changes the rate becomes unreasonable. United Fig & Date Co. v. A. C. L. R. R., 115 I. C. C. 643, 648.

(o) It does not follow that because the judgment of the Commission and that of the carriers as to what will be reasonable rates for the future differ, in relatively small degree, that the rates now found reasonable would have been maximum reasonable rates for a period extending back to November, 1921, or two years prior to the filing of the complaint. United Fig & Date Co. v. A. C. L. R. R., 115 I. C. C. 643, 648.

(p) Fact that certain shippers have paid class rates without protest is not conclusive of their reasonableness. Bender Iron & Supply Co. v. K. C. S., 118 I. C. C. 661, 665.

(q) Subsequent to hearing and prior to issuance of commission's decision in which certain class rates on high explosives were found unreasonable, carrier published specific commodity rates. Upon supplemental petition of complainant seeking reparation on shipments made subsequent to hearing and on which charges were assessed at specific commodity rates, HELD: Change made by carriers in nature of rates during pendency of proceeding had the effect of removing them from application of finding of unreasonableness of class rates and on such shipments there is no basis for an award of reparation. United States v. Director General, 118 I. C. C. 677.

(r) Determination of the reasonableness of rates is not a matter of mathematical computations or formulae, but involves the exercise of an informed judgment. To follow complainants contention to its logical conclusion would mean that any rate, regardless of its level, not made according to a certain method, even though such method may

be the one usually employed by the carriers, is unreasonable. Obviously such a conclusion is fallacious, and the contention leading to it must fall. Louisiana Oil Refining Corp. v. St. L., S. W. Ry., 122 I. C. C. 503, 504.

(s) Fear of possible misuse in the future can hardly be urged seriously as a reason for abandoning a sound conclusion in favor of one that is unsound. A minimum reasonable rate is not necessarily or often a maximum reasonable rate. Ex-Lake Iron Ore from Chicago to Granite City, 123 I. C. C. 503, 512.

(t) Determination of the reasonableness of rates is not a matter of mathematical computations or formulæ but involves the exercise of an informed judgment. Louisiana Oil Refining Corp. v. St. L. S. W., 122 I. C. C. 503, 504.

(u) Evidence which goes to the question of reasonableness of rates can not affect interpretation of tariffs in a proceeding involving legality of rates under section 6 of the act. Fraser v. A. C. L., 122 I. C. C. 520, 526.

(v) While there may be reasons in some instances to justify the construction of grain rates so that through rates are equal to combinations of rate factors to and from important grain markets, there is a limit to the extent to which such a policy can be followed with propriety in view of requirements of the act that all rates must be just and reasonable. Ogden Grain Exchange v. A. & S., 122 I. C. C. 691, 702.

(w) A minimum reasonable rate is not necessarily or often a maximum reasonable rate. Ex-Lake Iron Ore from Chicago to Granite City, 123 I. C. C. 503, 512.

(x) As a prerequisite to the commission's approval of rates under section 1 of the act it is only necessary for carriers to show, as it is in all suspension proceedings where the commission approves rate changes, that the rates are within the limits of reasonableness, i. e. not more than reasonable maxima not less than reasonable minima. Federated Metals Corp. v. C. R. R. Co. of N. J., 126 I. C. C. 703, 709.

(y) No different tests or standards are prescribed for determination of just and reasonable minimum rate than for just and reasonable maximum rate. Jefferson Island Salt Mining Co. v. United States (Interstate Commerce Commission, Intervener) 6 Fed. (2d) 315.

(z) In determining the correctness of a freight rate established by a railroad company covering shipments from loading point to destination, all items of cost and expense to the carrier, incident to the shipment, must be taken into account, including cost and expense of switching and spotting cars for unloading, and particularly so, where conditions attendant at delivery points are such as to substantially increase cost to carrier; and a freight rate that does not embrace a reasonable profit over and above actual cost and expense to the carrier is not a reasonable rate. New York Cent. R. Co., v. Public Utility Commission of Ohio, (O., 1927) 155 N. E. 862.

(aa) The determination of the reasonableness or unreasonableness of a rate is not a matter of mathematical computation. Murphysboro Paving Brick Co. v. I. C. R. R., 128 I. C. C. 635, 636.

(bb) What is the reasonable rate that shall be charged to the shipper? The legislature may not make rates so as to confiscate the carriers property. The carrier, on the other hand, may not make rates which are unjust for those who by economic necessity are compelled to employ its services. Here, then, we have the minimum of legislative power and the maximum of the carriers power. Between these lies a zone, indefinite and variable. Without question the carrier will tend toward the maximum, while governmental authority will be inclined—in fact has been created—to repress its upward tendency. One moves inevitably upward to the highest rate which the traffic will bear; the other attempts to discover some relation between charge for service and cost of service. Calif. Growers & Shippers Protective League v. S. P. Co., 129 I. C. C. 25, 33.

(cc) A reasonable rate may be said to be somewhere between minimum charge that can be made for the service and permit carrier to live, and the maximum charge that can be borne by shipper. Otherwise stated, there is a zone of reasonableness within which any rate is just and reasonable to the carrier as well as just, fair, and reasonable to the shipper that utilizes carrier's services. Calif. Growers' & Shippers' Protective League v. S. P., 129 I. C. C. 25, 33, 34.

§6. Car-mile or Train-mile Revenue.

See Evidence §6, §8.

(a) Determination of reasonableness or unreasonableness of rates is not a matter of mathematical computation, but involves exercise of an informed judgment. It can scarcely be said with any degree of accuracy that comparison of car-mile earnings under rates on one commodity computed on same weight is lacking in probative value. There is no fixed scale of progression or regression with changing distance for earnings per mile. Nat'l Council of Furniture Assos. v. A. A., 112 I. C. C. 289, 309.

(b) Fact that car earnings under a given rate exceed those on certain other unrelated commodities does not of itself tend to show unreasonableness. United Paperboard Co. v. C. & E. R. R., 120 I. C. C. 27, 30.

§7. Changed Circumstances.

See Advanced Rates §7; Evidence §9.

(a) Taking into consideration the gradual change in conditions surrounding transportation and marketing of peanuts over a number of years and gradual downward revision of rate structure to meet those conditions, with apparently no dissatisfaction with general rate adjustment on part of those in the industry, FOUND: That it does not follow because commission's judgment and that of carriers as to what will be reasonable rates for the future differ, in relatively small degree, that rates found reasonable for future would have been maximum reasonable rates for a period extending back two years prior to filing of a complaint. Accordingly, and in the light of commission's findings in 20 I. C. C. 43, 50, rates on this commodity in the past found unreasonable only back to date of filing of complaint, and not for the full two-year period prior thereto. United Fig & Date Co. v. A. C. L., 115 I. C. C. 643, 648, 649.

§7¼. Combination of Rates.

See Evidence §10.

(a) Applicable combination rates on muriate of potash from Salduro, Utah, to Chicago Heights, Ill., a Group D point, found not unreasonable as compared with lower rates contemporaneously in effect to St. Louis, Mo., a Group E point. Complainant showed that same rates applied to both groups on a number of commodities and that prior to and subsequent to movement equal rates applied to both groups on potash. Carriers, on the other hand, contend that rates established were depressed and were made to meet competition with imported fertilizer materials from Atlantic ports, and showed that on a number of commodities the rates between Salt Lake City and Chicago are higher than those to or from St. Louis. Armour Fertilizer Works v. W. P. R. R., 115 I. C. C. 684.

§7½. Comparisons.

See Blanket Rates §18; Classification §20; Comparative Rates; Evidence §11, §12, §13; Through Routes and Joint Rates §15.

(a) Rates on coal from Grants, Ala., to Florence, Ala., via an interstate route through Columbus, Tenn., found not unreasonable as compared with rates between various points in same general territory for comparable distances. Here interstate route was used because of delays over customary intrastate route caused by a strike. Such interstate route was not logical or reasonable route and will probably not be used again except in case of emergency. Florence Chamber of Commerce v. C. of G. Ry., 104 I. C. C. 373.

(b) Although in determining reasonableness of an interstate rate commission may give consideration to comparisons with intrastate rates, mere fact that carriers comprising longer interstate routes do not see fit to meet rate of the direct intrastate line does not establish unreasonableness of the interstate rate. Florence Chamber of Commerce v. C. of G., 104 I. C. C. 373, 375.

(c) Interstate rates on dried-apple pomace found not unreasonable as compared with lower intrastate rates applicable on same commodity for relatively shorter hauls. Greenwald Vinegar Co. v. B. & O., 104 I. C. C. 637.

(d) Mere comparison of through rates with combinations does not prove that combination rates are unreasonable. Beatrice Creamery Co. v. C., B. & Q., 107 I. C. C. 568, 570.

(e) No convincing reason found why rates on vegetables, generally, from producing districts in South Carolina to interstate destinations, should be made with relation to rates on potatoes, except perhaps as a matter of convenience. Vegetable rates in Mississippi Valley are not constructed upon any fixed relationship to rates on potatoes, and while in

43 I. C. C. 291, commission approved certain rates on fruits and vegetables which were made over the rates on potatoes, it is not committed to this doctrine for general application. South Carolina Produce Asso. v. A. & R., 107 I. C. C. 613, 615.

(f) Contention that rates on cabbage from South Carolina producing districts to interstate destinations are unreasonable to extent they exceed contemporaneous rates on potatoes, not sustained, carriers showing that rates on potatoes from South Carolina are maintained upon a low basis and to accord such a rate basis would result in a low level of cabbage rates from South Carolina. South Carolina Produce Asso. v. A. & R., 107 I. C. C. 613, 615, 618.

(g) Lettuce, spinach and asparagus: Upon complaint seeking rates on, from South Carolina producing districts to interstate destinations, made 18.5 cents over the contemporaneous rates on potatoes, FOUND: Rates proposed are on a decidely low basis and are conspicuously low as compared with contemporaneous rates from producing points in Virginia, North Carolina, and Florida, with which present rates compared favorably. South Carolina Produce Asso. v. A. & R., 107 I. C. C. 613, 618, 623.

(h) Rate on building paper from Downingtown, Pa., to Jacksonville, Fla., on shipments moving by rail to Philadelphia, thence by water beyond, found not unreasonable as compared with lower rate contemporaneously in effect on like traffic from York, Pa., moving by rail to Baltimore, thence water to Jacksonville, or with lower rail-and-water rate subsequently established from Downingtown to Jacksonville through Philadelphia in order to place complainant in a better position to compete in the Jacksonville market. Baker & Holmes Co. v. P. R. R., 109 I. C. C. 396.

(i) Mere comparisons of the rates and earnings on one commodity with the rates and earnings on other commodities for the purpose of showing reasonableness of rates is not convincing without a showing that such rates are comparable in other respects. Ballman-Cummings Furniture Co. v. C. & E. I. Ry. Co., 109 I. C. C. 413, 415.

(j) Evidence tending to show burdens and expense of handling a particular commodity, and, as compared with other traffic, low earnings therefrom, can not be accepted as the sole criterion in measuring reasonableness of the rates thereon. Rates applying on same commodity in same general region must also be looked to. Sioux Falls Live Stock Exchange v. A., T. & S. F., 109 I. C. C., 501, 511.

(k) Tamms, Ill.: Class D rates on iron ore from Ishpeming and Negaunee, Mich., to, found unreasonable as compared with commodity rates contemporaneously in effect to St. Louis, Mo., and East St. Louis and Granite City, Ill., and with commodity rate established subsequent to movement. Reparation awarded. Tamms Silica Co. v. C. & N. W., 109 I. C. C. 618.

(l) Complainant attacked commodity rates charged on tank cars of fuel oil shipped between July 21, 1921 and Sept. 23, 1922, from Kansas City, Mo., and Oklahoma to Cedar Rapids, Waterloo and Ottumwa, Iowa, as unreasonable and unduly prejudicial. Rates charged ranged from 28.5 c. to 37 c. and were 0.5 c. to 2 c. less than the rates on refined oils. HELD, rates attacked unreasonable to extent they exceed 6.5 c. less than rates on refined oil between July 21, 1921 and June 30, 1922 and 6 c. thereafter, reparation awarded. Shores Mueller Co. v. A. T. & S. F. Ry., 112 I. C. C. 603.

(m) Comparisons based merely upon differences in distance do not constitute sufficient justification for a finding either of unreasonableness or of undue prejudice. Bos Sand Co. v. A., T. & S. F., 112 I. C. C. 121, 123.

(n) While reasonableness of any given rate can not be measured solely by comparing its earnings with average earnings on all traffic, comparisons of this kind are not entirely without significance in a case where commission is called upon to determine proper rating on an article for application throughout a widespread region. Nat'l. Council of Furniture Assos. v. A. A., 112 I. C. C. 289, 297.

(o) In the absence of evidence as to comparative transportation and other conditions, rate comparisons of different commodities are of little probative force in measuring reasonableness of rates on a particular commodity. Bunte Bros. v. C. & N. W., 112 I. C. C. 557, 558.

(p) Rate on slack coal from points in the Oak Hills district, Colo., on the Denver & Salt Lake R. R., to Superior, Nebr., found not unreasonable. Complainant relied on comparison of rates

to the same destination from the Walsenburg and other districts, and seeks reparation on slack coal to a basis of rates lower than on lump coal. Little consideration, however, was given to difficulties under which the Moffat road labors, and complainant erroneously contended that an unfair relationship existed between the Oak Hills and the Walsenburg and other districts. Nebraska Cement Co. v. C., B. & Q., 113 I. C. C. 729.

(q) Class A rate assessed on castings and forgings, finished, parts of compresses, from Monroe, La., to El Paso, Tex., found not unreasonable as compared with commodity rates on structural iron and steel, including unfinished castings and forgings. Rate assailed is maintained on same description of traffic to all points in the Southwest similarly situated and was prescribed in 34 I. C. C. 472 and other cited cases. Moreover, commodity rate on structural iron and steel is affected by competition. El Paso Compress & Fumigation Co. v. M. P. R. R., 115 I. C. C. 166.

(r) Rate on sawdust found unreasonable as compared with rate on fuel wood and to extent it exceeded lower rates contemporaneously in effect on fuel-wood mill refuse. Reasonable rates prescribed for future. Apache Powder Co. v. A., T. & S. F., 115 I. C. C. 339.

(s) Rates on shooks, box, found unreasonable as compared with rates on railroad ties, timbers, lumber, and various other commodities. Reasonable rates prescribed for future and reparation awarded. Apache Powder Co. v. A., T. & S. F., 115 I. C. C. 339.

(t) Rates on staves and headings, found unreasonable as compared with rates on lumber, commission having indicated in 52 I. C. C. 598, 619, that carriers should observe as maxima the lumber rates on various kinds of cooperage stock, including heading and staves. Jackson Traffic Bureau v. A. & V. Ry., 115 I. C. C. 570.

(u) Rates on automobiles from Lansing and Detroit, Mich., and Springfield, Ohio, to Santa Fe, N. Mex., found not unreasonable or otherwise unlawful as compared with lower rates contemporaneously in effect to Columbus, N. Mex. Complainant contended that lower rate was applicable to Santa Fe as that point was intermediate to Columbus under an appropriate tariff provision which provided for application of Columbus rate as maximum to intermediate points. However for a shipment to pass through Santa Fe over A., T. & S. F. would require an out-of-line haul, except when routed via the New Mexico Central, and lower rate is not applicable over that route. Moreover carriers showed that Columbus rate was on an improper and depressed basis and has since been increased to a parity with rate assailed. Thomas Motor Co. v. A., T. & S. F., 118 I. C. C. 631.

(v) It is seldom, if ever, that a rate can be found unreasonable without comparison with rates to other points. One of the best tests of reasonableness of a rate is by comparison with rates on like traffic in same territory. The act recognizes no distinction between relative unreasonableness and intrinsic or absolute unreasonableness. Sioux City Chamber of Commerce v. B. & O., 120 I. C. C. 7, 14.

(w) Comparisons of inbound and outbound rates are not very helpful in establishing unreasonableness or undue prejudice where only the inbound or outbound rates are in issue. Anthony Produce Co. v. B. & A., 120 I. C. C. 224, 227.

(x) Comparisons of rates on unlike commodities are of little value in determining reasonableness of proposed rates on a particular commodity. Vegetables from Virginia, 120 I. C. C. 319, 323.

(y) The most helpful evidence in determining reasonableness of rates are comparisons of rates on like traffic, moving under like circumstances and in same territory. McLeod v. T. & P., 120 I. C. C. 550, 553.

(z) Mere existence of a lower intrastate rate under which a commodity does not move, has little, if any, probative value in determining the reasonableness of interstate rates under which there is a movement. Tanning Extract from Lynchburg, 122 I. C. C. 647, 650.

(aa) Rate comparisons, without evidence of circumstances and conditions surrounding the traffic, are not controlling in measuring reasonableness of rates on a particular class of traffic. Farrell Foundry & Machine Co. v. A., B. & A., 123 I. C. C. 127, 130.

(bb) Rates on wooden box shooks from, Baltimore, Md., to Jersey City, N. J., found unreasonable and unduly prejudicial as compared with rates con-

temporaneously in effect from Norfolk and other competing points in Virginia and North Carolina. While rates from latter points are depressed due to water competition, it was not shown that they are less than reasonable. Moreover, narrow spread in rates as compared with great difference in length of haul under substantially the same transportation conditions, can not be ignored. Reasonable and nonprejudicial rates prescribed for future and reparation awarded. Canton Box Co. v. P. R. R., 123 I. C. C. 663.

(cc) A mere comparison of rates and earnings, without other supporting data is not helpful in determining reasonableness of rates. Federated Metals Corp. v. P. R. R. Co., 126 I. C. C. 144, 146.

(dd) Comparisons with rates on commercial coal are not conclusive of reasonableness of rates on lake-cargo coal. Lake-cargo coal has a more concentrated movement and moves at a more favorable season of the year than the heaviest movement of commercial coal. Commercial coal also constitutes the larger proportion of joint-line hauls and there is a vast difference in the terminal delivery service of the two classes. Moreover, there is a greater availability of cars used for shipping lake-cargo coal for return loading with ore. Lake Cargo Coal Rates, 1925, 126 I. C. C. 309, 361.

(ee) Rates on brass and copper, standing alone, can not properly be used to measure the reasonableness of rates on lead alloys. Federated Metals Corp. v. C. R. R. Co., of N. J. 126 I. C. C. 703, 709.

(ff) In appraising the evidence of parties bearing on the reasonableness of rates, it is proper to consider rates found reasonable by commission on other commodities in same general territory. Federated Metals Corp. v. C. R. R. Co. of N. J., 126 I. C. C. 703, 709.

(gg) Fifth-class rates on denatured alcohol from New Orleans, and points taking same rates, to Oklahoma City and other destinations in Oklahoma, found unreasonable as compared with lower rates contemporaneously in effect to St. Louis, Kansas City, and Chicago; to destinations in Texas and Arkansas for comparable distances; and to extent they exceeded maximum reasonable fifth-class rates prescribed in 123 I. C. C. 203 for application between same points. Reasonable rates prescribed for future and reparation awarded. Oklahoma Traffic Asso. v. A. & V., 128 I. C. C. 89.

(hh) The exhibits fail to show the value of the articles, the volume of movement, the average loading, or any other information, except the classification ratings, which is usually considered in determining the relative reasonableness of rates, and, therefore, are of little probative value. Fisher Supply Co. v. A. & V. Ry., 128 I. C. C. 215, 218.

(ii) Third-class rate on oleomargarine found unreasonable to extent it exceeded rate on butter. While value of oleomargarine is about one-half that of butter, both have practically the same transportation characteristics, see 53 I. C. C. 59, and other cited cases; both are rated third class in principal classifications; and where commodity rates are published on the two they are generally the same. Record indicates that rates on oleomargarine should not be higher than those on butter, but it is not convincing that oleomargarine should take lower rates. Moreover, in 60 I. C. C. 663, rate on oleomargarine was found unreasonable to extent it exceeded rate on butter. Reasonable rate prescribed for future and reparation awarded. Boren-Stewart Co. v. G., C. & S. F., 128 I. C. C. 493.

(jj) Upon contention that a combination of three locals is an unreasonable basis for making of rates, and in conflict with views expressed in Southern Class Rate Investigation. 100 I. C. C. 513, 661. FOUND: This depends upon whether local rates making up the combination are normal or depressed. Duplex Printing Press Co. v. B. C. E., 128 I. C. C. 692, 693.

(kk) Best test of reasonableness of a rate is a comparison with other rates on the same or analogous commodities between points in the same general territory for similar distances. Continental Roofing & Mfg. Co. v. G. & S. I., 129 I. C. C. 313, 316.

§8. Competition.

(1) In General.

See Competition; Long and Short Hauls §4¾.

(a) Class rates on candy and confectionery, c. l. and l. c. l., from Salt Lake City, Utah, to destinations on Mississippi and Missouri Rivers, and to St. Paul, Minn., and Chicago, Ill., rate territories, found unreasonable and unduly prejudicial to extent they exceeded lower commodity rates contemporaneously applicable from San Francisco, Calif., to

same destinations. Reparation awarded. McDonald Chocolate Co. v. B. E. R. R., 118 I. C. C. 45.

(b) Rates on bale ties and woven and barbed wire fencing from Sterling, Ill., to Montgomery, Ala., found unreasonable and unduly prejudicial as compared with rates contemporaneously in effect to Mobile and Pensacola, farther distant competing points, and to extent they exceeded rates subsequently established when Montgomery was placed upon a rate parity with the latter-named points. Teague Hardware Co. v. C., B. & Q., 118 I. C. C. 221.

(c) The commission should not require the maintenance of a definite relationship between the rates on specific commodities on a showing that such commodities meet competitively in a relatively limited number of uses. Federated Metals Corp. v. C. R. R. Co. of N. J. 126 I. C. C. 703, 711.

§8 (1½). Market Competition.

See Market Competition.

(a) Commodity rates on staves found not unreasonable as compared with rates on cordwood and other commodities. Cordwood rates are on a low basis because of competition with other fuel and being a low-grade commodity would not move unless rates were low. A rate of sixth class would apply on staves in absence of lower rates, sixth class being found not unreasonable on lumber in 81 I. C. C. 401. Stave rates here in issue are 58 per cent of sixth class, and commodity rates on lumber applicable between various points in same territory as here involved compare favorably with stave rates under attack. Washington Building Lime Co. v. B. & O., 115 I. C. C. 128.

(b) Rates on pulp wood from Reedsport, Oreg., to Camas, Wash., found not unreasonable as compared with rates contemporaneously maintained on fuel wood. Pulp wood is more valuable and loads heavier than fuel wood, is also a commercial commodity and should bear its share of costs entering into manufacture of paper, while fuel wood is a waste commodity on which rates are made low in order to permit of its movement in competition with other fuel, particularly in he territory considered where it moves in large volume. Moreover, rate assailed is a joint rate applying not generally for average conditions but between specific points where transportation conditions are unfavorable and extremely costly. Crown Willamette Paper Co. v. S. P. Co., 118 I. C. C. 95.

(c) Rates on strawberries from certain North Carolina points to Providence, R. I., found not unduly prejudicial in comparison with rates to New York City. There is no evidence of competition between Providence and New York in marketing of strawberries, nor of any damage to complainant resulting from difference in rates to the two points. Providence Exchange v. N. Y., N. H. & H., 118 I. C. C. 190.

(d) Interstate rates on sand, gravel and crushed stone from producing points in Zone I in Illinois and certain producing points in Zone II in Illinois and Wisconsin to Chicago, Ill.,-Gary, Ind., switching district and other destinations in northern Illinois, southern Wisconsin, and eastern Iowa, found not unreasonable or unduly prejudicial except that such rates to district are unduly prejudicial in favor of producers of sand, gravel, crushed stone, and slag within the Chicago district; and interstate rates from Joliet, Ill., are unduly prejudicial in favor of producers of slag at that point. Nonprejudicial rates prescribed for future and reparation denied. Chicago Gravel Co. v. A., T. & S. F., 118 I. C. C. 633.

(e) Fifth-class rates on vinegar from New York points to mid-western destinations, found not unreasonable or otherwise unlawful as compared with rates from Pacific Coast to same destination territory. Vinegar is manufactured at low cost on Pacific Coast as compared with similar costs in New York territory and New York producers also suffer from disadvantage of buying their barrel material from Pacific Coast points. While complainant contended that an increase in Pacific Coast rate would remove the prejudice here involved, the evidence shows that its principal competition is encountered from producers located in destination territory, and any increase in Pacific Coast rates would be of little avail to complainant. American Cider Vinegar Mfrs.' Asso. v. N. Y. C., 118 I. C. C. 721.

§8. (2). Railroad Competition.

See Railroad Competition.

(a) It is not commission's province to require circuitous or more expensive routes to meet rates of shorter or less expensive routes. However, commission

may, in fixing rates by any route, give consideration to rates of other routes and attempt to devise an adjustment which on the whole will provide reasonable rates and at same time, as nearly as may be, permit various routes to engage in the traffic where they so desire. Consolidated Southwestern Cases, 123 I. C. C. 203, 374.

§8. (4). Water Competition.

See Evidence §14 (5); Water Competition.

(a) Rates on refined oil from mid-continent field to Arizona and New Mexico, from southern California to Arizona, and from El Paso to certain destinations in those States, found unreasonable. These rates found their origin in the intermediate application of transcontinental rates established by carriers to meet water competition, and while they might well be near the border line of confiscation for the transcontinental movement, they are unreasonable when applied to the small proportion of total movements here involved. Reparation awarded. Associated Oil Co. v. A. E. R. R., 112 I. C. C. 350.

§9. Cost of Service and Operation.

See Advanced Rates §7 (2); Evidence §6, §17, §18.

(a) Evidence tending to show burdens and expense of handling a particular commodity, and, as compared with other traffic, low earnings therefrom, can not be accepted as the sole criterion in measuring reasonableness of the rates thereon. Rates applying on same commodity in same general region must also be looked to. Sioux Falls Live Stock Exchange v. A., T. & S. F., 109 I. C. C. 501, 511.

(b) While a traffic test which furnishes evidence as to the level of existing rates on a particular class of traffic is entitled to weight in arriving at maximum reasonable rates it is not controlling. Fertilizers between Southern Points, 113 I. C. C. 389, 419, 420.

(c) Cost figures are at best only estimates and are not at times of sufficient accuracy or certainty to warrant their use in determining reasonableness of rates. Amer. Fruit & Veg. Shippers Asso. v. Amer. Ry. Exp. Co., 128 I. C. C. 651, 658.

§10. Distance.

See Infra §36; Blanket Rates §9; Differentials; Distance Rates; Evidence §20, §58.

(a) Distance is not a controlling element in fixing of group rates. Alexander Grocery Co. v. B., S. L. & W., 104 I. C. C. 155, 159.

(b) Fact that one point has a decided advantage in distance to specific destinations does not establish unreasonableness of rates from the former. Bliss Syrup Refining Co. v. A., T. & S. F., 109 I. C. C. 391, 393.

(c) Distance is an important consideration in determining proper rate relationship between territories where there is no material difference in transportation conditions. Como Chemical Co. v. A., T. & S. F., 120 I. C. C. 517, 519.

§11. Earnings.

See Infra §36; Evidence §5, §51.

(a) The commission has frequently commented upon the fallacy of attempting to measure reasonableness of rates on particular commodities by comparing earnings on such commodities with earnings on all traffic. Cotton Linters from Southwest, 118 I. C. C. 419, 430.

(b) Fact that a carrier may be prosperous and that a particular commodity constitutes a large part of its traffic, does not prove that rates on that commodity are unreasonable, as prosperity of a carrier, is the result of many causes. If all earnings of a carrier were considered in passing on the measure of the rates on a single commodity between two points on its lines, there could be no uniformity of rates. In fact rates between the same points would vary with the routes between those points. Roquemore Gravel Co. v. A. & W. P. R. R., 126 I. C. C. 575, 577.

§13a. Erroneous Rate.

See Erroneous Rates.

(a) Carriers over a long period of time erred in not collecting applicable rates and complainant urged that this long-continued practice raises a presumption that basis upon which rates were collected was and is reasonable. HELD: A practice based on an error, however long maintained, raises no presumption whatsoever. Berninghaus Co. v. C. & N. W., 109 I. C. C. 104, 106.

§16. Long Continued Adjustment.

See Evidence §29, §43, §66.

(a) Mere fact that one incident of a general readjustment was reduction of

a rate from a given point does not prove that former rate was unreasonable. See 58 I. C. C. 46. Manget Bros. Co. v. G. R. R., 123 I. C. C. 532, 534.

(b) Where a rate, voluntarily established by the carrier, has been in force for a long period, such rate may be presumed to be prima facie just and reasonable, and the burden is on any one attacking the same to show that the rate so fixed is unreasonable. Chicago, M. & St. P. Ry. Co., v. Public Utilities Commission of Idaho, (Idaho, 1925) 238 Pac. 970.

(c) In considering its reasonableness the long continuance of a rate or rate basis is entitled to consideration. Acme Brick Co. v. A. & V., 128 I. C. C. 715, 719.

§20. Need For Revenue.

See Infra §36; Evidence §36, §51.

(a) The unfavorable financial condition of a carrier is not justification for continuance of unreasonable rates on a particular commodity. Richmond Radiator Co. v. N. Y., N. H. & H., 109 I. C. C. 497, 500.

(b) Distance is only one of the elements to be considered in measuring reasonableness of rates. Furniture from Southern Points, 112 I. C. C. 302, 307.

§22. Origin of Traffic.

(a) Shippers are entitled to move their products to any market at reasonable and nonprejudicial rates and commission has repeatedly condemned action of carriers in adjusting rates so as to impede or stifle movement of commodities in any given direction. Old Ben Coal Corp. v. C., C., C. & St. L., 115 I. C. C. 84, 87.

§24. Paper Rate.

(a) The fact that there have been relatively few shipments of a commodity between certain points is not sufficient grounds to deny shippers reasonable rates. Dame Furniture Co. v. C. N. O. & T. P. Ry., 115 I. C. C. 566, 568.

(b) Shippers are entitled to reasonable rates from points from which there has been no previous movement, so that they may procure commodities from those points whenever available, since a movement might develop which would not be possible under excessive rates. Apache Powder Co. v. A., T. & S. F., 115 I. C. C. 339, 340.

(c) Fact that but relatively few shipments of a commodity move between certain points is not sufficient grounds to deny shippers reasonable rates. Dame Furniture Co. v. C., N. O. & T. P., 115 I. C. C. 566, 568.

(d) It was contended that the shipments constitute an isolated movement. Complainant is entitled to a reasonable rate. United Paperboard Co. v. B. & M. R. R., 120 I. C. C. 280, 282.

§25. Past Rates.

See Supra §16; Evidence §29, §43, §66; Passenger Fares and Facilities §7.

(a) While a prima facie presumption of reasonableness attaches to a rate long voluntarily maintained, the continuance of a given rate is not conclusive evidence of its reasonableness. Tunnell & Co. v. P. R. R., 120 I. C. C. 425, 427.

(b) Carriers showed that no shipments of commodity in issue moved from and to points involved since establishment of lower rate, and contended that such shipments constituted a sporadic movement, citing cases wherein commission declined to award reparation on such movements. HELD, Cases cited do not support that finding here. Every shipper is entitled to a reasonable rate on his traffic, and where he attacks the reasonableness of a rate, whether class or commodity, that issue must be decided on its merits. See 100 I. C. C. 411. Davies & Thomas Co. v. C. R. R. Co., 128 I. C. C. 241, 242.

§26½. Prior Adjudication.

See Classification §17; Evidence §43½, V; Previous Decision of Commission; Reparation §8½.

(a) Upon further hearing, original report, 74 I. C. C. 369, wherein rates on iron ore from Ironwood, Mich., and Baraboo, Wis., to Carondelet, Mo., within St. Louis switching district, were found not unreasonable as compared with lower rates prescribed in 62 I. C. C. 194, from same points to Granite City, Ill., within East St. Louis switching district, and subsequently made applicable to Carondelet, affirmed. Mississippi Valley Iron Co. v. C. & N. W., 104 I. C. C. 243.

(b) Rates on paper boxes from Nashville to Atlanta, Augusta, Savannah, Macon, Birmingham, Montgomery, and Jacksonville, published in accordance with commission's findings in Paper Boxes between Southeastern Points, 93 I. C. C. 559, found not unreasonable. American

Tri-State Paper Box Co. v. L. & N., 104 I. C. C. 442.

(c) Rates on newsprint and printing papers from producing points in Atlantic seaboard territory to points in Texas, found unreasonable in the past to extent they exceeded rates conforming to those prescribed in Minnesota & Ontario Paper Co., 66 I. C. C. 571, but present rates found not unreasonable. Reparation awarded. Express Publishing Co. v. A. S., 107 I. C. C. 528.

(d) Southwestern points: Interstate rates on brick and related articles carried in uniform brick list prescribed in General Brick case, 68 I. C. C. 213, from points in Texas, Arkansas, Oklahoma, and Kansas to points in those States and in Louisiana and to Memphis, Tenn., and from Texas, Arkansas, and Oklahoma to points in southern Missouri found unreasonable and unduly prejudicial. Reasonable distance scale of rates prescribed and reparation denied. Southwestern Brick Cases, 107 I. C. C. 681.

(e) Taking into consideration rates prescribed on like traffic from Kansas City, Mo., and other competing points to same destinations in Wilson case, 81 I. C. C. 79, rates on fresh meats and packing-house products, in straight and mixed carloads, from Sioux Falls, S. Dak., and Mason City, Waterloo, Cedar Rapids, Des Moines, and Ottumwa, Iowa, to destinations in Oklahoma and Texas, found unreasonable. No consistency exists in rates on these commodities from points in issue; each has had a different basis, and the relationships to each other and to other competing points have not been well defined. Reasonable rates prescribed and reparation awarded. Decker & Sons v. C., R. I. & P., 109 I. C. C. 261.

(f) Following Miami Copper Co., 93 I. C. C. 221; 104 I. C. C. 467, rates on fuel oil from Burkburnett and Wichita Falls, Tex., and Beckett, Okla., found not unreasonable, discriminatory, or unduly prejudicial as compared with rates contemporaneously in effect from other points in same origin groups or with lower rate subsequently established. Globe Light & Power Co. v. A. E. R. R., 109 I. C. C. 405.

(g) Rates on lard substitutes and vegetable cooking oils from Houston, Tex., to points in Arkansas and Louisiana found unreasonable to extent they exceeded those which would have accrued at rates found reasonable on same commodities from and to those points in Procter & Gamble Distributing Co., 101 I. C. C. 563. Reparation awarded. Merchants & Planters Oil Co. v. A., T. & S. F., 109 I. C. C. 477.

(h) Rate on crude feldspar, minimum weight 40,000 pounds, from DeKalb Junction, N. Y., to Cleveland, Ohio, found unreasonable as compared with lower rates from Keene, N. H., and Penland, N. C., competing points, and with rates prescribed in Ceramic Traffic Asso., 92 I. C. C. 675, for application from producing points in New England to Trenton, N. J. Reasonable rate, minimum weight marked capacity of car, prescribed for future and reparation awarded. Green Hill Mining Co. v. N. Y. C., 109 I. C. C. 643.

(i) Rate on linseed oil from St. Louis to New Orleans, found unreasonable to extent it exceeded rate prescribed in 98 I. C. C. 183, and unduly prejudicial to extent it exceeded rate on analogous vegetable oils from and to the same points. Reasonable rate prescribed for the future and reparation awarded. Glidden Co. v. I. C., 109 I. C. C. 721.

(j) Upon reconsideration, rate on paper from Orange, Tex., to Hutchinson, Kans., prescribed in former report, 95 I. C. C. 457, and equal to rate from St. Louis and Kansas City to Houston and other Texas points, found not unduly prejudicial because it exceeded 110 per cent of rate from Orange to Kansas City. Rates from St. Louis and Kansas City referred to were based on rates found reasonable and prescribed in Minnesota & Ontario Paper case, 66 I. C. C. 571, and rate from Orange to Kansas City is shown to be depressed by market competition and is not a maximum reasonable rate. Former finding of unreasonableness adhered to. Hutchinson Paper Co. v. T. & N. O., 112 I. C. C. 49.

(k) Rates on paper and paper articles from Urbana, Ohio, and St. Louis, Mo., to Dallas, El Paso, and San Antonio, Tex., found unreasonable to extent they exceed rates subsequently established, in conformity with those prescribed in the Paper case, 66 I. C. C. 571. Reparation awarded. Graham Paper Co. v. C., R. I. & P. Ry., 112 I. C. C. 51.

(l) Rate on wrapping paper from Orange, Tex., to Wichita, Kans., found unreasonable to extent it exceeded lower rate to Hutchinson, Kans., prescribed in 95 I. C. C. 457. Reparation awarded. Wichita Chamber of Commerce v. A., T.

& S. F., 112 I. C. C. 67.

(m) Rates on newsprint paper and printing paper from Port Edwards and and Wisconsin Rapids, Wis., to Dallas, Tex., found unreasonable to extent they exceeded those prescribed as reasonable from these points of origin to Texas common points, including Dallas, in the Paper case, 66 I. C. C. 571. Palmer & Co. v. C. G. W. R. R., 112 I. C. C. 323.

(n) Rates on prepared roofing, asphalt shingles, roofing and building paper and certain other related articles from various producing points in c. f. a., Buffalo-Pittsburgh, and trunk-line territories to southern territory, and from points in trunk-line territory to Virginia and West Virginia, found unreasonable and unduly prejudicial to extent they exceed rates determined on basis of those prescribed in Southern Class Rate Investigation, 109 I C. C. 300. Reasonable and non-prejudicial rates and relationships prescribed for the future. Standard Paint Co. v. Director General, 112 I. C. C. 589.

(o) Following Fletcher-Wilson Coffee Co., 93 I. C. C. 555, rates on imported green coffee from New Orleans, La., to Montgomery, Ala., found not unreasonable or unduly prejudicial as compared with rates to various points in Mississippi, Alabama, and Tennessee, and to St. Louis, Louisville, and Chicago. Fletcher-Wilson Coffee Co. v. L. & N., 113 I. C. C. 319.

(p) Rates on bananas, in carloads, and on bananas and coconuts, in mixed carloads, from New Orleans, La., to San Antonio, Tex., found unreasonable to extent they exceeded rates prescribed in 101 I. C. C. 196, and 113 I. C. C. 454. Reparation awarded. Gugenheim-Goldsmith Co. v. G., H. & S. A., 113 I. C. C. 459.

(q) Rate on sand from Sandusky, Ohio, to Pittsburgh, Pa., found not unreasonable as applied to past shipments, but unreasonable for future to extent it exceeded rate for like distances under the distance scale prescribed in 104 I. C. C. 717 for application from points in western Pennsylvania to points in Ohio. Rates prescribed in cited case forming basis of a general readjustment, a finding that rates applicable prior thereto were unreasonable to extent they exceeded the rates under new basis, and that damages were accordingly sustained, is not warranted. Moreover, reparation will not ordinarily be awarded to basis of a finding resulting in a widespread readjustment of rates. Accordingly, reparation denied in instant case, but reasonable rate prescribed for future. Booth & Flinn v. P. R. R., 113 I. C. C. 613.

(r) Upon complaint alleging that rates on shipments of bituminous coal from mines in Kansas, Missouri, Oklahoma, and Arkansas to Kansas City Mo.-Kans., Independence, Mo., and related points, were unreasonable in past to extent they exceeded rates prescribed for future in 89 I. C. C. 73, FOUND: Rates assailed compare favorably with various rates between other points, and with those prescribed by commission on various low-grade commodities, for comparable distances. Moreover, prescribed rates were in the nature of general readjustment, following which reparation is not ordinarily awarded. Beatty Coal Co. v. A. V. I., 115 I. C. C. 8.

(s) Following Southern Class Rate Investigation, 109 I. C. C. 300, commodity rates which are constructed on basis of previously existing class rates to and from river crossings should be adjusted with relation to class rates prescribed as reasonable therein. Birmingham Traffic Bureau v. Director General, 115 I. C. C. 33, 38.

(t) Commodity rate charged on sporadic shipments of phosphate rock from Milldale, Fla., to Shreveport, La., found not unreasonable. Milldale is not a producing point in the Florida group accorded lower rates; moreover, rate charged was actually less than contemporaneous rate from entire Florida phosphate rock group to Shreveport and such group rate was found not unreasonable in 78 I. C. C. 107. Meridian Fertilizer Factory v. A. C. L., 115 I. C. C. 226.

(u) In original report, 104 I. C. C. 183, rates on broom handles (wooden) in the white, turned to shape, were found unreasonable and rates 1.5 cents over contemporaneous lumber rates prescribed, reparation being awarded to that basis. Upon further hearing, carriers pointing out that tariffs naming rates on articles taking arbitraries over lumber rates provided rates equal to 1.5 cents over lumber rates when higher than 31.5 cents prior to July 1, 1922, and higher than 28.5 cents thereafter; and rates equal to 2 cents over lumber rates when such rates are 31.5 cents or less prior to July 1, 1922, and 28.5 cents thereafter, original finding modified, reasonable rates prescribed, and reparation awarded accordingly. Deshler Broom Factory v.

A., T. & S. F., 115 I. C. C. 437.

(v) Following Crescent Bed Co., 102 I. C. C. 419, rate on metallic couch frames found unreasonable to extent it exceeded 75 per cent of corresponding rate on furniture. Reparation awarded. Memphis Furniture Mfg. Co. v. I. C., 115 I. C. C. 554.

(w) Upon reargument, original report, 109 I. C. C. 733, affirmed, and rates on meat animals from points in Alabama to Moultrie, Ga., found not unreasonable; but relationship of rates on hogs from southeastern Alabama to Moultrie, on the one hand, and Montgomery and Birmingham, Ala., on the other, found unduly prejudicial to Moultrie, unduly preferential of Montgomery and Birmingham, and unjustly discriminatory against interstate commerce. Removal of such prejudice, preference, and discrimination by establishment of intrastate rates upon, basis of compromise scale set forth in Appendix A in 74 I. C. C. 419 prescribed. Swift & Co. v. G. N., 115 I. C. C. 661.

(x) An isolated shipment of limestone rock from Margerum, Ala., to Dallas, Tex., to be used for street paving, moved to Memphis, Tenn., at commodity rate applicable on broken stone, and at commodity rate applicable on paving stone, rough quarried, beyond. Upon contention that broken or crushed-stone rate should have applied over entire route, using scale prescribed in 77 I. C. C. 473, HELD: Scale basis sought was not prescribed to apply to Texas common points and its extension to that territory from New Orleans on paving and roofing materials was denied in 102 I. C. C. 31, being found too low for application between those points. Moreover, as class rates are ordinarily assessed on sporadic movements, charges collected under commodity rates in instant case were not unreasonable. Florence Chamber of Commerce v. S. Ry., 118 I. C. C. 7.

(y) Rates on hay from points in Texas differential territory and New Mexico to destinations in southern Arkansas and northern Louisiana, found unduly prejudicial to extent that differences between such rates and corresponding rates to Monroe, La., are more favorable to last-named point than would result by application of distance scale of rates prescribed in 101 I. C. C. 116, extending beyond 800 miles at same rate of progression as for the last 300 miles in that scale, plus differentials for hauls in differential territory and New Mexico. Nonprejudicial basis of rates prescribed for future. Arkansas Jobbers & Mfrs. Asso. v. A., T. & S. F., 118 I. C. C. 238.

(z) A finding by commission in a proceeding dealing with rate level on a particular commodity as a whole from points of origin covering a wide territory may not be considered as controlling in determining reasonableness of rates from a particular origin point. Colgate & Co. v. P. R. R., 118 I. C. C. 243, 245.

(aa) Rate on sawdust from Los Angeles, Calif., and points taking same rates, to Curtiss, Ariz., equal to rates on lumber, found unreasonable as compared with rates on various commodities of higher value and with rate prescribed on sawdust in 115 I. C. C. 339 from Albuquerque, N. Mex., and El Paso., Tex., to Curtiss and Kennard, Ariz. Reasonable rate prescribed for future and reparation awarded. Apache Powder Co. v. A., T. & S. F., 118 I. C. C. 457.

(bb) Sixth-class rates on logs from Adrian, Grosvenor, and Pittsford, Mich., to Hicksville, Ohio, found unreasonable to extent they exceeded rates based on the C. F. A. log scale prescribed in 85 I. C. C. 533 for similar distances. See also 107 I. C. C. 379 and 112 I. C. C. 399 wherein sixth-class rates on this commodity from various Indiana and Michigan points to Hicksville were found unreasonable. Crook Son & Co. v. N. Y. C., 118 I. C. C. 512.

(cc) Following 96 I. C. C. 136, rates on gasoline and naphtha from Beckett, Wilson, Bristow, Okmulgee, and Tulsa, Okla., to Blue Creek, W. Va., found unreasonable in their relation to rates to Charleston, W. Va., no warrant being found for the spread in the rates maintained between these two destinations. Reasonable rate prescribed for future and reparation awarded. Transcontinental Oil Co. v. B. & O., 118 I. C. C. 518.

(dd) Rates on charcoal from Gaskins Siding, Fla., to Amsterdam and Wataga, Ga., found unreasonable and unduly prejudicial to extent they exceeded lower rate upon which basis reparation was awarded in 95 I. C. C. 463 on similar shipments from Savannah, Ga., to Havanna, Fla., such lower rate having been subsequently established from Gaskins Siding to Amsterdam and Wataga. Although there is no evidence as to similarity of transportation conditions of these movements, the destinations are very near each other and there is no justification for the great

difference between rates assailed and those found reasonable in cited cases. Reparation awarded. American Sumatra Tobacco Co. v. A. C. L., 118 I. C. C. 583.

(ee) Rates on brick from Perla and Fort Smith, Ark., to Texas destinations found unreasonable to extent they exceeded those made on basis of brick rates prescribed in 77 I. C. C. 473, 534, and contemporaneously in effect generally in the Southwest. Reparation awarded Acme Brick Co. v. A. & N. R., 120 I. C. C. 112.

(ff) Rate on gasoline and petroleum refined burning oil from Casper, Wyo., to Glenwood Springs, Rifle, and Grand Junction, Colo., found unreasonable to extent it exceeded rate found reasonable in 66 I. C. C. 8; 92 I. C. C. 376, from Casper to Salt Lake City, Utah, to which Glenwood Springs, Rifle, and Grand Junction are intermediate, such lower rate having been subsequently established to intermediate points to comply with fourth section of the act. Reparation awarded. White Eagle Oil & Refining Co. v. D. & R. G., 120 I. C. C. 166.

(gg) In 85 I. C. C. 270, commission prescribed specific rates on lumber and forest products from points in southeastern and Carolina territories and Virginia cities to various New Jersey points. Upon complaint contending that rates prescribed do not reflect proper spreads under the New York rates and seeking establishment of rates to Trenton, N. J., on same basis as those to Philadelphia, with relatively higher rates to Jersey City, HELD: It is not unusual for a general rate adjustment such as that resulting from above-cited case to include increases as well as reductions, and fact that spread in rates to Jersey City and Trenton under New York is less than that formerly existing, does not demonstrate that rates assailed are unreasonable. Moreover, rates assailed compare favorably with those on lumber from Georgia and Alabama points to c. f. a. territory. New Jersey Lumbermens' Committee v. A. C. L., 120 I. C. C. 329.

(hh) Findings in original report, 104 I. C. C. 408; that rates on rosin to Burlington, Ontario, Canada, from south Atlantic and Gulf ports and points taking same rates, were not unduly prejudicial or unduly preferential; that rates from Gulf ports and points taking same rates were not unreasonable; and that rates from south Atlantic ports and points taking same rates were unreasonable to extent they exceeded rates contemporaneously in effect from Gulf ports to same destinations, affirmed. Vera Chemical Co. v. A. C., 120 I. C. C. 434.

(ii) Upon reconsideration, finding in 113 I. C. C. 280, that rates on green or green salted hides, pelts, skins, tallow, and grease, from Norfolk, Nebr., to Chicago and points taking same rates, were unreasonable, affirmed, no transportation conditions justifying the charging of a relatively higher rate from points in Nebraska, such as Norfolk, west of Nebraska differential territory than from points within that territory. Reparation awarded on shipments moving subsequent to filing of complaint, but denied on those moving prior thereto, rates on such shipments having been found not unreasonable in 74 I. C. C. 482. Robinson v. A., T. & S. F., 120 I. C. C. 452.

(jj) Upon further hearing, previous findings in 89 I. C. C. 356 and 100 I. C. C. 210, that applicable rates on gasoline from points in Texas and Oklahoma to destinations in California and Washington were not unreasonable, affirmed. Complainants compared rates assailed with rates on dissimilar traffic and on similar traffic in different territories but such comparisons are of little probative value. Carriers, on the other hand, showed that assailed rates are group rates having been established as an outgrowth of various decisions of the commission. Also that rates assailed compare favorably with those in same general territory from and to which shipments here involved were transported and with other rates found reasonable by commission in this same general territory in 92 I. C. C. 376 and 112 I. C. C. 350. McLeod v. T. & P., 120 I. C. C. 550.

(kk) Rates on lubricating-oil stock from Chaison, Tex., to Eldorado and Topeka, Kans., found unreasonable to extent they exceed rates constructed in accordance with oil rates prescribed in 112 I. C. C. 421, from Texas points to destinations in western trunk-line territory. However, as findings in that case were designed to effect proper relations rather than to establish maximum reasonable rates, they do not afford a proper measure of reasonableness in the past and record herein establishes no adequate basis for reparation. Reasonable rates prescribed for future. Petroleum

Oils Corp. v. A., T. & S. F., 120 I. C. C. 614.

(ll) Based upon finding in 92 I. C. C. 194, charges assessed on manganese-steel scrap from New Castle, Del., a Philadelphia rate point, to Chicago Heights, Ill., moving prior to date of decision in above case, found unreasonable to extent they exceeded $6 per long ton, minimum 50 tons, prescribed in case cited. Reparation awarded. Chicago Heights Mfrs. Asso. v. P. R. R., 120 I. C. C. 739.

(mm) In 118 I. C. C. 205 commission found rates on newsprint paper, in carloads from Berlin, N. H., to Birmingham, Ala., unreasonable to extent they exceeded 64 cents all rail and 60 cents rail-water and rail and that present rail-water-rail rate and present all rate over the B. & M., as initial carrier not unreasonable, and that all rail rates to Birmingham which exceeded by more than 1 cent the all rail rates maintained in connection with defendants lines to Nashville, Tenn., and rail-water and rail rates to Birmingham which exceed similar rates to Memphis, Tenn., and Nashville were unduly prejudicial. In view of the marked difference between the rates over the G. T. to Memphis as compared with rates of that carrier and the B. & M., to Nashville and Birmingham and in view of the further fact that the findings as to the reasonableness of a rate of 64 cents to the last named destination appears proper in the present state of the record, it becomes apparent that a further hearing will be necessary. In the meantime defendants will be expected to promptly publish the rate of 61.5 cents pending the general readjustment of rates on newsprint paper in this territory. Birmingham News Co. v. A. B. & A. Ry., 123 I. C. C. 133.

(nn) Rates on gasoline from Casper, Wyo., to Price, Provo, Salt Lake City, and Ogden, Utah, except when shipments to latter point were routed via Denver & Rio Grande Western, found unreasonable to extent they exceeded rates based on findings in 92 I. C. C. 376. Reparation awarded. Texas Co. v. C., B. & Q., 122 I. C. C. 109.

(oo) Rate on linseed oil from Fredonia, Kans., to Kansas City, Mo., found unreasonable as compared with rates from Chicago, Des Moines, Minneapolis, St. Louis, and Omaha, to same destination; from and to other points for comparable distances; and to extent it exceeded rate constructed in accordance with distance scale prescribed in 98 I. C. C. 183, on vegetable oils between points in the Southwest and from Oklahoma and other southwestern States to Kansas City and points in western trunk-line territory. Reasonable rate prescribed for future and reparation awarded. Fredonia Linseed Oil Works Co. v. A., T. & S. F., 122 I. C. C. 291.

(pp) Following Texas Co., 122 I. C. C. 109, rates on gasoline from Florence, Colo., to certain destinations in Utah found unreasonable to extent they exceeded lower rate voluntarily established by carriers contemporaneously with their compliance with commission's order in the Utah case, 66 I. C. C. 8; 92 I. C. C. 376, wherein a reasonable rate for future was prescribed from various origin points to Salt Lake City, Ogden, and Provo, Utah. Reparation awarded. Continental Oil Co. v. A., T. & S. F., 122 I. C. C. 335.

(qq) Upon contention that a mere citation of a decision of commission in another proceeding is insufficient to warrant conclusion that similar rates brought in issue in a new case were unreasonable, HELD: When a given situation has been fully considered, and deliberately passed upon by commission, that decision ought not to be disregarded and the question kept open indefinitely unless good cause is shown for adoption of a different course. Accordingly shippers may rely upon findings in former cases dealing with same subject. American Door & Mfg. Co. v. B. & O., 122 I. C. C. 471.

(rr) Rates on scrap copper and scrap brass, from points in official, southern, and western classification territories to East Liberty, Pittsburgh, Pa., found not unreasonable as compared with rates on like traffic between various points for comparable distances, except in so far as they exceeded those based on the general readjustment prescribed in 109 I. C. C. 351, modified in 118 I. C. C. 725. Reparation denied. Federated Metals Corp. v. B. & O., 122 I. C. C. 513.

(ss) Upon further consideration, former report, 118 I. C. C. 37, modified, and rate on green-salted hides from Meridian, Miss., to Portville, N. Y., found unreasonable to extent it exceeded rate which is in line with general readjustment of rates approved by commission on this commodity from points in Mississippi Valley, southeastern, and Carolina territories to destinations in trunk-line and

New England territories. Reasonable rate prescribed for future and reparation awarded. Northwestern Leather Co. Trust v. M. & O., 122 I. C. C. 517.

(tt) Upon further consideration, finding in previous report, 93 I. C. C. 85, that rates on crude oil from Irvine and Beattyville, Ky., to Blue Island, Ill., were unreasonable, corrected to include, as points of origin, all oil-producing points in eastern Kentucky. Both the complaint and evidence were broad enough to cover entire eastern Kentucky fields, and findings should not have been limited to Irvine and Beattyville. Reparation awarded. Barnett Oil & Gas Co. v. Director General, 122 I. C. C. 651.

(uu) Rates on pig iron from points in Alabama, Kentucky, and Tennessee, to Ansonia, Conn., found not unreasonable or otherwise unlawful as compared with lower rates to Derby and Shelton, Conn., and to other near-by destinations in Connecticut, New York, and Rhode Island. No evidence was introduced showing competition between these points in marketing of southern pig iron. Carriers showed that lower rates were predicated upon rates established by northern lines to meet water competition and while admitting that there never was water competition on traffic from and to this origin and destination territory, urged that the normal rate is a higher rate blanketed over New England. Moreover, in 87 I. C. C. 102, the commission found not unreasonable a higher rate on pig iron from Birmingham to Weehawken, N. J., involving a shorter distance than from and to points here involved. Farrell Foundry & Machine Co. v. A., B. & A., 123 I. C. C. 127.

(vv) Rates on linseed oil from Fredonia, Kan., to points in Missouri, Illinois, Michigan, Indiana, Kentucky, Ohio, Pennsylvania, and New York, found unreasonable as compared with rates from Minneapolis, Des Moines, St. Louis, and Chicago, to same destinations. Reasonable rates based upon distance scale approved in 98 I. C. C. 183, prescribed for future and reparation awarded. Fredonia Linseed Oil Works Co. v. A., T. & S. F., 123 I. C. C. 153.

(ww) Rate on cotton from, Corinth, Miss., to Monroe, Ga., found not unreasonable or otherwise unlawful as compared with those from Memphis, to which Corinth is intermediate; from New Orleans to Monroe and other Georgia destinations; or with rate subsequently established. Rates from Memphis and New Orleans were depressed and in 89 I. C. C. 47, it was found that rates on cotton to the Southeast departed in many instances from provisions of fourth section. Moreover, comparisons of rates assailed with those from other origins to Monroe for similar distances indicate that rate from Corinth was properly adjusted with relation to general level of rates from other Mississippi points intermediate to the various river crossings, and from points in interior Tennessee and Alabama. Manget Bros. Co. v. G. R. R., 123 I. C. C. 532.

(xx) Combination rates on gravel from Montgomery, Ala., to Barney, Ga., found unreasonable as compared with rates prescribed in 77 I. C. C. 473, 567, 593, for joint-line hauls in higher-rated southwestern territory; with those under distance scale prescribed in 83 I. C. C. 436, from South Carolina points to Georgia and Florida destinations; and to extent they exceeded rates contemporaneously maintained from Montgomery to destinations beyond Barney for comparable hauls. Reparation awarded. Luten Bridge Co. v. A. C. L., 123 I. C. C. 612.

(yy) Rates on salt from mines in Kansas, Michigan, and Ohio, to Mason City, Ia., found unreasonable to extent they exceeded lower commodity rates prescribed in Salt Cases of 1923, 92 I. C. C. 388. In 74 I. C. C. 409, the commission explained that proposal to reduce rates to Des Moines, without corresponding reductions to Mason City, was obviously unjustifiable, and recommended that Mason City and any other important salt-consuming point in northeastern and central Iowa, similarly situated, be given the same reduction. Complainants had a right to rely upon a prompt compliance with such recommendations which carriers failed to carry out until compelled to do so by order in the Salt Cases. Reparation awarded. Decker & Sons v. U. P. R. R., 123 I. C. C. 621.

(zz) Rates on paraffin wax from Casper, Wyo., and on crude glycerin from Chicago, Kansas City, Galveston, Tex., and Berkeley, Calif., to Curtiss and Kennard, Ariz., found not unreasonable or otherwise unlawful. Rate from Casper is lower than that prescribed in 112 I. C. C. 350, from mid-continent field to Arizona destinations including Curtiss, while glycerin rates are generally lower

than those on many other commodities rated fifth class between same points, and are substantially lower than rates to Bacchus, Utah, which is approximately the same distance from producing points as Curtiss. Apache Powder Co. v. A., T. & S. F., 123 I. C. C. 639.

(3a) Rates on paraffin wax from Ponca City, Okla., to Curtiss and Kennard, Ariz., found unreasonable to extent they exceeded rates prescribed on petroleum products in 112 I. C. C. 350, from points in mid-continent field, including Ponca City, to Arizona destinations, including Curtiss. Rates on nitrate of soda from New Orleans, Galveston, Tex., and San Pedro and Wilmington, Calif., to same destinations, found unreasonable as compared with rates contemporaneously maintained from New Orleans to Douglas, Ariz., which usually takes same rates as Curtiss; from New Orleans and Galveston to Hercules, Calif.; from San Pedro and San Francisco to Denver; and from New Orleans subports to Arkansas destinations under distance scale prescribed in 89 I. C. C. 223. Reasonable rates prescribed for future and reparation awarded. Apache Powder Co. v. A., T. & S. F., 123 I. C. C. 639.

(3b) Rate on waste paper from Boston, Mass., to Thomson, N. Y., established pursuant to decision in 81 I. C. C. 591 FOUND unreasonable as compared with lower rate contemporaneously in effect to various New York destinations, and to extent it exceeded lower rate contemporaneously in effect to Trionda, N. Y. While record clearly shows that rate assailed is now too high, it does not indicate that it should be found unreasonable for period extending back two years from date of filing of the complaint. Accordingly reasonable rate prescribed for the future and reparation awarded only back to date of filing of the complaint. United Paperboard Co. v. B. & A. R. R. 126 I. C. C. 751.

(3c) Upon further consideration, combination rates based on Norfolk, Va., assessed on lumber from Roach, Fla., to Harrison and Jersey City, N. J., and Great Works, Me., from Springdale, Fla., to Harrison and from Scott, Ga., to Great Works found unreasonable to extent they exceeded lower combinations based on Live Oak, Fla., and Savannah, Ga., plus a transit charge maintained by the Atlantic Coast Line at time of shipment for stoppage at Portsmouth. The A. C. L. sought to compute reparation on basis of a higher transit charge established subsequent to movement. While the lower charge was applicable only on shipments originating on that carrier's rails, no reason appears why it should not be used in computing the reparation due complainant under the original findings. Reparation awarded. Former report, 100 I. C. C. 405. McClave & Son v. A. C. L., 128 I. C. C. 1.

(3d) In original report 118 I. C. C. 524, rates on cordwood from Twin and Crosby, Miss., to Braithwaite, La., were found unreasonable. Complaint alleged that five shipments involved originated at Crosby, but freight bills submitted in evidence indicated that two were shipped from Goodyear, Miss., and as rates from latter point were not assailed no consideration was given those shipments. Upon further consideration the two shipments eliminated from original report found to have originated at Crosby, Goodyear being the point from which they were waybilled. Reparation awarded. E-Z Opener Bag Co. v. P. R. V., 128 I. C. C. 48.

(3e) Rate on cement from Ada, Okla., to Shreveport, La., found unreasonable to extent it exceeded rate prescribed in 24 I. C. C. 158 between same points. Reasonable rate prescribed for future and reparation awarded. Oklahoma Portland Cement Co. v. D. & R. G. W., 128 I. C. C. 63, 85, 86.

(3f) Upon further hearing, original report 95 I. C. C. 104, reversed in part, following 118 I. C. C. 725. Rates on scrap brass and copper from certain points in New York and New Jersey to East Liberty and Pittsburgh, Pa., found unreasonable with certain exceptions. Reparation awarded. Union Smelting & Refining Co. v. C. R. R. of N. J., 128 I. C. C. 129.

(3g) Rates on enameled iron bathtubs in straight carloads or mixed with enameled iron lavatories from Monaca, Pa., and on plumbers' lead goods from Joplin, Mo., to Dallas, Tex., found unreasonable to extent they exceeded or exceed rates prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203, for comparable hauls. Rates on tubs are higher than those on various other comparable commodities between the same points or than rates to other destinations in the transcontinental group. Rates on lavatories are considerably higher than those to destinations in Louisiana, Mississippi, Arkansas, or from St. Louis to same destinations for comparable dis-

tances. Reparation awarded. Fisher Supply Co. v. A. & V., 128 I. C. C. 215.

(3h) Rates on tin plate from McKeesport, Pa., to New London, Wis., found unreasonable to extent they exceeded lower rates prescribed in 100 I. C. C. 153 on same commodity between same points. Reparation awarded. McKeesport Tin Plate Co. v. A. A. R. R., 128 I. C. C. 259.

(3i) Rates on bituminous coal from producing points in Illinois, Indiana and western Kentucky to certain interior Iowa destinations, found unreasonable as compared with lower rates contemporaneously in effect to destinations in Illinois, Wisconsin, and Minnesota and with rates under distance scale prescribed in 60 I. C. C. 687; 69 I. C. C. 11, from Lake Superior points to Minnesota and the Dakotas for comparable distances. Scale referred to was result of long and careful consideration and offers a proper and convenient basis of comparison with due regard to differences in traffic and transportation conditions. Reasonable rates prescribed for future. Iowa R. R. Commissioners v. A. & S., 128 I. C. C. 293.

(3j) All-rail rates on refined sugar from New Orleans and other Louisiana refining points to points in Arkansas, found unreasonable as compared with lower rates contemporaneously in effect to numerous points in southern territory; to various points on the Mississippi and Ohio Rivers for comparable distances; and to extent they exceed rates that will result from application of distance rates prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203. Although evidence is inadequate to determine maximum reasonable river-and-rail rates, unless there are circumstances and conditions not revealed by the record, river-and-rail rates related differentially to all-rail rates on usual bases should be established. Sugar Between Louisiana and Texas Points, 128 I. C. C. 309.

(3k) Class rate assessed and commodity rate subsequently established on gravel from Holliday, Kas., to Standish, Mo., found unreasonable and unduly prejudicial as compared with lower rate contemporaneously in effect to St. Joseph, Mo.; with those under distance scales prescribed in 77 I. C. C. 473 and 88 I. C. C. 1; and to extent they exceeded lower rates contemporaneously in effect from Grinter, Muncie, and Morris, Kans., competing producing points. Various other comparisons showed that rate charged and present rate were in excess of rates on sand and gravel for both interstate and intrastate hauls in same general territory of equal or greater length. Reasonable rate prescribed for future and reparation awarded. Spencer Co. v. A., T. & S. F., 128 I. C. C. 346.

(3l) Upon further consideration, finding in former report, 118 I. C. C. 689, that rates on gasoline from certain points in Texas and Oklahoma to Bradford, Pa., were not unreasonable as compared with those to Buffalo, N. Y., reversed and rates to Bradford found unreasonable to extent they exceeded those to Buffalo. Car-mile and ton-mile earnings to Bradford exceed those to Buffalo. As transportation conditions are equal and considering the principle that ton-mile earnings should ordinarily decrease as distance increases, earnings under rates assailed appear too high as compared with those under rates prescribed in 96 I. C. C. 485 and other cited cases from Oklahoma points to various destinations for comparable distances. Reasonable rates prescribed for future and reparation awarded. Kendall Refining Co. v. A. &. V., 128 I. C. C. 427.

(3m) Rates on furniture from Memphis, Tenn., to destinations in c. f. a., Buffalo-Pittsburgh, and southern territories, found unreasonable to extent they exceed: In case of mixed furniture, minimum 12,000 pounds, 60 per cent of the corresponding first-class rates; in case of iron beds and articles classified therewith, minimum 12,000 pounds, the fourth-class rates and minimum 30,000 pounds the sixth-class rates, all of which are to be established under Southern Class Rate Investigation 100 I. C. C. 513; 109 I. C. C. 300; 113 I. C. C. 200; and in the case of l. c. l. rates on all articles of furniture, the class rates so established applicable under southern classification. Reasonable bases of rates prescribed for future. Memphis Freight Bureau v. A. G. S., 128 I. C. C. 445.

(3n) Complainant alleged rates charged on crushed stone, carloads, from Buffalo and Linwood, Ia., to Illinois destinations were unreasonable and unduly prejudicial. Original report, Dolese Bros. Co. v. A. T. & S. F. Ry., 89 I. C. C. 110. The record on further hearing shows failures on the part of defendants to carry out the original decision. The original report shows clearly that the level of rates from competing Illinois quarries in the Chicago, Joliet and Kankakee districts is considerably lower than the level

of rates from Buffalo and Linwood to Illinois destinations, even where the Illinois destinations are nearer to Buffalo and Linwood than to the producing points in Illinois. HELD, present rates do not conform to the original findings. Specific rates prescribed to designated points in Illinois. Dolese Bros. Co. v. A. T. & S. F. Ry., 128 I. C. C. 471.

(3o) Upon further hearing, present rates on crushed stone from Buffalo and Linwood, Iowa, to points in northern Illinois, found in many instances not in accord with findings in original report 89 I. C. C. 110, wherein reasonable and nonprejudicial rates were prescribed to 10 so-called key points and carriers were left to work out a schedule of properly related rates to all other destinations. Intention of original report was to prescribe rates that would eliminate disparity in rates from Iowa quarries and not to sanction blanketing of key-point rates all the way back to Buffalo and Linwood or to next intermediate key point as has been done. Therefore, to avoid further misunderstanding, carriers will be expected to publish rates in accordance with rates prescribed to points shown in appendix, rate to nearest point named therein by shortest workable route. Such rates are in accord with original findings and will be reasonable for the future. Dolese Bros. Co. v. A., T. & S. F., 128 I. C. C. 471.

(3p) Upon further consideration, findings in former report 123 I. C. C. 41, that rates on metal beds from New Orleans to destinations in Louisiana, Arkansas, Oklahoma, and Texas were not unreasonable or unduly prejudicial, except to Oklahoma, Texas common points, and Texas differential territory, minimum weight 30,000 pounds, modified and rates found unreasonable to extent they exceed column 55 and 41 rates, minimum weight 12,000 and 30,000 pounds respectively, prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203. Reasonable rates prescribed for future. Crescent Bed Co. v. C., R. I. & P., 128 I. C. C. 505.

(3q) Combination rates on grain and products from Oklahoma points to destinations in southeastern and Carolina territories found unreasonable to extent that factors east of Memphis, Tenn., exceed rates based on and approximating the class 12 rates prescribed in Southern Class Rate Investigation 113 I. C. C. 200, and to extent that factors west of Memphis from all points exceed present group rates, computed as provided in Consolidated Southwestern Cases 123 I. C. C. 203, up to 610 miles and from points at greater distance from Memphis those graded up 1.5 cents on wheat and flour and made less by 10 per cent on coarse grains, for each 50 miles. Factors east of Memphis constructed as above should apply not only on Oklahoma traffic but also from other western States from which through rates are equalized via the various gateways. Reasonable joint through rates prescribed for future. Oklahoma Millers' League v. A. & M., 128 I. C. C. 523.

(3r) Combination rates on grain and products from Oklahoma points to destinations in Louisiana west of the Mississippi River, including points on west bank thereof, and to Mississippi River crossings in Mississippi and Louisiana on east bank thereof, found unreasonable as compared with rates contemporaneously in effect from Kansas City, Mo., and Council Bluffs, Iowa, and to extent they exceed through rates based on those prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203. Reasonable joint through rates prescribed for future. Oklahoma Millers' League v. A. & M., 128 I. C. C. 523.

(3s) Rate on printing paper, from Appleton, Wis., to Dallas, Tex., found unreasonable to extent it exceeded lower rate prescribed in 88 I. C. C. 417, and 112 I. C. C. 323, from Appleton and other Wisconsin points to Dallas. Reparation awarded. Practical Drawing Co. v. C. & N. W., 128 I. C. C. 540.

(3t) Sixth-class rates on crushed stone moving interstate from Security, Md., to Best Gate, Md., found unreasonable as compared with those under distance scale prescribed in 49 I. C. C. 681; 100 I. C. C. 411, from Pennsylvania and Maryland points to destinations in Maryland, New York, New Jersey, Delaware, Virginia, and District of Columbia, and to extent they exceeded lower commodity rates subsequently established. Reparation awarded. North American Cement Corp. v. W. M., 129 I. C. C. 90.

(3u) Rates on Portland cement from Hanover and Trident, Mont., to western and central portions of North Dakota and South Dakota, coterminous with original and extended cement Scale IV territory in those States, found unreasonable as compared with rates under that scale prescribed in 48 I. C. C. 201;

69 I. C. C. 644, from Portland, Colo., to Montana Scale IV territory and Utah destinations; from El Paso, Tex., to groups just described for comparable distances; and unreasonable and unduly prejudicial as compared with lower rates from Mason City, Iowa, and Steelton and Duluth, Minn., competing points, to extent they exceed distance rates herein prescribed. Reasonable and nonprejudicial rates prescribed for future. Calif. Growers' and Shippers' Protective League v. S. P., 129 I. C. C. 25, 107.

(3v) Rates on millet seed from points in Colorado, Kansas, Nebraska, North Dakota, and South Dakota to Minneapolis, Minn., found unreasonable as compared with rates contemporaneously in effect on corn, coarse grains, and flaxseed, and to extent they exceeded by more than 12 per cent the contemporaneous rates on wheat. In 107 I. C. C. 35, rates on flaxseed were found unreasonable to extent they exceeded wheat rates by more than 12 per cent, and since from a traffic standpoint millet seed resembles flaxseed in many respects, although of less value, and the two seeds have been maintained on same rate basis in the past, this relationship, for convenience, should be preserved. Reasonable rates prescribed for future and reparation awarded. Northrup, King & Co. v. A., T. & S. F., 129 I. C. C. 125.

(3w) Rates on canned goods in straight or mixed carloads from Mobile, Ala., to destinations in Georgia, Mississippi, Tennessee, Kentucky, Missouri, Ohio, and Illinois, and from New Orleans to Nashville, Tenn., found unreasonable as compared with those prescribed in 77 I. C. C. 473; 123 I. C. C. 203; with lower rates contemporaneously maintained from Neely, Ala., a point within Mobile switching limits to same destinations; and to extent they exceed class 7 rates approved in 113 I. C. C. 200, applicable between same points. Reasonable rates prescribed for future. Mobile Chamber of Commerce v. A. & V., 129 I. C. C. 147.

(3x) Rates on bed springs or spring beds, compressed, from Carthage, Mo., to points in Oklahoma and Texas, found unreasonable and unduly prejudicial as compared with lower rates contemporaneously in effect from Chicago, Kansas City, St. Louis, and various other points and to extent they exceeded 55 and 41 per cent of first-class rates to Oklahoma and Texas, respectively, prescribed in 123 I. C. C. 203, between same points. Reasonable maximum basis of rates prescribed for future and reparation awarded. Leggett & Platt Mfg. Co. v. A., T. & S. F., 129 I. C. C. 219.

(3y) Rates on canned goods, including canned milk from Illinois Freight Association and c. f. a. territory points to Memphis, New Orleans, and other Mississippi Valley points, found not unreasonable as compared with rates on axle grease, fruits, and vegetables and other commodities between same and to various other Mississippi Valley points. Rates assailed are fairly aligned with those to the rest of the South, Southwest, and Southeast; are considerably lower than those prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203; and record affords no basis for a disturbance of present adjustment or change in relationship between points in destination territory. National Canners Asso. v. B. & O., 129 I. C. C. 269.

(3z) Rates on lard substitutes from Greenville, Tex., to Arkansas and Louisiana destinations west of Mississippi River, and to Joplin, Mo.; collected on basis of rates from Fort Worth, Tex., with which Greenville was apparently grouped, found unreasonable to extent they exceeded rates based on distance scale prescribed in 22 I. C. C. 160. While lard substitutes were not originally included in list of commodities on which that scale applied, it has been prescribed for application on packing-house products in southwestern territory generally and was found to be a reasonable basis on lard substitutes in 32 I. C. C. 192, and other cited cases. Reparation awarded. Texas Refining Co. v. C., R. I. & G., 129 I. C. C. 304.

(4a) Rates on grapes from producing points in California to Hibbing, Gilbert, Ely, Chisholm, and Keewatin, Minn., found unreasonable to extent they exceeded rates on same traffic between same points found reasonable in 113 I. C. C. 575. In that case rates assailed were found unreasonable to extent they exceeded rates to Duluth. Reparation awarded. Fena v. A., T. & S. F., 129 I. C. C. 311.

(4b) Fifth-class rates on pig lead, red lead, and litharge from Joplin, Mo., to Oklahoma City, Okla., found unreasonable but not unduly prejudicial as

compared with lower commodity rates from Joplin to various points in western territory, including St. Louis, Mo., East St. Louis, Ill., and Kansas City, Mo., and with distance rates prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203. Competitive situation prevents lower rates from Joplin to St. Louis, East St. Louis, and Kansas City from being basis of undue prejudice. Reasonable rates prescribed for future and reparation awarded. Oklahoma Traffic Asso. v. St. L.-S. F., 129 I. C. C. 461.

(4c) Rates on coke from Troy, N. Y., to destinations in New England territory found unreasonable as compared with contemporaneous rates under Seaboard distance scale prescribed in 62 I. C. C. 317, 327, or rates of same level from points in New Jersey, Rhode Island, and Massachusetts to same destinations, and to extent they exceeded distance rates based on shortest routes over which carload traffic can be moved without transfer of lading, subject to minimum weights as herein provided. See 113 I. C. C. 200. Reasonable rates prescribed for future and reparation awarded. Hudson Valley Coke & Products Corp. v. N. Y., N. H. & H., 129 I. C. C. 472.

(4d) Rates on pears from Fayette Junction, Ark., to Jackson, Miss., found unreasonable as compared with rates on the same commodity between points in the same general territory, and with rates subsequently established in 123 I. C. C. 203. Reparation awarded. Jackson Traffic Bureau v. I. C., 129 I. C. C. 497.

(4e) C. L. and l. c. l. rates on granite from, Granite Mountain, Llano, Teich, and Fredericksburg, Tex., to various interstate destinations, found not unduly prejudicial but unreasonable as compared with lower rates contemporaneously in effect from points in Vermont, Massachusetts, Georgia, North Carolina, South Carolina, Minnesota, Colorado, California, and various other points to same and various other destinations for comparable distances, and to extent they exceed distance rates prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203, between same points, except that rates to portions of Wyoming, Utah, and Colorado, found not unreasonable except to extent they will be reduced by reductions herein required to Colorado common points. Reasonable bases of rates prescribed for future. West Texas Chamber of Commerce v. H. & T. C., 129 I. C. C. 546.

(4f) Rates on apples from St. Joseph, Mo., and related points in Missouri and Kansas to destinations in Nebraska, Iowa, Minnesota, North Dakota, and South Dakota, found unreasonable as compared with lower rates contemporaneously in effect from St. Louis and Hannibal, Mo., Alton and Quincy, Ill., and various other points in same general territory, and to extent they exceed those ascertained by use of the Kansas-Missouri scale prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203; and unduly prejudicial to extent they exceed the contemporaneous rates from St. Louis, Alton, Hannibal, Quincy, and related points, or to extent their relation with rates to those points is less favorable than that which now exists. Reasonable and nonprejudicial rates prescribed for future. Hunt Bros. Fruit Co. v. A. & W., 129 I. C. C. 579.

(4g) Rates on sash, doors, and related articles from Clinton, Dubuque, Muscatine, and Davenport, Iowa, and Rock Island, Ill., to points in c. f. a. territory, except to Michigan points, including western termini of eastern trunk lines and points taking same rates or arbitraries higher except Buffalo, N. Y., found unreasonable and unduly prejudicial to extent they exceed present rates to Oshkosh, Wis., and rates from same origin points to Buffalo, N. Y., Bay City and Grand Rapids, Mich., found unreasonable and unduly prejudicial as compared with those from Oshkosh, with those from Pacific coast points, and with those prescribed or approved in 38 I. C. C. 105, and other cited cases. Reasonable rates prescribed for future. Farley & Loetscher Mfg. Co. v. A., C. & Y., 129 I. C. C. 645.

(4h) Rates on tomatoes from Fruitland, Gibson, and Humboldt, Tenn., to Hutchinson, Kans., found not unreasonable in past but for future found unreasonable and unduly prejudicial as compared with lower rates contemporaneously in effect to Kansas City, Mo., and Topeka, Kans., for comparable distances, and to extent they exceed rates prescribed in Consolidated Southwestern Case, 123 I. C. C. 203. No order entered but carriers expected to establish rates in conformity with findings herein at time they comply with rates prescribed in case cited. Former report 104 I. C. C.

745, modified. Grovier-Starr Produce Co. v. C., R. I. & P., 129 I. C. C. 711.

(4i) Fifth-class water-and-rail rates on quebracho tanning extract from New York and Brooklyn to St. Louis, Mo., found not unreasonable as compared with lower all-rail sixth-class rates from Glenn Falls, N. Y., and all-rail commodity rates from Norfolk, Va., to same destination, or with lower commodity rates applicable all-rail or rail and water subsequently established. In 120 I. C. C. 711, fifth-class rates on liquid tanning (quebracho) extract, from Brooklyn to Winchester and Peabody, Mass., were not unreasonable and evidence of record does not warrant a different conclusion with respect to rates assailed. Herman Oak Leather Co. v. C. G., 129 I. C. C. 725.

§27. Profit of Shipper.

See Advanced Rates §6 (6); Equalization of Rates; Evidence §16, §27, §45, §62.

(a) Reasonableness of a rate does not necessarily depend upon ability of shippers profitably to market their product under it. Rawlings v. C., B. & Q., 115 I. C. C. 103, 104.

§27½. Rate Via Competing Route.

See Evidence §30, §47; Routing and Misrouting §5; Through Routes and Joint Rates §15½.

(a) Rate on lumber from Tupelo, Miss., to Normal and Buntyn, Tenn., found unreasonable to extent it exceeded lower contemporaneous rate on like traffic from Pinson and Henderson, Tenn., to Normal. Reparation awarded. Northeast Mississippi Traffic Bureau v. M. & O., 104 I. C. C. 15.

(b) Shipments of matches moving from Chico, Calif., to destinations in Washington were assessed a rate to Portland, Oreg., higher than proportional rate applicable over a route other than route of movement to St. Johns, situated within corporate and switching limits of Portland. Lower rates was restricted to destinations other than those here involved and carried a switching charge at Portland also restricted to switching service performed in connection with a line haul. There was no switching in connection with a line haul via route of movement, and an out-of-line haul would have resulted had traffic moved through St. Johns. FOUND: Rates assessed were not unreasonable or otherwise unlawful. Diamond Match Co. v. Director General, 104 I. C. C. 147.

(c) Existence of a lower rate over other routes is not itself sufficient to establish unreasonableness of rate over a particular route of movement. Lynchburg Chamber of Commerce v. G. R. R., 115 I. C. C. 419, 420.

(d) Mere showing of existence of lower rates over other routes, and comparisons based upon distance alone, are insufficient to establish unreasonableness of rates. See 64 I. C. C. 78. Crerar Clinch Coal Co. v. A. A. R. R., 118 I. C. C. 171, 174.

(e) Rates on bituminous coal from Plymouth and Shrewsbury, W. Va., to Connersville and New Castle, Ind., moving via route specified by shipper, found not unreasonable as compared with lower rates contemporaneously in effect over other routes. While lower rate contended for applied over all routes except route of movement, the higher rates apply over latter due to fact that they are circuitous, the higher rates thereover apply to intermediate points in a higher rated territory; and rates to such intermediate territory were found not unreasonable in 96 I. C. C. 178. Connersville Lbr. Co. v. L. E. & W., 118 I. C. C. 499.

(f) Rates on gas oil in tank-car loads from Iowa Park and Electra, Tex., to Kassel, La., found not unreasonable. While contemporaneously a lower rate applied via other available routes such lower rate is shown by carriers to be subnormal, having been established upon request of shippers to meet a similar rate published by Texas lines to Texas ports. Altitude Petroleum Co. v. F. W. & D. C., 118 I. C. C. 572.

(g) Combination rate on farm wagons from Fort Smith, Ark., to Fredericksburg, located in Texas differential territory on the Fredericksburg & Northern R. R., found unreasonable to extent it exceeded a lower joint rate contemporaneously in effect via routes other than route of movement, such lower joint rate also applying to Kerrville, situated in same territory on the San Antonio & Aransas Pass Ry., approximately same distance from junction point on which the combination was based as is Fredericksburg. Route over which shipment moved constitutes the most practicable and reasonable route and no justification appears for maintenance of a higher rate to Fredericks-

burg than to Kerrville. Reasonable rate prescribed for future and reparation awarded. Deere Plow Co. v. St. L.-S. F., 120 I. C. C. 67.

(h) Although no presumption of unreasonableness attaches to rate over a particular route because lower rate applies over another route, shipper is not to be denied a reasonable rate merely because he could have secured it by designating another route. See 58 I. C. C. 42. Deere Plow Co. v. St. L.-S. F., 120 I. C. C. 67, 68.

(i) Rates on stoves and furnaces from Indianapolis, Ind., to Des Moines, Iowa, found unreasonable to extent they exceeded lower rates contemporaneously in effect via other routes and subsequently established via route of movement. Reparation awarded. Indianapolis Chamber of Commerce v. P. R. R., 120 I. C. C. 153.

(j) Applicable rate on lemons from New York, N. Y., to Nashville, Tenn., over various routes, found unreasonable to extent it exceeded lower rate contemporaneously in effect over longer routes through the Virginia gateways. Reasonable rate for future prescribed and waiver of undercharges authorized. Hill Grocery Co. v. L. V., 120 I. C. C. 161.

(k) Combination rate charged on coal from La Follette, Tenn., moving through Benton Harbor, Mich., to Milwaukee, Wis., reconsigned to Hawkeye, Iowa, found unreasonable to extent it exceeded a lower rate contemporaneously maintained on like traffic moving through Toledo, Ohio. Benton Harbor and Toledo are in same general territory, the distances over both routes are practically equal, and rates through the two gateways should be same. Reparation awarded. Reeves Coal & Dock Co. v. L. & N., 120 I. C. C. 428.

(l) Rate on eggs from Brownwood and Killeen, Tex., to Philadelphia, Pa., found unreasonable to extent it exceeded lower rate contemporaneously in effect from and to same points via routes other than routes of movement, which lower rate also applied from other Texas points to Philadelphia for comparable distances. Reparation awarded. Sheaffer & Marvel v. B. & O., 120 I. C. C. 673.

(m) The existence of a lower rate over a competing route does not of itself establish unreasonableness of a rate over a particular route of movement. Newsome Feed & Grain Co. v. P. & L. E., 122 I. C. C. 329, 330.

(n) Fact that a lower rate was applicable over another route does not deprive a shipper of a reasonable rate over route of movement. Spencer Co. v. A., T. & S. F., 122 I. C. C. 689, 690.

(o) Rate on cotton-factory products, l. c. l., from Mobile, Ala., via water-and-rail route to Rockland, Md., found unreasonable as compared with lower rate contemporaneously in effect over water-and-rail routes from Mobile to Baltimore, Md., Chester, Pa., and various points in New England, New York, New Jersey, and Pennsylvania, from various Mississippi and Tennessee points to Rockland, and to extent it exceeded the water-and-rail rate contemporaneously in effect from Meridian, Miss., to Rockland. Reasonable rate prescribed for future, and reparation awarded. Cotton Mills Products Co. v. Mallory S. S. Co., 123 I. C. C. 25.

(p) A rate can not be condemned merely because it was higher than a rate applicable over other routes. Dreer v. L. A. & S. L., 126 I. C. C. 130, 132.

(q) Neither voluntary reduction of a rate by carrier nor maintenance of a lower rate over another route between same points is sufficient to establish unreasonableness of a higher rate. Western Paper Makers Chemical Co. v. A. C. L., 128 I. C. C. 244, 245.

(r) Failure of a shipper to avail itself of a lower rate applicable over other routes does not establish the unreasonableness of the rate over route of movement. Citizens Coal Co. v. C., C., C. & St. L., 128 I. C. C. 263, 264.

(s) For determining the reasonableness or unreasonableness of rates applied to given shipments, the earnings and distances over the routes actually traveled constitute a better measure than do computations based on short line distances without regard for routes of movements. Tidal Western Oil Corp. v. M. K. T. R. R., 132 I. C. C. 681, 684.

(t) The principal laid down does not warrant a finding of unreasonableness where the points claimed to be intermediate to a lower rated point are intermediate only over excessively circuitous and unnatural routes over which no shipper could reasonably demand transportation under the provisions of section 1 (4) of the act. Tidal Western Oil Corp. v. M. K. T. R. R., 132 I. C. C. 681, 684.

§27¾. Rate in Opposite Direction.

See Classification §17; Differentials; Evidence §30, §56, §66; Relative Rates; Through Routes and Joint Rates §8.

(a) Fact that a rate is higher in one direction than in reverse direction does not of itself establish unreasonableness of higher rate, but such a situation may require satisfactory explanation. Garrett & Co. v. N. Y. C., 112 I. C. C. 519, 521.

(b) Fact that a rate is higher in one direction between same points than it is in reverse direction does not of itself prove that higher rate is unreasonable. Colgate & Co. v. N. Y. C., 112 I. C. C. 573, 576.

(c) Applicable rates on common brick from Nashville, Tenn., to Morehead, Ky., found unreasonable to extent they exceeded lower rates contemporaneously in effect in the opposite direction, no transportation conditions justifying a higher rate from Nashville to Morehead than from Morehead to Nashville. Reasonable rate prescribed for the future and reparation awarded. Bush & Co. v. L. & N., 115 I. C. C. 45.

(d) Sixth-class rate assessed and lower commodity rate subsequently established on scrap iron from Burnham, Pa., to Cumberland, Md., found unreasonable to extent it exceeded lower rate contemporaneously in effect in the reverse direction from Cumberland to Burnham. Reparation awarded. Cohen & Son v. P. R. R., 115 I. C. C. 307.

(e) Fifth-class rate charged on a sporadic shipment of fire-damaged sugar specifically routed by shipper from Jacksonville, Fla., to New Orleans, La., found not unreasonable as compared with lower rate contemporaneously in effect over other routes, and in the reverse direction. Underwriters Salvage Co. v. L. & N., 115 I. C. C. 585.

(f) Rate on creosote oil from Fort Worth, Tex., to Woodward, Ala., found unreasonable to extent it exceeded lower rate contemporaneously maintained in reverse direction. Rate from Woodward to Fort Worth does not appear low as compared with rates in same general territory and there is no showing that transportation conditions are any different in reverse direction. American Tar Products Co. v. C., R. I. & P., 115 I. C. C. 677.

(g) Fact that rates in one direction exceed rates in the opposite direction does not demonstrate unreasonableness of the higher rates. See 51 I. C. C. 23, 24. Stanley Lbr. Co. v. A. & V., 122 I. C. C. 506, 508.

(h) Difference in transportation conditions may justify a higher rate in one direction than in the opposite direction, provided the higher rate is not intrinsically unreasonable. See 92 I. C. C. 671. American Linseed Co. v. C., M. & St. P., 128 I. C. C. 163, 166.

(i) The fact that rate in one direction exceeds rate between same points in opposite direction does not in itself demonstrate that higher rate is unreasonable. Montello Granite Co. v. M., St. P. & S. S. M., 129 I. C. C. 427, 428.

§28. Relativity Of The Rate.

See Class Rates §2; Classification §17; Differentials; Discrimination; Evidence; Relative Rates; Through Routes and Joint Rates §8.

(a) Rates on carload shipments of newsprint-paper winding cores from various points in eastern and c. f. a. territories to destinations in New York and New England States, found unreasonable to extent they exceeded contemporaneous sixth-class rates from and to same points. Reasonable rates prescribed for future and reparation awarded. Washington Publishers' Asso. v. A. C. & H. B., 104 I. C. C. 4.

(b) Rate on wood flour from North Tonawanda, N. Y., to destinations in New York, New Jersey, and Pennsylvania, found unreasonable to extent it exceeded lower contemporaneous rates on like traffic from Newhall, Me., and Glens Falls, N. Y., to same and other destinations for comparable distances. Reasonable rate prescribed for future and reparation awarded. Becker, Moore & Co. v. N. Y. C., 104 I. C. C. 11.

(c) Rate on lumber from Tupelo, Miss., to Normal and Buntyn, Tenn., found unreasonable to extent it exceeded lower contemporaneous rate on like traffic from Pinson and Henderson, Tenn., to Normal, but not discriminatory or unduly prejudicial. Reasonable rate prescribed for future and reparation awarded. Northeast Mississippi Traffic Bureau v. M. & O., 104 I. C. C. 15.

(d) Rates on green salted hides from

Nashville, Tenn., to points in Massachusetts, New Hampshire, New York, and Pennsylvania, found unreasonable and unduly prejudicial to extent they exceeded specific rates named herein and as compared with contemporaneous rates on like traffic from points in same or adjacent territory to same destination. Reasonable rates prescribed and reparation awarded. Tolman, Dow & Co. v. T. C. Ry., 104 I. C. C. 37.

(e) Where evidence tends to show "relative unreasonableness" as distinguished from "intrinsic" or "per se unreasonableness," commission's findings must be based to a great extent upon measuring rate assailed with other rates; and it must be convinced that rates submitted by way of comparison are properly comparable. Mere fact that a rate under attack appears to be out of line with a few rates to which it is closely related does not necessarily afford a basis for finding of unreasonableness. Such a showing may indicate that comparative rates are too low rather than that assailed rate is too high, and correction of such a maladjustment might properly be made under section 3 of the act instead of section 1. See 87 I. C. C. 383. Tolman, Dow & Co. v. T. C. Ry., 104 I. C. C. 37, 39, 40.

(f) Mere fact that a rate under attack appears to be out of line with a few rates to which it is closely related does not necessarily afford a basis for finding of unreasonableness. Such a showing may indicate that comparative rates are too low rather than that assailed rate is too high, and correction of such a malajustment might properly be made under section 3 of the act instead of section 1. See 87 I, C. C. 383. Tolman, Dow & Co. v. T. C. Ry., 104 I. C. C. 37, 40.

(g) Having in mind varying existing conditions, large amounts of capital invested under existing rates, great disturbance which would result from prescribing fixed relationships, and fact that it is not commission's province to prescribe rates which appear desirable to it, but to ascertain whether existing rates are unlawful and, if so, to prescribe lawful rates in lieu thereof, no fixed rate relationships between rates on fresh and cured meats, hides, hogs, sheep, and cattle can be prescribed in instant proceeding. Morrell & Co. v. N. Y. C., 104 I. C. C., 104, 134, 135.

(h) Rates on fresh meats from Chicago, St. Louis and other packing points in c. f. a. territory to trunk-line and New England territories found unreasonable for future. Reasonable rates and percentage relationships, based on the Chicago-New York rates, which will not result in undue prejudice in their relation to present rates on livestock, prescribed. Morrell & Co. v. N. Y. C., 104 I. C. C. 104, 135.

(i) Rates on dried, dry-salted, smoked and pickled meats, loose, from Chicago and various other packing points to destinations in trunk-line territory east of Buffalo-Pittsburgh line and to New England territory found unjust and unreasonable for future to extent they exceed contemporaneous rates on cured meats and packing-house products, packed, from and to same points. Reasonable rates prescribed. Morrell & Co. v. N. Y. C., 104 I. C. C. 104, 136, 137.

(j) Rate on sulphuric acid from, Grasselli, Ind., to Toledo, Ohio, found not unreasonable as compared with contemporaneous rates on like traffic from and to points in same general territory for comparable disances. Royster Guano Co. v. M. C., 104 I. C. C. 151.

(k) Texas points: Rates on green coffee from New York to Denison, Fort Worth, Dallas, and Austin, Tex., and from New Orleans, La., and Galveston and Houston, Tex., to Austin and San Antonio, Tex., found unreasonable as compared with rates on like traffic from same original points of shipment to other destinations and from and to other points for comparable distances. Reparation awarded. Findings in original report, 92 I. C. C. 14, modified. Alexander Grocery Co. v. B., S. L. & W., 104 I. C. C. 155.

(l) Rates on petroleum products from Beverly, Mass., to Manchester and Concord, N. H., found unreasonable to extent they exceeded rates determined by use of rates applicable over class A lines based on short-line distance over such lines through Nashua, N. H. Reasonable rates prescribed for future, and reparation awarded. Gulf Refining Co. v. B. & A., 104 I. C. C. 165.

(m) Rates on broom handles from points in Michigan and Wisconsin to Des Moines, Iowa, Kansas City and North Kansas City, Mo., and Deshler, Nebr., found unreasonable to extent they exceeded rates 1.5 cents over those contemporaneously maintained on lumber.

Reasonable rates prescribed for future and reparation awarded. Deshler Broom Factory v. A., T. & S. F., 104 I. C. C. 183.

(n) Coraopolis, Pa.: Rates assessed on petroleum lubricating oil, in barrels, from, to New York, found unreasonable to extent it exceeded lower contemporaneous rate applicable over available routes other than route of movement, from same point of origin to certain destinations in New Jersey over route of movement, and to various points in Pennsylvania, New Jersey, New York, and Maryland for comparable distances. Reparation awarded. Transcontinental Oil Co. v. P. R. R., 104 I. C. C. 259.

(o) Rates on zinc skimmings, zinc salammoniac skimmings, zinc dross and zinc ashes from Illinois, Missouri, Ohio, and Wisconsin points to Van Buren, Ark., found not unreasonable as compared with rates contemporaneously maintained to competitive Oklahoma points. Falcon Zinc Co. v. M. P., 104 I. C. C. 267.

(p) Fifth-class rates on furnaces and furnace parts from Holland, Mich., to Milwaukee and Chicago and points taking Chicago rates, found unduly prejudicial to extent they exceeded those based upon rates bearing same relationship to fifth-class rate from Holland that contemporaneous commodity rates bear to corresponding fifth-class rates from Detroit. Nonprejudicial rates prescribed. Holland Furnace Co. v. A., T. & S. F., 104 I. C. C. 286.

(q) Rate assessed on shipment of lime from Gibsonburg, Ohio, to Rivermont, Va., found unreasonable to extent it exceeded lower contemporaneous rate from Gibsonburg to Lynchburg, Va., a farther distant point, which lower rate was established to Rivermont subsequent to movement here involved. Reparation awarded. Lynchburg Chamber of Commerce v. P. R. R., 104 I. C. C. 293.

(r) San Pedro, Calif.: Interstate rates on lumber and products from Westwood, Calif., Portland, Grants Pass, Medford, and Klamath Falls, Oreg., and points taking same rates, to Sacramento and other California points, found not unreasonably low, or to result in discrimination or undue prejudice to San Pedro. While some of these rates are on a low basis they are not unjustifiably low, as they yield to carriers something in excess of out-of-pocket cost, in addition to making possible a profitable traffic in transcontinental lumber and inbound supplies. Lumber industries of Oregon and California are dependent upon maintenance of existing adjustment, which has developed in view of many competitive forces. Moreover, present rate basis is satisfactory to all producing sections except San Pedro, from which intrastate rates are properly related to similar rates from other California producing sections. Los Angeles Lbr. Products Co. v. S. P. Co., 104 I. C. C. 297.

(s) Rate on corn and oats from certain Nebraska Group G points to Portland, Oreg., found unreasonable to extent it exceeded lower rate contemporaneously in effect from other points in same group, which lower rate was established from points here involved subsequent to movement. Reparation awarded. See also 64 I. C. C. 461. Albers Bros. Milling Co. v. Director General, 104 I. C. C. 330.

(t) Alabama points: Rates on coal from Grants, Ala., to Florence, Ala., via an interstate route through Columbus, Tenn., found not unreasonable as compared with rates between various points in same general territory for comparable distances. Here interstate route was used because of delays over customary intrastate route caused by a strike. Such interstate route was not logical or reasonable route and will probably not be used again except in case of emergency. Florence Chamber of Commerce v. C. of G. Ry., 104 I. C. C. 373.

(u) Alabama and Tennessee points: Present rates on sand from Lipe, Tenn., to Sheffield, Florence, and Tuscumbia, Ala., which conform with rates for similar distances under scales approved by commission in various cases, found not unreasonable. Florence Chamber of Commerce v. N., C. & St. L., 104 I. C. C. 393.

(v) Los Angeles, Calif.: Rates on sporadic shipments of fruit-wrapping paper from, to Ordway and Rocky Ford, Colo., found unreasonable as compared with rates from paper-producing points in Washington, Oregon, Wisconsin, and Minnesota to same destinations, and to extent they exceeded lower rate subsequently established. Reparation awarded. Crown Willamette Paper Co. v. U. P. R. R., 104 I. C. C. 399.

(w) Rate on evaporated milk from Lamar, Colo., to Dawson, N. Mex., found not unreasonable or otherwise unlawful as compared with rates from Pueblo or the Denver group to same destination.

Movement was sporadic and earnings under rate charged do not compare unfavorably with those on similar traffic in same general territory. Helvetia Milk Condensing Co. v. A., T. & S. F., 104 I. C. C. 402.

(x) South Atlantic ports: Rates on rosin from south Atlantic ports, and points taking same rates, to Burlington, Ont., Canada, found unreasonable to extent they exceeded rates contemporaneously in effect from Gulf ports to same destination. Rates from the Gulf ports found not unreasonable. Reparation awarded. Vera Chemical Co. v. A. C. R. R., 104 I. C. C. 408.

(y) Milltown, Ind. Rates on lime from Milltown, Ind., to destinations in c. f. a. territory found not unreasonable or unduly prejudicial as compared with rates from Mitchell, Bedford, and Salem, Ind., to same destinations. There is no showing by complainant that delivering carriers which participate in joint rates from Salem can by withdrawing from such participation thereby remove alleged undue prejudice against Milltown. Moreover, in certain instances delivering lines shown in complainant's comparisons are not same. Louisville Cement Co. v. S. Ry., 104 I. C. C. 455.

(z) Rates on prepared roofing and asphalt shingles from Chicago, St. Louis, Cairo, Evansville, Louisville, and Cincinnati, to Florence, Sheffield, and Tuscumbia, Ala., found not unreasonable, but, in view of level of rates in Mississippi Valley territory and circumstances under which they were established in comparison with contemporaneous rates in Southeast at points adjacent to that territory, the spread between rates that have for many years prevailed at Corinth, Miss., and rates at Florence, Sheffield, and Tuscumbia found too great, subjecting jobbers at latter points to undue prejudice in competing with Corinth jobbers for trade in same common territory. Differentials prescribed for removal of undue prejudice. Florence Chamber of Commerce v. L. & N., 104 I. C. C. 459.

(aa) Rates on grain from Minnesota points to Chicago, Milwaukee, and other Wisconsin destinations taking same rate, which at time of movement, exceeded contemporaneous combination of locals, to, and proportionals from, Winona, Minn., found not unreasonable. In view of commission's finding in 78 I. C. C. 110, that such through rates were reasonable carriers could have complied with fourth section by increasing the several components or by cancelling outbound proportionals from Winona. They elected, however, to reduce through rates to combination basis and later canceled proportionals. In support of reasonableness of rates charged, defendants presented numerous comparisons of through rates, and of components of lower combinations on Winona, with other rates from Iowa points to Minneapolis and between other points in same general territory. Lewiston Elevator Co. v. C. G. W., 104 I. C. C. 473.

(bb) Washington and Oregon points: Rates on unfermented grape juice, in glass, in boxes, from Melvin, Calif., to Aberdeen, Tacoma, and Seattle, Wash., found not unreasonable, but similar rates to Portland, Oreg., found unreasonable as compared with those to first named points. Joseph v. O. W. R. R. & N. Co., 104 I. C. C. 477.

(cc) Georgia and Tennessee points: Rates on coke from Chickamauga and Durham, Ga., and Chattanooga and Alton Park, Tenn., to Pacific coast terminals, found not unreasonable or discriminatory but unduly prejudicial to extent they exceed rates from Birmingham, Ala., district to same destinations. Following 34 I. C. C. 10, rates from these origin points were placed on a rate parity and so remained until disrupted by a reduction in rate from Birmingham. While southeastern carriers are willing to reduce rates involved to same as that applicable from Birmingham, the transcontinental lines are unwilling to concur therein because of low divisions which they would receive thereunder. Durham Coal & Iron Co. v. C. of G., 104 I. C. C. 483.

(dd) Atlanta, Ga.: Rate on glucose, in tank-car loads, from Clinton, Iowa, and Roby, Ind., to, found unreasonable to extent it exceeded rate from Chicago to Meridian and Jackson, Miss. Reasonable rate prescribed for future and reparation awarded. Cairo Syrup Co. v. I. H. B., 104 I. C. C. 487.

(ee) Existence of lower rate from a more distant point on same line or route is not in and of itself sufficient to justify a finding of unreasonableness and an award of reparation by reason of exaction of higher rates from an intermediate point or points. See 50 I. C. C. 719. Ohio Farm Bureau Federation v. N. Y. C., 104 I. C. C. 490, 492.

(ff) California points: Rail rates on lumber from Los Angeles, Wilmington and San Pedro, Calif., to El Paso, Tex., and destinations in Arizona and New Mexico, originally moving into these origin points by water from competing Pacific coast producing territory, found unreasonable and unduly prejudicial as compared with lower all-rail rates from same origin points to same destinations. Reasonable and nonprejudicial rates prescribed. Lumbermen's Exchange v. S. P. Co., 104 I. C. C. 538.

(gg) East St. Louis, Ill.: Applicable rates on articles named in uniform brick list from complainant's plant at East St. Louis to destinations within switching district of St. Louis, Mo., found not unreasonable or otherwise unlawful as compared with rates from farther distant competing points in Illinois and Missouri. Rates from complainant's plant are lower than those from more distant points in Illinois and are as low as or lower than rates prescribed for similar distances in the Brick case, 68 I. C. C. 213. It is not shown that complainant has lost any sales in St. Louis by reason of adjustment complained of; moreover, shipments from its plant for delivery in St. Louis switching district move freely under present rates. H. & R. Mining & Mfg. Co. v. A. & S., 104 I. C. C. 671.

(hh) Combination of commodity rates to Ohio River and class rates beyond assessed on strawberries and tomatoes from points in Tennessee and Kentucky to Youngstown, Ohio, found unreasonable to extent they exceeded lower joint rates contemporaneously in effect to Pittsburgh, Allegheny, and Erie, Pa., and other c. f. a. points in Buffalo-Pittsburgh district. Reasonable rates prescribed for future and reparation awarded. Coulbourn Fruit Co. v. B. & O., 104 I. C. C. 734.

(ii) Rates on tomatoes from Fruitland and Gibson, Tenn., to Hutchinson, Kans., found not unreasonable but unduly prejudicial in favor of Saline and Kansas City, competing points located in same general territory. Relationship of rates prescribed for future. Grovier-Starr Produce Co. v. C., R. I. & P., 104 I. C. C. 745.

(jj) Sixth-class rates on empty steel shells from Penniman, Va., situated on a short branch line of C. & O., to Carnegie, Pa., and Canton, Ohio, found unreasonable to extent they exceeded lower commodity rate contemporaneously maintained from Williamsburg, Va., a mainline point to same destinations, which lower rate was established from Penniman subsequent to movements here involved. Reparation awarded. Hyman-Michaels Co. v. C. & O., 104 I. C. C. 749.

(kk) Rates on wrapping paper, l. c. l., from Hartsville, S. C., to Jackson, Miss., found not unreasonable, but unduly prejudicial to extent they exceeded contemporaneous rates to Vicksburg, a farther distant competitive point. Nonprejudicial rate prescribed and reparation denied. Jackson Paper Co. v. A. G. S. Ry., 104 I. C. C. 758.

(ll) Rates on gas oil in tank-car loads from Parco, Wyo., to Denver, Colo., found unreasonable to extent they exceeded lower contemporaneous rate on like traffic from Parco and Laramie, Wyo., to Ogden and Salt Lake City, Utah. Reasonable rate prescribed and reparation awarded. Colorado Public Service Co. v. U. P. R. R., 107 I. C. C. 97.

(mm) North Carolina points: Rates on crushed stone from Columbia, S. C., to Wilford, Edwards, and Dean Siding, N. C., destinations on the Washington & Vandemere, a short-line carrier under same management and control as Atlantic Coast Line, found not unreasonable as compared with single-line distance rates from same point of origin to same and other destinations, or with rates between numerous other points for application over two or more lines for approximately equal distances. Raleigh Freight Traffic Bureau v. A. C. L., 107 I. C. C. 156.

(nn) Iowa points: Rates on lumber and related commodities from Washington, Oregon, Idaho, Montana, and California, to destinations in Iowa, found unreasonable and unduly prejudicial as compared with rates to Missouri River cities, the Twin Cities, and Chicago, Ill. Reasonable and nonprejudicial rates prescribed for future. Burlington Shippers' Asso. v. A., T. & S. F., 107 I. C. C. 198.

(oo) Rates on articles in uniform brick list from Danville, Ill., to points in Wisconsin, Michigan, Minnesota, and North Dakota, found not unreasonable but unduly prejudicial to Danville and unduly preferential of other competing Illinois origin points. Nonprejudicial relationship of rates prescribed for future and reparation denied. Western Brick Co. v. N. Y. C., 107 I. C. C. 245.

(pp) Proposal to readjust class rates between upper Mississippi River crossings and related points and points in Minnesota and North Dakota to basis of rates between Chicago group and Fargo, N. Dak., resulting in both increases and decreases, the former predominating, found not justified. Transportation conditions between the crossings and the destination territory, on one hand, and between Chicago and destination territory, on the other, are not materially different, and difference in distance can not be ignored. Reasonable maximum class rates between the crossings and Fargo and Moorhead, N. Dak., and from crossings to Fargo for application on traffic from points east of Chicago in c. f. a. trunk-line, and New England territories, determined. Rates from Upper Mississippi Crossings, 107 I. C. C. 256.

(qq) Montana points: Domestic rates on grain and products from, to destinations, in California, Oregon, Washington, Nebraska, Missouri, Iowa, Minnesota, Wisconsin, and Illinois, found not unreasonable or otherwise unlawful as compared with lower export rates from Montana to north Pacific coast ports for equal distances. Export Rates on Wheat and Products, 107 I. C. C. 276.

(rr) Rates on coal from Ohio and Crescent districts to certain points in Lower Peninsula of Michigan and to Elkhart, Ind., found not unreasonable or otherwise unlawful as compared with rates to Toledo, Detroit, and Jackson. Spreads between assailed and compared rates are not sufficiently out of line to warrant finding of undue prejudice and complainant's case, built entirely on distance, fails to take into consideration different conditions which render compared rates unacceptable as the foundation upon which to construct rates on a distance basis. Radical changes are sought in group adjustment which has existed for many years with commission's approval. However, evidence adduced deals with only a relatively small portion thereof and record fails to indicate how proposed changes will react on the group adjustment as a whole. Kalamazoo Chamber of Commerce v. C. & O., 107 I. C. C. 291.

(ss) Rates on logs from Pawpaw and Lawton, Mich., to Hicksville, Ohio, found unreasonable to extent they exceeded lower contemporaneous rate on like traffic between other points in same general territory for comparable distances. Reparation awarded. Crook, Son & Co. v. K., L. S. & C., 107 I. C. C. 379.

(tt) Following 88 I. C. C. 188, rate on common window glass from Okmulgee, Okla., to Jackson, Miss., via Memphis, Tenn., found unreasonable to extent it exceeded lower contemporaneous rate via Memphis to New Orleans, Vicksburg, Gulfport, and Mobile. Reparation awarded. Jackson Traffic Bureau v. St. L.-S. F., 107 I. C. C. 383.

(uu) Rates on sewer pipe and wall coping from Brazil and Mecca, Ind., to points in Illinois classification territory found unreasonable and unduly prejudicial to extent they exceeded contemporaneously applicable rates for like distances from St. Louis to same destinations. Reasonable and nonprejudicial rate for future prescribed and reparation denied. Chicago Fire Brick Co. v. A. & W., 107 I. C. C. 399, 406.

(vv) Rate on bituminous coal from South Providence and Harbor Junction Wharf, R. I., to Sterling, Conn., as part of a through interstate movement from Virginia mines by rail and water, found unreasonable to extent it exceeded lower contemporaneous rate on like traffic from New Haven and Stratford to other destinations in Connecticut for comparable distances found reasonable in 83 I. C. C. 563. Reasonable rate prescribed and reparation awarded. United States Finishing Co. v. N. Y., N. H. & H., 107 I. C. C. 412.

(ww) Rate on bituminous coal from Allyn's Point to Sterling, Conn., as part of a through interstate movement from Virginia mines by rail and water, found not unreasonable as compared with contemporaneous rates on like traffic between points in same general territory for comparable distances and with rates found reasonable in 83 I. C. C. 563. United States Finishing Co. v. N. Y., N. H. & H., 107 I. C. C. 412.

(xx) Gary, Ill.: Applicable rate on crushed stone from Gary, Ill., situated within the Chicago switching district, to Kankakee and Stillwell, Ind., found unreasonable to extent it exceeded rate contemporaneously in effect from Chicago. Waiver of undercharges authorized. Taylor v. N. Y., C. & St. L., 107 I. C. C. 441.

(yy) Florida points: Rates on crate and box material from Bainbridge and

Brunswick, Ga., to destinations in Florida on Florida East Coast Ry., found not unreasonable as compared with lower intrastate rates on like traffic in Florida and with interstate rates from and to other points for comparable distances. Elberta Crate Co. v. A. C. L., 107 I. C. C. 499.

(zz) Upon further argument and reconsideration, rate on bituminous coal from Harrisburg, Ill., to La Fayette, Ind., found not unreasonable as compared with rates from Harrisburg to other farther distant destinations in Indiana. Finding in former report, 93 I. C. C. 579, affirmed. La Fayette Box Board & Paper Co. v. C., C., C. & St. L., 107 I. C. C. 509.

(3a) New York and New Jersey points: Rates on inedible tallow and inedible grease from Georgetown and Bennings, D. C., to Jersey City, N. J., Port Ivory, and Brooklyn, N. Y., and New York Harbor lighterage points, found not unreasonable as compared with contemporaneous rates on like traffic between other points in trunk-line and c. f. a. territories. Hopfenmaier v. B. & O., 107 I. C. C. 577.

(3b) Rates on baled hay from Arizona points to El Paso, and from Yuma group in Arizona to Los Angeles, and points taking same rates found not unreasonable or otherwise unlawful. Rates on same commodity from the Thatcher, Phoenix, and Yuma groups in Arizona to points in New Mexico, Clifton, Ariz., Ft. Bliss, Tex., Texas common points, Kansas City and St. Louis, Mo., and Mississippi River crossings, Memphis, Tenn., and south thereof;from Alhambra, Glendale and Peoria, Ariz., to same points east of New Mexico, and to El Paso, Tex.; and from the Thatcher and Phoenix groups to Los Angeles, found unreasonable. Reasonable rates or bases of rates prescribed. Arizona Hay Traffic Asso. v. A. E., 107 I. C. C. 591.

(3c) Rates on nails, washers, nuts, and bolts, l. c. l., from Birdsboro, Coatesville, Lebanon, and Pottstown, Pa., to Lynchburg, Va., found neither unreasonable nor unduly prejudicial as compared with rates on like traffic from same points of origin to other Virginia points for comparable distances. Lynchburg Chamber of Commerce v. R. Co., 107 I. C. C. 610.

(3d) Knoxville, Tenn.: Rates on bar iron from, to stations on Ohio & Kentucky Ry., a short-line carrier, found unreasonable as compared with rates from Pittsburgh and other points to same destinations, with rates between other points for comparable distances, and to extent they exceeded lower rate subsequently established. Reparation awarded. Knoxville Iron Co. v. L. & N., 107 I. C. C. 627, 633, 634.

(3e) Rock Springs District of Wyoming: Rate on slack coal from, to Sugarton and Cornish, Utah, found unreasonable to extent it exceeded lower contemporaneous rate on like traffic from Castle Gate district in Utah to same destinations. Reparation awarded. Amalgamated Sugar Co. v. U. P., 107 I. C. C. 635.

(3f) Class rates and commodity rates bearing a direct relation thereto from points in c. f. a. and border territories to Williamson, W. Va., found unreasonable as compared with rates from same territories of origin to Charleston, Gauley, Kenova, Huntington, and other West Virginia destinations, and to extent they exceed rates constructed on distance scale of class rates applicable in c. f. a. territory for short-line distance to Williamson, plus specific arbitraries for the six classes respectively. Williamson Chamber of Commerce v. A., C. & Y., 107 I. C. C. 639.

(3g) Rates on iron and steel articles, c. l. and l. c. l., from Pittsburgh and Woodlawn, Pa., to Williamson, W. Va., found unreasonable as compared with rates on like traffic from more distant points of origin to which Woodlawn and Pittsburgh are intermediate, and with rates from same origin points to Ashland, Ky., Kenova, Huntington, and Charleston, W. Va. Reasonable rates prescribed for future and reparation awarded. Williamson Chamber of Commerce v. A., C. & Y., 107 I. C. C. 639.

(3h) Rate on grapefruit from Bowling Green, Fla., to Wausau, Wis., found unreasonable to extent it exceeded lower joint rate contemporaneously in effect to Duluth and Albert Lea, Minn., Eau Claire, Wis., and other points in same territory, which lower rate was established to Wausau subsequent to movement here involved. Reparation awarded. Murphy v. A. C. L., 107 I. C. C. 651.

(3i) Rate on potatoes from Almora, Minn., to Tinley Park, Ill., via Chicago, found not unreasonable as compared with rates from North Dakota origin points to Chicago for greater distances. Thoem-

ing & Co. v. M., St. P. & S. S. M., 107 I. C. C. 658.

(3j) Upon further hearing, rate on wrapping paper from Madison, Me., to New Hope, Pa., found unreasonable to extent that proportional rate comprising factor to Brunswick, Me., exceeded lower proportional rate from Enfield, Howland, Montague, and Lincoln, Me., farther distant points, which lower rate was established from Madison subsequent to movements here involved. Reparation awarded. To this extent former report, 88 I. C. C. 593, reversed. Universal Paper Bag Co. v. M. C., 107 I. C. C. 661.

(3k) Rates on linoleum, oilcloth, and paper-felt carpeting from Philadelphia and other eastern points to Memphis, Tenn. found not unreasonable or otherwise unlawful as compared with rates on like traffic from same points to St. Louis and from and to other points for comparable distances. Memphis Freight Bureau v. A. C. L., 109 I. C. C. 31.

(3l) Rates on black sheet steel, c. l. and l. c. l., from Lynchburg, Va., to Nashville, Ga., found not unreasonable as compared with lower contemporaneous rates on like traffic from Lynchburg to Sparks, Moultrie, and Valdosta, Ga., farther distant competing points. Lynchburg Chamber of Commerce v. G. & F., 109 I. C. C. 39.

(3m) El Paso, Tex.: Upon further hearing, findings in original report 85 I. C. C. 425, that rates on asphalt, in barrels, from Richmond and El Segundo, Calif., to El Paso, Tex., were unreasonable to extent they exceeded lower rates from same origin points to Albuquerque, N. Mex., and Denver, Colo., reversed as to Richmond and affirmed as to El Segundo. Reparation awarded on shipments from El Segundo. El Paso Bithulithic Co. v. E. P. & S. W., 109 I. C. C. 42.

(3n) Rates on lumber from Cornwall, Va., to destinations in Pennsylvania and to Boston, found not unreasonable or otherwise unlawful as compared with lower contemporaneous rates on like traffic from Hotchkiss, Va., to same destinations, which lower rates were subsequently established from Cornwall. South River Lbr. Co. v. N. & W., 109 I. C. C. 173.

(3o) Mere fact that as a result of general readjustment in rates certain rates from a given point were reduced does not warrant a finding that higher rates were unreasonable. South River Lbr. Co. v. N. & W., 109 I. C. C. 173, 175.

(3p) Spocari, Ala.: Rates on gypsum rock from Plasterco and Saltville, Va., to, found unreasonable as compared with rates to Chattanooga, Tenn., and Birmingham and Leeds, Ala., competing points, and to extent they exceeded rates subsequently established to Spocari. During period of idleness when operations of complainant's plant at Spocari were suspended, the rate adjustment thereto in its relation to rates to competing points became disrupted, and upon resumption of operations was not restored until after shipments here involved had moved. Present rates found not unreasonable or otherwise unlawful. Reparation awarded. Gulf States Portland Cement Co. v. N. & W., 109 I. C. C. 231.

(3q) Rates on lumber from points in Washington, Oregon, Idaho, Montana, and British Columbia, to Lincoln and Omaha, Nebr., and other points in Nebraska, Kansas, Missouri, Iowa, and South Dakota, found not unreasonable during period when such rates were on basis higher than to Twin Cities. These rates were formerly on a parity, the equalization being disrupted by application of general reductions required in Reduced Rates, 1922, 68 I. C. C. 676, which rate parity carriers subsequently restored. Rates assailed, however, are shown to compare favorably with rates from the Northwest to various points for substantially equal or greater distances. Adams & Kelly Co. v. A., T. & S. F., 109 I. C. C. 241.

(3r) Rate on overalls, l. c. l., from Middlesboro, Ky., to Tupelo, Miss., found not unreasonable or unduly prejudicial as compared with rate from same point to Memphis, Tenn., and various other points in Mississippi for comparable distances. Northeast Miss. Traffic Bureau v. M. & O., 109 I. C. C. 246.

(3s) Rates on molding sand from Ottawa and Utica, Ill., to Keokuk, Iowa, found improperly related to rates to Burlington, Iowa, Quincy, Ill., and other Mississippi River crossings, resulting in undue prejudice to Keokuk in favor of such other crossings. Relationship of rates prescribed for future and reparation denied. Keokuk Shippers' Asso. v. B. & O., 109 I. C. C. 346.

(3t) Rate on manure from Harlem River, N. Y., to North Hatfield, Mass., via a route embracing the New York,

New Haven & Hartford and Boston & Maine Railroads, found unreasonable to extent it exceeded lower rate contemporaneously in effect from and to the same points in connection with the New York Central and Boston & Maine. Reasonable rate for the future prescribed and reparation awarded. American Sumatra Tobacco Co. v. N. Y., N. H. & H., 109 I. C. C. 383.

(3u) Rates on sirup and molasses, in straight carloads, and on sirup, molasses, and preserves, in mixed carloads, from Kansas City, Mo., to destinations in Kansas, found not unreasonable or otherwise unlawful as compared with rates from St. Louis and Chicago. While Kansas City has an advantage in distance and the St. Louis rates are a lesser percentage of fifth class than are those from Kansas City, the former bear no fixed relationship to class rates. Complainant's difficulties in meeting competition at St. Louis and Chicago are due to fact that it obtains its raw material at points east of Kansas City, paying inbound freight charges thereon, whereas its competitors either manufacture their own raw material or secure it where their plants are located. Bliss Syrup Refining Co. v. A., T. & S. F., 109 I. C. C. 391.

(3v) Rates on iron, steel, tin, and galvanized cans from Kansas City to Fort Smith, Ark., Wichita, Kans., and Sioux City, Iowa, found not unreasonable or otherwise unlawful as compared with rates on tin cans from Kansas City and other origin points to various destinations for comparable distances. Gille Mfg. Co. v. K. C. S., 109 I. C. C. 408.

(3w) Class C rates on excelsior cushions, mats, or pads from Oshkosh and Rice Lake, Wis., to Ft. Smith, Ark., found unreasonable as compared with rates contemporaneously applicable to Chicago, St. Louis, Kansas City, and other competing cities in western classification territory to which excelsior pads from Wisconsin move at commodity rates lower than class C, and to extent they exceeded rates constructed by application of the rates prescribed in 100 I. C. C. 274, for distances here involved, with the addition of an arbitrary, excelsior pads over excelsior, of 3.5 cents. Reasonable rates for the future prescribed and reparation awarded. Ballman-Cummings Furniture Co. v. C. & E. I. Ry., 109 I. C. C. 413.

(3x) Rates on crude feldspar from certain points in New Hampshire to Manchester, Conn., found unreasonable as compared with rates from same origin points to Trenton and East Liverpool, from Bowdoinham, Me., to Buffalo and Trenton, with rates on crushed stone and other commodities in same general territory which are relatively lower, distance considered, and with rates found reasonable on crude feldspar from Keene and Rumney, N. H., to Trenton. Reasonable rates prescribed for the future and reparation awarded. Orford Soap Co. v. B. & M., 109 I. C. C. 434.

(3y) Combination rates assessed on forest products and naval stores from Barth, Kiln, and Loretta, local points on the Mississippi Southern R. R. a short-line carrier, to interstate destinations, and on coal from interstate points to above-named stations, found not unreasonable as compared with lower blanket rates contemporaneously maintained from and to Lumberton, the junction point, and adjacent points in Mississippi Valley territory, which lower rates were subsequently established as through rates from and to Kiln, Barth, and Loretta. Reparation denied for any undue prejudice which may have existed in the past, no such proof of damage as is required to sustain an award of reparation under such a finding having been furnished. Hines Yellow Pine Trustees v. A., C. & Y., 109 I. C. C. 453.

(3z) Class rates on ginger ale, root beer, and mineral water, l. c. l., from Tazewell, Va., to points in West Virginia on the Virginian and Kanawha, Glen Jean & Eastern Railways, and on empty bottles, l. c. l., returned from those points to Tazewell, found not unduly prejudicial or discriminatory, but unreasonable as compared with rates accorded other Virginia and West Virginia points. Reasonable distance scale of rates prescribed for future. Was-Cott Corp. v. K., G. J. & E., 109 I. C. C. 468.

(4a) Class rate assessed on sporadic shipments of green salted hides from Moultrie, Ga., to Elsmere Junction, Del., found unreasonable as compared with lower commodity rates contemporaneously in effect from various points in Georgia, Alabama, and Florida to Elsmere Junction and to Philadelphia, New York, and Boston, and to extent it exceeded lower commodity rate subsequently established. Reparation awarded. Barr & Dougherty v. G. N., 109 I. C. C. 487.

(4b) Rate on monumental granite

from Montello, Wis., to Muscatine, Iowa, found not unreasonable or otherwise unlawful as compared with lower rates on building or paving stone, rough or dressed, not carved, lettered, polished, or traced, to Muscatine from Montello, Oshkosh, and Eau Claire, Wis., and from Rhinelander and Menominee, Mich. Comparisons submitted are not persuasive since unsupported by evidence concerning relative transportation characteristics of the kinds of stone on which they apply and of monumenal granite. Moreover, there is no movement of stone from Rhinelander, and rate from Menominee applies on a class of stone which is not competitive with that received by complainant. Olson v. M., St. P. & S. S. M., 109 I. C. C. 526.

(4c) Rate on crude feldspar from DeKalb Junction, N. Y., to Manchester, Conn., found unreasonable as compared with rates contemporaneously in effect on same commodity between various points for comparable distances and to extent it exceeded rate from DeKalb Junction to Trenton, N. J. Reasonable rate prescribed for future and reparation awarded. Green Hill Mining Co. v. N. Y. C., 109 I. C. C. 632.

(4d) Rate on crude feldspar, minimum weight 40,000 pounds, from DeKalb Junction to Cleveland, Ohio, found unreasonable as compared with lower rates from Keene, N. H., and Penland, N. C., competing points, and with rates prescribed in Ceramic Traffic Asso., 92 I. C. C. 675, for application from producing points in New England to Trenton, N. J. Reasonable rate, minimum weight marked capacity of car, prescribed for future and reparation awarded. Green Hill Mining Co. v. N. Y. C., 109 I. C. C. 643.

(4e) Rates on candle pitch from New York, N. Y., to Lancaster, Pa., found not unreasonable as compared with rates contemporaneously in effect on same commodity between various points for comparable distances. Armstrong Cork Co. v. P. R. R., 109 I. C. C. 655.

(4f) Relation of rates on canned goods from Illinois freight association territory to certain west-bank Misisssippi River points in that territory on the one hand, and from Illinois territory to Chicago, Peoria, and St. Louis, on the other, found not unduly prejudicial to river cities. While general level of rates to alleged preferred points is lower, mere showing of differences in inbound rates to competing jobbing points does not establish undue prejudice. No definite showing is here made with respect to character or intensity of competition encountered, the specific effect of rate relationship upon such competition, or extent to which conditions affecting transportation to the respective jobbing points are properly comparable. Burlington Shippers Asso. v. A., T. & S. F., 109 I. C. C. 694.

(4g) Illinois territory: Rates on canned goods from Illinois freight association territory to certain west-bank Mississippi River points in that territory found not unreasonable as compared with rates on cereal beverages in Illinois territory, or with cereal-beverage rates and canned-goods rates in western trunk-line and c. f. a. territories, except to extent they exceeded fifth class. Transportation conditions in Illinois are not shown to be more favorable than in c. f. a. territory, and prescription of rates lower than fifth class would be based not on transportation conditions but on existence of commodity rates voluntarily established by carriers to meet competitive conditions, and which they regard as too low. Burlington Shippers' Asso. v. A., T. & S. F., 109 I. C. C. 694.

(4h) Applicable rate on clean rice from Galveston, Tex. to Bluefield, W. Va., found not unreasonable as compared with rates from Lake Charles and New Orleans, La., to eastern points, or with rates subsequently established when Galveston and Lake Charles were placed on a rate parity on this traffic moving to Bluefield over various routes. There is no fixed relationship on clean rice from these origin points to eastern destinations, and any change in rate from Galveston without a corresponding change from other points in same group would result in disruption not warranted by the record. Seaboard Rice Milling Co. v. A. G. S., 109 I. C. C. 718.

(4i) Sixth-class rates on sand and gravel from La Fayette, Ind., in connection with the Wabash, Illinois Central, B. & O., Kankakee & Urbana, and Illinois Traction, to specified points in Illinois, found unreasonable as compared with rates from Attica, Ind. Maximum reasonable joint commodity rates prescribed for future. Western Indiana Gravel Co. v. N. Y., C. & St. L., 109 I. C. C. 727.

(4j) Rates on meat animals from points in Alabama to Moultrie, Ga., found

not unreasonable, but the relationship of rates on hogs from southeastern Alabama to Moultrie, on the one hand, and Montgomery and Birmingham, Ala., on the other, found unduly prejudicial and preferential and unjustly discriminatory against interstate commerce. Nonprejudicial relationship prescribed for future. Swift & Co., v. G. N., 109 I. C. C. 733.

(4k) Relationship between rates on coal, Birmingham district on one hand, and western Kentucky and southern Illinois districts on the other, to destinations in Tennessee, Alabama, Mississippi, Louisiana, Arkansas, and Texas, found unduly prejudicial to Birmingham district, and unduly preferential of Kentucky and Illinois districts. Nonprejudicial differential relationship in favor of Birmingham district, prescribed. Alabama Mining Institute v. I. C., 109 I. C. C. 740.

(4l) Rate assessed on fresh peaches from Quincy, Pa., to Jacksonville, Fla., found not unreasonable or otherwise unlawful as compared with rates on like traffic from producing points in same general territory to same and other destinations for comparable distances. Nooney & Co. v. P. R. R., 112 I. C. C. 35.

(4m) Rates on wooden railroad ties from Argyle, Canaan, Rosebud, and Bagnell, Mo., to Rapid City, S. Dak., found not unreasonable or otherwise unlawful as compared with rate on like traffic from St. Louis to same destination and with rates from and to other points for comparable distances. Abeles & Taussig Lbr. & Tie Co. v. C., R. I. & P., 112 I. C. C. 62.

(4n) Rates on coke from St. Louis to destinations in Colorado, Iowa, Kansas, Missouri, and Nebraska found unreasonable as compared with rates from Chicago and Birmingham, competing points shipping to same destinations. Warren Coke Co. v. A., T. & S. F. Ry., 112 I. C. C. 71.

(4o) St. Louis territory group rates applicable at time of movement on fire brick from Wellsville, Mo., to certain points in Oklahoma and Texas, found unreasonable to extent they exceeded Mexico, Mo., group rates contemporaneously in effect and subsequently established Shipper at Wellsville was in direct competition with manufacturers in the Mexico group; in order to market its product at these destinations it was forced to meet prices of those competitors, and shipments here were sold without profit. Only possible profit was to be obtained through promised refunds from carriers after publication of the Mexico basis. Reparation awarded. Wellsville Fire Brick Co. v. Director General, 112 I. C. C. 98.

(4p) Rate on sand from Michigan City, Ind., to points on connecting lines in Chicago, Ill., switching district, found not unreasonable or unduly prejudicial as compared with lower rates from Dune Park, Aetna, Millers, and Gary, Ind., and other near-by competing producing points. The comparisons, based merely upon differences in distance do not constitute sufficient justification for a finding either of unreasonableness or of undue prejudice, the differential between Michigan City and alleged preferred points is less than that prescribed by commission between the inner and outer zones, Michigan City having been found to be properly included in the higher 52-mile scale, whereas alleged preferred points are in the lower 35-mile scale, indicating that alleged preferred points are entitled to advantage of their location. Furthermore, certain of these points are not served by same carriers serving Michigan City. Bos Sand Co. v. A., T. & S. F., 112 I. C. C. 121.

(4q) Rate on copperas moving via interstate route from Farrell to Easton, Pa., found not unreasonable, as compared with rates from and to other points, or with lower rate contemporaneously maintained from New Castle, Pa., to Easton, the latter being subsequently made applicable from Farrell by incorporation of an intermediate clause in tariff. Distance over route of movement was substantially greater than short-line distance between origin and destination, and subsequently established rate was compelled by carrier competition. Williams & Co. v. L. V., 112 I. C. C. 171.

(4r) Rates on printing paper from Providence, Md., and Wilmington, Del., to Richmond, Va., found unreasonable as compared with rates from and to various points for comparable distances. Reparation awarded. Jessup & Moore Paper Co. v. B. & O., 112 I. C. C. 174.

(4s) Rates and minimum weights on strawberries and cabbage from points in Kentucky and Tennessee to Kalama-

zoo, Battle Creek, Sturgis, and Coldwater, Mich., found unreasonable and unduly prejudicial to extent they exceed those contemporaneously applicable to Grand Rapids, Mich. Reparation awarded. Lewis Co. v. L. & N., 112 I. C. C. 213.

(4t) Upon further hearing, former report, 93 I. C. C. 593, reversed, and rate on rough staves and headings from Bonita, La., to Louisville, Ky., found unreasonable to extent it exceeded lower group rate contemporaneously maintained from a large number of stations to which Bonita is closely related, the lower rate being established by carriers from Bonita subsequent to movement. Reparation awarded. Louisville Cooperage Co. v. L. & N., 112 I. C. C. 228.

(4u) The mere fact that a rate under attack appears to be out of line with a few other related rates does not necessarily prove rate attacked unreasonable. Louisville Cooperage Co. v. L. & N., 112 I. C. C. 228, 229, 230.

(4v) Combination rates on coal from Colorado and northern New Mexico producing districts to local points in State of Kansas on the Frisco, Katy, and Midland Valley railroads found unreasonable and unduly prejudicial as compared with joint rates maintained to destinations on other lines in same general Kansas territory. Kansas Public Utilities Comm. v. A., T. & S. F., 112 I. C. C. 235.

(4w) Rate on mine cars from Chattanooga, Tenn., to Carbon Hill, Ala., found unreasonable as compared with rates contemporaneously in effect from Chattanooga and other points of origin to numerous points in same general destination territory. Reasonable rate prescribed for future and reparation awarded. Gustafson Mfg, Co. v. St. L.-S. F., 112 I. C. C. 277.

(4x) Rates on potatoes from Pocomoke, Md., and various points on eastern shore of Virginia to Jacksonville, Fla., found unreasonable, as compared with rates from various origin points to same destination for comparable distances, and to extent they exceeded lower group rate contemporaneously in effect in New York. Origin points here under consideration are usually located in New York group, and carrier subsequently established such rates therefrom. Reparation awarded. Hulsey-Bessent Co. v. P. R. R., 112 I. C. C. 317.

(4y) Rates on ties from Bealeton, Brandy, Culpeper, Remington, and Warrenton, Va., to Canton, Ohio, found not unreasonable as compared with rates from various other Virginia points to Canton and other destinations in Ohio for comparable distances. Lafayette Lbr. Co. v. S. Ry., 112 I. C. C. 341.

(4z) Refined-oil rate assessed on petroleum refined-oil distillate having a specific gravity in excess of 36°, from Casper, Wyo., to Sioux City, Iowa, found not unreasonable. While the oil here shipped is much lower in value than that of various commodities on which refined-oil rates apply, such as kerosene and gasoline, the rates charged compare favorably with those on low-grade oils from Casper and Tulsa, Okla., to various destinations for comparable distances, and with rates found reasonable by the commission in other cases. Sioux City Gas & Elec. Co. v. C., B. & Q., 112 I C. C. 344.

(5a) Relationship of fuel-oil rates from southern California to Arizona with those from the mid-continent field to the same destinations found not unduly prejudicial, with exception of rates from Galveston and other Texas points to Douglas and Bisbee, Ariz. If rates from California and mid-continent fields into Arizona were constructed strictly according to relative distances, as California would have them, the only logical result would be to deprive mid-continent producers from competing in this territory, provided the price of fuel oil in the two fields is anywhere near same. Associated Oil Co. v. A. E. R. R., 112 I. C. C. 350.

(5b) Rates on fuel oil from the mid-continent field and from southern California to destinations in Arizona and New Mexico, distance considered, found not unreasonable per se or relatively. Rates from the mid-continent field not only compare favorably with those from California from standpoint of intrinsic reasonableness but they also compare favorably with rates to other territories to which the rate levels are as a rule considerably lower than on traffic to Arizona. Associated Oil Co. v. A. E. R. R., 112 I. C. C. 350.

(5c) Rates on rosin from points in the South and Southeast to Hamilton, Ontario, Canada, found not unreasonable, unduly prejudicial, or otherwise unlawful as compared with rates to Buffalo, N. Y.

The present rates on this traffic resulted from relatively low rates established following the decision in Naval Stores from Southern Points, 87 I. C. C. 740, and 89 I. C. C. 634, and there is nothing of record to show that rate factors to or beyond either Cincinnati or Buffalo are unreasonable. Proctor & Gamble Co. v. A. & V., 112 I. C. C. 381.

(5d) Rate on ground limestone from Cartersville, Ga., to Cuyahoga Falls, Ohio, found unreasonable to extent it exceeded lower rate contemporaneously in effect to Cleveland, Ohio, a farther distant point, which lower rate was established to Cuyahoga Falls subsequent to movement. Thompson, Weinman & Co. v. W. & A., 112 I. C. C. 395.

(5e) Rate on barrel staves and headings from Camden, Ala., to Pensacola, Fla., found not unreasonable or unduly prejudicial as compared with somewhat lower rates from numerous Alabama and Florida points to Pensacola, New Orleans, La., Gautier, Miss., and Birmingham, Montgomery, and Tuscaloosa, Ala. Rate assailed is substantially lower than on lumber, staves, and headings between numerous points in the South for hauls of comparable distances, and is less than normal basis of rates on these commodities in southern territory. Pensacola Cooperage Co. v. L. & N., 112 I. C. C. 401.

(5f) Rate on printing paper other than newsprint from Spring Grove, Pa., to Nashville, Tenn., found unreasonable and unduly prejudicial to extent it exceeded the rate contemporaneously in effect from Luke, Md., Piedmont, W. Va., and Williamsburg, Tyrone, and Roaring Spring, Pa., to same destination. Reasonable rate for future prescribed and reparation awarded. Clements Paper Co. v. T. C., 112 I. C. C. 411.

(5g) Rates on gasoline and other so-called refined oils from mid-continent Group 2 points to St. Joseph, Mo., found unreasonable and unduly prejudicial to extent they exceed rates contemporaneously maintained from same points of origin to Kansas City, Mo. Reasonable and nonprejudicial basis of rates prescribed. Midcontinent Oil Rates, 1925, 112 I. C. C. 421, 473, 474.

(5h) Upon further consideration, original report, 96 I. C. C. 485, modified and rates on gasoline from Tulsa and grouped points in Oklahoma to destinations in Indiana found unreasonable and unduly prejudicial as compared with rates from same origin points to Chicago and other Illinois destinations. In view of substantial similarity of transportation conditions in Indiana and Illinois, there is no warrant for maintenance of higher rates to points in western Indiana than to Chicago and other Illinois points taking same rates. Concurrently, rate on fuel oil and other products taking same rates from same origins to same destinations found unreasonable to extent they exceeded 80 per cent of the contemporaneous rates on gasoline. Reasonable and nonprejudicial rates prescribed for future. Indiana State Chamber of Commerce v. A., T. & S. F., 112 I. C. C. 481.

(5i) Combination rates, component factors of which are joint rates, assessed on gasoline moving from Peckham, Okla., to Port Arthur, Ontario, Canada, found not unreasonable or otherwise unlawful, due to factor beyond Duluth, or as compared with lower rates contemporaneously maintained to Winnipeg. In an endeavor to establish unreasonableness, complainant showed distances and rates on gasoline from Peckham to North Dakota points and on various commodities moving from Duluth to Port Arthur. However, competition met by shippers at Winnipeg is due to fact that oil is shipped by tank steamers on Lake Superior, carrier competition and equalizing of commercial advantages between neighboring destination points being controlling elements in establishing petroleum rates to the Northwest. Northwestern Oil Co. v. St. L.-S. F., 112 I. C. C. 488.

(5j) Rate on crude sulphur from Freeport, Tex., to Elyria, Ohio, located in Detroit-Cleveland group, found unreasonable to extent it exceeded lower rate contemporaneously in effect to other Reparation awarded. Stauffer Chemical Co. of Tex. v. H. & B. V., 112 I. C. C. 495.

(5k) Third-class rates on wine in bulk in barrels, and in tank cars from St. Louis, Mo., and Sandusky, Ohio, to Brooklyn, N. Y., found not unreasonable as compared with fourth-class rates contemporaneously in effect to Brooklyn from various other origin points for comparable distances. Garrett & Co. v. N. Y. C., 112 I. C. C. 519.

(5l) Rate on tin-plate scrap found unreasonable and reasonable rate for future prescribed. While rate on this commodity is equal to that on scrap iron and billets, revenues on the latter are mate-

rially greater because of heavier car loadings. Scrap tin plate is a refuse of little intrinsic value and can move only under a rate relatively low as compared with articles usually classed as junk. See points in that group, which lower rate was subsequently established to Elyria. also 21 I. C. C. 93. Reparation awarded. Metal & Thermit Corp. v. C. R. R. Co. of N. J., 112 I. C. C. 523.

(5m) Rates on coal from Christopher, Ill., to Malvern, Iowa, found unreasonable as compared with rates contemporaneously in effect from Illinois and Kentucky points to various destinations over routes involving substantially similar hauls and operating conditions. Green Bay Lumber Co. v. C. B. & Q., 112 I. C. C. 562, 563.

(5n) Applicable rate on cottonseed linters from Memphis to Chicago found unreasonable to extent it exceeded lower joint rate contemporaneously in effect on cotton-hull fiber or shavings and on second-cut linters to Chicago from Bridge Junction, Ark., 3 miles west of Memphis, via which city this rate applied all rail. Reparation awarded. Stern-Kauders Co. v. U. S. War Dept., 112 I. C. C. 580.

(5o) Rate on face brick from Wichita Heights, Kans., to Wellington, Texas, found unreasonable to extent it exceeded the joint-line rate on face and other kinds of brick for like distances under the so-called 9702 distance scale prescribed for application throughout southwestern territory, as subsequently extended. The lower rate sought compares favorably with rates for equal distances from Kansas to Oklahoma and Texas, with rates from various points in Texas to Wellington, and with joint-line rates under intrastate distance scales applying in Kansas, Oklahoma, Arkansas, and Missouri. Reparation awarded. Reliance Brick Co. v. St. L.-S. F., 112 I. C. C. 619.

(5p) Combination rate on canned vegetables, in tin and glass, moving from Albion, N. Y., by rail to Baltimore, thence via water to Jacksonville, Fla., found not unreasonable, or otherwise unlawful, as compared with lower joint rates from Mount Morris and other New York points to Jacksonville and Savannah, when moving by rail to Baltimore and water beyond. Zaring & Co. v. N. Y. C., 112 I. C. C. 621.

(5q) Rates on newsprint paper from Millwood, Wash., to Dallas, Texas, found not unduly prejudicial but unreasonable as compared with lower rates contemporaneously in effect from producing points in Ontario, Canada, and in Minnesota, Wisconsin, Michigan, Indiana, and Maine to Texas, Louisiana, Arizona, California, and Oregon, for comparable distances, and to extent they exceeded those found reasonable in Wortham-Carter Publishing Co., 102 I. C. 729. Reparation awarded. West-Cullum Paper Co. v. A. T. & S. F., 112 I. C. C. 641.

(5r) Rate on coke from Brookwood, Dolcito Junction, and Bradford, Ala., located in Birmingham district, to Collinsville, Okla., found unreasonable as compared with rates to other destinations for comparable distances and to extent it exceeded rate to Tulsa, Okla., the Tulsa rate being subsequently voluntarily established by carriers to Collinsville. Reparation awarded. Oil Well Improvement Co. v. A. T. & S. F., 112 I. C. C. 705.

(5s) Sixth-class rate on woven wire fencing from Fairfield, Ala., to Americus, Ga., found unreasonable, but not unduly prejudicial as compared with lower rates contemporaneously maintained to Macon and Atlanta, Ga., farther distant points, or with commodity rates from the Birmingham district to eastern destinations, Ohio River crossings, Virginia and Tennessee cities, and to extent they exceeded the special-iron basis subsequently established. Reparation awarded. Sheffield Co. v. B. S., 112 I. C. C. 729.

(5t) Local and joint class rates between points in Arizona, on the one hand, and points in California, New Mexico, and El Paso, Texas, on the other hand, found unreasonable. Rates assailed are materially higher than those prescribed in 21 I. C. C. 640, and 74 I. C. C. 207, for application in the Pacific Northwest and at present in effect throughout the northern half of the Mountain Pacific group. Operating and transportation conditions in territory here under consideration compare favorably with those in much of the territory in which the lower rates apply. Temporary scale of distance rates prescribed which will accord the Pacific Southwest substantially same scale of rates as now applies in the Pacific Northwest. Arizona Corp. Commission v. A. E., 113 I. C. C. 52.

(5u) Combination rate applicable on wheat from St. Francis, Kans., to Kansas City, Mo., there stored and reforwarded to Wausau, Wis., found unreasonable as compared with rates from St. Francis to points beyond Kansas City for comparable distances, and to extent it exceeded a lower rate contemporaneously in effect from St. Francis to South Omaha, and from St. Francis to Wausau over a route other than route of movement. Reparation awarded. Hodgson-Davis Grain Co. v. C. B. & Q., 113 I. C. C. 234.

(5v) Rates on green or green salted hides, pelts, skins, grease, and tallow, in straight or mixed carloads, from Norfolk, Nebr., to Chicago, Ill., and points taking the same rates, found unreasonable as compared with lower rates contemporaneously accorded competing cities in Kansas, Nebraska, Iowa, Minnesota, and the Dakotas. No transportation conditions justify the charging of a relatively higher basis of rates from points in Nebraska, such as Norfolk, west of Nebraska differential territory, than from points within that territory, and fact that carriers apply differential basis from certain Nebraska points and a higher combination basis from other points explains or accounts for difference in rates but affords no justification therefor. Reparation awarded. Robinson v. A. T. & S. F. Ry., 113 I. C. C. 280.

(5w) Rates on canned sirup from Montgomery, Ala., to Tampa, Fla., found unreasonable as compared with lower rates contemporaneously in effect from New Orleans, Memphis, and Nashville, to same destinations. Alabama-Georgia Syrup Co. v. A. C. L., 113 I. C. C. 283.

(5x) Proposed general revision of rates on potatoes, increases predominating, from points in Wisconsin and elsewhere in western trunk-line territory to destinations in southeastern Missouri, found not justified. While proposed rates are shown to be reasonable as compared with rates in other territories, the reverse is true when compared with lower rates, distance considered, not only to farther distant destinations in Arkansas but also to intermediate destinations in southeastern Missouri where observance of the fourth section requires maintenance of the rates to the Arkansas destinations. Also when compared with rates from same territory of origin to destinations in southwestern Missouri and Kansas. Potatoes to Missouri, 113 I. C. C. 289.

(5y) Rates on grain from points in northern Illinois and southern Wisconsin on certain lines of the Illinois Central and C., B. & Q. railroads to Chicago, Ill., district, and on feed in reverse direction, found not unreasonable or unduly prejudicial as compared with rates on those commodities from same origin points to other Illinois, Missouri, Indiana, Kentucky, and Ohio destinations. Disadvantage of Chicago district is primarily one of location, shippers there located seeking to market feed against the flow of ingredients, in competition with manufacturers shipping with it. Moreover, rates assailed are for most part local rates, and under circumstances of this case their reasonableness may not be tested by comparisons with proportional rates, and fact that local rates on feed lower than on grain are maintained to a few points is not convincing that same basis should be extended to all points. Chicago Board of Trade v. C., B. & Q., 113 I. C. C. 295.

(5z) Upon investigation by commission on its own motion into and concerning the general basis of rates on fertilizer and fertilizer materials in southern territory, FOUND: That in view of characteristics of this traffic it is reasonably entitled to a relatively low basis of rates. Maximum reasonable rates based on a distance scale prescribed for uniform application over standard lines, and certain so-called short or weak lines accorded arbitraries or a percentage over such prescribed standard line rates. Fertilizers between Southern Points, 113 I. C. C. 389.

(6a) Rates on lumber, egg-case material, box lumber, and shooks, from Caruthersville, Mo., to points in Iowa, South Dakota, Minnesota, Wisconsin, and Illinois, found unreasonable and unduly prejudicial in comparison with rates contemporaneously maintained from Cairo to same destinations. Similar rates to Kansas and Nebraska destinations found not unreasonable or otherwise unlawful as compared with those from Memphis, average distances and rates from Caruthersville and Memphis appearing to be substantially the same. Reasonable and nonprejudicial rates, Caruthersville differentially over Cairo, prescribed and reparation awarded. Dillman Egg Case Co. v. A., T. & S. F., 113 I. C. C. 447.

(6b) Millinocket and East Millinocket, Me.: Applicable combination

rates on newsprint paper from, to Providence, South Providence, and Pawtucket, R. I., found unreasonable as compared with lower rate on newsprint from Howland and Woodland, Me., to same destinations, and to extent they exceeded combinations composed of proportional commodity rate on printing paper to Northern Maine Junction plus the sixth-class rate beyond. Reparation awarded. Great Northern Paper Co. v. B. & A., 113 I. C. C. 463.

(6c) Rates on eggs from points in Oklahoma, Kansas, Missouri, and Nebraska, to Laredo, located in Texas differential territory, found not unreasonable, discriminatory, or unduly prejudicial as compared with rates contemporaneously maintained to Houston, San Antonio, Corpus Christi, and other destinations in Texas common-point territory. Present rates to Laredo were established as part of a general adjustment voluntarily made to meet rates to Brownsville and other points in the Rio Grande Valley and were found to be just and reasonable as maxima in 81 I. C. C. 703. Moreover, voluntary reduction of a rate is not of itself evidence of the unreasonableness of the rate so reduced, nor does record support a finding that Laredo is entitled to a rate adjustment different from that now accorded other points in differential territory. Sames, Moore & Co. v. A., T. & S. F., 113 I. C. C. 501.

(6d) Rates on grain and products from C. & E. I. R. R. stations, through Indianapolis, to Louisville, on traffic destined to southeastern points, and transit arrangements in connection therewith at Indianapolis, found not unreasonable or otherwise unlawful as compared with lower proportionals over same carrier to Princeton, Ind., and thence in connection with the Southern Ry. beyond. The proportionals are part of an equalization scheme whereby Louisville and Evansville, as gateways, are kept on a parity, were established primarily in interest of economical operation, and do not constitute a proper measure for rates through Indianapolis. Their cancellation would not benefit Indianapolis interests, whereas, their publication through that point would deprive the C. & E. I. of its long haul, which, in absence of a convincing showing of public interest and necessity, should not be required. Moreover, carriers show that rates assailed are low as compared with those from same origin points to destinations in Ohio and Michigan for similar distances. Indianapolis Board of Trade v. L. & N., 113 I. C. C. 508.

(6e) Rates on flaxseed from Montana and North Dakota points to Portland, Ore., found not unreasonable as compared with rates on wheat from and to same points or with equal rates maintained on these commodities between other points in same territory for comparable distances. Carriers show that from and to various points in this territory, for equal distances, flaxseed rates are in some instances higher and in others lower than to Portland. Moreover, in 107 I. C. C. 276, rates on grain and grain products, including flaxseed, and in some instances the rates here under attack, as a whole, were found not unreasonable or otherwise unlawful. Portland Linseed Oil Works v. G. N. Ry., 113 I. C. C. 528.

(6f) Rates on clay from certain points in Tennessee and Kentucky to Abingdon, Lincoln, Macomb, and Morton, Ill., found unreasonable as compared with rates to other points for comparable distances and to extent they exceeded lower rate subsequently established and equal to rate to Chicago. Reparation awarded. Abingdon Sanitary Mfg. Co. v. C. & N. W., 113 I. C. C. 556.

(6g) Rates on peaches and grapes from producing points in California to Hibbing, South Hibbing, Ely, Aurora, Virginia, Eveleth, Chisholm, and Gilbert, Minn., found unreasonable to extent they exceeded lower blanket rate contemporaneously in effect to Duluth. Reasonable rate prescribed for future and reparation awarded. Hansen-Peterson Co. v. A., T. & S. F., 113 I. C. C. 575.

(6h) Rates on cement from Security, Md., through the District of Columbia, to Maryland destinations served by Washington, Baltimore & Annapolis Electric R. R., and to stations on the old Annapolis Short Line, found not unreasonable. This electric line is what is known as a short line, essentially a suburban line, and rates from Security to its stations, here claimed to have been unreasonable, compare favorably with rates from complainant's immediate competitors located at Lehigh, York, and Union Bridge, Pa., and with rates on cement approved or prescribed by commission in former cases. Security Ce-

ment & Lime Co. v. B. & O., 113 I. C. C. 579.

(6i) Rates on bituminous coal from points in the Brazil-Clinton, Linton-Sullivan, Princeton, and Boonville groups in Indiana, to Hoopeston, Ill., found unreasonable as compared with rates from other Indiana and Illinois mines for comparable distances, rates from the Brazil-Clinton and Linton-Sullivan groups particularly being too high when tested by the Holmes & Hallowell scale prescribed in 69 I. C. C. 11, for application in a higher-rated territory. Reasonable rates prescribed for future and reparation awarded. Iliff-Bruff Chemical Co. v. C. & E. I., 113 I. C. C. 606.

(6j) Rates on coke from Appalachia, Stonega, and other producing points in Virginia and from Birmingham, Ala., to destinations in California found not unreasonable or unduly prejudicial as compared with rates from Chattanooga. Similar rates from Chattanooga found not unreasonable or discriminatory but following 104 I. C. C. 483, were unduly prejudicial to extent they exceeded the rates from the Birmingham district to the same destinations. Romann & Bush Pig Iron & Coke Co. v. I. R. R., 113 I. C. C. 622.

(6k) Rates to two competing points or groups may be within range of reasonableness and thus not in violation of section 1 of the act, but may be, nevertheless, improperly related and result in undue prejudice in violation of section 3. In such a case the Commission may, where warranted by the record, prescribe specific rates to one or both of the competing points in order to remove the undue prejudice. Ridenour Baker Mercantile Co. v. A., T. & S. F. Ry., 113 I. C. C. 629, 634.

(6l) Combination rates based on Suffolk, Va., and assessed on shipments of cotton moving from North Carolina points to Danville, Va., found unreasonable to extent they exceeded lower joint rates subsequently established and contemporaneously in effect during period of movement to Martinsville, Va., a farther distant point beyond Danville. Reparation awarded. Bradshaw-Robertson Cotton Co. v. A. C. L., 113 I. C. C. 661.

(6m) Rates on bituminous coal from points in southern Illinois and western Kentucky to points in southeastern Missouri and northeastern Arkansas found unreasonable as compared with rates to St. Louis, Crystal City, Ste. Genevieve, St. Marys, Cape Girardeau, Illmo, and Chaffee, Mo. Reasonable rates prescribed for future and reparation awarded. Scott County Milling Co. v. B. C. R. R., 113 I. C. C. 675.

(6n) Rates on evaporated milk from Pecatonica, Ill., to points in trunk-line territory, found not unreasonable, discriminatory, or unduly prejudicial as compared with lower rates from Wisconsin points to same destinations. Points in Wisconsin enjoying rates lower than Pecatonica are located near Lake Michigan, such rates are influenced by carferry routes, and compare favorably with rates assailed. Milk Producers Cooperative Co. v. B. & O., 113 I. C. C. 721.

(6o) Class rates on barrel shooks from Rahway, N. J., to New York Harbor, which entail lighterage service, found not unreasonable as compared with other rates from and to same points including lighterage, on various commodities differing in transportation and other characteristics, or with rates for comparable distances on lumber and articles taking same rates, including barrel shooks, which do not include such service. Assailed rates compare favorably with commodity rates for similar distances from a number of New Jersey points to destinations on Long Island and South Brooklyn over routes which entail movement by car float across the Harbor. Hamilton v. P. R. R., 113 I. C. C. 723.

(6p) Rate on slack coal from points in the Oak Hills district, Colo., on the Denver & Salt Lake R. R., to Superior, Nebr., found not unreasonable. Complainant relies on comparisons of rates to same destination from the Walsenburg and other districts, and seeks reparation on slack coal to a basis of rates lower than on lump coal. Little consideration, however, was given to difficulties under which the Moffat road labors, and complainant erroneously contended that an unfair relationship existed between the Oak Hills and the Walsenburg and other districts. Nebraska Cement Co. v. C., B. & Q., 113 I. C. C. 729.

(6q) Fourth class all-rail rate on sole leather from Bridesburg (Philadelphia), Pa., to Boston, found not unreasonable or otherwise unlawful as compared with lower commodity rate from competing

points in western Pennsylvania. Western Pennsylvania points from which lower commodity rate applies are west of the Harrisburg-Williamsport line of the Pennsylvania and in some instances are served by other carriers having more direct routes to Boston than the Pennsylvania affords. Continental Leather Co. v. P. R. R., 113 I. C. C. 745.

(6r) Rate on printed paper, l. c. l., from Cincinnati, Ohio, to Lynchburg, Va., found unreasonable to extent it exceeded third class, the basis found reasonable in official classification territory in 96 I. C. C. 280. Reasonable rate prescribed for future and reparation awarded. Lynchburg Chamber of Commerce v. N. & W., 115 I. C. C. 27.

(6s) Fifth class rate on pickles, in brine, from points in Ohio, Indiana, and Michigan, to Toledo, Ohio, found not unreasonable or discriminatory, but unduly prejudicial, in that competitive companies in Chicago district and certain Michigan cities were favored with a lower commodity rate. Transportation conditions throughout territory involved are substantially the same and with but few exceptions pickles move at the fifth-class rate. Where such conditions exist commission is not disposed to allow rates from a comparatively limited section to control general basis of rates applicable throughout that general territory in absence of a clear showing that such rates are too high. Harbauer Co. v. A. A. R. R., 115 I. C. C. 30.

(6t) Combination rates on automobiles from Detroit, Flint, and North Flint, Mich., and on plumbers' supplies from Noblesville, Ind., to Birmingham, Ala., found not unreasonable as compared with lower joint rates subsequently established, or with rates to south Atlantic and Gulf ports. Rates from Ohio River to south Atlantic and Gulf ports are subnormal, being induced by competition over which rail lines have no control. For many years the prevailing basis for rate making to points south of the Ohio River has been the combinations on the crossings and joint through rates subsequently established were constructed on that basis. Moreover, rates assailed to Birmingham compare favorably with those to such inland points as Atlanta, Gainesville, Macon, and Rome, Ga., and Montgomery, Alabama City, and Tuscaloosa, Ala. Birmingham Traffic Bureau v. Director General, 115 I. C. C. 33.

(6u) Applicable rates on common brick from Nashville, Tenn., to Morehead, Ky., found unreasonable to extent they exceeded lower rates contemporaneously in effect in the opposite direction, no transportation conditions justifying a higher rate from Nashville to Morehead than from Morehead to Nashville. Reasonable rate prescribed for the future and reparation awarded. Bush & Co. v. L. & N., 115 I. C. C. 45.

(6v) Rates on fresh meats and packing-house products, in straight or mixed carloads, from Chicago, Milwaukee, and South St. Paul, to Houghton, Hancock, and Calumet, Mich., found unreasonable as compared with blanket rates contemporaneously maintained on like traffic from same points of origin to other various destinations in same general territory. Reasonable rates for future prescribed and reparation awarded. Armour & Co. v. C., M. & St. P., 115 I. C. C. 68.

(6w) Full combinations of locals to and from junction points on bituminous coal from West Frankfort, West Frankfort mine No. 18, Christopher, Christopher mine No. 20, Johnston City, and Buckner, Ill., to points in Indiana on the Big Four, found unreasonable and unduly prejudicial to extent they exceeded lower joint rates contemporaneously maintained from competing mines located in so-called Harrisburg group in southern Illinois to same Indiana destinations. Reasonable and nonprejudicial rates prescribed for future. Old Ben Coal Corp. v. C., C., C. & St. L., 115 I. C. C. 84.

(6x) Shippers are entitled to move their products to any market at reasonable and nonprejudicial rates and commission has repeatedly condemned action of carriers in adjusting rates so as to impede or stifle movement of commodities in any given direction. Old Ben Coal Corp. v. C., C., C. & St. L., 115 I. C. C. 84, 87.

(6y) Combination rates on crude rubber from New York terminals, and on reclaimed rubber from points in c. f. a. territory, to Omaha, Nebr., found not unreasonable or otherwise unlawful as compared with rates to Akron, Ohio. Complainant's allegation of unreasonableness rests upon a showing that rates to Omaha yield ton-mile earnings higher than rates to Akron, but that fact alone does not establish unreasonableness of Omaha rate. The Mississippi River combination basis of constructing through rates has been in effect for many years, and has in numerous cases received ap-

proval of commission. Nebraska Tire & Rubber Co. v. B. & O., 115 I. C. C. 99.

(6z) Rate on pine lumber from Bonneau, S. C., to Chatham, Va., found not unreasonable or unduly prejudicial as compared with rate contemporaneously in effect from Charleston, S. C. to same destination. Lynchburg Traffic Bureau v. A. C. L., 115 I. C. C. 121.

(7a) Rate on pine lumber from Jalapa, S. C., to Danville, Va., found unreasonable to extent it exceeded lower rate contemporaneously in effect from Jalapa and Newberry to Lynchburg, Va. Reasonable rate prescribed for future and reparation awarded. Lynchburg Traffic Bureau v. A. C. L., 115 I. C. C. 121.

(7b) Combination rate on lime from Woodville, Ohio, to Fulton Station, Baltimore, Md., on the Western Maryland Ry., found unreasonable and unduly prejudicial for the future to extent it exceeded lower rate contemporaneously in effect from same point of origin to deliveries in Baltimore on the Pennsylvania R. R., and from other Ohio points to Fulton Station. Woodville Lime Products Co. v. P. R. R., 115 I. C. C. 131.

(7c) Second-class rate on peaches from Timberville and Markham, Va., to Jacksonville, Fla., found not unreasonable, discriminatory, or unduly prejudicial as compared with lower rate contemporaneously in effect to Palatka, Fla., a farther distant point beyond Jacksonville, or with lower rates from St. Louis and Cincinnati to Jacksonville. The Cincinnati and St. Louis rates are shown to be subnormal and depressed and rates assailed compare favorably with those in effect for comparable distances from Timberville to various destinations in Georgia, Alabama and Tennessee. Toney Bros. v. S. Ry., 115 I. C. C. 203.

(7d) Combination rates on oak railroad ties from Crocker, Mo., to Lyons, Iowa, found unreasonable to extent they exceeded lower rate contemporaneously in effect to Savanna, a farther distant point. Reparation awarded. Abeles & Taussig Lbr. & Tie Co. v. C., M. & St. P., 115 I. C. C. 205.

(7e) Combination rate on crushed rock from Dresser Junction, Wis., to Minnehaha Falls, Minn., outside the switching district but within the city limits of Minneapolis, Minn., found unreasonable as compared with lower rates contemporaneously in effect from point of origin to various delivery points within the Minneapolis switching limits and to extent it exceeded lower joint rate subsequently established. Reparation awarded. Board of Park Commrs. v. C., M. & St. P., 115 I. C. C. 211.

(7f) Group rate on phosphate rock from producing points in Florida to Roanoke, Ala., found not unreasonable as compared with rates from Florida to other grouped points in same general territory or with rate subsequently established when the Roanoke rate was reduced for purpose of placing that point on a parity with points in the Atlantic-La Grange group. Phosphate Rock from Florida, 115 I. C. C. 229.

(7g) Joint rates assessed on shipments of cement from Coplay, Saylor, and Hokendauqua, Pa., located in the Lehigh cement district, to Riverhead, Long Island, N. Y., found unreasonable as compared with lower rates contemporaneously maintained to various points in same general territory and to various points in New England by way of New York lighterage points, and to extent they exceeded lower rates subsequently established. Reparation awarded. Awixa Corp. v. L. I. R. R., 115 I. C. C. 245.

(7h) Sixth-class rate assessed and lower commodity rate subsequently established on scrap iron from Burnham, Pa., to Cumberland, Md., found unreasonable as compared with rates for considerably greater hauls, with lower commodity rate in effect between points in immediate territory of this movement for comparable distances, and to extent it exceeded rate contemporaneously in effect from Burnham, Milroy, and Lewiston, Pa., to State Line, Pa., which lower rate was also in effect in the reverse direction from Cumberland to Burnham. Reasonable rate prescribed and reparation awarded. Cohen & Son v. P. R. R., 115 I. C. C. 307.

(7i) Joint rate on wet wood pulp from Port Arthur, Ontario, Canada, to Wisconsin Rapids and Biron, Wis., found not unreasonable as compared with rates contemporaneously in effect on same commodity from the same and various other points of origin to same and various other destinations in same general territory for comparable distances. Consolidated Water Power Co. v. C. N. Rys., 115 I. C. C. 310.

(7j) Rates on dried fruits, in sacks, from points in groups 1 and 3 in California, to Ogden and Salt Lake City, Utah,

found not unreasonable as compared with rates contemporaneously in effect to Denver, Colo., and Butte, Mont., but rates on dried fruits, in boxes, to and from same points, found unreasonable to extent they exceeded lower rates voluntarily established by carriers subsequent to movement here involved. Reparation awarded. Anderson-Taylor Co. v. A., T. & S. F., 115 I. C. C. 313.

(7k) Rate on silica sand from points in the Ottawa district in Illinois to Sandusky, Ohio, found not unreasonable. Judged by percentage relationships between silica-sand rates and sixth-class rates from the Ottawa district the rate on silica sand to Sandusky compares favorably with rates on same commodity to other points in Ohio, Indiana, and Michigan to which there is a substantial movement. Frohman Chemical Co. v. B. & O., 115 I. C. C. 322.

(7l) Commodity rates on iron and steel pull and sucker rods from Marion, Ind., to Oklahoma and Texas destinations found not unreasonable. Complainant compared assailed rates with lower rates on iron and steel articles to and from same points and contended that they should not exceed those on general run of iron and steel articles, particularly bar and structural iron and steel. However, rates under attack are lower than commodity rates on oil-well supplies, compare favorably, distance considered, with those on same commodity from St. Louis, Toledo, and Pittsburgh to Oklahoma and Texas destinations, and with rates approved by commission in cases heretofore decided. Marion Machine F. & S. Co. v. C., C., C. & St. L., 115 I. C. C. 327.

(7m) Rates assessed on box shooks from Albuquerque, N. Mex., and El Paso, Tex., to Curtiss and Kennard, Ariz., found not unduly prejudicial or discriminatory, but found unreasonable as compared with rates contemporaneously in effect on box shooks and various other commodities for as long or longer hauls in same general territory and to extent they exceeded rates prescribed in 80 I. C. C. 487 and 96 I. C. C. 203, for comparable distances on lumber and box shooks from Williams and Flagstaff to Nogales and Naco, Ariz., applicable on shipments into Mexico. Reasonable rates prescribed for future and reparation awarded. Apache Powder Co. v. A., T. & S. F., 115 I. C. C. 339.

(7n) Rate on coal from Hazard, Ky., to Valparaiso, Ind., in connection with the Grand Trunk, found not unreasonable or otherwise unlawful as compared with lower rate contemporaneously in effect over short-line routes to Valparaiso in connection with various other lines, and to a large destination group surrounding Valparaiso. Coovert & Young v. L. & N., 115 I. C. C. 349.

(7o) Sixth-class rate on crossties from Bedford and other points in Pennsylvania to Buffalo, N. Y., and related points, found unreasonable to extent it exceeded a commodity rate subsequently established from Everett, Pa., to Buffalo, and a lower rate applicable in reverse direction from Buffalo and related points to approximately 40 destinations of comparable distance in Pennsylvania and New Jersey, including Bedford and Everett. Reasonable rates prescribed for future, and reparation awarded. LaFayette Lbr. Co. v. P. R. R., 115 I. C. C. 445.

(7p) Rates on spelter by-products from Pittsburgh, Pa., to Trenton, N. J., found unreasonable to extent they exceeded lower rate contemporaneously in effect to farther distant points to which Trenton is intermediate, rates to farther distant points being published subject to rule 77 of Tariff Circular 18-A. Reparation awarded. Lissberger & Co. v. P. R. R., 115 I. C. C. 521.

(7q) Rates on spelter by-products from points in c. f. a. territory, and from western termini points, not including Pittsburgh, to Trenton, N. J., found not unreasonable or otherwise unlawful. Trenton takes rates 2 cents higher than to Philadelphia, Palmerton, and Phillipsburg, this basis being in accordance with the general group adjustment between c. f. a. and eastern trunk-line territories which has obtained for many years. In the adjustment of class and commodity rates from Pittsburgh and points west thereof, Philadelphia, Palmerton, and Phlilipsburg are located in Philadelphia group, to which rates are generally based on a differential of 2 cents under New York group, in which Trenton is located, and commission has hitherto refused to disturb this adjustment. See 23 I. C. C. 195, 198; 23 I. C. C. 684, 686. Lissberger & Co. v. P. R. R., 115 I. C. C. 521.

(7r) Sixth-class rate charged on refuse sand from Detroit, Mich., to Indianapolis, Ind., found unreasonable to extent it exceeded a lower commodity rate con-

temporaneously in effect from Detroit to Cincinnati, Ohio. Reasonable rate prescribed for future and reparation awarded. American Radiator Co. v. D. & T. S. L. R. R., 115 I. C. C. 529.

(7s) Following 91 I. C. C. 654, rates on slack wooden barrels from Kansas City, Kans.-Mo., to Enid and Tulsa, Okla., found not unreasonable as compared with lower rates from points of origin in Texas to Oklahoma destinations. Hauber Cooperage Co. v. A., T. & S. F., 115 I. C. C. 533.

(7t) Rates on potatoes from Virginia points to Jacksonville, Fla., found unreasonable as compared with lower rates contemporaneously in effect from various points of origin to Jacksonville for comparable distances. Reasonable rates prescribed for future and reparation awarded. Nooney & Co. v. P. R. R., 115 I. C. C., 547.

(7u) Rates on built-up native wood from Louisville, Ky., to Harriman, Tenn., found unreasonable to extent they exceeded rates contemporaneously in effect to Knoxville, Chattanooga, and Cleveland, Tenn. more distant points. Carriers failed to show that rates to more distant points were unreasonably low or that such rates would not have been compensatory if applied to Harriman. Moreover, fact that but few shipments moved between Louisville and Harriman as compared with those to points beyond is not sufficient grounds to deny shippers reasonable rates. Dame Furniture Co. v. C., N. O. & T. P., 115 I. C. C. 566.

(7v) Rates on bituminous coal from various points in Alabama coal field to Columbus, Ga., found not unreasonable or otherwise unlawful as compared with lower rates contemporaneously maintained to Girard, Ala., to which Columbus is intermediate over some routes. While the situation here involved creates departures from long-and-short-haul provision of section 4 of the act, such departures were protected by appropriate applications and were subsequently removed by reducing Columbus rates to the Girard basis. Complainant introduced comparisons showing lower rates to Tennessee and Mississippi points for comparable distances but failed to show anything regarding transportation conditions. Carriers, on the other hand, showed that coal rates from Alabama mines are part of an extensive group adjustment; also that assailed rates apply to numerous destinations in Georgia, Tennessee, and Alabama, for comparable distances. Mayo v. S. Ry., 115 I. C. C. 595.

(7w) Rates on potatoes from points in the Carolinas on Atlantic Coast Line R. R., to Kalamazoo, Jackson, Battle Creek, and Sturgis, Mich., found unreasonable and unduly prejudicial to extent they exceed corresponding rates contemporaneously in effect to Grand Rapids, Mich. Distance scale of rates prescribed for future and reparation denied on past shipments because the evidence on which the adjustment prescribed is based is general in character and savors of a general readjustment. Taylor Produce Co. v. A. C. L., 115 I. C. C. 633.

(7x) Rates on naval stores (rosin and turpentine) from Louisiana and Texas producing points to destinations in c. f. a. territory found unreasonable and unduly prejudicial; and to points in western trunk-line territory found unreasonable; as compared with rates contemporaneously maintained from competing producing points in southeastern and Mississippi Valley territories. Reasonable and nonprejudicial basis of rates prescribed and reparation denied. Turpentine & Rosin Producers Asso. v. A. & V., 115 I. C. C. 667.

(7y) Rate on grain from Tab, Ind., to Cincinnati, Ohio, and Louisville, Ky., found unreasonable to extent it exceeded lower rate contemporaneously in effect from various contiguous Indiana points to same destinations. Reasonable rate prescribed and reparation awarded. Indianapolis Board of Trade v. C., C., C. & St. L., 115 I. C. C. 681.

(7z) Applicable combination rates on muriate of potash from Salduro, Utah, to Chicago Heights, Ill., a Group D point, found not unreasonable as compared with lower rates contemporaneously in effect to St. Louis, Mo., a Group E point. Complainant showed that same rates applied to both groups on a number of commodities and that prior to and subsequent to movement equal rates applied to both groups on potash. Carriers, on the other hand, contend that rates established were depressed and were made to meet competition with imported fertilizer materials from Atlantic ports, and showed that on a number of commodities the rates between Salt Lake City and Chicago are higher than those to or from St. Louis. Armour Fertilizer Works v. W. P. R. R., 115 I. C. C. 684.

(8a) Rates on agricultural limestone from Buffalo, N. Y., to Troy and Canton, Pa., found not unreasonable or otherwise unlawful. Rates assailed compare favorably with those on same and related commodities for similar distances on carrier's lines. Fact that lower rates are maintained from Buffalo to competitive destinations by nonparticipating carriers not serving Troy or Canton does not establish discrimination or prejudice, as undue prejudice or preference does not exist as between shippers or communities unless same carriers serve them or participate in their traffic. Moreover, carrier showed that to meet rates applicable over competing lines would create prejudice against lime-producing districts served by it; also that rates assailed compare favorably with those prescribed in 85 I. C. C. 341. Case & Sons v. P. R. R., 115 I. C. C. 694.

(8b) Sixth-class rates on wood pulp from Delano Junction, N. Y., and Great Works, Me., to Housatonic, Mass., found unreasonable as compared with lower commodity rates for comparable distances in same territory and to a number of destinations in trunkline and c. f. a. territories. Reasonable rates prescribed for future and reparation awarded. Rising Paper Co. v. N. Y., N. H. & H., 115 I. C. C. 699.

(8c) Rates on oak staves and headings found not unreasonable or otherwise unlawful as compared with contemporaneous rates on rough and dressed lumber. Staves and lumber do not constitute such "like traffic" that a different charge for their contemporaneous transportation is violative of section 2 of the act. See 50 I. C. C. 229. A history of cooperage stock and lumber rates shows that no rigid rate relationship has been maintained between them. Therefore lumber rates are not determinative of reasonableness of rates on cooperage stock. Chess-Wymond Co. v. A. & V., 115 I. C. C. 703.

(8d) Rate on newsprint paper from Millinocket, Me., to Lynchburg, Va., found not unreasonable, discriminatory or unduly prejudicial as compared with rates to Atlanta, Ga., Memphis and Chattanooga, Tenn., and New Orleans, La. Rates to alleged preferred points are shown to be depressed, having been established to meet water competition, and are therefore not a fair measure of reasonableness of the rates to Lynchburg. Moreover, the Lynchburg rate compares favorably, distance considered, with rates from other paper producing points to destinations in the same general territory. Lynchburg Chamber of Commerce v. B. & A. R. R., 115 I. C. C. 715.

(8e) Rates on brick machinery from Lancaster, Pa., to Deacon, Va., found not unreasonable or unduly prejudicial as compared with lower rates contemporaneously in effect to Lynchburg, Va., a farther distant point. Rates to Deacon are governed by the official classification, whereas those to Lynchburg are governed by the southern classification. The fourth-section departure is protected by an appropriate application and in view of a pending general investigation covering class rates within and between southern and eastern territories no attempt will be made here to adjust the disparity brought about by the application of rates governed by the different classifications as above described. Lynchburg Chamber of Commerce v. B. & O., 115 I. C. C. 721.

(8f) Rates on small-arms ammunition l. c. l. from New York and Baltimore to Lynchburg, Va., found not unreasonable or unduly prejudicial as compared with lower rates contemporaneously maintained to farther distant points immediately east and west of Lynchburg. Rates to Lynchburg on this commodity are governed by the southern classification whereas rates to the alleged preferred points are governed by the official classification and although lower rates would apply if the official classification governed on this traffic moving to Lynchburg the record shows that on other commodities lower rates would apply if governed by the southern classification. The fourth-section departures instanced are protected by appropriate applications and in view of a general investigation covering class rates within and between southern and eastern territories, no attempt will be made here to adjust the disparity brought about by the application of rates governed by the different classifications as above described. Lynchburg Chamber of Commerce v. B. & O., 115 I. C. C. 721.

(8g) Milling-in-transit rates on alfalfa meal from points in Idaho to Memphis, Tenn., found not unreasonable or unduly prejudicial as compared with lower rates from Colorado points to same destination. Earnings under rates attacked compare favorably, distance considered, with those from Colorado points

and are considerably lower than those on other agricultural products from and to same and other points. Fact that rate assailed was not contemporaneously reduced with corresponding rate to St. Louis, does not alone establish unreasonableness or unlawfulness of rate to Memphis. Bailey v. O. S. L., 115 I. C. C. 745.

(8h) Rates on brick and hollow building tile from Vale, Mo., a point outside Kansas City switching district, to Kansas City, Mo.-Kans., found not unreasonable or unduly prejudicial as compared with other rates on same and related products for comparable distances to same destination from points both within and without the district, or as compared with distance rates for similar hauls in effect on intrastate and interstate traffic in Kansas, Nebraska, Missouri, Texas, Arkansas, Illinois, and Iowa. Kansas City Brick Co. v. C., R. I. & P., 115 I. C. C. 750.

(8i) Applicable third-class l. c. l. rate under official classification on printing paper from Erie, Pa., to Lynchburg, Va., found not unreasonable or unduly prejudicial as compared with lower fourth-class rates contemporaneously in effect under southern classification to Danville and South Boston, Va., farther distant points. Rate assailed compares favorably with corresponding rates between other points in official classification territory and at time of shipment rates to alleged preferred points were protected by appropriate fourth-section applications. While complainant meets competition with paper dealers at latter points for business "in common territory," no damage was shown by reason of any undue prejudice which may have existed in past, the fourth-section departures having since been removed. Lynchburg Chamber of Commerce v. P. R. R., 118 I. C. C. 11.

(8j) Rates on green salted hides from certain points in Mississippi and Alabama to Winchester, Mass., found unreasonable as compared with lower rates contemporaneously maintained from numerous other points in southern and other territories to Winchester for comparable distances. Reasonable rates prescribed for future and reparation awarded. Beggs & Cobb v. A. & V., 118 I. C. C. 13.

(8k) Rates on barytes from Cartersville, Ga., to various eastern destinations, found not unreasonable or otherwise unlawful as compared with lower rates from Sweetwater, Tenn., to same destinations. Present rates from Sweetwater were established to enable shippers at that point to compete with shippers at Cartersville; distances from Cartersville over short-line routes to eastern destinations are substantially greater than from Sweetwater; moreover, the commission has approved higher rates on this traffic from Cartersville than from Sweetwater in 43 I. C. C. 334, 50 I. C. C. 429, and 59 I. C. C. 173. Thompson, Weinman & Co. v. A. C. Ry., 118 I. C. C. 21.

(8l) Rates on green salted hides from Meridian, Miss., to Portville, N. Y., found unreasonable, such rates being shown to be out of line, distance considered, with rates contemporaneously applicable from and to near-by points of origin and destination, as well as with rates between points in same rate territories for comparable distances. Reasonable rate prescribed for future and reparation awarded. Northwestern Leather Co. Trust v. M. & O., 118 I. C. C. 37.

(8m) Class rates on candy and confectionery, c. l. and l. c. l., from Salt Lake City, Utah, to destinations on Mississippi and Missouri Rivers, and to St. Paul, Minn., and Chicago, Ill., rate territories, found unreasonable and unduly prejudicial to extent they exceeded lower commodity rates contemporaneously applicable from San Francisco, Calif., to same destinations. Reparation awarded. McDonald Chocolate Co. v. B. E. R. R., 118 I. C. C. 45.

(8n) Rates on bituminous coal from Spadra and Greenwood groups in western Arkansas, and Oolagah and McAlester groups in eastern Oklahoma, to Wichita and Hutchinson, Kans., found not unreasonable as compared with those from same territories to Kansas City, Mo.-Kans., prescribed in 89 I. C. C. 73; 113 I. C. C. 161. Rates assailed compare favorably, distance and earnings considered, with those in same general region; from origin groups to Kansas points and from Illinois points to Missouri and Arkansas; also with single-line and joint-line intrastate scales in Kansas, Missouri, Oklahoma, and Arkansas. Moreover, while rates are apparently not related throughout as they should be, a readjustment to basis sought would make no provision for many producing points and might disrupt present groups. Bunte v. C., R. I. P., 118 I. C. C. 66.

(8o) Rate on stone from Carthage,

Mo., to Wichita, Kans., found not unreasonable or unduly prejudicial. Assailed rate compares favorably with rates on rough or finished stone from Carthage to destinations in eastern and southern Kansas for similar hauls; also with those found reasonable or approved by commission in various cases for hauls of substantially similar distances. Cuthbert Cut Stone Co. v. St. L.-S. F., 118 I. C. C. 69.

(8p) Rates on coal from Clinchfield, Dante, and Clinchco, Va., to Toledo and Toledo dock, Ohio, for transshipment by vessel, found unduly prejudicial to extent rate from Clinchco exceeds rate contemporaneously maintained on lake-cargo coal from Big Sandy district to same destinations, and those from Dante and Clinchfield exceed a differential of 15 judicial rate relationship prescribed for future. Clinchfield Coal Corp. v. C., C. & O., 118 I. C. C. 79.

(8q) Rates on compressed cotton over rail-water-and-rail routes from Opelousas and Bunkie, La., to destinations in New England and New York found unreasonable to extent they exceeded rates contemporaneously maintained on like traffic from Shreveport and Alexandria, La., to same destinations. Reasonable rates for future prescribed and reparation awarded. Manget Bros. Co. v. A. C., 118 I. C. C. 85.

(8r) Rates on hay from points in South Dakota to destinations in Iowa, Nebraska, Illinois, Wisconsin, and Minnesota found unreasonable in their relation to rates on various other commodities and with rates on hay from producing points in States located in same general territory to same destinations. Reasonable distance basis of rates prescribed for future. South Dakota R. R. Commrs. v. C. & N. W., 118 I. C. C. 139.

(8s) Rates on coal from Herrin, Ill., to Bannister, Ashley, North Star, and Ithaca, Mich., found not unreasonable as compared with rates from southern Illinois coal fields to same general destination territory. Comparisons based upon distance alone are insufficient to establish unreasonableness of rates charged. See 64 I. C. C. 78. Crerar Clinch Coal Co. v. A. A. R. R., 118 I. C. C. 171.

(8t) Upon reargument, former report 92 I. C. C. 722, wherein it was found that class rates from western trunk-line, c. f. a., and trunk-line territories, and rates on various commodities from same territories and from Ohio River crossings and New Orleans, to Virginia, are not unreasonable or unduly prejudicial in their relation to rates to Duluth, Minn., affirmed. Rates assailed do not compare unfavorably with those from and to other points in same territory as Virginia, for comparable distances, and notwithstanding fact that rates to Virginia are made on a combination basis Virginia derives benefit of depressed rates to Duluth and its growth has not been retarded by rate situation. Moreover, the commission can not condemn through rates as unreasonable merely because they are constructed upon combination. Virginia Chamber of Commerce v. A. A. R. R., 118 I. C. C. 195.

(8u) All-rail rates on newsprint paper from Berlin, N. H., to Birmingham, Ala., which exceeded or exceed by more than 1 per cent per 100 pounds the all-rail rates contemporaneously maintained to Nashville, and rail-water-and-rail rates which exceeded or exceed similar rates contemporaneously maintained to Memphis and Nashville, found unreasonable and to subject Birmingham to undue prejudice. Reparation awarded and undue prejudice ordered removed. Birmingham News Co. v. A., B. & A., 118 I. C. C. 205.

(8v) Rates on bale ties and woven and barbed wire fencing from Sterling, Ill., to Montgomery, Ala., found unreasonable and unduly prejudicial as compared with rates contemporaneously in effect to Mobile and Pensacola, farther distant competing points, and to extent they exceeded rates subsequently established when Montgomery was placed upon a rate parity with the latter-named points. Teague Hardware Co. v. C., B. & Q., 118 I. C. C. 221.

(8w) Rate on cereal beverages from St. Louis, Mo., to Atlanta, Ga., found not unreasonable or unduly prejudicial as compared with rates contemporaneously in effect to Montgomery, Ala., Augusta, Macon and Savannah, Ga. Rate assailed compares favorably with corresponding rates from Milwaukee, Pittsburgh, and Chicago, and with general level of rates from St. Louis to southeastern destinations. Complainant does not meet competition with dealers at Montgomery, and although Augusta, Macon, and Savannah are able to compete with complainant in same general territory, under group basis of rates maintained in the Southeast the nearest point in the group is always

prejudiced. It does not follow, however, that such prejudice is undue as it must appear that nearest point is injured by adjustment. Bradley & Woertz v. I. C., 118 I. C. C. 233.

(8x) Relationship between interstate rates on hay from points in Texas differential territory and New Mexico, to points in southern Arkansas and northern Louisiana, and intrastate rates applying from Texas differential points to Texarkana, Tex., found unduly prejudicial to interstate shippers, unduly preferential of shippers at Texarkana, and unjustly discriminatory against interstate commerce. Arkansas Jobbers & Mfrs. Asso. v. A., T. & S. F., 118 I. C. C. 238.

(8y) Rates on sugar from Utah and Idaho points to Texas common points found not unreasonable in their relation to rates from New Orleans and points in Colorado to same destinations. The New Orleans rates upon which the Utah-Idaho rates are based are depressed due to competitive influences and disparity in distance from Utah and Idaho origins is practically three times in excess of mileage from New Orleans. Utah-Idaho Sugar Co. v. C., R. I. & P., 118 I. C. C. 256.

(8z) Rates on sugar from Utah and Idaho to Missouri, Arkansas, and Oklahoma destinations, found not unreasonable as compared with rates from farther distant California points of origin. Utah-Idaho Sugar Co. v. C., R. I. & P., 118 I. C. C. 256.

(9a) Sixth-class rate applicable on lumber and assessed on logs from Adrian, Mich., to Hicksville, Ohio, found unreasonable to extent it exceeded a lower rate contemporaneously in effect from Adrian to other destinations in same general territory as Hicksville, such lower rate being equivalent to 74 per cent of contemporaneous sixth-class rate. Reparation awarded. Crook Son & Co. v. W. Ry., 118 I. C. C. 285.

(9b) Rates on sulphuric acid from El Segundo and Nadeau, Calif., and points taking same rates, to Curtiss, Ariz., found unreasonable and unduly prejudicial as compared with rates contemporaneously in effect to Bacchus, Utah, Robert, Calif., and other competing points. Reasonable rate prescribed for future and reparation awarded. Apache Powder Co. v. A., T. & S. F., 118 I. C. C. 457.

(9c) Rate on sawdust from Los Angeles, Calif., and points taking same rates, to Curtiss, Ariz., equal to the rates on lumber, found unreasonable as compared with rates on various commodities of higher value and with rate prescribed on sawdust in 115 I. C. C. 339, from Albuquerque, N. Mex., and El Paso, Tex., to Curtiss and Kennard, Ariz. Reasonable rate prescribed for future and reparation awarded. Apache Powder Co. v. A., T. & S. F., 118 I. C. C. 457.

(9d) Fifth-class rates, minimum 36,000 pounds, approved in 48 I. C. C. 515 and applied on wet rag pulp from Franklin, Ohio, to points in official classification territory, found unreasonable as compared with rates and minimum weights contemporaneously in effect on wood pulp, cottonseed-hull shavings pulp, linen pulp, and straw pulp, used in manufacture of paper, and with which rag pulp comes into competition, and to extent they exceeded sixth class, minimum 50,000 pounds. Reasonable rates and minimum weight prescribed for future. Cheney Pulp & Paper Co. v. A., C. & Y., 118 I. C. C. 477.

(9e) Sixth-class rate applicable on lumber and assessed on logs from Arcola, Ind., to Montpelier, Ohio, found unreasonable to extent it exceeded a lower log rate equal to 65 per cent of sixth class contemporaneously in effect from and to points in c. f. a. territory for like distances and found reasonable as maxima in 85 I. C. C. 533. Reparation awarded. Liberty Cooperage & Lbr. Co. v. P. R. R., 118 I. C. C. 505.

(9f) Combination rate on asphalt from Richmond, Calif., to Delta, Colo., found unreasonable as compared with lower rates, contemporaneously in effect to destinations in the Denver group and to extent it exceeded a lower rate subsequently established when a proportional rate of 10 cents was made effective from Grand Junction to Delta on shipments originating beyond. Reparation awarded. Strange-Maguire Paving Co. v. A., T. & S. F., 118 I. C. C. 509.

(9g) Class A rate applicable on a sporadic shipment of coffin material from Jackson, Miss., to New Orleans, La., found not unreasonable as compared with lower rate from Maryville, Tenn., to same destination, or with commodity rate established from Jackson subsequent to movement. The subsequently established rate was accorded with expectation of a regular movement which never developed,

whereas it is shown that there is a free movement under the rate from Maryville. Considering the sporadic character of shipment here involved, coupled with a lack of evidence to indicate that coffin stock is improperly classified, the commission does not consider class A rate as unduly high. Jackson Traffic Bureau v. I. C., 118 I. C. C. 515.

(9h) Fifth-class rate on refined petroleum oil from Reno, Pa., to Rockford, Ill., found unreasonable and unlawful. A lower commodity rate was contemporaneously in effect applicable via Reno from Foxburg, Pa., a farther distant point in contravention of section 4 of the act. However, had the Rockford rate been construed upon basis generally applicable between contiguous points of origin and destination, the subsequently established rate would have applied. Smith Oil & Refining Co. v. C., M. & St. P., 118 I. C. C. 527.

(9i) Rates on sand from Lawrence, Kans., to destinations within a radius of 150 miles east of Kansas City, Mo., found unreasonable and unduly prejudicial to extent they exceed by more than 20 cents per ton rates from Turner, Muncie, Grinter, Sirridge, and Armourdale, Kans., competing points accorded Kansas City basis of rates. Reasonable and nonprejudicial rates prescribed for future. Jackman & Jackman v. A., T. & S. F., 118 I. C. C. 547.

(9j) Rate on sand from Lawrence, Kans., to Kansas City, Mo.-Kans., found unreasonable and unduly prejudicial to extent it exceeds by more than 1 cent per 100 pounds the rate from points within Kansas City switching limits and Muncie and Grinter, Kans., to points in Kansas City switching district. Taking into consideration low grade of sand and keen competition in its sale, the difference in rate from Lawrence is too high as compared with those from Kansas City district points. Reasonable rate prescribed for future. Jackman & Jackman v. A., T. & S. F., 118 I. C. C. 560.

(9k) Rate on wrought-iron pipe from Bowling Green, Ky., to Florence, Ala., found unreasonable to extent it exceeded a lower rate contemporaneously in effect in the reverse direction; from Memphis, Tenn., to Decatur, Ala.; Chattanooga, Tenn., to Hopkinsville, Ky., and Cincinnati, Ohio; Sheffield and Florence, Ala., to Louisville, Ky.; and from Knoxville, Tenn., to Cincinnati, Ohio; and as compared with other rates to and from various other points in southern territory for comparable distances. Reasonable rate for the future prescribed and reparation awarded. Nashville Machine & Supply Co. v. L. & N., 118 I. C. C. 577.

(9l) Rates on charcoal from Gaskins Siding, Fla., to Amsterdam and Wataga, Ga., found unreasonable and unduly prejudicial to extent they exceeded lower rate upon which basis reparation was awarded in 95 I. C. C. 463 on similar shipments from Savannah, Ga., to Havanna, Fla., such lower rate having been subsequently established from Gaskins Siding to Amsterdam and Wataga. Although there is no evidence as to similarity of transportation conditions of these movements, the destinations are very near each other and there is no justification for the great difference between rates assailed and those found reasonable in cited case. Reparation awarded. American Sumatra Tobacco Co. v. A. C. L., 118 I. C. C. 583.

(9m) Joint rates on pipe from Youngstown, Ohio, to Tioga and other Louisiana points found unreasonable as compared with lower rates contemporaneously in effect between various points in same general territory for comparable distances and to extent they exceeded lower distance rate approved in 77 I. C. C. 473, for general application in this territory, which rate was subsequently established to the more distant point of Alexandria. Reparation awarded. Hope Engineering & Supply Co. v. M. P., 118 I. C. C. 598.

(9n) Rates on automobiles from Lansing and Detroit, Mich., and Springfield, Ohio, to Santa Fe, N. Mex., found not unreasonable or otherwise unlawful as compared with lower rates contemporaneously in effect to Columbus, N. Mex. Complainant contended that lower rate was applicable to Santa Fe as that point was intermediate to Columbus under an appropriate tariff provision which provided for application of Columbus rate as maximum to intermediate points. However, for a shipment to pass through Santa Fe over A., T. & S. F. would require an out-of-line haul, except when routed via the New Mexico Central and lower rate is not applicable over that route. Moreover, carriers showed that Columbus rate was on an improper and depressed basis and has since been increased to a parity with rate assailed. Thomas Motor Co. v. A., T. & S. F., 118 I. C. C. 631.

(9o) Rates on sugar from New Orleans to Keokuk, Iowa, found not unreasonable or unduly prejudicial as compared with lower rates contemporaneously in effect to competitive Illinois points directly intermediate to Chicago. While Chicago rate applies via Keokuk, this route is used only in exceptional cases, whereas Illinois points are on reasonably direct routes from New Orleans to Chicago and take the Chicago rate basis to avoid fourth-section departures. In 81 I. C. C. 448, the commission indicated that the Chicago rate is a less-than-reasonable maximum rate, and carriers herein intend to place the Illinois points on a rate parity with Keokuk. Rate to latter compares favorably with rates to other Mississippi River gateways in Iowa, as well as with rates to destinations westward from the river in Iowa and Nebraska to and including Missouri River gateways. See also 88 I. C. C. 46. Keokuk Shippers' Asso. v. A., T. & S. F., 118 I. C. C. 683.

(9p) Combination rates on gasoline from Texas and Oklahoma points to Bradford, Pa., found not unreasonable as compared with lower rates to Buffalo, N. Y. Although Bradford is directly intermediate to Buffalo over the Buffalo, Rochester and Pittsburgh, the average distance to Bradford over all routes is a few miles in excess of that to Buffalo. Beyond river crossings specific rates are published to destinations in c. f. a. territory in which Buffalo is located, while rates to destinations in trunk-line territory are made on basing points, Bradford taking the Rochester base rate. Carriers show that rates to Rochester group have always been higher than those to Buffalo group and that adjustment is one of long standing which should not be disturbed. Kendall Refining Co. v. A. & V., 118 I. C. C. 689.

(9q) Fifth-class rate assessed on printing paper from Kansas City, Mo., to Wichita, Kans., found unreasonable as compared with lower rate contemporaneously in effect from St. Louis, Mo., to Wichita, and from Kansas City to Ponca City, Okla., and to extent it exceeded a lower rate subsequently established in order to conform to rates resulting from commission's findings in Minnesota & Ontario Paper Co., 66 I. C. C. 571. Reparation awarded. Western Newspaper Union v. A., T. & S. F., 118 I. C. C. 692.

(9r) Applicable rates on yellow pine lumber from Elba, Ala., and Richton, Miss., to Booneville, Ind., found not unreasonable as compared with rates to Ohio River crossings and other destinations in c. f. a. territory. Carriers instanced rates from and to other points for comparable distances in same general territory in order to show that rates charged are not unreasonable, showed that origin points here considered are embraced within yellow-pine blanket, and that any reduction in the Elba and Richton rates would disrupt the rate relationships from southeastern and Mississippi Valley territory. The blanket system of rate making when applied to limited areas containing natural resources has been approved by commission and where it is sought to disrupt an existing adjustment a comprehensive record should be developed. Record in instant case is limited and does not warrant a readjustment of lumber rates from this territory. Standard Lbr. Co. v. A. C. L., 118 I. C. C. 703, 705, 706.

(9s) Rate on dried beans from Colorado points to Florence, Sheffield, and Tuscumbia, Ala., in southeastern territory, found not unreasonable or otherwise unlawful as compared with rate to Memphis, Tenn., Corinth, Miss., and other Mississippi Valley points. Carriers show that Mississippi Valley rates are low and depressed due to maintenance of port rates to intermediate points and point out that rates from Memphis and Ohio River crossings to Florence group do not compare unfavorably with rates in general to the Southeast, nor with rates from trunk-line and c. f. a. territories. Moreover, commission has previously recognized that level of rates in Mississippi Valley territory is lower than in southeastern territory. See 87 I. C. C. 547. Florence Chamber of Commerce v. A., T. & S. F., 118 I. C. C. 710.

(9t) Fifth-class rates on vinegar from New York points to mid-western destinations, found not unreasonable or otherwise unlawful as compared with rates from Pacific coast to same destination territory. Vinegar is manufactured at low cost on Pacific coast as compared with similar costs in New York territory and New York producers also suffer from disadvantage of buying their barrel material from Pacific coast points. While complainant contended that an increase in Pacific coast rate would remove the prejudice here involved, the evidence shows that its principal competition is encountered from producers located in

destination territory, and any increase in Pacific coast rates would be of little avail to complainant. American Cider Vinegar Mfrs.' Asso. v. N. Y. C., 118 I. C. C. 721.

(9u) Rates on grain and products from points in Missouri, Kansas, Nebraska, the Dakotas, Minnesota, Iowa, Wisconsin, Illinois, and Indiana to Montgomery, Ala., found unreasonable and unduly prejudicial as compared with rates contemporaneously maintained to Meridian, Miss., Mobile, Ala., and Pensacola, Fla., Mississippi Valley points. Reasonable and nonprejudicial rates prescribed for future and reparation awarded. Capital Grain & Feed Co. v. I. C., 118 I. C. C. 732.

(9v) Proportional or reshipping and local rates on grain, and products from Ohio and Mississippi River crossings to Nashville, Tenn., found unreasonable and unduly prejudicial in their relation to corresponding rates from same crossings to Memphis. Reasonable and nonprejudicial rates prescribed for future and reparation denied. Nashville Traffic Bureau v. L. & N., 118 I. C. C. 748.

(9w) Local and proportional or reshipping rates on grain and products from Memphis, Tenn., to Birmingham, Ala., found unreasonable as compared with rates to Meridian, Miss., and other points in Mississippi Valley territory. Reasonable rates prescribed for future and reparation denied. Birmingham Traffic Bureau v. St. L.-S. F., 118 I. C. C. 756.

(9x) The act condemns the exaction of unreasonable rates and makes no distinction between relative unreasonableness and unreasonableness per se. Nelson Fuel Co. v. C. & O. Ry., 120 I. C. C. 723, 725.

(9y) Rates on wet wood pulp from Lockport, N. Y., to Wabash, Ind., found not unreasonable or otherwise unlawful as compared with those from Erie, Pa., to Marion and Muncie, Ind., alleged competing points. With few exceptions rates on wood pulp in c. f. a. territory are on same basis as rates assailed and rates to Marion and Muncie were, subsequent to hearing in instant case, placed on a parity with rates attacked. Moreover, fact that car earnings on certain other unrelated commodities are lower, does not of itself tend to show unreasonableness of rates attacked. United Paperboard Co. v. C. & E. R. R., 120 I. C. C. 27.

(9z) Rates on hardwood lumber from Mississippi points to Loudon and Harriman, Tenn., found not unreasonable as compared with those contemporaneously in effect in same general territory or in other territories. Carriers showed that earnings compare favorably with those which accrue under rates on lumber or lumber articles prescribed in 83 I. C. C. 271 and other cited cases, and fact that rates assailed reflect voluntary reductions is not sufficient in and of itself to indicate that prior rates were unreasonable. Jackson Traffic Bureau v. I. C., 120 I. C. C. 33.

(10a) Fact that there is a difference in rates as between two commodities which ordinarily take same rates is not of itself sufficient to prove the higher rates unreasonable. Jackson Traffic Bureau v. I. C., 120 I. C. C. 33, 34.

(10b) Following 96 I. C. C. 682, fifth-class rates on steel castings from Attica, Ind., to St. Louis, Mo., Chicago, Peoria, Streator, and Mount Vernon, Ill., found unreasonable and unduly prejudicial as compared with rates from various competing points in Illinois, Indiana, and Missouri. Distance scale of rates prescribed for future and reparation awarded. Nat'l. Car Coupler Co. v. A., T. & S. F., 120 I. C. C. 37.

(10c) Fifth-class rates on printed waxed wrapping paper from Nashua, N. H., to Westchester Avenue, New York, N. Y., and Flatbush Avenue, Brooklyn, found unreasonable as compared with lower sixth-class rates contemporaneously in effect from points generally in trunk-line and c. f. a. territories to stations on Long Island R. R., including Flatbush Avenue, and from same point of origin to stations on New York Central except New York and Brooklyn. Reasonable rates prescribed for future and reparation awarded. Ward Baking Co. v. B. & M., 120 I. C. C. 47.

(10d) Combination rate on farm wagons from Fort Smith, Ark., to Fredericksburg, located in Texas Differential territory on the Fredericksburg & Northern R. R., found unreasonable to extent it exceeded a lower joint rate contemporaneously in effect via routes other than route of movement, such lower joint rate also applying to Kerrville, situated in same territory on the San Antonio & Aransas Pass Ry., approximately same distance from junction point on which the combination was based as is Fredericksburg. Route over which ship-

ment moved constitutes the most practicable and reasonable route and no justification appears for maintenance of a higher rate to Fredericksburg than to Kerrville. Reasonable rate prescribed for future and reparation awarded. Deere Plow Co. v. St. L.-S. F., 120 I. C. C. 67.

(10e) Rates on bituminous coal from Arkansas and Oklahoma mines to Kansas City, Leavenworth, and Atchison, Kans., and St. Joseph, Mo., lower than to Lawrence and Topeka, Kans., found not unduly prejudicial. There is no competition in Lawrence or Topeka with coal from Kansas City or other Missouri River points named. Moreover, the sale price of coal in Kansas City and other points alleged to be unduly preferred is affected not only by freight rates from southwestern mines but also by freight rates from competitive Illinois mines, as well as from other sources of production. Albert Silk Coal Co. v. A., T. & S. F., 120 I. C. C. 69, 72, 73.

(10f) Rate on green coffee from New Orleans, La., to Salina, Kans., found unreasonable as compared with lower rate approved by commission for application from New Orleans to Oklahoma City, Okla., and to extent it exceeded rate subsequently established. Such lower rate would have been in effect at time of movement had it not been suspended in an I. & S. proceeding, order in which was vacated prior to hearing, resulting in lower rate eventually becoming effective. Reparation awarded. Lee Mercantile Co. v. C., R. I. & G., 120 I. C. C. 90.

(10g) Rate on rough granite in blocks from Salida, Colo., to Keokuk, Iowa, found not unreasonable or otherwise unlawful as compared with lower rate contemporaneously in effect from Mountain Park, Okla., to same destination. Hauls from latter point are through level country whereas route of movement traverses a mountainous territory where operating conditions are unusual and difficult. Cameron, Joyce & Schneider v. D. & R. G. W., 120 I. C. C. 129.

(10h) Rate on lumber from Virginia, Minn., to Grafton, Wis., found not unreasonable or otherwise unlawful as compared with lower rates contemporaneously in effect from Virginia to points in Wisconsin farther distant than Grafton; also from other Minnesota points north of Virginia to Grafton. Carriers pointed out that at time of movement numerous fourth-section departures occurred in this territory because of maintenance of depressed rates to Chicago and other Lake Michigan ports. Complainant failed to show damage by reason of such fourth-section departures, and a violation of long-and-short-haul clause of section 4 does not alone establish unreasonableness or form a basis for reparation. Moreover, rates assailed compare favorably with corresponding rates from and to various points for comparable distances. Virginia & Rainy Lake Co. v. D., W. & P., 120 I. C. C. 131.

(10i) Class rates between Kansas City, Mo., Omaha, Nebr., and St. Paul and Minneapolis, Minn., on one hand and Fulton and Mayfield, Ky., on other found unreasonable and unduly prejudicial in favor of Ohio River crossings to extent they exceed corresponding rates contemporaneously maintained from or to Cairo or Metropolis by more than specified amounts herein prescribed. Mayfield Chamber of Commerce v. A. & W., 120 I. C. C. 137, 144.

(10j) Commodity rates between official classification territory and western trunk-line territory, on one hand, and Fulton and Mayfield, Ky., on other, not shown unreasonable, but found unduly prejudicial to extent that differences between these rates on the one hand, and corresponding commodity rates to or from Paducah, Cairo, and Metropolis, on the other, will be greater than differences in rates from and to same points on the classes to which respective commodities belong in official classification when to or from points in official territory; and in western classification when to or from points in western trunk-line territory. Nonprejudicial basis of rates prescribed. Mayfield Chamber of Commerce v. A. & W., 120 I. C. C. 137, 145.

(10k) Rate on zinc ore from Henryetta, Okla., to Caney, Kans., found unreasonable as compared with lower rates contemporaneously in effect from same origin point to various competing smelting points in western territory involving longer hauls, and to extent it exceeded lower commodity rate subsequently established. Reparation awarded. Weir Smelting Co. v. A., T. & S. F., 120 I. C. C. 155.

(10l) Applicable rate on lemons from New York, N. Y., to Nashville, Tenn., over various routes, found unreasonable to extent it exceeded lower rate contem-

poraneously in effect over longer routes through the Virginia gateways. Hill Grocery Co. v. L. V., 120 I. C. C. 161.

(10m) Sixth-class rates and minimum weights on spelter from Trenton, N. J., to Atlanta, Birmingham, and Chattanooga, and points grouped therewith, found unreasonable as compared with lower commodity rates taking a higher minimum contemporaneously in effect from spelter-producing points in eastern Pennsylvania relatively close to Trenton to same destinations; also with those from and to various other points for comparable distances. Reasonable rates and minimum weights prescribed for future. Federated Metals Corp. v. P. R. R., 120 I. C. C. 181.

(10n) Rates on logs, except walnut, cherry, and cedar, from points on Atlantic Coast Line in South Carolina south of Charleston to Savannah, Ga., found unreasonable as compared with lower rates under distance scales in effect in same general territory and to extent they exceed rates prescribed by the State public service commission for intrastate application in Alabama. Reasonable Maximum scale of rates prescribed for future. Southern Cotton Oil Co. v. A. C. L., 120 I. C. C. 190.

(10o) Rates on cranberries from points in Massachusetts, New Jersey, and Wisconsin, to Hutchinson, Wichita, and Anthony, Kans., found not unreasonable or otherwise unlawful as compared with lower rates contemporaneously in effect to Kansas City, St. Joseph, and Omaha. Complainants contend that, distance considered, they are denied benefit of their location, and that under present adjustment they can not compete in surrounding territory with jobbers at Missouri River points. Carriers show, however, that rates assailed are in harmony with rates to other interior Kansas destinations. The rate differences here encountered are results of a long-standing adjustment and no substantial change in transportation conditions warrants a departure therefrom. Moreover, volume of this traffic does not warrant establishment of commodity rates. Anthony Produce Co. v. B. & A., 120 I. C. C. 224.

(10p) Sixth-class rate on lumber from Masten and Laquin, Pa., situated on the Susquehanna & New York R. R., to destinations in New England, found not unreasonable as compared with lower commodity rate contemporaneously applicable from points on other short lines located in same general origin territory. Formerly equal rates applied from points on all these short lines, but due to general increases under the Fifteen Per Cent Case, 45 I. C. C. 303, this equalization was disrupted and subsequently restored. However, disruption of rate adjustment caused by general advances and subsequent establishment of rate sought afford no basis for award of reparation. Moreover, commission has recognized that lumber is rated sixth class in official classification and generally moves intraterritorially on class rates. Central Pennsylvania Lbr. Co. v. S. & N. Y., 120 I. C. C. 239.

(10q) Rates on potatoes and vegetables from Colorado, Idaho, Montana, Nebraska, Wyoming, and Utah, to points in southern Arkansas, and Louisiana, found unduly prejudicial to such destination points and shippers there located and unduly preferential of Little Rock, Pine Bluff, and Helena, points in northern Arkansas, and Memphis, Tenn., and shippers there located, to extent they exceed contemporaneous rates to latter points by more than 8 cents from points in Utah, Idaho, and Montana. See also 80 I. C. C. 620. Arkansas Jobbers & Mfrs. Asso. v. C., R. I. & P., 120 I. C. C. 245.

(10r) Finding in prior report, 113 I. C. C. 343, that joint rates on newsprint paper from Espanola, Ontario, Canada, to destinations in Wisconsin, Minnesota, Illinois, Missouri, Iowa, and Nebraska are, and for future will be, in so far as transportation takes place within United States, unreasonable and unduly prejudicial to extent they exceed or may exceed by more than 4 cents per 100 pounds the rates contemporaneously applicable from Sault Ste. Marie, Ontario, to same destinations, affirmed on reconsideration. Spanish River Pulp & Paper Mills v. A. & W., 120 I. C. C. 251.

(10s) Rate on radiators from Camp Meade, Md., to Trenton, found unreasonable as compared with lower rate contemporaneously in effect via a route other than route of movement and to extent it exceeded lower rate in effect to Princeton, N. J., to which Trenton is intermediate, which lower rate was subsequently established via route of movement from Camp Meade to Trenton. Reparation awarded. Camp Meade Salvage Co. v. B. & O., 120 I. C. C. 273.

(10t) Rates on coal from Appalachia

and Dante districts in Virginia to destinations in the Carolinas and Georgia, and rates from Harlan County district in Kentucky to same destinations, found not unduly prejudicial. Like rates to Jacksonville, Fla., and points basing thereon, found unduly prejudicial to Appalachia and Dante districts to extent that the rate therefrom to Jacksonville exceeds rate from Harlan County district Group 4 to Jacksonville. Virginia Coal Operators' Asso. v. A. & R., 120 I. C. C. 283.

(10u) Rates on refined petroleum from Oklahoma Group 3 points to destinations on the Missouri & North Arkansas Ry., in Arkansas, found unreasonable as compared with rates contemporaneously in effect from Texas and Arkansas points to same destinations, with other rates on this commodity in same general territory, and to extent they exceeded rates subsequently established. Reparation awarded. Bear State Oil Co. v. A., T. & S. F., 120 I. C. C. 301.

(10v) Rates on iron or steel barrels or drums, used as containers in shipping mineral water, from Detroit, Mich., and Sharon, Pa., to Hot Springs, Ark., found not unreasonable as compared with lower rates from same origin points to destinations in southwestern Arkansas and in Louisiana on iron oil barrels, with lower rates on wooden barrels and on furniture from and to same points, or with lower rates established subsequent to movement. Rates to Hot Springs compare favorably with those to certain other Arkansas points, iron or steel barrels or drums yield less earnings than do several other commodities of heavier loading, movement is light, and subsequently established rates were in the nature of a general readjustment involving both increases and reductions. Mountain Valley Springs Co. v. C., R. I. & P., 120 I. C. C. 313.

(10w) Sixth-class rates on commercial fertilizers between points in c. f. a. territory, found not unreasonable or otherwise unlawful in the past as compared with rates in the South and West, but for future found unreasonable to extent they exceed distance rates herein prescribed. As volume of movement is substantial and increasing and use of fertilizers is an adjunct to successful farming, rates thereon should be more on a parity with those prescribed in 113 I. C. C. 389 in southern territory. However, on evidence presented, the commission is not convinced that sixth-class rate produces rates which might be condemned as exceeding the limits of maximum reasonableness if evidence covering conditions in c. f. a. territory in general was fully presented, and scale prescribed is, therefore, without prejudice to any future findings which may be made on a more comprehensive record. Ohio Farm Bureau Federation v. A. & W., 120 I. C. C. 361.

(10x) Fifth-class rates on iron and steel articles from Pittsburgh, Pa., and points taking the same rates to Jamestown and Falconer, N. Y., found unreasonable and unduly prejudicial as compared with lower so-called short-haul commodity rates contemporaneously maintained from and to various other points for comparable distances. Reasonable and nonprejudicial rates prescribed for the future and reparation awarded. Jamestown Chamber of Commerce v. P. R. R., 120 I. C. C. 372.

(10y) Rates on sugar from Yonkers and Brooklyn, N. Y., to Lynchburg, Va., found unreasonable as compared with rates between other points for comparable distances and to extent they exceeded lower rate subsequently established. For a time, lower rates were in effect from points of origin to Lone Jack and South Boston, Va., farther distant points. Subsequently rates to South Boston were increased and those to Lynchburg reduced, thus removing fourth-section departures. Although evidence of a departure from long-and-short-haul provision of fourth section of the act does not establish unreasonableness of the intermediate rate, it is evidence tending in that direction, particularly when, as here, it is accompanied by subsequent establishment of the lower rate. Reparation awarded. See also 104 I. C. C. 293. Lynchburg Chamber of Commerce v. P. R. R., 120 I. C. C. 392.

(10z) Rates on cottonseed products from Tiptonville, Tenn., a branch line point, to northern and eastern destinations found not unreasonable but unduly prejudicial to extent they exceeded or may exceed lower rates contemporaneously maintained from Dyersburg, Tenn., a competing main-line point. Reparation awarded and undue prejudice ordered removed. Gannaway & Rice v. I. C., 120 I. C. C. 400.

(11a) Rate on burlap bags from Jersey City, N. J., to Baltimore, Md., found unreasonable to extent it exceeded lower

rate contemporaneously in effect to Norfolk, Va., a farther distant point, which lower rate was subsequently established to Baltimore. Reparation awarded. Riegel Sack Co. v. C. R. R. Co. of N. J., 120 I. C. C. 405.

(11b) Combination rates on curbing from Granite Hill, Ga., to St. Petersburg, Fla., found not unreasonable, discriminatory, or unduly prejudicial as compared with lower rates contemporaneously in effect to Tampa, Fla. Because of Florida's peculiar location, there is practically no overhead traffic and carriers have been permitted to make rates to and from Florida points on Jacksonville combination. Beyond Jacksonville, rates are on a distance basis, and while rates to stations intermediate between Jacksonville and Tampa are higher than to Tampa, rates to latter point are protected by appropriate fourth-section applications and are said to be depressed because of water competition which has been actual in the past. Moreover, earnings under rates assailed compare favorably with those for comparable distances from Granite Hill to Alabama and Mississippi destinations, and from points in Georgia and South Carolina to same and other destinations in southern and middle Atlantic States. Georgia Quincy Granite Co. v. A. C. L., 120 I. C. C. 408.

(11c) Joint rates on scrap car wheels from Windsor, Ontario, Canada, to Michigan City, Ind., and Pullman, Ill., found unreasonable and unduly prejudicial, in so far as the transportation takes place within United States, to extent they exceeded or may exceed 72 and 55 cents, respectively, higher than corresponding rates from Detroit, Mich. Reparation awarded. Hyman-Michaels Co. v. B. & O., 120 I. C. C. 417.

(11d) Combination rate charged on coal from La Follette. Tenn., moving through Benton Harbor, Mich., to Milwaukee, Wis., reconsigned to Hawkeye, Iowa, found unreasonable to extent it exceeded a lower rate contemporaneously maintained on like traffic moving through Toledo, Ohio. Benton Harbor and Toledo are in same general territory, the distances over both routes are practically equal, and rates through the two gateways should be same. Reparation awarded. Reeves Coal & Dock Co. v. L. & N., 120 I. C. C. 428.

(11e) Findings in original report, 104 I. C. C. 408, that rates on rosin to Burlington, Ontario, Canada, from south Atlantic and Gulf ports and points taking same rates were not unduly prejudicial or unduly preferential; that rates from Gulf ports and points taking same rates were not unreasonable; and that rates from south Atlantic ports and points taking same rates were unreasonable to extent they exceeded rates contemporaneously in effect from Gulf ports to same destinations, affirmed. Vera Chemical Co. v. A. C., 120 I. C. C. 434.

(11f) Rates on sugar from New Orleans and points taking same rates to Marshall and Jefferson, Tex., found unreasonable in past to extent they exceeded present rates. Present rates found just and reasonable maximum rates for future, but unduly prejudicial to extent they exceed those contemporaneously in effect to Shreveport by more than 3 cents from Marshall and 4 cents from Jefferson. Marshall and Jefferson v. T. & P., 120 I. C. C. 455.

(11g) A finding of the commission made many years ago and designed primarily to place certain points upon a proper relationship, should not be accepted ipso facto as proving intrinsic unreasonableness in same rates subsequently attacked for sole purpose of reparation. Marshall and Jefferson v. T. & P., 120 I. C. C. 455, 458.

(11h) Fifth-class rates on dried seed peas, minimum 60,000 pounds, from Grace, Idaho, to Smithfield, Utah, found unreasonable as compared with lower commodity rates contemporaneously in effect on canned goods and green peas from and to same points; also with lower rates for comparable distances from Idaho to Utah points on various other commodities. The usual minimum for commodity rates on dried peas in this territory is 40,000 pounds and no good reason appears for a higher minimum in connection with commodity rates from Grace to Smithfield. Reasonable rate and minimum weight prescribed for future and reparation awarded. Morgan Canning Co. v. O. S. L., 120 I. C. C. 466.

(11i) Applicable rates on cotton-compress parts or pieces weighing less than 2,000 pounds from Houston and Winona, Miss., to Russellville, Little Rock, and Earle, Ark., found not unreasonable, but applicable rates on castings or forgings weighing 2,000 pounds or more each found unreasonable to extent they exceeded rates contemporaneously in effect from New Orleans, Jackson, and Meri-

dian to same destinations. Reparation awarded. Russellville Compress Co. v. G., M. & N., 120 I. C. C. 481.

(11j) Ratings and rates in official, southern, and western classifications on sandwich spread found unreasonable to extent they exceeded second class, l. c. l., in all three classifications, and fifth class in official and western classifications, and sixth class in southern classification, in carloads, subject to a 36,000-pound minimum. Reasonable ratings and rates prescribed for future and reparation awarded on shipments moving from Cleveland, Ohio, to various destinations. Sar-A-Lee Co. v. A., C. & Y., 120 I. C. C. 512.

(11k) Rates on bituminous coal from Elkville, Ill., to destinations in Missouri, Iowa, Kansas, Arkansas, Colorado, Montana, Nebraska, Oklahoma, South Dakota, and Wyoming found unreasonable and unduly prejudicial to extent they exceed corresponding rates from Dowell, Ill., and other points in so-called DuQuoin group. Except for slightly greater distance, transportation and other conditions from Elkville are substantially similar to those applying from the DuQuoin group, and Elkville should be included therein rather than in the southern Illinois group. Reasonable and nonprejudicial rates prescribed for future. Black Servant Coal Co. v. I. C., 120 I. C. C. 604.

(11l) Sixth-class rates on cement roofing slabs, reinforced with metal, from Wampum, Pa., to Toronto, Ontario, Canada, found unreasonable to extent they exceeded 75 per cent of sixth class, which lower basis was contemporaneously in effect from Chicago and other producing points to destinations in c. f. a. territory, and from Chicago to Sarnia, Windsor, and Toronto, Ontario, Canada for comparable hauls. Reparation awarded. American Cement Tile Mfg. Co. v. P. R. R., 120 I. C. C. 611.

(11m) Rates on agricultural limestone from West Stockbridge, Mass., to points in eastern New York found unreasonable and unduly prejudicial as compared with rates contemporaneously maintained from Buffalo. Reasonable and nonprejudicial rates and relationships prescribed for future and reparation denied, no shipments having moved under the rates found unreasonable and other evidence of damage being too uncertain and speculative to afford a sufficient basis for an award. Grangers Mfg. Co. v. N. Y. C., 120 I. C. C. 648.

(11n) Rate on eggs from Brownwood and Killeen, Tex., to Philadelphia, Pa., found unreasonable to extent it exceeded lower rate contemporaneously in effect from and to same points via routes other than route of movement, which lower rate also applied from other Texas points to Philadelphia for comparable distances. Reparation awarded. Sheaffer & Marvel v. B. & O., 120 I. C. C. 673.

(11o) Rate on scrap iron from East Radford, Va., to Brackenridge and Pittsburgh, Pa., and Steubenville, Ohio, found unreasonable to extent it exceeded Virginia cities basis of rates contemporaneously in effect from Hopewell and other Virginia points, and subsequently made applicable from East Radford. Reparation awarded. Dreifus Co. v. P. R. R., 120 I. C. C. 680.

(11p) Sixth-class rate on sawdust from Clarksburg, W. Va., to Newark, N. J., found unreasonable as compared with lower commodity rates contemporaneously in effect from points surrounding Clarksburg to same destination; between other points in same territory for similar distances; and to extent it exceeded rate subsequently established. Reparation awarded. Maloney v. B. & O., 120 I. C. C. 705.

(11q) Rate on lumber from Breckenridge, Tex., to Kaw, Okla., found unreasonable to extent it exceeded a lower rate contemporaneously in effect from numerous points in central Texas to Kaw for comparable distances. Reasonable rate prescribed for future and reparation awarded. Gulf Production Co. v. W. F. & S., 120 I. C. C. 709.

(11r) Rates on liquid tanning (quebracho) extract from Brooklyn, N. Y., to Winchester and Peabody, Mass., found not unreasonable as compared with lower rates on same commodity or on dried or solid extract from and to various other points. Carriers point out that fifth-class rates charged are on basis prescribed in 49 I. C. C. 421. Moreover, rate charged is approximately equal to that found reasonable by commission on liquid tanning extract from Mariners Harbor, N. Y., to Millville, Pa., for a distance considerably less than that here involved. Beggs & Cobb v. B. & M., 120 I. C. C. 711.

(11s) Line-haul rate, plus switching charge, on crushed stone from points on Chicago, North Shore & Milwaukee Ry., within the Racine, Wis., switching limits, to Chicago and other Illinois points found

not unreasonable as compared with rates on other articles moving between numerous points in same territory for comparable distances, or with rates on gravel from Fontana, Wis., a similarly situated short-line point, to Chicago. Carriers show that sand and gravel rates are depressed due to competitive conditions, and cite decisions in which higher rates have been prescribed in various sections of the country. Assailed rates do not appear unreasonable, and also apply from a group including North Milwaukee and Waukesha, Wis., competing points, to Chicago. Moreover, in 118 I. C. C. 633, present rate from Racine to Chicago, which does not include absorption of switching charges, was found not unreasonable. Racine Crushed Stone Co. v. C., M. & St. P., 120 I. C. C. 717.

(11t) The act condemns exaction of unreasonable rates and makes no distinction as between relative unreasonableness and unreasonableness per se. Nelson Fuel Co. v. C. & O., 120 I. C. C. 723, 725, 726.

(11u) Rate on green and green-salted hides and pelts, and tallow, in straight and mixed carloads from Wenatchee, Wash., to Portland, Oreg., found unreasonable as compared with lower rates from various other Washington and Idaho points to same destination. Similar rates from Billings, Butte, and Missoula, Mont., found out of line and their readjustment required. Reparation awarded and reasonable rate for future prescribed from Wenatchee. Bissinger & Co. v. G. N., 120 I. C. C. 745.

(11v) The maintenance of a higher rate to one point than to a few others to which it is closely related does not necessarily indicate that the higher rate is unreasonable, especially when, as here, the general conditions of transportation are substantially dissimilar. Consolidated Rendering Co. v. N. Y., N. H. & H. R. R., 123 I. C. C. 98, 100.

(11w) Each packing house is entitled to a reasonable rate upon its products to various markets of consumption, and these rates, again, should be fairly adjusted with reference to one another. Allied Packers v. B. & O. R. R., 123 I. C. C. 115, 117.

(11xy) Rate on cabbage from St. Elmo, Ala., to, Lima, Ohio, found unreasonable to extent it exceeded lower rate contemporaneously in effect to Akron, Canton, Cleveland, Sandusky, and Toledo, Ohio, and Detroit, Mich., farther distant points, which lower rate was subsequently made applicable to Lima. No justification exists for charging a higher rate to Lima than to farther distant points and presumption that this higher rate was unreasonable was not adequately rebutted. Reparation awarded. Cardosi & Co. v. B. & O., 122 I. C. C. 1.

(11z) Rates on tankage and dried blood, from, El Paso, Tex., to Los Angeles, Calif., and points taking same rates, found not unreasonable or unduly prejudicial as compared with lower rates contemporaneously maintained from Salt Lake City, Utah, to same destination, or with rates from and to various points in same general territory for comparable distances. Peyton Packing Co. v. A. & S., 122 I. C. C. 3, 10, 11.

(12a) Rate on soap stock from El Paso, Tex., San Francisco, Calif., found not unreasonable as compared with lower rate contemporaneously in effect to Chicago, Ill., but rates on soap stock to Los Angeles, and on inedible tallow to both San Francisco and Los Angeles found unreasonable and reasonable specific rates, in harmony with scale prescribed in 100 I. C. C. 4, for application on packing-house products, prescribed for future. Peyton Packing Co. v. A. & S., 122 I. C. C. 3, 11, 12.

(12b) Rate on edible tallow from El Paso, Tex., to Los Angeles, Calif., found unreasonable as compared with lower rates contemporaneously in effect from Utah points to the same destination, with rates from and to various points for comparable distances, and to extent it exceeded rate on packing-house products for similar distances under the scale prescribed in 100 I. C. C. 4. Reasonable rate prescribed for future. Peyton Packing Co. v. A. & S., 122 I. C. C. 3, 12, 13.

(12c) Fifth-class rate on graders' outfits with livestock in carloads, and first-class rate on excess livestock in less than carloads, from Hazlehurst, Miss., to Hartselle, Ala., found unreasonable as compared with rates contemporaneously applicable between points in contiguous territory wherein transportation conditions are similar, and to extent they exceeded lower first-class and fifth-class rates subsequently established, which lower rates the commission found reasonable as maxima in 61 I. C. C. 308, from New Orleans, Mobile, and Pensacola, to Nashville. Reparation award-

ed. Jones Construction Co. v. L. & N., 122 I. C. C. 18.

(12d) Fifth-class rates assessed on petroleum products from Bayonne and Tremley Point, N. J., to Fresh Pond, N. Y., all Group A points, found unreasonable as compared with commodity rates from various refining points to destinations in eastern trunk-line and New England territories; as compared with commodity rates contemporaneously in effect from Point Breeze, a Philadelphia group point, to Fresh Pond, established in compliance with commission's findings in Transcontinental Oil Co., 89 I. C. C. 738; and to extent it exceeded lower rate subsequently made effective to all Group A points, some of which involve a materially longer haul than to Fresh Pond. Reparation awarded. Transcontinental Oil Co. v. C. R. R. Co. of N. J., 122 I. C. C. 61.

(12e) Sixth-class rate on printing paper from Newburgh and Salisbury Mills, N. Y., to Montclair, N. J., found unreasonable as compared with lower corresponding rates contemporaneously in effect to Newark, Nutley, Rutherford, and Belleville, N. J., points in the general vicinity of Montclair. Reparation awarded. Holden Paper Co. v. E. R. R., 122 I. C. C. 130.

(12f) Commodity rates on cowpeas from various points in South Carolina to New Orleans, found unreasonable to extent they exceeded lower class D rates contemporaneously in effect. In 10 I. C. C. 281, the commission recognized propriety of class D ratings on this commodity in southern territory; moreover, the situation here presented is an abnormality requiring special justification. See 29 I. C. C. 18 and 101 I. C. C. 424. Reasonable rates prescribed for future and reparation awarded. Gay, Sullivan & Co. v. A. G. S., 122 I. C. C. 201.

(12g) Rates on window glass from, Fort Smith, Ark., and Okmulgee, Okla., and on rough-rolled glass from Okmulgee to destinations in Texas, found not unreasonable, discriminatory, or unduly prejudicial as compared with those contemporaneously in effect from Shreveport, La., a competing point, to same destinations; except that such rates are unduly prejudicial to Fort Smith and Okmulgee and unduly preferential of Shreveport, to extent that rates from Fort Smith and Okmulgee to Gainesville exceed 6 cents less than the contemporaneous rates from Shreveport, and to extent that rates from Fort Smith and Okmulgee to Sweetwater and San Antonio exceed 4 and 5 cents, respectively, higher than the contemporaneous rates from Shreveport. Nonprejudicial bases of rates prescribed. Harding Glass Co. v. A., T. & S. F., 122 I. C. C. 217.

(12h) Rate on box board from Denver, Colo., to Oklahoma City, Okla., found not unreasonable as compared with rates contemporaneously in effect from same point to Kansas City, St. Louis, and Chicago and from two last-named points and St. Paul and Fox River group in Wisconsin to Oklahoma City. Complainant sought same rate on its traffic as that in effect from St. Louis to Oklahoma City, but difference in distance in favor of St. Louis does not warrant a parity in rates. Moreover, rates prescribed on paper and paper articles from Fox River and related northern groups to destinations in Oklahoma and other States, were subsequently made applicable from Denver, and carriers urge that because of this fact complainant has enjoyed a commodity rate substantially lower than class rates previously maintained. Oklahoma Paper Co. v. M. K. T., 122 I. C. C. 229.

(12i) Rates on fluorspar from Mesilla Park, N. Mex., to Torrance, Calif., found unreasonable to extent it exceeded a lower rate contemporaneously in effect to San Francisco involving a greater haul. Reparation awarded. Llewellyn Iron Works v. A., T. & S. F., 122 I. C. C. 232.

(12j) Rates from more sparsely settled and less well-developed western portions of the Dakotas may properly be higher, relatively, than rates from the eastern portions. Grain and Products, 122 I. C. C. 235, 267.

(12k) Rates on grain from points in Indiana on the Chicago, Indianapolis & Louisville Ry. to Chicago, when reshipped over lake or lake-and-rail lines, found not unreasonable or otherwise unlawful because lower than rates on similar traffic from same origin points to Indianapolis. Complainant contended that assailed rates are unduly low as a result of which traffic is diverted by way of Chicago instead of moving by way of Indianapolis. However, local rates to Chicago are upon a much higher level than rates assailed and evidence of shippers is to effect that the bulk of their grain moves to interior destinations and

Ohio River markets and that greater quantities of grain are shipped to Indianapolis than to Chicago the latter market being desirable principally for off-grade grain. Indianapolis Board of Trade v. C., I. & L., 122 I. C. C. 289.

(12l) Rate on linseed oil from Fredonia, Kans., to Kansas City, Mo., found unreasonable as compared with rates from Chicago, Des Moines, Minneapolis, St. Louis, and Omaha, to same destination; from and to other points for comparable distances; and to extent it exceeded rate constructed in accordance with distance scale prescribed in 98 I. C. C. 183, on vegetable oils between points in the Southwest and from Oklahoma and other southwestern States to Kansas City and points in western trunk-line territory. Reasonable rate prescribed for future and reparation awarded. Fredonia Linseed Oil Works v. A., T. & S F., 122 I. C. C. 291.

(12m) Rates on fresh berries, preserved in sugar, in barrels, from Seattle and Tacoma, Wash., Portland, East Portland, Salem, and Eugene, Oreg., to Los Angeles Calif., found unreasonable as compared with rates on canned and fresh fruit from and to the same points, on the same commodities, including green vegetables, from various points to Los Angeles, and on citrus fruits from Los Angeles to various destinations for comparable distances. Reparation awarded. North Ontario Packing Co. v. O. W. R. R. & Nav. Co., 122 I. C. C. 360.

(12n) Rates on furniture from Fort Smith Ark., to Florence, Sheffield and Tuscumbia, Ala., found not unreasonable or discriminatory as compared with lower rates to Birmingham, Ala., from Florence to Ft. Smith, or from Fort Smith to eastern seaboard cities, but unduly prejudicial to extent that rate to Florence exceeds that contemporaneously maintained to Birmingham. Rates assailed compare favorably with those prescribed in 100 I. C. C. 127 and 112 I. C. C. 302, for comparable distances, and considering fact that a portion of the haul from compared points is through territory taking a lower level of rates comparisons indicate that rates assailed are not unduly high. Undue prejudice ordered removed and reparation denied. Florence Chamber of Commerce v. L. & N., 122 I. C. C. 367.

(12o) Rate on crushed marble, in sacks, from Gantt's Quarry, Ala., to Biloxi, Miss., found unreasonable as compared with lower rates on crushed stone and crushed marble from and to points in same general territory for comparable distances, and to extent it exceeded rate contemporaneously in effect on crushed marble from Moretti, Ala., to Gulfport, Miss., minimum 90 per cent of marked capacity of car, except when loaded to full visible capacity, the distance from Moretti to Gulfport approximating that from Gantt's Quarry to Biloxi. Reparation awarded. Dagostin & Angelini Bros. v. L. & N., 122 I. C. C. 385.

(12p) Proportional rates on grain and products from Mississippi River gateways and points west thereof to intermediate destinations on the Gulf & Ship Island R. R., higher than to farther distant points, found not unreasonable or otherwise unlawful. Higher rates to intermediate points were permitted to meet rates of trunk-line competitors at junction points by fourth-section order. Moreover, carriers show that rates to points on the Gulf & Ship Island compare favorably with rates from same points to destinations in Mississippi and Louisiana on the New Orleans Great Northern, Mississippi Central, and Gulf, Mobile & Northern, and are on a lower level than rates to the Southeast. Jackson Traffic Bureau v. A. & V., 122 I. C. C. 387, 388, 389.

(12q) Class artes on wrapping paper and paper articles from Cincinnati, Ohio, to destinations in Missouri, Kansas, Iowa, Nebraska, and Colorado, found unreasonable and unduly prejudicial as compared with lower commodity rates contemporaneously in effect from Fox River group prescribed in 66 I. C. C. 571, to same destinations. However, as practice of basing interterritorial rates on a combination of factors to and from the Mississippi River has been in effect for many years and rates assailed, judged as combination rates, do not produce excessive earnings, they were not unreasonable in the past and no damage has been shown as a result of undue prejudice which may have existed. Reasonable and nonprejudicial rates prescribed for future. Fox Paper Co. v. A., T. & S. F., 122 I. C. C. 399.

(12r) Class rate on wood pulp from Philadelphia and Baltimore to Fort Edward, N. Y., found not unreasonable as compared with lower commodity rates from certain Philadelphia piers, New York, and Boston to same destination, or with commodity rates in effect generally

from Philadelphia and Baltimore to various New York and Canadian destinations. While carriers subsequently established a commodity rate lower than that charged, assailed rate compares favorably with rates approved by commission on this commodity in 104 I. C. C. 327 and other cases. International Paper Co. v. B. & O., 122 I. C. C. 440.

(12s) Rates on anthracite coal from points in Pennsylvania and West Virginia to West Roxbury and Bemis (Watertown), points outside the Boston switching district, and Roxbury, Boylston Street, and Forest Hills, Mass., points within the district intermediate to Boston found not unreasonable or unduly prejudicial to West Roxbury as compared with lower rates to Boston, but unduly prejudicial to Roxbury, Boylston Street and Forest Hills. Rates to Bemis found unduly prejudicial to extent they exceed rates contemporaneously in effect to other stations in Watertown. Lower rates to Boston are protected by fourth-section orders and are shown to be depressed by water competition, but no good reason appears for maintaining higher rates to Bemis than to other stations in Watertown. Whittemore's Sons v. N. Y., N. H. & H., 122 I. C. C. 451.

(12t) Rate on bituminous-coal screenings from Harrisburg, Ill., to Sioux City, Iowa, found unreasonable as compared with lower rates from mines in Harrisburg district to destinations in Missouri Nebraska, North Dakota, South Dakota and Minnesota for comparable distances and to extent it exceeded a lower rate contemporaneously in effect from southern Illinois Mines to Sioux City over various routes, which lower rate was subsequently established from Harrisburg to Sioux City via route of movement. Reparation awarded. Saline Coal Corp., v. C., M. & St. P., 122 I. C. C. 467.

(12u) Rate on fresh meats, in mixed carloads with packinghouse products from Jacksonville, Ill., to Detroit, Mich. found not unreasonable but unduly prejudicial to extent it exceeded a lower rate contemporaneously in effect from St Louis, Mo. While Jacksonville is not intermediate to St. Louis, it is nearer to Detroit. However, rate assailed was based on distance scale prescribed in 45 I. C. C. 254 and record does not warrant a finding that such rate was unreasonable. Powers-Begg & Co. v. W. Ry., 122 I. C. C. 476.

(12v) Rates on linseed oil from Portland, Oreg., to Spokane, Tacoma, and Seattle, Wash., and to San Francisco, Paraffin, Berkeley, and Los Angeles, Calif., found not unreasonable or otherwise unlawful as compared with rates on creosote oil, coconut oil, cottonseed oil, cooking oils, and various other commodities, from Chicago, Milwaukee, and Minneapolis, to the same west coast destinations. While the compared rates are lower than those on linseed oil, no showing was made as to competition or any movement from and to points specified. Moreover, rates assailed compare favorably with those approved by commission in 21 I. C. C. 640 and other cited cases. Portland Linseed Oil Works v. G. N., 122 I. C. C. 484.

(12w) Combination rates on lumber from points in Mississippi to Mariemont, Ohio, found unreasonable to extent they exceeded lower rate subsequently established. Rates assailed were based on Cincinnati, using factors of southern lines plus the local to Newtown, Ohio, applicable to Mariemont, an intermediate point, under proper tariff provision, and subject to combination rule. The rate subsequently established was a proportional rate from Cincinnati to Mariemont on shipments originating in the South and is reasonably aligned with rates on lumber from same origin territory to various Ohio points in vicinity of Mariemont. Reparation awarded on shipments moving prior to establishment of lower rate Stanley Lbr. Co. v. A. & V., 122 I. C. C. 506.

(12x) Rates on scrap copper and scrap brass, from points in official, southern, and western classification territories to East Liberty, Pittsburgh, Pa., found not unreasonable as compared with rates on like traffic between various points for comparable distances, except in so far as they exceeded those based on the general readjustment prescribed in 109 I. C. C. 351, modified in 118 I. C. C. 725. Reparation denied. Federated Metals Corp. v. B. & O., 122 I. C. C. 513.

(12y) Rates on prepared sizes of anthracite coal from Wyoming, Lehigh, and Schuylkill mines in Pennsylvania, to points in Albany-Utica-Syracuse group and other points taking same rates over one or more routes considered as a whole found unjust, unreasonable, and unduly prejudicial and preferential in relation of such rates to each other. Rates to Rochester, N. Y., found unreasonable to

extent they exceed those contemporaneously in effect via other routes for comparable distances; and rates to Carthage and Clayton, N. Y., found unreasonable to extent they exceed rates contemporaneously maintained to Buffalo and Watertown, N. Y. Just and reasonable rates prescribed for future and findings in 104 I. C. C. 514, reversed in so far as inconsistent with findings herein. Anthracite Coal Investigation, 122 I. C. C. 527.

(12z) Rates on grain and products from Ohio and Mississippi river crossings and Mount Vernon, Ind., to Florence Sheffield, and Tuscumbia, Ala., found unreasonable to extent they exceed rates found reasonable in 118 I. C. C. 732 and other cited cases, and unduly prejudicial to extent they exceed by more than 2 cents per 100 pounds the rates contemporaneously applied on like traffic to Corinth. Reasonable and nonprejudicial rates prescribed for future and reparation denied. Florence Chamber of Commerce v. I. C., 122 I. C. C. 653.

(13a) Rates prescribed to the Mississippi Valley were not designed as standards of reasonable maximum rates, but primarily to bring rates in harmony with fourth section, and at same time return to carriers substantially the same revenue as earned under adjustment theretofore maintained. Florence Chamber of Commerce v. I. C., 122 I. C. C. 653, 657 658.

(13b) Rate on gravel from Holliday, Kans., to St. Joseph, Mo., found unreasonable to extent it exceeded a lower rate contemporaneously in effect from various points in Kansas to points in Missouri for greater distances, which lower rate also applied from Holliday to St. Joseph over a route other than route of movement. Reasonable rate prescribed for future and reparation awarded Spencer Co. v. A., T. & S. F., 122 I. C. C. 689.

(13c) Although the question of relationship between rates on grain and rates on grain products has been presented frequently for commission's determination, it has never prescribed a fixed differential for universal application. The commission has been inclined rather to treat each case on its merits, recognizing the differences in conditions which prevail in various parts of the country. Accordingly, it has been held in some instances that there should be a substantial parity between rates on wheat and flour, in other cases differentials have been prescribed, and in others wheat and flour rates were prescribed on same basis. Ogden Grain Exchange v. A. & S., 122 I. C. C. 691, 714.

(13d) Rates on drag-line machinery from Dayton and Tippecanoe City, Ohio, to Tarke, Calif., found not unreasonable as compared with lower rate contemporaneously in effect from Memphis, Tenn., Owen, Wis., and Illinois points to Spokane, Wash. Smith Bros. v. B. & O., 122 I. C. C. 745.

(13e) Fifth-class rate on quebracho tanning extract from New York Harbor points to Ludlow, Pa., found unreasonable as compared with lower rates contemporaneously in effect from Boston, Mass., to points in vicinity of Ludlow, and to extent it exceeded a lower commodity rate contemporaneously in effect to Salamanca, N. Y., a farther distant point. Reasonable rate prescribed for future and reparation awarded. Curtis Leather Co. v. P. R. R., 123 I. C. C. 1.

(13f) Rates on coke and bituminous and anthracite coal from eastern points to Beaver Dam, Wis., found not unreasonable or unduly prejudicial because of factors from Milwaukee to Beaver Dam, or as compared with factors on same commodities from Milwaukee to various other eastern Wisconsin destinations. Factor assailed was established as outgrowth of a general revision of coal rates in Wisconsin with a view to harmonizing rates, and appears to be in line with the general level throughout that State. Through rates in issue are on a group basis both as to origins and destinations, and represent efforts of years towards balancing the delicate competitive situation obtaining among carriers, producers and distributors. Complainant's comparisons can not be taken as the measure of reasonableness in this wide territory, nor do exceptions which obtain at competitive Wisconsin points within a short distance of one or more docks show unreasonableness of rates to Beaver Dam. Beaver Dam Chamber of Commerce v. C., M. & St. P., 123 I. C. C. 5.

(13g) Rates on sheet iron or steel from points in Alabama, Indiana, Illinois, Kentucky, Missouri, Pennsylvania, the Virginias, and other interstate points in defined territories, to Houston, Tex., found not unreasonable as compared with rates on same and various other articles

from Pittsburgh to same destination. Rates assailed compare favorably, distance considered, with those found reasonable in 100 I. C. C. 173 and 93 I. C. C. 285, on iron and steel plates from St Louis to Dallas and Fort Worth, Tex., and on steel plates and sheet iron from Niles, Ohio, a point in the Pittsburgh district, to Mexia, Tex., respectively. Davis George Mfg. Co. v. A. G. S., 123 I. C. C. 10.

(13h) Third-class rates on printing and wrapping paper, l. c. l., from Niagara Falls, N. Y., to Lynchburg, Va., found not unreasonable or unduly prejudicial as compared with lower l. c. l. rates to Lone Jack, South Boston, and Danville, Va., to which Lynchburg is intermediate. Carriers showed that rates from Niagara Falls to Lynchburg compare favorably with corresponding rates between other points in that territory. Moreover fourth-section departures were protected by appropriate applications, and were subsequently removed by increasing the rates from the farther distant points to level of rates to Lynchburg. Lynchburg Traffic Bureau v. N. Y. C., 123 I. C. C. 15

(13i) Fifth-class rate on brass ingots from Chicago, Ill., to Sturgis, Mich., found not unreasonable as compared with lower commodity rate equal to sixth class subsequently established by carriers, under a general readjustment of rates in c. f. a. territory, which basis commission approved in 96 I. C. C. 351. In cited case the rate from Chicago to Sturgis was not directly involved, and revision suggested was in nature of a general readjustment which might require both increases and reductions. Complaint offered comparisons with a number of miscellaneous commodities for similar distances, but made no showing with respect to transportation, competitive, and other conditions attending their movement. Carriers, on the other hand, showed that when these shipments moved the general rate bases on brass ingots in c. f. a. territory was fifth class; also that the same bases of rates apply on numerous commodities, which move in substantially greater volume than brass ingots. Hartman Ingot Metal Co. v. C., B. & Q., 123 I. C. C. 20.

(13j) Combination rate on sporadic shipment of cane syrup from Inwood, Fla., to Columbus, Ga., found unreasonable as compared with lower rates between various points in same general territory for comparable distances, and to extent it exceeded a lower joint rate subsequently established. Reparation awarded. Hardaway-Cargill Co. v. L. & N., 123 I. C. C. 23.

(13k) Rate on cotton-factory products, l. c. l., from Mobile, Ala., via water-and-rail route to Rockland, Md., found unreasonable as compared with lower rate contemporaneously in effect over water-and-rail routes from Mobile to Baltimore, Md., Chester, Pa., and various points in New England, New York, New Jersey, and Pennsylvania, from various Mississippi and Tennessee points to Rockland, and to extent it exceeded the water-and-rail rate contemporaneously in effect from Meridian, Miss., to Rockland. Reasonable rate prescribed for future, and reparation awarded. Cotton Mills Products Co. v. Mallory S. S. Co. 123 I. C. C. 25.

(13l) Fourth-class l. c. l. and class D c. l. rates charged on shipments of casks, kegs, and cases containing empty bottles returned from points in Wisconsin and Michigan to Duluth, found unreasonable to extent they exceeded one-half of fourth-class rate subject to a fourth-class minimum charge contemporaneously in effect to St. Paul, Minneapolis, Chicago, and Milwaukee, which lower rate was subsequently established from and to points here involved, and were previously found reasonable by commission from various points to Duluth in 73 I. C. C. 637 and 95 I. C. C. 3. Reparation awarded. Fitger Co. v. D., S. S. & A., 123 I. C. C. 27.

(13m) Local rate on redwood lumber from Pittsburg, Calif., to Hayden, Ariz., originally moving from Casper, Calif., to Pittsburg by water, found not unreasonable, discriminatory, or unduly prejudicial, as compared with lower ex-water proportional rate from Pittsburg to Phoenix and other points more distant than Hayden, or with lower rate established to Hayden subsequent to movement. Such lower rates are on a low basis, having been established because of market and carrier competition, which is not reflected at Hayden, and subsequent reduction is not conclusive of unreasonableness of the higher rate. Redwood Mfg. Co. v. S. P. Co., 123 I. C. C. 30, 32.

(13n) Rates on metal beds from New Orleans to destinations in western Louisiana, Arkansas, Oklahoma, and Texas found not unreasonable or unduly prejudicial as compared with rates contemporaneously in effect from St. Louis, At-

lanta, Chicago, Kenosha, and New York to same destinations, except to extent that rates to Oklahoma exceed rates based on distance scale prescribed herein; that rates to Texas common points exceed Table 14 rate prescribed in 77 I. C. C. 473; and that rates to Texas differential territory exceed rates constructed in accordance with method prescribed, all subject to a minimum of 30,000 pounds. Reasonable rates prescribed for future. Crescent Bed Co. v. C., R. I. & P., 123 I. C. C. 41.

(13o) Applicable rate on potatoes from Pablo and Whitehall, Mont., to New Orleans, La., found not unreasonable as compared with lower rate contemporaneously in effect to Houston, Tex., a farther distant point. While subsequent to movement tariff naming lower rate was made subject to rule 77 of Tariff Circular 18-A, and such lower rate was made applicable from and to points here involved, neither the subsequent reduction nor the fourth-section violation, in and of themselves, establish unreasonableness of the rate to New Orleans. Moreover, carriers showed that higher rates contemporaneously applied on this traffic between various points in same general territory for comparable distances. Kohlman Bros. & Sugarman v. L. & N., 123 I. C. C. 56.

(13p) Applicable rate on cotton compresses, k. d., loose or in packages, charged on shipments of castings and forgoeings, constituting parts of a compress, from Meridian, Miss., to Blytheville, Ark., found not unreasonable. These shipments were tendered on separate bills of lading, and moved on different dates, none consisting of a complete compress. Distance considered, the rate charged compares favorably with those contemporaneously applicable between various points, and higher rates were found not unreasonable on commodities having like transportation characteristics in 45 I. C. C. 549 and 51 I. C. C. 138, between other points in same general territory for comparable distances. Blytheville Compress & Warehouse Co. v. M. & O., 123 I. C. C. 95.

(13q) Sixth-class rate on acid phosphate from Lowell, Mass., to East Windsor, Conn., found not unreasonable or otherwise unlawful as compared with lower commodity rate subsequently established, or with commodity rates contemporaneously in effect to Bridgeport, Hartford, and other Connecticut points, and from Carteret and Grasselli, N. J., to New England points for comparable distances. Maintenance of a higher rate to East Windsor than to the other points to which it is closely related does not necessarily indicate that higher rate is unreasonable as the general conditions of transportation are substantially dissimilar; nor is the subsequent reduction, of itself, sufficient to justify presumption that former rate was unreasonable. Consolidated Rendering Co. v. N. Y., N. H. & H., 123 I. C. C. 98.

(13rs) Rates on coal from Thompson, Utah, to destinations in Utah, Nevada, and California west of Castle Gate, Utah, during Federal control, found not unreasonable as compared with those from Castle Gate, and Rock Springs, Wyo., to same destinations, and from Montana points for comparable distances, except to destinations on Nevada Northern, Western Pacific, and Los Angeles & Salt Lake. The more favorable transportation conditions from Rock Springs was recognized in 89 I. C. C. 666, which tends to offset somewhat longer average distances from Castle Gate or Thompson; a differential of 10 cents in favor of Castle Gate can not be considered an unreasonable charge for the 94-mile haul from Thompson; and Montana coal rates are on a somewhat lower level than those in other western States. American Fuel Co. v. A., T. & S. F., 123 I. C. C. 101.

(13t) On further consideration, former report 118 I. C. C. 205, wherein rates on newsprint paper from Berlin, N. H., to Birmingham, Ala., were found unreasonable and unduly prejudicial in comparison with rates to Nashville and Memphis, modified in part and case reopened for further hearing with a view to establishment of an appropriate relationship between these points. Birmingham News Co. v. A., B. & A., 123 I. C. C. 133.

(13u) Rates on sand and gravel from Janesville, Afton, and Beloit, Wis., to complainant's plants located in the Mayfair and Weber districts in Chicago, Ill., found not unreasonable or discriminatory, but unduly prejudicial to extent they exceeded rates contemporaneously applicable on like traffic from same points of origin to so-called inner-zone destinations in Chicago switching district. Reparation denied. Chicago Fire Brick Co. v. C. & N. W., 123 I. C. C. 164.

(13v) Joint rates on shipments of bituminous coal during Federal control

from central and southern Illinois to Edgebrook, a point within Chicago switching district, and Morton Grove, a point immediately outside of that district, found not unreasonable, but combination rates based on Chicago, plus local rate beyond, found unreasonable as compared with lower rates contemporaneously in effect to near-by competing points both within and without the district. See also 73 I. C. C. 152. Reparation awarded. Chicago Coal Merchants Asso. v. Director General, 123 I. C. C. 169

(13w) In a general proceeding, where rates on practically all articles other than a few so-called basic commodities are in issue, the commission should, in fixing level of rates on any one article, have reasonable regard for relative transportation conditions of respective articles and prescribe rates on each commodity fairly related to those prescribed on others with similar characteristics. Consolidated Southwestern Cases, 123 I. C. C. 203, 304.

(13x) Rates to, from, and between points in Texas differential territory and to, from, and between points on the Rock Island line, Tyronne to Texahoma, Okla., inclusive, may properly be higher than rates for like distances in the Southwest. Consolidated Southwestern Cases, 123 I. C. C. 203, 389, 390.

(13y) Rates on brick and articles taking same rates from designated points in Ohio and West Virginia to Verona Brackenridge, and Tarentum, Pa., found in violation of fourth section of the act and unreasonable to extent they exceeded rates from the same origin points to Butler, a farther distant point. Reasonable rates prescribed for future, and reparation awarded. Globe Brick Co. v. P. R. R., 123 I. C. C. 498.

(13z) Rates on fertilizer from Philadelphia, Pa., to destinations on Long Island, N. Y., found unreasonable as compared with lower rates contemporaneously in effect from Baltimore to destinations in same groups for considerably greater distances; with rates on fertilizer in trunk-line territory generally; and to extent they exceeded rates subsequently established. Reparation awarded. Tunnell & Co. v. P. R. R., 123 I. C. C. 581.

(14a) Rate on lumber from Burks Falls, Ontario, Canada, to Pontiac, Mich. found not unreasonably as compared with rates contemporaneously in effect to Toledo, Detroit, and Chicago. While comparisons of distances and earnings show rates that are relatively lower than rate assailed, Toledo, Detroit, and Chicago are lake ports and failure to show conditions under which rates to those points were established impairs their probative value. Strable Lbr. & Salt Co. v. C. N. Ry., 123 I. C. C. 585.

(14b) Rate on clay from Calhoun Mo., to Pittsburg, Kans., found unreasonable as compared with lower rate from point of origin to Kansas City, Mo., for comparable distances over various routes; with single-line and joint-line distance rates for similar distances prescribed in 77 I. C. C. 473; and to extent it exceeded a lower rate subsequently established over route of movement. Pittsburg Clay Products Co. v. M.-K.-T., 123 I. C. C. 605.

(14c) Mere fact that rate assailed appears to be out of line with a few other rates to which it is closely related, is not of itself sufficient to afford basis for a finding of unreasonableness. City Coal Co. v. N. Y., N. H. & H., 123 I. C. C. 609, 611.

(14d) Rates on salt from mines in Kansas, Michigan, and Ohio, to Mason City, Ia., found unreasonable to extent they exceeded lower commodity rates prescribed in Salt Cases of 1923, 92 I. C. C. 388. In 74 I. C. C. 409, the commission explained that proposal to reduce rates to Des Moines, without corresponding reductions to Mason City, was obviously unjustifiable, and recommended that Mason City, and any other important salt-consuming point in northeastern and central Iowa, similarly situated, be given the same reduction. Complainants had a right to rely upon a prompt compliance with such recommendations which carriers failed to carry out until compelled to do so by order in the Salt Cases. Reparation awarded. Decker & Sons v. U. P. R. R., 123 I. C. C. 621.

(14e) Rates on cedar poles from Sand Point, Idaho, to Shingle Springs, Calif., found unreasonable as compared with lower rates contemporaneously in effect to San Jose, Stockton, Los Angeles, and Fresno, Calif., farther distant points; with those from San Pedro, Calif., to El Paso, Texas., and Colorado common points for comparable distances; and to extent they exceeded the contemporaneous aggregate of intermediate rates. While record indicates that factors making up the lower combination are in-

fluenced by water competition, it fails to convince that the combination is less than a reasonable maximum charge. Reasonable rates prescribed for future and reparation awarded. McFarland Co. v. G. N., 123 I. C. C. 631.

(14f) Rates on sulphur from Gulf Hill, Tex., to Curtiss and Kennard, Ariz. found unreasonable as compared with rates contemporaneously in effect from same point to San Francisco and from latter point to Ogden, Utah, and Curtiss. No reason appears why rates assailed should be relatively higher than those from San Francisco to Ogden and Curtiss, and rate constructed on that basis compares favorably, distance and earnings considered, with rate prescribed in 74 I. C. C. 641, from Gulf Hill to San Francisco and Los Angeles. Reasonable rate prescribed for future and reparation awarded. Apache Powder Co. v. A., T. & S. F., 123 I. C. C. 639.

(14g) Class rates on interstate traffic from Bluefield, W. Va., to destinations in West Virginia on the Virginia Ry., between Princeton and Oak Hill Junction, W. Va., found unreasonable and unduly prejudicial as compared with local distance rates contemporaneously maintained by Norfolk & Western and the Virginian; with joint rates from Charleston, W. Va., on the Chesapeake & Ohio to destinations on the Virginia; and to extent they exceed distance rates prescribed. Present disparity between rates here under consideration is clearly unwarranted, as transportation conditions throughout this territory are substantially the same. Reasonable and nonprejudicial distance rates prescribed for future. Bluefield Traffic Bureau v. N. & W., 123 I. C. C. 653.

(14h) Fifth-class rates on manufactured iron and steel articles from Youngstown, Newton Falls, and Niles Ohio, and points grouped therewith, to Buffalo and other western New York and northwestern Pennsylvania points, found unreasonable as compared with lower rates contemporaneously in effect between points in c. f. a. territory; from Pittsburgh district to St. Louis under distance scale prescribed in 96 I. C. C. 682; from Buffalo to destinations in Youngstown district; with aggregate of interduly prejudicial to extent they exceed ceeded distance rates prescribed, and unduly prejudicial to extent they exceed the contemporaneous rates from Buffalo to same destinations. Reasonable and nonprejudicial distance rates prescribed for future and reparation awarded. Concrete Steel Co. v. B. & O., 123 I. C. C. 677.

(14i) Third-class rate on electrolytic cells (electrolyzers) from Pittsburgh, Pa., to Seattle, Wash., found unreasonable as compared with lower rates contemporaneously applicable on machinery and electrical applicances, including batteries, fans, motors, generators and engines combined, carbonating machines, and various other articles, and to extent it exceeded lower commodity rate applicable on machinery and machines, n. o. s. Reasonable rate prescribed for future and waiver of undercharges authorized. Pacific Nitrogen Corp. v. C., B. & Q., 123 I. C. C. 717.

(14j) Commodity rates assessed on scrap iron from Fowler and Rensselaer, Ind., to Kewanee, Ill., and from Rensselaer to Gibson, Ind., over an interstate route, found not reasonable as compared with rates contemporaneously in effect from various other Illinois, Missouri, and Iowa points to same destinations for comparable distances. While some commodity rates are shown to be lower, record indicates that rates in general in c. f. a. territory are on a much higher basis than those assailed. Moreover, rate to Gibson is lower than that prescribed in 98 I. C. C. 533, from Rensselaer to Benton Harbor, Mich., and latter rate compares favorably with rates fixed by the Indiana Public Service Commission. Karnowsky v. C., B. & Q., 123 I. C. C. 749.

(14k) Fifth-class rate on structural steel from Denison, Tex., to Henryetta, Okla., based on the short single-line distance over a route other than route of movement, FOUND unreasonable as compared with lower rates contemporaneously in effect for similar distances between various points in same general territory based on the distance scale prescribed in 77 I. C. C. 473, and to extent it exceeded joint-line rate under that scale for the distance shipments actually moved. Reparation awarded. Okmulgee County Commrs. v. M.-K.-T., 126 I. C. C. 1.

(14l) Rates on bituminous coal from mines in Pennsylvania and West Virginia to points in the Warren district in Pennsylvania, which is included in the Buffalo, N. Y., rate group, FOUND not unreasonable or unduly prejudicial as compared with those from same points to Buffalo

rate group as a whole. Buffalo group adjustment is not maintained solely with respect to Pittsburgh district and any reduction in rates to Warren district would require similar reductions throughout a large portion of the group. Rates are not out of line with those for similar hauls from other Pennsylvania groups to points in the East and in view of delicacy of coal rate adjustment in this territory and long-continued maintenance of the Buffalo group, evidence is not sufficient to require a disruption of that group. National Petroleum Asso. v. B. & O., 126 I. C. C. 11.

(14m) Rates on iron and steel tank material from points in Pennsylvania, Ohio, Illinois, Indiana and from Kansas City, Kans., to destinations in Kansas, Oklahoma, Indiana and Texas. FOUND unreasonable to extent they exceeded those contemporaneously applicable on iron or steel pipe. Rates on tank material are same as those on pipe from Chicago territory to western trunk-line and lower Mississippi River points, from c. f. a. territory to points in Colorado, Wyoming, Montana, California, Oregon, and Washington, and from Pittsburgh territory to trunk-line points and no sufficient reason appears for a difference in rates on these commodities between points under consideration. See 100 I. C. C. 245. Reasonable basis of rates prescribed and reparation awarded. Sinclair Crude Oil Co. v. A., T. & S. F., 126 I. C. C. 73.

(14n) Second-class rate on furniture frames from Chicago, to Burlington, Iowa, FOUND unreasonable to extent it exceeded lower commodity rate contemporaneously in effect from Chicago to New London, Iowa, a farther distant point to which Burlington is directly intermediate. Lower rate was subject to Rule 77 of Tariff Circular 18-A and commission has consistently held that publication of rates subject to that rule is a substantial compliance with long-and-short-haul provision of fourth section of the act, and affords an adequate basis for an award of reparation on shipments moving to intermediate points at charges higher than those to farther distant points. Reparation awarded. Burlington Shippers Asso. v. C., B. & Q., 126 I. C. C. 179.

(14o) Rates on grain and products from points on specified lines in Idaho, Montana, Oregon, Utah, Wyoming, and Colorado, to north Pacific coast and California terminals, FOUND not unreasonable as compared with rates from various points in California, Colorado, Idaho, Kansas, Montana, Minnesota, Nebraska, Oklahoma, and Texas, except from and to points shown in appendix. Reasonable rates prescribed between latter points, and carriers required to maintain relationships in present rates to Portland, Oreg., on the one hand and other north Pacific coast points on the other. Ogden Grain Exchange v. A. E. R. R. Co., 126 I. C. C. 255.

(14p) Rates on grain and products from all origin points on specified lines in Idaho, Montana, Oregon, Utah, Wyoming, and Colorado, to destinations in interior California, the Imperial Valley, and Arizona, FOUND unreasonable as compared with rates on same commodities from various points in California, Colorado, Idaho, Kansas, Montana, Minnesota, Nebraska, Oklahoma, and Texas. Reasonable bases of rates prescribed. Ogden Grain Exchange v. A. E. R. R. Co., 126 I. C. C. 255.

(14q) Upon a consideration of unusually favorable circumstances and conditions surrounding movement of lake-cargo coal; the relatively lower rates from southern districts; the decided change in relative tonnage shipped from Pittsburgh and Ohio districts and the southern districts, respectively; the present depressed condition of coal-mining industry in Pittsburgh and Ohio districts; the changed conditions since decision regarding those rates issued in 101 I. C. C. 513; and fact that cost of the service warrants a substantial rate reduction, HELD: That bituminous coal rates from mines in Pennsylvania, Ohio, and West Virginia in the Pittsburgh, Ohio No. 8, and Cambridge districts to lower Lake Erie ports for transshipment by vessel are unreasonable but not unduly prejudicial. Rates on like traffic from mines in the Fairmont district of West Virginia found not unreasonable or unduly prejudicial. Reasonable rates prescribed for future and former report, 101 I. C. C. 513, modified in part. Lake Cargo Coal Rates, 1925, 126 I. C. C. 309.

(14r) Commission's findings in former report 118 I. C. C. 85, were confined to rates on compressed cotton. However, except that uncompressed cotton is compressed by and at expense of carriers, circumstances surrounding its movement and that of compressed cotton

are identical. Accordingly, original report modified and rates on uncompressed cotton moving rail-water-and-rail from Opelousas and Bunkie, La., to destinations in New England and New York, FOUND unreasonable to extent they exceeded rates contemporaneously maintained from Shreveport and Alexandria, La., to same destinations. Reasonable rates prescribed for future and reparation awarded. Manget Bros. Co. v. A. C. R. R. 126 I. C. C. 403.

(14s) Rates on crushed stone from Thornton, Ill., to destinations in northern Indiana and southwestern Michigan FOUND unreasonable as compared with contemporaneously intrastate rates from various Michigan competing points; with those to other Illinois destinations for comparable distances; and with lower rates to Elkhart, Ind., and Niles, Mich., points less distant than Kalamazoo, Mich. As rates beyond Elkhart and Niles rise abruptly, traffic from Thornton to farther distant territory is practically excluded. However, while Illinois and Michigan are generally lower than corresponding interstate rates, they should be properly aligned with corresponding interstate rates to Niles and Elkhart, Reasonable basis of rates prescribed for and leess-distant Indiana destinations. future. Brownell Improvement Co. v. B. & O. C. T., 126 I. C. C. 414.

(14t) Rates on scrap copper and scrap brass from New York, N. Y., to New England destinations FOUND not to have been unreasonable, discriminatory, or unduly prejudicial in the past, but for the future found unreasonable to extent they exceed the contemporaneous sixth-class rates from and to same points, and unduly prejudicial to extent the exceed rates contemporaneously maintained from Pittsburgh and Cleveland group points to same destinations. Six-class basis will provide uniformity in rating of scrap copper and brass, and earnings thereunder appear adequate even for the generally higher rated New England territory. Reasonable and nonprejudicial rates prescribed for the future. Federated Metals Corp. v. N. Y., N. H. & H., 126 I. C. C. 439.

(14u) Rates on phosphate rock from Brewster, Bradley, Achan, and Prairie, Fla., to Gulport, Miss., found not unreasonable or otherwise unlawful as compared with lower rates contemporaneously in effect to New Orleans, La., to which Gulfport is directly intermediate and with which it comes into active competition. New Orleans rates were lower than rates generally in the Southeast, due to water competition; rates to Gulfport were neither inherently high nor unreasonable by comparison with rates other than those to New Orleans; and commission is not justified in condemning Gulfport rates by comparison alone with New Orleans rates. Moreover, above relationship of rates was protected by appropriate fourth-section applications. Gulfport Fertilizer Co. v. A. C. L., 126 I. C. C.463.

(14v) Rates on building and roofing material, from Chicago, Ill., and St. Louis, Mo., and points taking same rates, and from Lockland, Ohio, to Colorado common-point territory, FOUND not unreasonable. Contention that above rates should not exceed 95 percent of rates contemporaneously in effect on 95 I. C. C. 296. Rates on prepared roofing to destinations here involved range from 100 to 135.6 per cent of rates on newsprint paper. Moreover, present rates on building and roofing are on a comparable basis with rates on other building materials. Mountain States Roofing Co. v. A., T. & S. F., 126 I. C. C. 475.

(14w) Rates on crude phosphate rock, from Tilphosco and Brewster, Fla., to Meridian, Miss., FOUND unreasonable as compared with lower rates to various destinations in Alabama, Tennessee, and Georgia, for comparable distances, and to extent it exceeds distance rate prescribed in 101 I. C. C. 165, for application on phosphate rock from Florida mines to Knoxville, Tenn. Reasonable rate prescribed for future and reparation awarded. Meridian Fertilizer Factory v. A. C. L. ,126 I. C. C. 478.

(14x) Rate on crude phosphate rock, from Tilphosco and Brewster, Fla., to Meridian, Miss., FOUND not unduly prejudicial as compared with lower rate to New Orleans, La., and Gulf Ports, for greater distances. Carriers show that rate to the Gulf ports is depressed by reason of water competition, much phosphate rock being transported in tramp steamers which maintain no regular rates. Moreover, in 101 I. C. C. 165, the influence of water competition over these rates was recognized by commission and record in instant case sub-

stantiates the view there expressed. Meridian Fertilizer Factory v. A. C. L., 126 I. C. C. 478.

(14y) Rates on sand and gravel from Muscatine, Iowa, to destinations in central Illinois, FOUND unreasonable and unduly prejudicial as compared with rates on crushed stone under distance scale prescribed in 49 I. C. C. 681, from Birdsboro and Devault, Pa., and Port Deposit, Md., to various eastern destinations; with rates on chert, clay, sand and gravel prescribed in 122 I. C. C. 133 for application in the Southeast; and to extent they do exceed by more than 10 cents per ton rates contemporaneously maintained on crushed stone, prescribed in 89 I. C. C. 110, from Buffalo and Linwood, competing Iowa points with which Muscatine is grouped to same destinations. Reasonable and nonprejudicial rates required for future. Automatic Gravel Products Co. v. C., R. I. & P., 126 I. C. C. 487.

(14z) Rate on coarse grain from Aberdeen and contiguous territory in South Dakota to points in Montana Idaho, Washington, and Oregon, FOUND not unreasonable as compared with those contemporaneously in effect from Minneapolis and Sioux City. Rate assailed is lower than rate found reasonable in 57 I. C. C. 629 and other cited cases, from same points to Pacific coast destinations and except for reductions by carriers would be considerably higher. Moreover, carriers show that it compares favorably with many other rates for corresponding distances applicable on corn or coarse grain in western territory and lower than rate on numerous other commodities of considerable less value between same points. Aberdeen Commercial Club v. C. P. R. R., 126 I. C. C. 498.

(15a) Rates on tannery fleshings from various points in Virginia, West Virginia, North Carolina, Tennessee, and Kentucky, to West Williamsport, Pa., FOUND unreasonable as compared with lower rates from same points of origin to Gowanda, N. Y., and Springdale, Pa. Reasonable rates prescribed for future and reparation awarded. Keystone Glue Co. v. S. Ry. Co., 126 I. C. C. 507.

(15b) Rate on pig iron from Birmingham, Ala., and points taking same rate to Nashville, Tenn., FOUND unreasonable as compared with lower rates contemporaneously in effect to Chattanooga, Tenn., and other destinations in Tennessee, Alabama, and Georgia, with which Nashville comes into competition, and to extent it exceeded rate subsequently established over route of movement. Present rate found not unreasonable or otherwise unlawful. Reparation awarded. Allen Mfg. Co. v. A. G. S., 126 I. C. C. 515.

(15c) Local rate on crude petroleum oil from certain Kentucky points to Owensboro, Ky., for movement by pipe line to Lawrenceville, Ill., FOUND not unreasonable, unduly prejudicial, or otherwise unlawful, as compared with local rates contemporaneously in effect from same and various other points to Evansville, Ind., and Louisville, Ky.; or with proportional rates to Evansville and Louisville, and to Jeffersonville and New Albany, Ind., more distant points. If proportional rates had been established to Owensboro for application in connection with the pipe line, no reason appears why they should have been higher than those to Louisville and Evansville. However, local rates assessed appear not to have exceeded maximum reasonable rates for services performed. Indian Refining Co. v. L. & N. R. R., 126 I. C. C. 543.

(15d) Rates charged on steel rails, angle bars, and similar articles from O. N. Junction, Fla., a point situated beyond the switching limits of Palatka, Fla., to Jacksonville and Key West, Fla., for export to Cuba, FOUND unreasonable to extent they exceeded rates maintained for comparable distances between other points in Florida. Reparation awarded. Hyman-Michaels Co. v. A. C. L., 126 I. C. C. 547.

(15e) Combination rates on potatoes from Pungo, Pleasant Ridge, Creeds, Fentress, and Hickory Ground, Va., and Elizabeth City and Barnett's Creek, N. C., to destinations in New York, FOUND unreasonable but not otherwise unlawful as compared with lower joint commodity rates contemporaneously in effect from the same and various other points on carrier's lines to New York points and to eastern and c. f. a. territory destinations. Reasonable rates prescribed for future and reparation awarded. Caruso, Rinella, Battaglia Co. v. N. S. R. R., 126 I. C. C. 555.

(15f) L. c. l. rating on chocolate and chocolate coating in official, southern and western classifications FOUND not discriminatory or unduly prejudicial, but c. l. rating in official and western classi-

fications FOUND unreasonable as compared with rating on coffee and other comparable commodities, and to extent it exceeds fourth class, minimum 36,000 pounds. Reasonable rating prescribed for future. Cocoa & Chocolate Mfrs. Asso. v. A. & V. Ry., 126 I. C. C. 561.

(15g) Rate on newsprint paper from Carthage, N. Y., to Newark, via National Junction, N. J., FOUND not unreasonable, discriminatory, or unduly prejudicial as compared with lower rate contemporaneously in effect to New York, or from Glens Falls, N. Y., to New York over another route also applicable to Newark, and subsequently established via route of movement. Rate from Glens Falls was established to avoid fourth-section departures because of fact that Newark is intermediate to New York. However, rate to Newark, except on traffic via National Junction, is the same as rate assailed in connection with all other delivering carriers, and mere fact that carriers voluntarily reduced the latter rate does not establish unreasonableness of the rate so reduced. Newark Call Printing & Publishing Co. v. C. R. R. of N. J., 126 I. C. C. 569.

(15h) Upon contention that rate on newsprint paper from Carthage, N. Y., to Newark, N. J., should be no higher than to New York, complainant showed that class rates to New York and Newark from Syracuse, N. Y., and points west thereof, are the same and urges that a like relationship should apply from Carthage which is farther distant from New York and Newark than Syracuse. HELD: Carthage is not west of Syracuse and class rates therefrom have always been on a higher basis to Newark than to New York. Moreover, rate on newsprint paper from Carthage and other points in nothern New York have been on a higher basis to Newark than to New York because Newark was considered as being in the Philadelphia rate group and traffic destined thereto moved through Philadelphia rate-group points. Newark Call Printing & Publishing Co. v. C. R. R. of N. J., 126 I. C. C. 569, 570, 571.

(15i) Upon further hearing, rates on sand and gravel from Montgomery, Ala., to La Grange, Ga., FOUND not unreasonable as compared with those contemporaneously in effect from Birmingham. While rates from latter district were lower for like distances than between various other points in the Southeast, carriers point out that rates assailed were lower than those between points in the Southeast other than to the Birmingham and Atlanta groups and compare favorably with those prescribed in 83 I. C. C. 436. Moreover, a scale of maximum interstate rates on sand and gravel for application in this general territory was prescribed in 122 I. C. C. 133, and in accordance therewith, finding in former report 85 I. C. C. 184 reversed. Roquemore Gravel Co. v. A. & W. P., 126 I. C. C. 575.

(15j) The commission should not require the maintenance of a definite relationship between the rates on specific commodities on a showing that such commodities meet competitively in a relatively limited number of uses. Federated Metals Corp. v. C. R. R. Co. of N. J., 126 I. C. C. 703, 711.

(15k) Rates on tin cans from Chicago to North Prairie, Wis., FOUND unreasonable as compared with rate contemporaneously in effect to Waukesha, Wis., a slightly less distant point and to extent it exceeded rate contemporaneously applicable via another route. Reparation awarded. Nelson v. C., M. & St. P., 126 I. C. C. 713.

(15l) Rates on cottonseed from points in Louisiana on the Vicksburg, Shreveport & Pacific, Louisiana & Arkansas, and Missouri Pacific railroads, and from points in Arkansas on the Missouri Pacific, to Jackson and Newton, FOUND unreasonable in their relation to the rates contemporaneously maintained to Vicksburg. Reasonable maximum rates prescribed for the future and reparation awarded. Findings in 96 I. C. C. 333, modified. Tallulah Cotton Oil Co. v. A. & V. Ry., 126 I. C. C. 723.

(15m) Rates on steel rods, in straight lengths and coils, from Pittsburgh and Johnstown, Pa., Youngstown, Ohio, and Buffalo and North Tonawanda, N. Y., to Pawtucket and Valley Falls, R. I., FOUND not unreasonable as compared with those contemporaneously in effect to other New England destinations for comparable distances. Standard Nut & Bolt Co. v. N. Y., N. H. & H., 126 I. C. C. 731.

(15n) Rate on wrapping paper from Bastrop, La., to Dallas and Wichita Falls, Tex., FOUND not unreasonable as compared with rates to Dallas from Kansas City, St. Louis, and Chicago for comparable distances, or with lower rate con-

temporaneously in effect from Elizabeth, La., to Dallas, subsequently established over route of movement. Latter rate was not applicable via Bastrop, whereas rate assailed applied from Bastrop, New Orleans, and other Louisiana points grouped therewith to all Texas common points, and record contains no evidence of improper grouping. Moreover, in considering the reasonableness of group rates, comparisons of rates and distances between selected points can not be regarded as controlling. Dallas Paper Co. v. A. & L. M., 126 I. C. C. 739.

(15o) Rate on waste paper from Boston, Mass., to Thomson, N. Y., established pursuant to decision in 81 I. C. C. 591, FOUND unreasonable as compared with lower rate contemporaneously in effect to various New York destinations, and to extent it exceeded lower rate contemporaneously in effect to Trionda, N. Y. While record clearly shows that rate assailed is now too high, it does not indicate that it should be found unreasonable for period extending back two years from date of filing of the complaint. Accordingly reasonable rate prescribed for the future and reparation awarded only back to date of filing of the complaint. United Paperboard Co., v. B. & A. R. R., 126 I. C. C. 751.

(15p) Rates on strawberries from various Tennessee points to Battle Creek, Detroit, and Kalamazoo, Mich., and rate on peaches from Sale Creek, Rathburn, and Harriman, Tenn., to Detroit, Mich., found not unreasonable as compared with rates contemporaneously in effect from Huntsville and Chase, Ala., to Detroit and Grand Rapids, Mich. While Tennessee points are intermediate to the Alabama points, carriers showed that minimum charge per car was lower from the Tennessee points and urge that any improper relationship existing between rates should be established by increasing rates from Alabama. Rates assailed compare favorably with those applying between many other points for comparable distances and are lower than those points in official territory for like distances. Lewis Co. v. C., N. O. & T. P., 128 I. C. C. 3.

(15q) Combination rates on lime, ground limestone, and crushed stone from Woodville, Ohio, to stations in Maryland on the Washington, Baltimore & Annapolis Electric R. R. and the Hagerstown & Frederick Ry., under tariff providing that combination rule would apply only where all issues publishing the factors made reference to the combination-rule tariff, found unreasonable as compared with rates found reasonable in 112 I. C. C. 7, and in 104 I. C. C. 293 from Gibsonburg, Ohio, near Woodville, to Rivermont, Va., for comparable distances, and to extent they exceeded rates constructed in accordance with combination basis previously in effect. Reparation awarded. Washington Building Lime Co. v. B. & O., 128 I. C. C. 9, 16, 18.

(15r) Fourth-class rate on storage batteries from Kansas City and Centropolis, Mo., to Dallas, Tex., found not unreasonable as compared with lower commodity rate contemporaneously in effect from St. Paul, Minn., to Dallas. The commodity rate was published from St. Paul to Deming, N. Mex., and held as maximum at Dallas, because of fourth-section difficulties. National Lead Battery Co. v. M. P., 128 I. C. C. 39.

(15s) Rates on potatoes from points in Idaho, Colorado, Nebraska, and Utah, to Nashville, Tenn., found not unreasonable or otherwise unlawful as compared with rates to other points in same general territory for comparable distances, or publish rates in accordance with rates hereto, and to points not named in apwith lower rates contemporaneously in effect to New Orleans, a more distant point, The fourth-section departure was protected by an appropriate application and exhibits submitted by carriers support contention that rates charged are reasonable. Comlainant based case entirely upon comparison of the New Orleans and Nashville rates, but such comparison is of little value inasmuch as rates to New Orleans and other Gulf ports are depressed by water competition. Boyle Comm. Co. v. C., B. & Q., 128 I. C. C. 51.

(15t) Rates on casing-head gasoline from Delaware, Okla., to Los Angeles, Avon and Martinez, Calif., found unreasonable to extent they exceeded blanket rates contemporaneously in effect between same points. Blanket rates apply generally from midcontinent oil field to California, but combination rate was assessed due to failure of one participating carrier to become a party to blanket rate until subsequent to movement. Reparation awarded. Henderson Co. v. A., T. & S. F., 128 I. C. C. 59.

(15u) Rates on automobiles from Pontiac and Detroit, Mich., to Dodge City, Kans., found not unreasonable or otherwise unlawful as compared with lower

rate contemporaneously in effect from points in c. f. a. territory, including Pontiac and Detroit, to Tyrone, Okla., or with lower rates subsequently established. Latter rates were established to meet carrier competition, similar adjustment being made in all class rates on all commodities handled on a competitive basis. Moreover, a voluntary reduction in rates does not prove former rates unreasonable or afford a basis for reparation, and carriers may voluntarily equalize commercial or geographical disadvantages in many instances in which the commission could not require such equalization. See 22 U. S. 42. Gum Motor Co. v. A., T. & S. F., 128 I. C. C. 61.

(15v) Rates on cement from Ada, Okla., and points in the Kansas gas belt to Texas destinations in Scale III and Scale IV territories, and from Portland and Concrete, Colo., to said Scale IV territory, found unreasonable, and rates from Kansas gas-belt points found unduly prejudicial as compared with those from Ada, Bonner Springs, Kans., Sugar Creek, Mo., and Portland and Concrete, Colo. Reasonable and nonprejudicial distance rates prescribed for interstate application, which will remove the undue prejudice in relationship of interstate and intrastate rates within Texas. Adjustment of intrastate rates left to State authorities and carriers. Oklahoma Portland Cement Co. v. D. & R. G. W., 128 I. C. C. 63.

(15w) Fifth-class rates on denatured alcohol from New Orleans, and points taking same rates, to Oklahoma City and other destinations in Oklahoma, found unreasonable as compared with lower rates contemporaneously in effect to St. Louis, Kansas City, and Chicago; to destinations in Texas and Arkansas for comparable distances; and to extent they exceeded maximum reasonable fifth-class rates prescribed in 123 I. C. C. 203, for application between same points. Reasonable rates prescribed for future and reparation awarded. Oklahoma Traffic Asso. v. A. & V., 128 I. C. C. 89.

(15x) Rate on crude infusorial earth from Lovelock, Nev., to Chicago, Ill., found not discriminatory or unduly prejudicial, but unreasonable as compared with lower rate, distance considered, on crude, processed or finished infusorial earth, contemporaneously in effect from Lompoc, Calif., a competing producing point to Chicago, or to New York Piers, N. Y., and other Atlantic seaboard points. Reasonable rate prescribed for future. Hylonite Products Co. v. A., T. & S. F., 128 I. C. C. 135.

(15y) Rates on coke breeze or coke dust from Martins Ferry, Ohio, to Moundsville, W. Va., found not unreasonable, but rates from Steubenville, Ohio, to same destination found unreasonable as compared with rates contemporaneously maintained between various Pennsylvania and Ohio points for comparable distances and to extent they exceeded rates prescribed in 102 I. C. C. 601 from Pittsburgh to Moundsville. Rates from Martins Ferry are same as those on bituminous coal which, according to carriers, are usually lower than those on the by-product coke. However, rates from Steubenville were higher for the single-line haul than for joint-line hauls instanced by complainant for comparison. See 89 I. C. C. 749. Reasonable rate prescribed for future and reparation awarded. United Zinc Smelting Corp. v. P. R. R., 128 I. C. C. 139.

(15z) Rates on iron and steel rails and reinforcement concrete bars from Huntington, W. Va., to certain points in Kentucky, Tennessee, and Virginia, found unreasonable as compared with lower rates for comparable distances from Pittsburgh, Pa., Newark, Ohio, and Birmingham, Ala., competitive points, and to extent that rates on the rails over specific routes exceeded those subsequently established from Huntington to Johnson City, Tenn., plus prescribed distance rate factors beyond, and rates on bars and rails to destinations involved to extent they exceeded specific base rates, plus prescribed distance factors beyond Winchester, Ky. Reasonable rates prescribed for future and reparation awarded. West Virginia Rail Co. v. C. & O., 128 I. C. C. 153.

(16a) Rates on rough and polished marble from Marble, Colo., to Clifford Spur, Calif., a point within the Los Angeles city limits, found unreasonable as compared with lower rate contemporaneously in effect from Redstone and Carbondale, Colo., to Los Angeles, Anaheim, Fullerton, San Pedro, Long Beach, and San Diego, Calif., more distant points, and to extent they exceeded lower rate subsequently established from Redstone to Glendale, Calif., a point beyond Los Angeles to which Clifford Spur is intermediate, plus local rate on marble from Marble to Redstone. Reparation awarded. Clifford Co. v. C. R. & S. J., 128 I. C. C. 182.

(16b) Rates on blank wall paper from Thomson, N. Y., to destinations in c. f. a. territory, found not unreasonable or unduly prejudicial as compared with those contemporaneously in effect from Watertown, N. Y., in the Ogdensburg, N. Y., group; Brunswick, Me., in the Boston group; and Appleton, Wis., in the Fox River, Wis., group; but rates on newsprint paper between same points found unreasonable to extent they exceed rates contemporaneously maintained on blank wall paper. Earnings under rates on wall paper to Chicago and Joliet, Ill., destinations in which complainant is particularly interested, do not appear excessive. However, rates on newsprint paper and blank wall paper from Glens Falls and Warrensburg, N. Y., are the same, and in 38 I. C. C. 120 it was stated that rates on blank wall paper should be no lower than rates on newsprint paper. Reasonable rates prescribed for future. Iroquois Pulp & Paper Co. v. A. A. R. R., 128 I. C. C. 187.

(16c) Third-class rates on store and office fixtures from Columbus, Ga., to Paducah, Ky., Memphis, Tenn., and New Orleans, La., found not unreasonable or unduly prejudicial as compared with those from Atlanta, Louisville, St. Louis, and Chicago, or with lower commodity rate subsequently established. Carriers stated that latter were temporary rates published at Complainant's request, pending readjustment of rates in both directions on a reasonable basis; were made with relation to rates from Atlanta; and should not be used as a basis for condemning rates charged. Moreover, earnings under rates assailed can not be regarded as high when value, character, and light loading of this furniture is considered, nor can it be said that it is a commodity which would call for commodity rates, and since record consists wholly of rate and distance comparisons, a finding of undue prejudice is not warranted. Nat'l. Show Case Co. v. S. A. L., 128 I. C. C. 193.

(16d) Fifth-class rates on window glass from Hartford City, Ind., to destinations in western trunk-line territory found not unreasonable or unduly prejudicial as compared with rates from southwestern points to destinations in western trunk-line and c. f. a. territories, or from Hartford City to c. f. a. southwestern and southern territories. The compared rates were generally upon the fifth-class basis. Carriers urge that rates from the southwest are unduly low and that observance of those rates as a basis for adjustment of rates from Hartford City would result in a general disruption of the basis in effect from points in c. f. a. territory. The disturbance of the class-rate adjustment applicable to the numerous destinations involved is not warranted upon the present record, nor is it shown to what extent, if any, carriers handling complainant's traffic, control rates from the Southwest. American Window Glass Co. v. A., T. & S. F., 128 I. C. C. 222.

(16e) Rates on cabbage and potatoes from lower Rio Grande Valley of Texas to Cincinnati, Ohio, found unreasonable and unduly prejudicial as compared with rates from same points of origin to certain destinations in Illinois, Wisconsin, and Indiana, from various other points to Cincinnati for comparable distances, and to extent they exceeded lower rates contemporaneously in effect to Chicago. Reasonable rates prescribed for future and reparation awarded. Leonard, Crosset & Riley v. A., T. & S. F., 128 I. C. C. 225.

(16f) Rates on face brick from Wooster, Ohio to eastern points found not unreasonable as compared with lower rates contemporaneously in effect from Canton and Massillon, Ohio, competing producing points, but unduly prejudicial to extent they exceed those from the latter points. Rates assailed are generally based upon a percentage of Chicago-New York rates prescribed in 68 I. C. C. 213, although the percentage bases are not rigidly observed. Since carriers have accorded same rates from all three points to destinations in all directions in a large expanse of surrounding territory it is unjust to subject Wooster to a disadvantage to more distant destinations in the East. Nonprejudicial basis of rates prescribed for future. Medal Brick & Tile Co. v. B. & O., 128 I. C. C. 241.

(16g) Rate on rosin dross from Jacksonville, Fla., to Pensacola, Fla., over an interstate route, found unreasonable as compared with rates contemporaneously in effect on rosin from Jacksonville to many destinations in Alabama and Tennessee for comparable distances, and to extent it exceeded a lower rate contemporaneously in effect over an intrastate route and subsequently established over route of movement. Reparation awarded. Western Paper Makers Chemical Co. v. A. C. L., 128 I. C. C. 244.

(16h) Rate on talc from Emeryville,

N. Y., to Dallas Tex., found not unreasonable as compared with lower rates on ground limestone from Memphis, Tenn., to Dallas; and from Buffalo, N. Y., to Dallas, Big Springs, and San Angelo. Talc and ground limestone are rated class C and E respectively in western classification, and while both are used as a filler in the manufacture of paint, talc is used in the better grades. Carrier showed that rate assailed is used as maximum to Texas common-point territory. Moreover, rate assailed compares favorably with rail-and-water rate maintained between Emeryville and Dallas. Sewall Paint & Glass Co. v. C., C., C. & St. L., 128 I. C. C. 247.

(16i) Rate on crushed stone and chatts from Webb City and Oronogo Junction, Mo., to Arcadia, Kans., found unreasonable as compared with lower rates contemporaneously in effect from and to other points in same general territory for like and greater distances and to extent it exceeded rate prescribed in 77 I. C. C. 473, 592, 605, for distances similar to those involved. Reparation awarded. Ziegler Bros. v. St. L.-S. F., 128 I. C. C. 257.

(16j) Rates on bituminous coal from mines in Illinois and Indiana to points in Illinois, Indiana, Michigan, Wisconsin, Minnesota, North Dakota, South Dakota, Nebraska, and Iowa, found not unreasonable by relationship between rates from said mines in Illinois and Indiana, on the one hand, and mines in western Kentucky, on the other, found unduly prejudicial to Illinois and Indiana mines due to maintenance of unreasonably low rates from western Kentucky mines. Prejudice should be removed by increasing rates from latter mines in amount of 10 cents per net ton to all destinations in States named to which existing differential of the western Kentucky over the southern Illinois group is 25 cents per net ton. See 89 I. C. C. 170; 263 U. S. 515. Illinois-Indiana Coal Cases, 128 I. C. C. 265.

(16k) Rates on bituminous coal from the Danville, Brazil-Clinton, and Linton-Sullivan groups in Illinois and Indiana to points in Chicago switching district, found unreasonable as compared with lower rates contemporaneously maintained from Western Kentucky group to East St. Louis for a longer haul under less favorable conditions, including movement across the Ohio River and to Louisville, Ky., for a similar haul; and with rates from mine groups in Pennsylvania, southern West Virginia, eastern Kentucky, and Tennessee to Lake Erie ports for comparable distances. Reasonable rates prescribed for future. Illinois-Indiana Coal Cases, 128 I. C. C. 265.

(16l) Rates on bituminous coal from producing points in Illinois, Indiana, and western Kentucky to Hannibal, Mo., and Mississippi River cities in Iowa and to Linwood, Mason City, Council Bluffs, Sioux City, and Buffalo, Iowa, and on fine coal from southern Illinois group to Cedar Rapids, found not unreasonable or otherwise unlawful. Rates to Mason City and Sioux City compare favorably with those prescribed in 89 I. C. C. 73; 89 I. C. C. 170; from Illinois points to Sioux City and from Arkansas-Oklahoma group to Sioux City respectively, for hauls of similar length, and in view of fact that market competition is stronger at Kansas City, rates to that point may properly be lower than those to Council Bluffs. Iowa R. R. Commissioners v. A. & S., 128 I. C. C. 293.

(16m) All-rail and river-and-rail rates on refined sugar from Louisiana refining points to Shreveport or Monroe, La., to extent they are lower, distance considered, than corresponding contemporaneous rates maintained on interstate traffic from same points to Wilmot, Texarkana, and Hope, Ark., or from Sugarland or Texas City, Tex., to Shreveport, found to result in undue preference and advantage of competing shippers in intrastate commerce at said Louisiana points, in undue prejudice and disadvantage to Arkansas and Texas points, and in unjust discrimination against interstate commerce. Manner of removing undue prejudice and discrimination prescribed. Sugar Between Louisiana and Texas Points, 128 I. C. C. 309.

(16n) Suspended schedules filed in purported compliance with findings in original report 100 I. C. C. 110, wherein relationships between rates on certain commodities in export, import, and coastwise movement from points in Kansas, Oklahoma, and Texas to Galveston and New Orleans and ports taking same rates, were found unduly prejudicial and ordered removed by establishment of differentials prescribed, found not justified, without prejudice to filing of new schedules conforming with findings herein. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349, 392, 393.

(16o) Rates on petroleum and products in export and coastwise movement from refining points in north-central Texas to New Orleans and Galveston and points taking same rates found not unreasonable as compared with those from extensive groups in various portions of Southwest for domestic and foreign consumption, nor unduly prejudicial as compared with those from Shreveport-El Dorado groups in northern Louisiana and southern Arkansas. Earnings under rates assailed are considerably below those under rates for similar distances from mid-continent groups to western trunk-line and Illinois destinations found reasonable in 112 I. C. C. 421, and a reduction in rates from any one important group under present extensively grouped and highly competitive adjustment should be made cautiously and only for strongest reasons. Galveston Commercial Asso. v. G., H. & S. A., 128 I. C. C. 349, 393, 396.

(16p) Upon further consideration, finding in former report 118 I. C. C. 689, that rates on gasoline from certain points in Texas and Oklahoma to Bradford, Pa., were not unreasonable as compared with those to Buffalo, N. Y., reversed and rates to Bradford found unreasonable to extent they exceeded those to Buffalo. Car-mile and ton-mile earnings to Bradford exceed those to Buffalo. As transportation conditions are equal and considering the principle that ton-mile earnings should ordinarily decrease as distance increases, earnings under rates assailed appear too high as compared with those under rates prescribed in 96 I. C. C. 485 and other cited cases, from Oklahoma points to various destinations for comparable distances. Reasonable rates prescribed for future and reparation awarded. Kendall Refining Co. v. A. & V., 128 I. C. C. 427.

(16q) Rates on furniture from Memphis, Tenn., to points in trunk-line and New England territories, found not unreasonable or unduly prejudicial, except that l. c. l. commodity rate on mattresses will be unreasonable to extent it exceeds first-class rate contemporaneously in effect. Other rates assailed are relatively lower than those previously found reasonable from c. f. a. territory manfacturing points to destination in trunk-line territory and also lower than corresponding rates in reverse direction, and on the whole compare favorably with corresponding rates to eastern port cities from Atlanta, Ga., and Chattanooga, Tenn., competing points. Reasonable rates on mattresses prescribed for future. Memphis Freight Bureau v. A. G. S., 128 I. C. C. 445.

(16r) Sixth-class rate on imported wood pulp from Boston, Mass., to Fort Edward, N. Y., found unreasonable as compared with lower commodity rate contemporaneously in effect; with those to various points in c. f. a. territory for comparable distances; with blanket rates extending from points on the Hudson River to Buffalo and Niagara Falls; and to extent it exceeded distance-scale rates on like traffic from Wilmington, Del., to points in New England territory prescribed in 122 I. C. C. 543. Reasonable rates prescribed for future and reparation awarded. International Paper Co. v. B. & M., 128 I. C. C. 466.

(16s) Proposed rates on articles in uniform brick list from points in Illinois, Indiana, Missouri, and Iowa to destinations in Wisconsin, Michigan, Minnesota, and North Dakota, found not justified. While rates proposed to Wisconsin and Minnesota are not unreasonably high but are in some instances lower than between points in c. f. a. territory, from points in that territory to Chicago and Peoria, and from Chicago to various destinations in Iowa, Nebraska, and Missouri for comparable distances, record fails to warrant proposed rates higher to Michigan than to Wisconsin. Moreover, an increase is proposed from Chicago to Duluth, while no change is proposed to St. Paul, and proposed differential from St. Louis, Mo., over Chicago to the Twin Cities is also out of line with other present and proposed differential relationships. Western Brick Co. v. N. Y. C., 128 I. C. C. 479.

(16t) Sixth-class l. c. l. rates on bar iron from Knoxville, Tenn., to points in Georgia, found not unreasonable but unduly prejudicial as compared with lower l. c. l. commodity rates contemporaneously maintained from Birmingham, Ala. Rates assailed compare favorably with those from Memphis, Nashville, and Chattanooga, Tenn., and Louisville, Ky., to Georgia points and are relatively lower than those prescribed in 100 I .C. C. 513 and other cited cases. Practically all shipments were sold on basis of Birmingham prices plus rate from Birmingham, but since no loss of business is alleged and proof of damage is insufficient, reparation is denied. Knoxville Iron Co. v. L. & N., 128 I. C. C. 513.

(16u) Rates on calcium arsenate from Middleport, N. Y., to Minden and Shreveport, La., found not unreasonable as compared with lower rate contemporaneously in effect to numerous Texas points, including a point beyond Shereveport, to which basis rate to Shreveport was subsequently reduced. No showing was made as to reasonableness of compared rates, and they were not applicable over route of movement. Carriers showed that rate to Shreveport over route of movement was reduced to meet competition over other routes, and urged that because of the higher average value and lower weight, rates on calcium arsenate should exceed the average of all commodities on which they are required to make annual reports to the commission. Moline George Co. v. N. Y. C., 128 I. C. C. 517.

(16v) Combination rates on grain and products from Oklahoma points to destinations in Louisiana west of the Mississippi River, including points on west bank thereof, and to Mississippi River crossings in Mississippi and Louisiana on east bank thereof, found unreasonable as compared with rates contemporaneously in effect from Kansas City, Mo., and Council Bluffs, Iowa, and to extent they exceed through rates based on those prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203. Reasonable joint through rates prescribed for future. Oklahoma Millers' League v. A. & M., 128 I. C. C. 523.

(16w) Rates on creosote oil from Indianapolis, Ind., to Louisville, Ky., Cincinnati, Ohio, St. Louis, Mo., East St. Louis, Granite City, Madison and Chicago, Ill., and points in Chicago switching district, found unreasonable but not unduly prejudicial as compared with lower rates contemporaneously in effect from Birmingham, St. Louis and Chicago switching district, competitive producing points, to same destinations. Movement from Birmingham to Cincinnati, Louisville and St. Louis, is, for most part, in southern territory, and while rates in southern and Illinois territories are lower percentage of class rates than those in c. f. a. territory, from which complainant's shipments move, since transportation conditions throughout that territory are substantially similar to those in Illinois territory, and conditions in southern territory are such as to warrant a higher level of rates, no reason appears for the wide differences in existing percentages between the various territories. Reasonable rates prescribed for future. Republic Creosoting Co. v. A. G. S., 128 I. C. C. 547.

(16x) Rates on ground poultry manure from Kenton, Ohio to Meridian and Hattiesburg, Miss., found unreasonable as compared with lower rates contemporaneously in effect over route of movement to Mobile, Ala., via Meridian, and to New Orleans, via Hattiesburg. While carriers had no record that complainant requested prior to movement establishment of rates to Meridian and Hattiesburg not in excess of rates to the more distant points, in compliance with rule 77 of Tariff Circular 18-A, failure on part of a shipper to request prior to shipment a rate to which he is entitled under the rule, through ignorance of the rule or otherwise, is not a reason for saying that he is not entitled to reparation. See 81 I. C. C. 659. Reparation awarded. Fosse & Co. v. E. R. R., 128 I. C. C. 553.

(16y) Sixth-class rate on china clay from Philadelphia to Newton Falls, N. Y. found unreasonable as compared with lower rates contemporaneously in effect between points in c. f. a. territory; between points in c. f. a. territory and Canadian points; from Philadelphia and Mount Holly Spring, Pa., to numerous destinations in New York for comparable distances; and to extent it exceeded lower commodity rate subsequently established. Reparation awarded. Newton Falls Paper Co. v. R. Co., 128 I. C. C. 563.

(16z) Rate on box shooks from Bend, Ore., to Port Arthur, Tex., found not unreasonable as compared with lower rate prescribed in 78 I. C. C. 746 on lumber products, including box shooks from the North Pacific Coast group, including Bend, to group points including Port Arthur, established subsequent to movement herein. Upon further hearing in 104 I. C. C. 695, reparation was denied upon the theory that where, as here, readjustment of rates is required throughout an extensive territory involving both increases and reductions and affecting shippers at many points, substantial justice would not be advanced by awarding reparation. Moreover, issues and contentions similar to those here presented were advanced in 100 I. C. C. 319, in which reparation was denied. Shelvin-Hixon Co. v. O.-W. R. & N., 128 I. C. C. 565.

(17a) Combination rate on dried fruit from Suisun, Calif., to Phoenix, Ariz.,

found unreasonable as compared with lower rate contemporaneously in effect over another route; with lower rates to Albuquerque and Deming, N. Mex., and from other California, Oregon, and Washington points to Arizona and New Mexico destinations for greater distances; and to extent it exceeded lower joint commodity rate subsequently established. Reparation awarded. California Packing Corp. v. S. P., 128 I. C. C. 631.

(17b) Rates on pine lumber from points in Oregon, Idaho, and Montana to Bayport, Minn., found not unreasonable or unduly prejudicial as compared with lower rates contemporaneously in effect to St. Paul. Outside of irregularities in the construction and filing of tariffs,complainants showed that rates to Bayport exceeded those to St. Paul; that it sold frames in competition with dealers at that point and Minneapolis, made from lumber from same origin points; and that carriers conceded error in publishing rates assailed and sought authority to make reparation. However, consent of carriers to an award of reparation is not proof of unreasonableness of rates charged; mere fact that rates assailed exceeded those to St. Paul has little probative force as evidence of unreasonableness; not is competition with dealers in St. Paul and Minneapolis, standing alone, proof of undue prejudice. Moreover, a subsequent increase in rates to St. Paul would seem to indicate that those rates were out of line. Anderson Lbr. Co. v. N. P., 128 I. C. C. 633.

(17c) Rate on fresh peaches from Palisade, Colo., to Syracuse, N. Y., found not unreasonable or otherwise unlawful as compared with those from Georgia points to Syracuse or from California points. Distance considered, rate attacked is on a relatively lower basis than those from Georgia, and as it is blanketed from Colorado to the Pacific coast, the alleged violation of long-and-short-haul provision of section 4 is without merit. Caruso, Rinella, Battaglia Co. v. D. & R. G. W., 128 I. C. C. 687.

(17d) Combination rate on printing presses from Vancouver, British Columbia, to a point taking Group K rates, found not unreasonable as compared with Group A rates contemporaneously maintained from Pacific coast terminals to New York. Earnings under latter rates as well as those under rates from various producing points to Orlando, compare favorably with those under rates assailed for comparable distances. Duplex Printing Press Co. v. B. C. E., 128 I. C. C. 692.

(17e) First-class rates on black powder, moving interstate from Oriental siding, Fairchance, Pa., to destinations on the Western Maryland Railway, found not unreasonable or discriminatory but unduly prejudicial as compared with lower second-class rates contemporaneously maintained from Youngstown, Ohio. ircumstances and cinditions surrounding transportation from Youngstown and Fairchance to trunk-line destinations are similar and no justification appears for maintaining a higher classification rating from Fairchance than from Youngstown. Undue prejudice ordered removed. Du Pont De Nemours & Co. v. B. & O., 128 I. C. C. 705.

(17f) Rates on dry tanning extract from Nashville, Tenn., to Kitchener, Ontario, Canada, found not unreasonable or otherwise unlawful, but rates on liquid tanning extract to Milwaukee, Wis., found unreasonable to extent they exceeded rate subsequently established and unduly prejudicial as compared with rates contemporaneously maintained from Lynchburg, Va., and Harriman and Chattanooga, Tenn., competitive points, and rates on dry tanning extract to Huntsville, Ontario, Canada, found unreasonable and unduly prejudicial to extent they exceeded those contemporaneously applicable from Chattanooga. Nashville is directly intermediate to Chattanooga on traffic to all three destinations, but while rates to Milwaukee and Kitchener conform to the fourth section, departure therefrom still exists in rates to Huntsville. Reparation awarded. Tennessee Extract Corp. v. L. & N., 128 I. C. C. 709.

(17g) Sixth-class rate on scrap iron from Pedricktown, N. J., to Catasaqua, Pa., found unreasonable as compared with lower rates on same commodity between other points in same territory, and to extent it exceeded lower commodity rate subsequently established. Reparation awarded. Davies & Thomas Co. v. C. R. R. Co. of N. J., 128 I. C. C. 241.

(17ga) Rates on brick and clay products included in uniform brick list from Perla and Ft. Smith Ark., to points in Alabama, Florida, Georgia, Kentucky, Mississippi, and Tennessee, except points on the Mississippi Rvier found unreasonable as compared with

lower rates constructed under distance scales prescribed in 107 I. C. C. 681; 88 I. C. C. 543; 68 I. C. C. 213, for application in Southeast, official classification territory, and under uniform brick list, respectively, and to extent they exceed 12 per cent of first-class (column 100) all-rail rates approved or prescribed between Perla and Fort Smith, on the one hand, and points in said States on the other, in Consolidated Southwestern Cases, 123 I. C. C. 203. Reasonable rates prescribed for future. Acme Brick Co. v. A. & V., 128 I. C. C. 715.

(17h) Rates on pig iron from producing points in Virginia to destinations in Maryland, Pennsylvania, Delaware, New Jersey, New York, and New England states, found unreasonable as compared with those contemporaneously in effect from competitive furnaces in Pennsylvania and Maryland. Earnings under rates assailed are high as compared with those from Pennsylvania producing points, and while it was pointed out in Low Moor Iron Case, 30 I. C. C. 615, 618, that a relatively higher rate structure prevails in southern territory than in territory north of Ohio and Potomac rivers, history of rates and record in instant case are persuasive that transportation conditions have so changed as to be substantially the same as from furnaces in Pennsylvania and Maryland and accordingly Virginia furnaces should be accorded the same level of rates. Reasonable rates prescribed for future. Virginia Pig Iron Asso. v. C. & O., 128 I. C. C. 737.

(17i) Rates on building material from Jackson, Miss., to Forsythe, Tenn., found unreasonable as compared with lower rates, unrestricted as to routing, contemporaneously in effect from Vicksburg, Miss., to Memphis and Forsythe, over some of which routes Forsythe is intermediate to Memphis. Reasonable rate prescribed for future and reparation awarded. Jackson Traffic Bureau v. A. & V., 128 I. C. C. 744.

(17j) Rate on bituminous coal from mines in Clearfield, Meyersdale and Cumberland-Piedmont districts of Pennsylvania, Maryland, and West Virginia, to Black Tom Pier, Jersey City, N. J., found not unreasonable but unduly prejudicial, except as maintained by the Pennsylvania, to extent it excedeed lower transshipment rates contemporaneously in effect to its competitors operating from piers on both sides of complainant. While latter is clearly at a rate disadvantage it does not follow that transshipment rate is reasonable maximum or that rate assailed is more than reasonable maximum. However, same rate to complainant applicable under substantially similar transportation circumstances and conditions can not be withheld merely because volume of business handled does not overtax piers on which its competitors operate, for complainant is entitled to share in the business on an equal basis. Undue prejudice ordered removed. Harbor Coaling Corp. v. B. & O., 128 I. C. C. 747.

(17k) The mere fact that a rate under attack appears to be out of line with other rates to which it is ordinarily closely related does not necessarily prove that the rate assailed has been unreasonable in the past. It may be that the comparative rates are too low. But in determining a reasonable level for the future, the relationship which the different commodities should bear to each other may properly be given consideration. Furthermore, there has been offered here no justification for joint rates that exceed the combination of rates in effect over the route of movement. Jackson v. M. C. Ry., 129 I. C. C. 235, 240.

(17l) The act condemns the exaction of unreasonable rates and makes no distinction as between relative unreasonableness and unreasonableness per se. In the absence of such distinction defendants contentions as to "relative" unreasonableness are without merit. Washington Publishers Asso. v. B. & O. R. R., 129 I. C. C. 360, 361.

(17m) The mere fact that the rates assailed were out of line with the rate to certain other points does not in itself warrant a finding of unreasonableness. Montello Granite Co. v. M. St. P. & S. S. M. Ry., 129 I. C. C. 427, 428.

(17n) The mere showing that the rate assailed is out of line with a few other rates to which it is closely related is not sufficient to warrant a finding that the assailed rate was unreasonable. Dallas Paper Co. v. T. & N. O. Ry., 132 I. C. C. 591, 592.

(17o) A mere showing that the rates assailed are out of line with a few other rates to which it is closely related is not sufficient to warrant a finding that they were unreasonable. Such a showing may as well indicate that the compared rates were too low, as that the rates assailed were too high. Peabody Lumber Co. v. Pennsylvania R. R., 132 I. C. C. 741.

(17p) Rates on newsprint and wrapping paper from Camas, Wash., and West Linn and Lebanon, Oreg., to Oregon, California, Nevada, Montana, Wyoming, Colorado, Arizona, and Texas, found not unreasonable or unduly prejudicial as compared with rates contemporaneously in effect from competitive producing points in Fox River territory in Wisconsin and Atlantic Seaboard territory. While complainants base their claim upon disruption of rate relationships which they allege formerly existed between Fox River and Pacific Northwest territories, examination of rates indicates no definite or constant rate relationship over a period of years and carriers show that transportation conditions are not similar. Moreover, disregarding all elements but distance, rate to Texas common points from Camas and West Linn is only 13.5 per cent greater than from Stevens Point, Wis., for a 100 per cent longer haul. Crown Willamette Paper Co. v. W. T. Co., 129 I. C. C. 79.

(17q) Sixth-class rates on crushed stone moving interstate from Security, Md., to Best Gate, Md., found unreasonable as compared with those under distance scale prescribed in 49 I. C. C. 681; 100 I. C. C. 411, from Pennsylvania and Maryland points to destinations in Maryland, New York, New Jersey, Delaware, Virginia, and District of Columbia, and to extent they exceeded lower commodity rates subsequently established. Reparation awarded. North American Cement Corp. v. W. M., 129 I. C. C. 90.

(17r) Rates on wall plaster from Hanover, Mont., to western and central portions of North Dakota and South Dakota, found unreasonable as compared with rates contemporaneously in effect from competing points in Loveland, Colo., Laramie, Wyo., and St. Paul, Minn., and from South Dakota points to destinations in North Dakota, for comparable distances; and unreasonable and unduly prejudicial as compared with intrastate rates from Piedmont and Black Hawk, S. Dak., to various South Dakota destinations. While distance rates herein prescribed will not completely remove existing undue prejudice and preference between intrastate and interstate rates in South Dakota, no order will at present be entered with respect thereto but carriers and State authorities will be given opportunity to adjust their rates so as to remove balance thereof. Reasonable and nonprejudicial basis of rates prescribed for future. Three Forks Portland Cement Co. v. C., B. & Q., 129 I. C. C. 107.

(17s) Rates on Portland cement and plaster in mixed carloads from Hanover, Mont., to western and central portions of North Dakota and South Dakota, found not unreasonable but unduly prejudicial to extent that charges thereunder exceed those which would accrue under mixing rules similar to those contemporaneously maintained from Steelton, Minn., and Des Moines and Gilmore City, Iowa. Mixtures from Hanover move under rates subject to 50,000-pound minimum, whereas from preferred points cement moves at c. l. rate and actual weight subject to 50,000-pound minimum, and plaster at actual weight and c. l. rate subject to lowest minimum. No order entered but carriers expected to provide for mixing rules in revising rates. Three Forks Portland Cement Co. v. C., B. & Q., 129 I. C. C. 107, 118.

(17t) Rates on strawboard from various producing points in Ohio, Indiana, Michigan, Illinois, and Iowa to Texas common points and to San Francisco and Petaluma, Calif., found not unreasonable nor unduly prejudicial as compared with contemporaneous rates on building and roofing paper, fuller's earth, and various other commodities to Texas common points, or with rates on agricultural implements, water heaters, and other commodities to California destinations. Comparisons are of little value because neither volume of movement nor values of commodities are shown. Moreover, assailed rates to Texas compare favorably with those prescribed in 91 I. C. C. 589, from Peoria, Ill., to San Antonio, Tex., and in 85 I. C. C. 470, it was stated that earnings under rates to south Pacific coast same as those here attacked seemed fair and reasonable. United Paperboard Co. v. A. & R., 129 I. C. C. 131.

(17u) Rates on canned goods in straight or mixed carloads from Mobile, Ala., to destinations in Georgia, Mississippi, Tennessee, Kentucky, Missouri, Ohio, and Illinois, and from New Orleans to Nashville, Tenn., found unreasonable as compared with those prescribed in 77 I. C. C. 473; 123 I. C. C. 203; with lower rates contemporaneously maintained from Neely, Ala., a point within

Mobile switching limits to same destinations; and to extent they exceed class 7 rates approved in 113 I. C. C. 200, applicable between same points. Reasonable rates prescribed for future. Mobile Chamber of Commerce v. A. & V., 129 I. C. C. 147.

(17v) Rates on anthracite coal from anthracite region of Pennsylvania to destinations within the district of metropolitan Boston, but outside Boston switching district, found not unreasonable as compared with lower rates to Boston and destinations within or just outside the switching district, but unduly prejudicial to extent they exceeded the contemporaneous rates to adjacent points in metropolitan Boston outside the switching limits but not on tidewater, where distances are not greater than those to complainants' plants. Fourth-section situation is protected by an order. Undue prejudice ordered removed and reparation denied. Chadwick Coal Yard Co. v. N. Y., N. H. & H., 129 I. C. C. 165.

(17w) Rates on limestone containing 2.5 per cent or more of asphalt, broken, crushed, or ground from Margerum and Colrock, Ala., to destinations in southern territory, except Florida, found unreasonable and unduly prejudicial as compared with rates on similar asphalt rock from Oklahoma and Texas to Mississipi River points and west thereof and with those on sandstone asphaltic rock produced at Kyrock, Ky., competitive products; with rates prescribed in 96 I. C. C. 319 on crushed asphalt rock from Dougherty, Okla., to Kansas City, Mo.-Kans.; and to extent they exceeded distance rates herein prescribed. Reasonable maximum rates prescribed for future and reparation denied. Colbert Limerock Asphalt Co. v. A. C., 129 I. C. C. 177.

(17x) Rates on scrap brass and brass ingots from Pittsburgh, Pa. to Newark and Jersey City, N. J., and Baltimore, Md., found unreasonable to extent they exceeded lower rates contemporaneously in effect from 60 per cent territory west of Pittsburgh to same destinations. Reparation awarded. S. Hausman & Sons Co. v. P. R. R., 129 I. C. C. 233.

(17y) Combination rates on relaying rails from Bellwood and Hartford, Ala., to Hellams, S. C. found unreasonable as compared with joint-line rate named in fourth-section committee's distance scale subsequently used by southern trunk lines, in revising rates on these commodities; with lower rates between other points in same general territory for similar distances; and to extent they exceeded single-line distance rates plus 60-cent differential, contemporaneously in effect, differential being basis employed in making rates to points on so-called weak or short lines on shipments of iron and steel articles from Birmingham, Ala. Reparation awarded. Rinehart & Dennis Co. v. C. of G., 129 I. C. C. 247.

(17z) Rates on lumber from Maine points to destinations in New England found not unreasonable. Assailed rates were prescribed in 43 I. C. C. 641, and, subjected to general increase and reductions, are lower than those under distance scale prescribed in 49 I. C. C. 421, for application in New England. Woodstock Lbr. Co. v. B. & A., 129 I. C. C. 255.

(18a) Rate on oil-well machinery from Mobile, Ala., to Tulsa, Okla., found not unreasonable as compared with lower rate contemporaneously in effect to Coffeyville, Kans., over another route, to which, complainant contended, Tulsa was intermediate. However, route sought was considerably longer than route of movement and tariff was not described as applying between Oklahoma points. Sinclair Oil & Gas Co. v. M. & O., 129 I. C. C. 281.

(18b) Fifth-class rate on soy, soja, or soya beans from Bloomington, Ill., to Fort Smith, Ark., found unreasonable as compared with lower rate contemporaneously in effect from Norfolk, Va., to Atlanta, Ga., and Athens, Tenn., for similar distances; and to extent it exceeded lower rate subsesquentiv BpsBH ceeded lower rate subsequently established in reverse direction. Class rates are the same in both directions, and carriers failed to show why rate assailed should exceed that in reverse direction. Reparation awarded and reasonable rate for future prescribed. Binding-Stephens Seed Co. v. A., T. & S. F., 129 I. C. C. 291.

(18c) Fourth-class rate on empty tin cans from Baltimore, Md., to Bushwick station, Brooklyn, N. Y., found unreasonable to extent it exceeded lower commodity rate contemporaneously in effect to certain New York and Brooklyn stations, and subsequently established to

Bushwick. Carriers long have maintained lower commodity rates on like traffic from Baltimore to permit manufacturers there to compete with manufacturers in and around New York City. Reparation awarded. Metal Package Corp. v. B. & O., 129 I. C. C. 301.

(18d) Rate on lumber from Luverne, Ala., to Sarasota, Fla. found not unreasonable as compared with lower rates under distance scale for comparable hauls. Scale referred to was not scaled up to length of haul here involved and did not cover the shipment. Moreover, rate assailed compares favorably with rates between various points in same general territory for comparable distance and is lower than rate constructed on basis prescribed in Southern Class Rate Investigation, 100 I. C. C. 513; 109 I. C. C. 300; 113 I. C. C. 200. Aycock--Holley Lbr. Co. v. A. C. L., 129 I. C. C. 306.

(18e) Combination rates on lumber and other forest products from points in Oregon and Washington to destinations on Minneapolis, St Paul and Sault Ste. Marie, in Minnesota, Montana, North Dakota, and South Dakota found not unreasonable nor discriminatory but maintenance of lower joint rates from other points generally in the coast group to same destinations found unduly prejudicial. Undue prejudice ordered removed. West Coast Lumberman's Asso. v. C., M. & St. P., 129 I. C. C. 363.

(18f) Rates on fresh meat and packing-house products in straight or mixed carloads from Moultrie, Ga., to Baltimore, Md., Washington, D. C., and North Carolina, South Carolina, and Virginia destinations; rates on green salted hides to St. Louis, Mo., Somerville, Mass and Endicott, N. Y., found unreasonable as compared with those from southeastern points to same destinations; and rates on grease to Chicago found unreasonable to extent they exceeded rates subsequently established. Reparation awarded. Swift & Co. v. G. & F., 129 I. C. C. 407 .

(18g) Rates on automobiles, c. l., from Lansing and North Flint, Mich., to Santa Fe, N. Mex. found not unreasonable or otherwise unlawful as compared with lower rates contemporaneously in effect to Columbus, N. Mex. Contention that as Santa Fe was intermediate to Columbus, lower rate applied under an intermediate rule which provided for application of Columbus rate as maximum to intermediate points, not sustained. Shipment was routed over A., T. & S. F., and Santa Fe is not intermediate to Columbus over that route. See 118 I. C. C. 411. Mirabel Motor Co. v. M. C., 129 I. C. C. 411.

(18h) Rates on rough granite from Bradford and Westerly, R. I., to Montello, Wis. found not unreasonable, unduly prejudicial, or otherwise unlawful, as compared with lower rate contemporaneously in effect on stone or granite, dressed, axed, or hammered, to Burlington and Keokuk, Iowa, and St. Louis, Mo. Latter points alleged to be preferred are not served by Soo Line which serves Montello, and mere fact that rates assailed were out of line with rates to certain other points does not in itself warrant a finding of unreasonableness. Moreover, earnings under assailed rates compared favorably with corresponding earnings under rate sought. Montello Granite Co. v. M., St. P. & S. S. M., 129 I. C. C. 427.

(18i) Fifth-class rates on pig lead, red lead, and litharge from Joplin, Mo., to Oklahoma City, Okla., found unreasonable but not unduly prejudicial as compared with lower commodity rates from Joplin to various points in western territory, including St. Louis, Mo., East St. Louis, Ill., and Kansas City, Mo., and with distance rates prescribed in Consolidated Southwestern Cases 123 I. C. C. 203. Competitive situation prevents lower rates from Joplin to St. Louis, East St. Louis, and Kansas City from being basis of undue prejudice. Reasonable rates prescribed for future and reparation awarded. Oklahoma Traffic Asso. v. St. L.-S. F., 129 I. C. C. 461.

(18j) Combination rates on refined petroleum products from Augusta, Topeka, and El Dorado, Kans., to St. Francis, Kans., and intermediate points in Kansas and Nebraska, via Superior, Nebr., found unreasonable as compared with joint rates in effect over longer routes via Kansas City and other Missouri River points; and via Kansas City or St. Joseph, Mo., unreasonable as compared with rates from Kansas City to points in Kansas, with intrastate rates in Kansas, with rates between points in Oklahoma and Kansas, and from points in Group 2. Reasonable rates prescribed and reparation awarded. White Eagle Oil & Refining Co. v. C., B. & Q., 129 I. C. C. 467.

(18k) Rates on coke from Troy, N. Y., to destinations in New England territory found unreasonable as compared

with contemporaneous rates under Seaboard distance scale prescribed in 62 I. C. C. 317, 327, or rates of same level from points in New Jersey, Rhode Island, and Massachusetts to same destinations; and to extent they exceeded distance rates based on shortest routes over which carload traffic can be moved without transfer of lading, subject to minimum weights as herein provided. See 113 I. C. C. 200. Reasonable rates prescribed for future and reparation awarded. Hudson Valley Coke & Products Corp. v. N. Y., N. H. & H., 129 I. C. C. 472.

(18l) Rates on wrapping paper from Richmond, Va., to Harlem River, N. Y., found unreasonable as compared with rates between various points in same tances and to extent they exceed a lower general territory for comparable dis- River, which rate is subject to rule 77 rate from Covington, Va., to Harlem of Tariff Circular 18-A, unrestricted as to routing and therefore applicable via Richmond. Reasonable rate prescribed for future and reparation awarded. Albemarle Paper Mfg. Co. v. R., F. & P., 129 I. C. C. 502.

(18m) Rates on bituminous lump coal from Zeigler, Ill., to Logan and Woodbine, Iowa, found not unreasonable or otherwise unlawful. While contemporaneously, a lower rate applied from Southern Illinois district to Omaha, Nebr., and ouncil Bluffs, Iowa, to which Logan and Woodbine are directly intermediate, and was subsequently established by other carriers to intermediate points, in cluding Logan and Woodbine, this departure from fourth section was protected by fourth-section order. However, rate assailed compares favorably with contemporaneous rates to Sioux City and other Iowa points and with those prescribed in 89 I. C. C. 170, from southern Illinois district to Sioux City for comparable hauls. Bowman Lbr. Co. v. I. C., 129 I. C. C. 507.

(18n) Rates on apples from St. Joseph, Mo and related points in Missouri and Kansas to destinations in Nebraska, Iowa, Minnesota, North Dakota, and South Dakota, found unreasonable as compared with lower rates contemporaneously in effect from St. Louis and Hannibal, Mo., Alton and Quincy, Ill., and various other points in same general territory, and to extent they exceed those ascertained by use of the Kansas-Missouri scale prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203; and unduly prejudicial to extent they exceed the contemporaneous rates from St. Louis, Alton, Hannibal, Quincy, and related points, or to extent their relation with rates to those points is less favorable than that which now exists. Reasonable and nonprejudicial rates prescribed for future. Hunt Bros. Fruit Co. v. A. & W., 129 I. C. C. 579.

(18o) All-rail and water-and-rail rates on sugar from San Francisco and Crockett, Calif., to Missoula, Mont., found unreasonable as compared with lower rates, distance considered, contemporaneously in effect from San Francisco to Utah, Colorado and various other points; and rates from Portland, Oreg., Seattle and Tacoma, Wash., to Missoula, found unreasonable and unduly prejudicial to extent they exceed corresponding rates from Seattle, Tacoma, and Portland to Spokane, Wash., by more than 20 cents per 100 pounds. Reasonable rates prescribed for future and reparation awarded. M'Clintock-Trunkey Co. v. McCormick S. S. Co., 129 I. C. C. 591.

(18p) Fourth-class rate, minimum 30,000 pounds, on shipments of varnish weighing less than 33,000 pounds, found not unreasonable as compared with fifth-class rate, minimum 36,000 pounds, contemporaneously applicable on paint. Under an intermediate clause a lower commodity rate on varnish minimum 40,000 pounds, would have been applicable to shipments had not an alternative rule provided for application of rate and minimum producing lowest charge. Transportation qualities of paint and varnish are not shown to be similar and fourth-class rate was prescribed on paint, between the same points, in 123 I C. C. 203. Peaslee-Gaulbert Co. v. S. Ry., 129 I C. C. 611.

(18q) Fifth-class rate on imported benzol from Eagle Pass, Tex., to Ivorydale, Ohio, a point within Cincinnati switching district, found unreasonable as compared with lower commodity rates contemporaneously in effect from near-by Texas producing points to Cincinnati and other northern markets; with rates on gasoline to Cincinnati; and to extent it exceeded lower combination consisting of lower commodity rate from Eagle Pass to St. Louis, subsequently established plus a contemporaneous commodity rate St. Louis to Cincinnati. Reparation awarded. Caldwell & Taylor v. C., R. I. & G., 129 I. C. C. 626.

(18r) Rates on sash, doors, and related articles from Clinton, Dubuque, Muscatine, and Davenport, Iowa, and Rock Island, Ill., to points in c. f. a. territory except to Michigan points, including western termini of eastern trunk lines and points taking same rates or arbitraries higher, except Buffalo, N. Y., found unreasonable and unduly prejudicial to extent they exceed present rates to Oshkosh, Wis; and rates from same origin points to Buffalo, N. Y., Bay City and Grand Rapids, Mich., found unreasonable and unduly prejudicial as compared with those from Oshkosh, with those from Pacific coast points, and with those prescribed or approved in 58 I. C. C. 105, and other cited cases. Reasonable rates prescribed for future. Farley & Loetscher Mfg. Co. v. A., C. & Y., 129 I. C. C. 645.

(18s) Rates on beets and carrots with "clipped tops," in straight or mixed carloads, from points in lower Rio Grande Valley of Texas to destinations east of the Mississippi River and north of Ohio River, found not unduly prejudicial but unreasonable as compared with rates between the same and various other points for comparable distances, and to extent that factors or arbitraries east of Mississippi River exceeded rates contemporaneously applicable on same commodities "without tops." Reasonable rates prescribed for future and reparation awarded. Carfiel & Morris v. N. Y. C., 129 I. C. C. 658.

(18t) Sixth-class rates on grain and products from Illinois and Indiana points on Wabash Ry. to Indianapolis, Ind., and through that point to Louisville, Ky., and to points in eastern trunkline and New England territories, including western termini of eastern trunk lines and points taking same rates or rates based thereon, found not unreasonable or otherwise unlawful as compared with lower commodity rates from points on various other lines to or via Indianapolis to same destination, or to eastern destinations over routes other than through Indianapolis. Mere maintenance of lower rates over above comparative routes does not of itself establish unreasonableness of rates assailed. Indianapolis Board of Trade v. B. & O., 129 I. C. C. 675.

(18u) Contention that circumstances do not justify higher joint rates prescribed on shipments to Boston of wool grown in Nebraska and Kansas, which commodity is on a competitive basis and has a lower value than wool grown in Missouri and Iowa and shipped at lower rates. FOUND: Rates on wool from various western points of production to Boston are available to all Boston dealers alike and there is no evidence of undue prejudice from the situation disclosed. Boston Wool Trade Asso. v. A., T. & S. F., 129 I. C. C. 681, 686.

(18v) Rates on tomatoes from Fruitland, Gibson, and Humbolt, Tenn., to Hutchinson, Kans. found not unreasonable in past but for future found unreasonable and unduly prejudicial as compared with lower rates contemporaneously in effect to Kansas City, Mo., and Topeka, Kans., for comparable distances, and to extent they exceed rates prescribed in Consolidated Southwestern Case, 123 I. C. C. 203. No order entered but carriers expected to establish rates in conformity with findings herein at time they comply with rates prescribed in case cited. Former report 104 I. C. C. 745, modified. Grovier-Starr Produce Co. v. C., R. I. & P., 129 I. C. C. 711.

§ 32. Standard for Carriers.

See Branch Lines §2; Evidence §55, §56.

(a) Upon investigation by commission on its own motion into and concerning the general basis of rates on fertilizer and fertilizer materials in southern territory, FOUND: That in view of the characteristics of this traffic it is reasonably entitled to a relatively low basis of rates. Maximum reasonable rates based on a distance scale prescribed for uniform application over standard lines, and certain so-called short or weak lines accorded arbitraries or a percentage over such prescribed standard-line rates. Fertilizers between Southern Points, 113 I. C. C. 389.

(b) In determining just and reasonable rates consideration must be given to density of traffic and yield of carriers in a sparsely populated section of the country, as well as to share of transportation charges borne by a particular commodity when compared with other commodities. Sames, Moore & Co. v. A., T. & S. F., 113 I. C. C. 501, 506.

§32½. Subsequent Reduction.

See Commodity Rates §4; Evidence §64; Reparation §16.

(a) Rate on sand from Lipe, Tenn.,

to Sheffield, Ala., found unreasonable to extent it exceeded rate subsequently established which conforms with rates for similar distances under scales approved by Commission in various cases. Present rate found not unreasonable. Reparation awarded. Florence Chamber of Commerce v. N., C. & St. L., 104 I. C. C. 393.

(b) Rates on sporadic shipments of fruit-wrapping paper from Los Angeles to Ordway and Rocky Ford, Colo., found unreasonable as compared with rates from paper-producing points in Washington, Oregon, Wisconsin, and Minnesota to same destinations, and to extent they exceeded lower rate subsequently established. Reparation awarded. Crown Willamette Paper Co. v. U. P. R. R., 104 I. C. C. 399.

(c) Rates on steel tanks, k. d., from South Chicago, Ill., Indiana Harbor, Ind., and Youngstown, Ohio, to Galveston, Tex., for export to Mexico, fabricated in transit at Iola, Kans., found not unreasonable due to lower export rates between same cation in transit at Kansas City, such origin and destination points with fabrilower through rates being subsequently established through Iola. Earnings under rates assailed are materially lower than those under numerous rates on same and analogous commodities from other iron and steel producing points for comparable distances, many of which were approved or prescribed by commission. United Iron Works v. Director General, 104 I. C. C. 449.

(d) Voluntary reductions in rates afford no basis for condemning previously existing adjustment. Therefore, mere proposals submitted in a general investigation can not be considered as having any material bearing on propriety of rates in effect. Wilson & Co. v. C. & O., 104 I. C. C. 641, 643.

(e) Fact that a rate was subsequently reduced in compliance with decisions of commission embracing general readjustments, involving both increases and reductions, does not of itself demonstrate unreasonableness of higher rates. Commission declines to give retroactive effect to such rates as a basis for an award of reparation. Cairo Cotton Oil Mill v. M. & O., 107 I. C. C. 299.

(f) Rate on cypress, ash, and maple lumber from Gable, S. C., to Cincinnati, Ohio, found unreasonable to extent it exceeded lower rate established subsequent to movements here involved. Reparation awarded. Gulf Red Cypress Co. v. Alcolu R. R., 107 I. C. C. 397.

(g) Rate on paper boxes, knocked down flat, from Chicago to Dallas found unreasonable to extent it exceeded lower rate established subsequent to movements here involved on basis of rates prescribed in 66 I. C. C. 571. Reparation awarded. Chicago Carton Co. v. C., B. & Q., 107 I. C. C. 586.

(h) While the subsequent reduction of a rate does not show the prior rate to be unreasonable neither does it act as a bar to reparation when former rate was clearly unreasonable. Knoxville Iron Co. v. L. & N. 107 I. C. C. 627, 634.

(i) Rates on bar iron from Knoxville, Tenn., to stations on Ohio & Kentucky Ry., a short-line carrier, found unreasonable as compared with rates from Pittsburgh and other points to same destinations, with rates between other points for comparable distances, and to extent they exceeded lower rate subsequently established. Reparation awarded. Knoxville Iron Co. v. L. & N., 107 I. C. C. 627, 633, 634.

(j) Rate on slack coal from Rock Springs district of Wyoming to Sugarton and Cornish, Utah found unreasonable to extent it exceeded lower rate established subsequent to movements here involved. Reparation awarded. Amalgamated Sugar Co. v. U. P., 107 I. C. C. 635.

(k) Rate on crude petroleum from points in Arkansas to Texas City Tex., found not unreasonable or unduly prejudicial as compared with lower rate to other Gulf ports which lower rate was subsequently made applicable to Texas City. Rate charged was in substance an emergency rate established to enable an overproduction of crude oil to be used, and its subsequent reduction does not establish that it was unreasonable prior thereto. While complainant was at a disadvantage during period of movement as compared with other ports there is no showing that the disadvantage was undue or that it suffered damage. Swiftsure Petroleum Co. v. M. P. 107 I. C. C. 637.

(l) The subsequent reduction of a rate by carrier does not, of itself, establish that rate formerly in effect was unreasonable. Swiftsure Petroleum Co. v. M. P., 107 I. C. C. 637, 638.

(m) Rate on grapefruit from Bowling

Green, Fla., to Wausau, Wis., found unreasonable to extent it exceeded lower joint rate contemporaneously in effect to Duluth and Albert Lea, Minn., Eau Claire, Wis., and other points in same territory, which lower rate was established to Wausau subsequent to movement here involved. Reparation awarded. Murphy v. A. C. L., 107 I. C. C. 651.

(n) Contention that subsequent reduction of a rate does not show prior rate to be unreasonable, sustained. Murphy v. A. C. L., 107 I. C. C. 651, 652.

(o) Upon further hearing, rate on wrapping paper from Madison, Me., to New Hope, Pa., found unreasonable to extent that proportional rate comprising factor to Brunswick, Me., exceeded lower proportional rate from Enfield, Howland, Montague, and Lincoln, Me., farther distant points, which lower rate was established from Madison subsequent to movements here involved. Reparation awarded. To this extent former report, 88 I. C. C. 593, reversed. Universal Paper Bag Co. v. M. C., 107 I. C. C. 661.

(p) Class D rate on manganese ore from Phillipsburg, Mont., to Portland, Oreg., found unreasonable to extent it exceeded lower commodity rate contemporaneously in effect to Tacoma, Wash., and subsequently established to Portland. Complainant was promised lower rate, but it could not be made available for these shipments because of delays incident to formality of tariff publication, complainant being required to move its traffic before such lower rate could be made effective. Reparation awarded. Humphreys v. Director General, 109 I. C. C. 157.

(q) Mere fact that as a result of general readjustment in rates certain rates from a given point were reduced does not warrant a finding that higher rates were unreasonable. South River Lbr. Co. v. N. & W., 109 I. C. C. 173, 175.

(r) Rates on fuel and crude oil from Smackover, Ark., to Lincoln, Nebr., found unreasonable to extent it exceeded lower rate contemporaneously in effect to Omaha, Nebr., and Council Bluffs, Iowa, which lower rate was subsequently established to Lincoln. Lincoln is usually accorded same rates on oil from Smackover as Omaha and related points, the relationship being recognized in 36 I. C. C. 109. Lincoln Traction Co. v. M. P., 109 I. C. C. 653.

(s) Mere fact that a rate has been reduced does not establish unreasonableness of former rate. Knoxville Traffic Bureau v. A. C. L., 109 I. C. C. 705, 709.

(t) Rates on paper and paper articles from Urbana, Ohio, and St. Louis, Mo., to Dallas, El Paso, and San Antonio, Tex., found unreasonable to extent they exceed rates subsequently established, in conformity with those prescribed in the Paper case, 66 I. C. C. 571. Reparation awarded. Graham Paper Co. v. C., R. I. & P., 112 I. C. C. 51.

(u) Class rates on asphalt found unreasonable in past as compared with lower commodity rates applying on cement and petroleum road oil, and to extent they exceeded lower rate subsequently established. Present rate found not unreasonable since transportation, commercial, and other qualities of the three commodities are not so similar as to warrant prescription of same rates for all of them, or a fixed relationship between them. Reparation awarded. Warren Brothers Co. v. S. P., 112 I. C. C. 87.

(v) An offer of carriers to reduce a rate does not of itself establish that rates in effect were or are unreasonable. Standard Pipe Line Co. v. T. & P., 112 I. C. C. 186, 187.

(w) The voluntary reduction of a rate by carrier is not of itself sufficient to establish unreasonableness of former rate, and in absence of proof of damage, fact that carriers have charged a higher rate to an intermediate than to a more distant point is not sufficient to entitle shipper to an award of reparation for a violation of section 4. Dees v. M. & O., 112 I. C. C. 397, 398.

(x) The unreasonableness of a rate is not established, nor it is admitted, by a subsequent voluntary reduction. Bunte Bros. v. C. & N. W., 112 I. C. C. 557, 558.

(y) The subsequent reduction of a rate does not of itself establish unreasonableness. Dow Chemical Co. v. P. M., 112 I. C. C. 559, 560.

(z) Rate assessed on crude and fuel oils from El Dorado, Norphlet, and Smackover, Ark., to Alexandria, La., found not unreasonable. Complainant relies upon fact that subsequent to movement carriers reduced rate on refined oils, arriving at rate sought by deducting 6.5c, the differential applied by commission on fuel and other low-

grade oils under refined oils. Rate charged was equivalent to the single-line maximum distance scale rate on crude and fuel oils prescribed in 58 I. C. C. 610 for a less distance, and carrier further supports the reasonableness of rate charged by numerous rate comparisons on low-grade oils throughout Oklahoma, Kansas, and other States, prescribed or approved by the commission, as well as other rates under which these oils move from various Kansas and Oklahoma points to destinations in western Missouri. Alexandria Refining Co. v. M. P., 112 I. C. C. 613.

(aa) The voluntary reduction of a rate by a carrier does not in itself constitute sufficient proof of the unreasonableness of former rate. Alexandria Refining Co. v. M. P., 112 I. C. C. 613, 614.

(bb) Voluntary reduction of a rate is not of itself evidence of unreasonableness of the rate so reduced. Sames, Moore & Co. v. A., T. & S. F., 113 I. C. C. 501, 507.

(cc) Rates on sugar from points in Nebraska, Colorado, Kansas, Utah, and Idaho, to Oklahoma destinations, found unreasonable to extent they exceed rates 7.5c per 100 pounds less than present rates. Oklahoma Traffic Asso. v. A. G. S., 113 I. C. C. 635.

(dd) Combination rates based on Suffolk, Va., and assessed on shipments of cotton moving from North Carolina points to Danville, Va., found unreasonable to extent they exceeded lower joint rates subsequently established and contemporaneously in effect during period of movement to Martinsville, Va., a farther distant point beyond Danville. Reparation awarded. Bradshaw-Roberson Cotton Co. v. A. C. L., 113 I. C. C. 661.

(ee) Rates on bituminous coal from points in southern Illinois and western Kentucky to points in southeastern Missouri and northeastern Arkansas found unreasonable as compared with rates to St. Louis, Crystal City, Ste. Genevieve, St. Marys, Cape Girardeau, Illmo, and Chaffee, Mo. Reasonable rates prescribed for future and reparation awarded. Scott County Milling Co. v. B. C. R. R., 113 I. C. C. 675.

(ff) Rates on wheat from points in Missouri, milled at Jefferson City, and resulting flour reshipped to destinations in Arkansas found not unreasonable as compared with lower rates subsequently established. Carriers published these lower rates in conformity with commission's suggestion in 80 I. C. C. 620, wherein an extensive readjustment in rates on grain and products was prescribed in this general territory. The commission had consistently denied reparation in cases where general readjustments have been made in extensive territories, resulting in both increases and reductions, See 87 I. C. C. 451, 468; moreover, the mere reduction of a rate is insufficient to prove that higher rate formerly charged was unreasonable. See 85 I. C. C. 449. Dulle Milling Co. v. M. P., 113 I. C. C. 742.

(gg) Complainant alleged that due to misrouting the shipper was compelled to pay a rate on a car of lumber shipped Oct. 17, 1924, from Orangeburg, S. C., to Leesburg, Va., which was unreasonable and in violation of the fourth section. Shipment moved Southern to Alexandria, Va., W. & O. D. beyond, charged 38c. Other than a subsequent reduction there is nothing to show that the rate charged was unreasonable, and there is no evidence of a violation of the fourth section. HELD: Shipment not misrouted, rate charged not unreasonable or otherwise unlawful, complaint dismissed. Lynchburg Traffic Bureau v. Southern Ry., 118 I. C. C. 523.

(hh) Rates on paper strawboard and boxboard, from New Haven and Windsor Locks, Conn., to Ridgefield, N. J., found unreasonable to extent they exceeded lower rates subsequently established. Reparation awarded. Lowe Paper Co. v. C. N. E., 115 I. C. C. 189.

(ii) Combination rates on coal from Wilder and Davidson, Tenn., via Cincinnati to Peoria, Ill., thence reconsigned to points in Iowa, found not unreasonable as compared with lower joint rates contemporaneously in effect from and to same origin and destination points via Louisville, Ky. Considering earnings yielded under rates assessed it can not be said that they exceeded a maximum reasonable basis, nor is the fact that they were reduced to the joint-rate basis shortly after shipments moved sufficient to defeat this conclusion. Fentress Coal Co. v. T. C. Ry., 115 I. C. C. 286.

(jj) Rates on dried fruits, in sacks, from points in groups 1 and 3 in California, to Ogden and Salt Lake City, Utah, found not unreasonable as com-

pared with rates contemporaneously in effect to Denver, Colo., and Butte, Mont., but rates on dried fruits, in boxes, to and from same points, found unreasonable to extent they exceeded lower rates voluntarily established by carriers subsequent to movements here involved. Reparation awarded. Anderson-Taylor Co. v. A., T. & S. F., 115 I. C. C. 313.

(kk) Rate on iron beds from Kenosha, Wis., to Meridian, Miss., found not unreasonable as compared with lower rate subsequently established, or with lower rates for greater distances from points in Pennsylvania and Michigan to Mississippi and Louisiana destinations where water competition influences the rate level. Rate assailed did not exceed general level of rates contemporaneously applicable on iron beds from points in c. f. a. territory to Mississippi Valley and southeastern destinations for comparable distances. Hulett & Son v. C. & N. W., 115 I. C. C. 399.

(ll) Sixth-class rate on crossties from Bedford and other points in Pennsylvania to Buffalo, N. Y., and related points, found unreasonable to extent it exceeded a commodity rate subsequently established from Everett, Pa., to Buffalo, and a lower rate applicable in reverse direction from Buffalo and related points to approximately 40 destinations of comparable distance in Pennsylvania and New Jersey, including Bedford and Everett. Reasonable rates prescribed for future, and reparation awarded. LaFayette Lbr. Co. v. P. R. R., 115 I. C. C. 445.

(mm) Based upon light traffic density and unfavorable operating and financial conditions, joint distance commodity rate assessed on petroleum crude oil from Texon, Tex., to Texas City, Tex., for coastwise movement, found not unreasonable because it exceeded lower rate subsequently established, such lower rate being literally forced upon carrier to meet pipe-line competition. Kay County Gas Co. v. G., C. & S. F., 115 I. C. C. 736.

(nn) Voluntary reduction of rate by carrier is no criterion per se of its previous unreasonableness. Kay County Gas Co. v. G., C. & S. F., 115 I. C. C. 736, 737.

(oo) Fact that rates on same commodity to two different destinations are not contemporaneously reduced does not alone render rate not reduced unreasonable or otherwise unlawful. Bailey v. O. S. L., 115 I. C. C. 745, 747.

(pp) Subsequent reduction of rates does not, in itself, carry the presumption that rates formerly in effect were unreasonable. Crook Son & Co. v. N. Y. C., 118 I. C. C. 512, 514.

(qq) Following 96 I. C. C. 136, rates on gasoline and naphtha, from Beckett, Wilson, Bristow, Okmulgee, and Tulsa, Okla., to Blue Creek, W. Va., found unreasonable in their relation to rates to Charleston, W. Va., no warrant being found for the spread in the rates maintained between these two destinations. Reasonable rate prescribed for future and reparation awarded. Transcontinental Oil Co. v. B. & O., 118 I. C. C. 518.

(rr) Mere fact that rates charged reflect voluntary reductions is not sufficient in and of itself to indicate that prior rates were unreasonable. Jackson Traffic Bureau v. I. C., 120 I. C. C. 33, 36.

(ss) Sixth-class rate applicable on hollow building brick and hollow building tile from Haviland, Ohio, to Fort Wayne, Ind., found unreasonable to extent it exceeded lower commodity rate prescribed in General Brick Case, 68 I. C. C. 213, and established subsequent to movement between points here involved. Reparation awarded. Haviland Clay Works Co. v. C. N. R. R., 120 I. C. C. 241.

(tt) Complainant attacked combination rate charged on fluorspar, carloads, shipped during July, August and Sept., 1922 from Mesila Park, N. M., to Torrance, Calif., as unreasonable and unduly prejudicial to extent it exceeded a rate of $8 subsequently established. Mesila Park is on the Santa Fe 41 miles north of El Paso, Tex. Torrance is on the P. E., 18 miles west of Los Angeles, Calif. Shipments moved Santa Fe to Los Angeles and P. E., beyond, 1,071 miles, charged commodity rate of $10.125 to Los Angeles and class D rate of $1.20 beyond. Fluorspar is rated class D. The rate of $10.125 also applied to San Francisco, 295 miles greater than to Los Angeles. HELD, rate attacked unreasonable to extent it exceeded $10.125, reparation awarded. Llewellyn Iron Works v. A., T. & S. F. Ry., 122 I. C. C. 232.

(uu) The reduction of a rate is not of itself sufficient to justify the presumption that the former rate was unreasonable. Consolidated Rendering Co. v. N. Y., N. H. & H. R. R., 123 I. C. C. 98, 100.

(uua) Voluntary reduction of a rate by carriers is evidence to be considered

along with other proof that rate previously in effect was unreasonable. Biegel Sack Co. v. C. R. R. Co. of N. J., 122 I. C. C. 78, 80.

(uub) Rate on bituminous-coal screenings from Harrisburg, Ill., to Sioux City, Ia., found unreasonable to extent it exceeded a lower rate contemporaneously in effect from southern Illinois mines to Sioux City over various routes, which lower rate was subsequently established from Harrisburg to Sioux City via route of movement. Reparation awarded. Saline Coal Corp. v. C., M. & St. P., 122 I. C. C. 467.

(uuc) Combination rates on lumber from points in Mississippi to Mariemont, Ohio, found unreasonable to extent they exceeded lower rate subsequently established. Rates assailed were based on Cincinnati using factors of southern lines plus the local to Newtown, Ohio, applicable to Mariemont, an intermediate point, under proper tariff provision, and subject to combination rule. The rate subsequently established was a proportional rate from Cincinnati to Mariemont on shipments originating in the South and is reasonably aligned with rates on lumber from same origin territory to various Ohio points in vicinity of Mariemont. Reparation awarded on shipments moving prior to establishment of lower rate. Stanley Lbr. Co. v. A. & V., 122 I. C. C. 506.

(uud) Subsequent reduction of a rate is not conclusive of unreasonableness of higher rate formerly in effect. Redwood Mfg. Co. v. S. P. Co., 123 I. C. C. 30, 32.

(vv) Local rate on redwood lumber from Pittsburg, Calif., to Hayden, Ariz., originally moving from Casper, Calif., to Pittsburg by water, found not unreasonable, discriminatory, or unduly prejudicial, as compared with lower ex-water proportional rate from Pittsburg to Phoenix and other points more distant than Hayden, or with lower rate established to Hayden subsequent to movement. Such lower rates are on a low basis, having been established because of market and carrier competition, which is not reflected at Hayden, and subsequent reduction is not conclusive of unreasonableness of the higher rate. Redwood Mfg. Co. v. S. P. Co., 123 I. C. C. 30, 32.

(ww) The subsequent reduction of a rate in and of itself does not justify an award of reparation. Kohlman Bros. & Sugarman v. L. & N., 123 I. C. C. 56, 58.

(xx) Sixth-class rate on acid phosphate from Lowell, Mass., to East Windsor, Conn., found not unreasonable or otherwise unlawful as compared with lower commodity rate subsequently established, or with commodity rates contemporaneously in effect to Bridgeport, Hartford, and other Connecticut points, and from Carteret and Grasselli, N. J., to New England points for comparable distances. Maintenance of a higher rate to East Windsor than to the other points to which it is closely related does not necessarily indicate that higher rate is unreasonable as the general conditions of transportation are substantially dissimilar; nor is the subsequent reduction, of itself, sufficient to justify presumption that former rate was unreasonable. Consolidated Rendering Co. v. N. Y., N. H. & H., 123 I. C. C. 98.

(yyzz) Mere fact that one incident of a general readjustment was reduction of a rate from a given point does not prove that former rate was unreasonable. See 58 I. C. C. 46. Manget Bros. v. G. R. R., 123 I. C. C. 532, 534.

(3a) Voluntary reduction of a rate creates no presumption that former rate was unreasonable. Newark Call Printing & Publishing Co. v. C. R. R. of N. J., 126 I. C. C. 569, 571.

(3b) Upon contention that subsequent reduction of a rate is not indicative of the unreasonableness of the prior rate, HELD: While this contention is ordinarily correct it can not be sustained where rates assailed are higher than those on analogous articles which are higher rated, sold at higher prices, and no more desirable from a transportation standpoint. Chicago Granatine Mfg. Co. v. I. C. R. R., 126 I. C. C. 572.

(3c) Reduction of a rate is not of itself sufficient to show that the prior rate was unreasonable. Nat'l. Show Case Co. v. S. A. L., 128 I. C. C. 193, 197.

(3d) Reduction of a rate does not prove that rate formerly charged was unreasonable. See 107 I. C. C. 147. Vickers Petroleum Co. v. M. P., 128 I. C. C. 205.

(3e) Rate on gasoline from Potwin, Kans., to Westwego and St. Rose, La., for export, found not unreasonable as compared with lower rate contemporaneously in effect to same points from Arkansas

City, and other Kansas producing points, and subsequently established from Potwin. Reduction of a rate does not prove that rate formerly charged was unreasonable. See 107 I. C. C. 147. Vickers Petroleum Co. v. M. P., 128 I. C. C. 205.

(3f) Neither voluntary reduction of a rate by carrier nor maintenance of a lower rate over another route between same points is sufficient to establish unreasonableness of a higher rate. Western Paper Makers Chemical Co. v. A. C. L., 128 I. C. C. 244, 245.

(3g) Subsequent reduction of a rate does not prove that rate previously assessed was unreasonable. United States Potters' Asso. v. A., C. & Y., 128 I. C. C. 249, 254.

(3h) Rates on peanuts from Petersburg and Suffolk, Va., to Enid, Okla., found unreasonable to extent they exceeded lower rate subsequently established, which lower rate was same as that prescribed in 100 I. C. C. 307, from same points to McAlester, Shawnee, and Oklahoma City, Okla. While traffic and transportation conditions are substantially the same to Oklahoma City as to Enid, latter is slightly more distant. However, southwestern lines generally observe rates to Texas points as maxima to Oklahoma destinations and rates prescribed in cited case conform with that practice. Reparation awarded. Alton Mercantile Co. v. A., T. & S. F., 128 I. C. C. 721.

(3i) Complainant alleged that the rate of $1.45 assessed on a carload of structural steel shipped Jan. 10, 1925, from Indiana Harbor, Ind., to Blythe, Calif., fabricated in transit at Jacksonville, Ill., and forwarded from the latter point on June 24, 1925, was unreasonable to extent it exceeded $1 subsequently established. Shipment moved I. H. B., C. B. & Q. via Jacksonville to Kansas City, Mo., thence Santa Fe. Charged $1 to Cadiz., and 45c beyond, and subsequently the $1 was established to points on the Ripley Branch, including Blythe. HELD, rate attacked not unreasonable, complaint dismissed. Illinois Steel Bridge Co. v. A. T. & S. F. Ry., 129 I. C. C. 87.

(3j) Class rates on muriatic, sulphuric, and nitric acids, from Kansas City, Mo.-Kans., Grasselli, Ind., and Hegewisch, Ill., to Omaha, Nebr., found not unreasonable as compared with lower commodity rates subsequently established. Bruce & Co. v. C. & N. W., 129 I. C.C. 435.

(3k) Subsequent reduction of a rate does not, in itself, establish unreasonableness of former rate. Bruce & Co. v. C. & N. W., 129 I. C. C. 435, 437.

§36. Ton-mile Revenue.

See Supra §11, §20; Evidence §36, §58.

(a) Ton-mile earnings yielded by coal rates found reasonable by commission in a proceeding wherein the relationship was controlling factor, can not be accepted as criteria for coal rates in general. Fentress Coal Co. v. T. C. Ry., 115 I. C. C. 286, 287.

§ 38. Value of Commodity.

See Classification §11; Evidence §61.

(a) Rate on tin-plate scrap found unreasonable and reasonable rate for future prescribed. While rate on this commodity is equal to that on scrap iron and billets, revenues on the latter are materially greater because of heavier car loadings. Scrap tin plate is a refuse of little intrinsic value and can move only under a rate relatively low as compared with articles usually classed as junk. See also 21 I. C. C. 93. Reparation awarded. Metal Thermit Corp. v. C. R. R. of N. J., 112 I. C. C. 523.

(b) Rates on anthracite silt from Scranton and other Pennsylvania mines to Buffalo, N. Y., and Erie, Pa., for transshipment by lake to interstate destinations, found unreasonable. Washed silt is of extremely low value at the mines and although used to some extent for other purposes, it has value as a domestic fuel only when manufactured into briquets. Furthermore, transshipment rates which contemplate a movement beyond ports may reasonably be somewhat lower than those applicable on local traffic. Reparation awarded. Stott Briquet Co. v. P. R. R., 113 I. C. C. 693.

(c) Value is an essential factor in determining reasonableness of a rate, but is only one of the elements to be considered. Southern Mirror Co. v. S. Ry., 115 I. C. C. 590, 594.

(d) Value of a commodity is only one element to be considered in determining reasonableness of rates, for transportation cost to carrier is not less because of value of article transported. Due consideration must also be given to transportation conditions surrounding hand-

ling of traffic. However, commission can not disregard the value of service to shippers; that is, what rates the commodity can bear without curtailing the movement. Lignite Coal from North Dakota, 126 I. C. C. 243, 247.

§ 39. Value of Service.

See Evidence §62.

(a) Upon investigation by commission on its own motion into and concerning the general basis of rates on fertilizer and fertilizer materials in southern territory, FOUND: That in view of characteristics of this traffic it is reasonably entitled to a relatively low basis of rates. Maximum reasonable rates based on a distance scale prescribed for uniform application over standard lines, and certain so-called short or weak lines accorded arbitraries or a percentage over such prescribed standard line rates. Fertilizers between Southern Points, 113 I. C. C. 389.

(b) The commission has repeatedly condemned the action of carriers in adjusting rates so as to impede or stifle the movement of commodities in any given direction. Old Ben Coal Corp. v. C. C. C. & St. L. Ry., 115 I. C. C. 84, 87.

§40. Volume of Traffic.

See Evidence §63.

(a) While volume of movement is an important element to be considered in arriving at a reasonable rate, an excessive rate can not be justified merely on account of fact that movements thereunder are infrequent. Orford Soap Co. v. B. & M. R. R., 107 I. C. C. 338, 339.

(b) While volume of movement is an important element to be considered in arriving at a reasonable rate, an excessive rate can not be justified merely on account of fact that movements thereunder are infrequent. Barr & Dougherty v. G. N., 109 I. C. C. 487, 489.

(c) Fact that but relatively few shipments of a commodity move between certain points is not sufficient grounds to deny shippers reasonable rates. Dame Furniture Co. v. C., N. O. & T. P., 115 I. C. C. 566, 568.

REBATES

See Absorption of Charges §5½ (a); Allowance VII; Common Carrier; Crimes VI; Evidence §48.

RECEIVERS

(a) Operating company conducted business for a holding and selling company, for which latter company a receiver was appointed. Shipments were consigned to operating company and charges paid by holding and selling company prior to receivership, and by receiver thereafter. Complaint filed on behalf of receiver. Upon contention that since holding and selling company is not a party to complaint, shipments on which it paid charges prior to receivership are not properly covered by complaint, HELD: Receiver, upon appointment, became entitled to custody and control of all property of holding and selling company and it became his duty to secure all available assets. Complaint was properly filed on his behalf, as receiver, for the holding and selling company, and as such he is entitled to reparation due on all shipments delivered during statutory period. Columbia Steel Co. v. B. & O., 109 I. C. C. 46, 49.

(b) Complaint was filed by a corporation which ultimately became bankrupt and reparation statement under Rule V of the Rules of Practice was prepared and submitted by its receivers. Upon contention that commission can not legally award reparation to the corporation, which no longer exists. HELD: It being well settled that reparation claims are assignable reparation awarded to receivers who were vested with full power to take into possession all property and assets of the defunct corporation, including this claim for reparation. Wertheim Coal & Coke Co. v. L. V., 112 I. C. C. 513, 515.

(c) Upon contention of receiver of a carrier named as a party defendant that an order for reparation should not be issued against him on shipments made prior to date of receivership. HELD: Awards of reparation are not dependent upon solvency or insolvency of carriers concerned, but if a through rate, joint or combination, is found unreasonable and reparation is awarded, the order entered may run against carriers collectively that participated in transportation. See also 89 I. C. C. 125. Hansen-Peterson Co. v. A., T. & S. F., 113 I. C. C. 575, 577.

(d) One defendant carrier in the hands of a receiver was operated at a considerable loss during period covered

by complaint alleging unreasonable rates. Upon contention of receivers that it would be inequitable for them to be required to further reduce their capital assets by turning a portion thereof over to a complainant for exaction of unreasonable rates, HELD: Contention has no support in law. While financial condition of carrier may be taken into consideration in determining reasonable rates, such carrier is not relieved of any liability for damages because of fact that it was operating at a loss at time damages were sustained. Continental Sugar Co. v. N. Y. C., 115 I. C. C. 124, 125.

(da) That unreasonable freight charges unlawfully exacted had been commingled with other moneys of railroad and used HELD not to preclude holding that as to such moneys railroad was trustee ex maleficio for benefit of shipper, it being shown that railroad or its receiver at all times held funds in excess of shipper's claim. Spiller v. St. Louis & S. H. R. Co., 14 Fed (2d) 284.

(db) A trusteeship ex maleficio, while ordinarily arising out of fraud or deceit, may arise out of duress or other unconscionable manner of obtaining property. Spiller v. St. Louis & S. H. R. Co., 14 Fed. (2d) 284.

(dc) Shippers, having obtained judgments on claims for unlawful freight exactions and thereafter intervened in receivership suit against carrier, HELD not entitled to preferred claims for attorney fees. Spiller v. St. Louis & S. F. R. Co., 14 Fed. (2d) 284.

(de) Shippers, having obtained judgment on claims for illegal freight exactions and thereafter intervened in receivership suit against railroad, HELD not entitled to priority under rules giving preference to claims for operating expenses. Spiller v. St. Louis & S. F. R. Co., 14 Fed. (2d) 284.

(e) "Arise," as used in decree for sale of railroad's property subject to unpresented claims "which may arise after the entry of this decree," HELD to mean to appear, to become, to present itself, and not synonymous with "accrue," nor used in the sense of "originating." Spiller v. St. Louis & S. H. R. Co., 14 Fed. (2d) 284.

(f) Shipper, intervening and asserting claims in receivership suit against railroad after final decree and sale of railroad's property, HELD bound by prior orders and decrees in suit. Spiller v. St. Louis & S. H. R. Co., 14 Fed. (2d) 284.

(g) Where decree directing receiver's sale of railroad property required purchasers to take subject to any unpaid claims of creditors, "which shall have been or shall be admitted * * * or adjudged * * * to be prior in lien or superior in equity to the refunding mortgage, * * * " and subject to unpresented claims "which may arise after the entry of this decree." HELD, purchasers took subject to claims of shippers, who intervened before confirmation of sale, asserting claims for reparations then being litigated at law. Spiller v. St. Louis & S. F. R. Co., 14 Fed. (2d) 284.

(h) Insolvent carrier was purchased by a trustee at foreclosure sale, and receiver ordered to continue operation for account of trustee who should be responsible for any deficit resulting from such operation. At time order discharging receiver was issued no record was made of claims for reparation and defendant carrier urges therefore that an award of reparation should not be made. FOUND: Awards of reparation are not dependent upon solvency or insolvency of carriers concerned. They require payment of sum found due and run against all defendant carriers. See 40 I. C. C. 501; 62 I. C. C. 60. Mobile Chamber of Commerce v. M. S., B. & P., 129 I. C. C. 419, 422, 423.

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(j) Rating base value of tramway company furnishes no proper or legal value, since the former is bottomed on criterion on which to bottom actual present value of lands plus present stable cost of constructing plant, less depreciation for use, and plus a fair allowance for going value, intangible element, and working capital. Temmer

v. Denver Tramway Co., 18 Fed. (2d.) 226.

(k) In determining solvency of tramway company at time of reorganization elements, and working capital. Temmer for purpose of decididng whether provision for unsecured creditors was fair, rating base "value" determined in action to increase rate of fares is not conclusive, since actual value or fair and reasonable market value is not value taken into account in such valuation. Temmer v. Denver Tramway Co., 18 Fed. (2d.) 226.

(l) Receiver cannot, by his acts as such, in bringing action to increase fares of tramway company pending receivership, estop other parties litigant in pais as his very office makes him impotent to do so. Temmer v. Denver Trimway Co., 18 Fed. (2d.) 226.

RECIPROCAL SWITCHING

See Demmurage §18; Switch Tracks and Switching §6, §7½.

RECONSIGNMENT

I. LEGALITY.
- §1. Right to grant privilege.

II. DISCRIMINATION.
- §2. In general.

III. REASONABLENESS OF CHARGES.
- §3. In general.
- §3½. Duty of carrier to afford.

IV. TARIFFS AND PUBLICATION.
- §4. Necessity of publishing.
- §4½. Embargoed destination.
- §5. Construction in general.
- §5½. Notice.
- §6. Retroactive application.
- §6½. Rules and regulations.
- §6½a. Road haul rates applicable.

V. PROCEDURE AND REPARATION.
- §7. In general.
- §8. Parties to complaint.
- §9. Jurisdiction of Commission.
- §10. Damages and reparation.

CROSS REFERENCES

See Demurrage §5¾; Embargoes; Express Companies §16¾, §33; Routing and Misrouting §5¾; Through Routes and Joint Rates §19.

II. DISCRIMINATION.

See Discrimination.

§2. In General.

(a) Proposal of Wabash Ry. and Grand Trunk Ry. system to cancel free diversion or reconsignment of anthracite coal at Detroit, Milwaukee Junction, West Detroit, and Port Huron, Mich., found not justified. Such free service is accorded by various lines at other points in c. f. a. territory and carriers failed in their proof to establish affirmatively that proposed schedules, if allowed to become effective, would not result in undue prejudice to consignees of anthracite coal at Detroit and undue preference of competitors at Chicago and other distributing points who would continue to enjoy free reconsignment. Diversion and Reconsignment of Anthracite Coal, 112 I. C. C. 374.

(b) Mere inference that conditions surrounding certain shipments on which reconsignment charges are assessed are similar to those surrounding other shipments on which lower charges apply, is not sufficient to sustain a finding of undue prejudice and discrimination. Toberman, Mackey & Co. v. C., C. & O., 118 I. C. C. 565, 566.

III. REASONABLENESS OF CHARGES.

§3. In General.

See Facilities and Privileges §15 (3i); Reasonableness of Rates.

(a) Complainant alleged in substance that the refusal of defendant at Cincinnati, O., to reconsign to Syracuse, N. Y., as first requested by him, a carload of yellow pine lumber shipped Jan. 23, 1920, from Sweetwater, Ala., to Cincinnati and ultimately reconsigned from that point to Detroit, Mich., resulted in collection of charges of $5 for reconsignment, $6 for demurrage, and $20 for storage at Cincinnati that were unjust, unreasonable and in excess of those applicable. The real issue is whether it was the duty of defendants agent under the law to have complied with the first request for reconsignment to Syracuse. By letter of Jan. 26, 1920, complainant requested agent at Cincinnati to reconsign the shipment to Syracuse and specified routing over the N. Y. C. The agent received that request on Jan. 28, 1920, and upon arrival of the shipment at Cincinnati on Feb. 9, 1920, advised complainant by letter received the following day of the arrival of the car, that reconsignment

to Syracuse as requested would not be accepted because of an existing embargo, and asked that other disposition be given. On Feb. 13, 1920, complainant wired the agent to reconsign the shipment to Detroit, and it went forward to that point. Shipment moved A. & N., and Southern to Birmingham, Ala., thence Southern or A. G. S., to Chattanooga, Tenn., and C. N. O. & T. P., to Cincinnati. N. Y. C., serves Syracuse but not Cincinnati. The request for reconsignment to Syracuse was therefore incomplete as to routing, and the agent should have forwarded the shipment by any available route out of Cincinnati over which the lowest through rate consistent with N. Y. C., delivery applied. The tariff naming the joint rate authorized routing from Sweetwater to Syracuse through Cincinnati and through Hagerstown Junction, and N. & W., and other lines. HELD, refusal of agent to reconsign the shipment to Syracuse resulted in charges in excess of those applicable to the extent they exceeded $2 for reconsignment, reparation awarded. Thames v. Director General, 112 I. C. C. 677.

(b) Proposal of the Wabash Ry. and Grand Trunk Ry. system to cancel free diversion or reconsignment of anthracite coal at Detroit, Milwaukee Junction, West Detroit, and Port Huron, Mich., found not justified. Such free service is accorded by various lines at other points in c. f. a. territory and carriers have failed in their proof to establish affirmatively that proposed schedules, if allowed to become effective, would not result in undue prejudice to consignees of anthracite coal at Detroit and undue preference of their competitors at Chicago and other distributing points who would continue to enjoy free reconsignment. Diversion and Reconsignment of Anthracite Coal, 112 I. C. C. 374.

(c) Reconsignment charges in addition to rates to and from point of reconsignment, assessed on shipments of lumber, found unreasonable. In 89 I. C. C. 236 and 91 I. C. C. 615 similar findings were made. In case here involved there was no delivery, actual or constructive, prior to second movement, whereas in cited cases there was a delivery. However, in both cited and instant cases the line-haul charges collected were same as though there had been two separate and distinct shipments. The record shows no service in addition to that performed under the separate line-haul rates which would justify a charge for reconsignment any more than it would if cars had been actually or constructively delivered. Reparation awarded. Wilgus v. P. R. R., 113 I. C. C. 617.

(d) The collection of a reconsignment charge on lumber in addition to the assessment of the full local charges to and from the point of reconsignment is unreasonable. Brown Hoisting Machinery Co. v. Pennsylvania R. R., 115 I. C. C. 218, 219.

(e) Shipment of scrap iron from Buttonwood, Pa., originally consigned to Burnham, Pa., was refused by consignee and reconsigned under new bill of lading by consignor to Cumberland, Md. Reconsignment charge assessed in addition to local rates to and beyond reforwarding point found unreasonable. Discontinuance of such charge required for future and reparation awarded. See also 101 I. C. C. 389 and cases there cited. Cohen & Son v. P. R. R., 115 I. C. C. 307.

(f) Governing tariff provided for application of rates to and from point of reconsignment, plus reconsignment charges, if no through rate applied via point of reconsignment. Carrier's agent assessed local rates to and from reforwarding point on shipments of barley moving from points in South Dakota and Minnesota to Minneapolis, thence reforwarded to Milwaukee, apparently regarding the movement from Minneapolis as new shipments rather than reconsignments. HELD: In absence of documentary evidence that written notice of reconsignment was given by shipper and received by carrier's agent, the failure of carrier to assess a reconsignment charge was proper. Zimmerman v. Director General, 115 I. C. C. 407.

(g) Upon contention that combination rates on shipments of potatoes from Sidney, Mich., to Philadelphia, Pa., reconsigned at Old Forge, Pa., were inapplicable and unreasonable to extent they exceeded lower joint rate contemporaneously in effect from origin to final destination over another route, plus a backhaul charge, HELD: Governing reconsignment tariff provided for the application of through rate plus certain distance rates for detours or back hauls not to exceed 300 miles, but a back haul of more than 480 miles would have been necessary in instant case. Reconsignment at Old Forge did not, therefore, come within such provision. Miller v.

P. M. Ry., 115 I. C. C. 461, 462, 463.

(h) Rates plus reconsignment or switching charges applicable on lime from Woodville, Ohio, to stations on Western Maryland in Baltimore, Md., east of Walbrook station, found unreasonable and unduly prejudicial to extent they exceeded rates without the addition of such charges contemporaneously maintained to Walbrook and other destinations in Baltimore. Reparation awarded. Washington Bldg. Lime Co. v. P. R. R., 115 I. C. C. 618.

(i) Complainant alleged that a reconsignment charge of $6.30 assessed on a car of yellow pine lumber shipped August 29, 1925 from Meridian, Miss., to Hobart, Ind., reconsigned at the latter point to another consignee at Chicago, Ill., was unreasonable. Shipment moved M. & O., C. & E. I., and Pennsylvania to Hobart, placed for delivery but refused, whereupon it was sold f. o. b. Chicago and forwarded to the new consignee at that point for delivery by the C. B. & Q. Paid rates to and beyond Hobart, plus reconsigning and other charges. HELD, reconsignment charge unreasonable, reparation awarded. Usher Bros. v. M. & O. R. R., 120 I. C. C. 159.

(j) Complainant attacked rates charged on eight cars of potatoes from Wisconsin and South Dakota to Illinois, Indiana and Iowa in Nov. and Dec., 1920 and March and Sept., 1921 as unreasonable. Shipments were originally billed to Chicago and after arrival and placement on public team tracks they were reconsigned to other destinations. Charged combination on Chicago plus reconsignment charge. HELD, assessment of reconsignment charge in addition to combination rates unreasonable, reparation awarded. Earl Bros. v. C., M. & St. P. Ry., 120 I. C. C. 299.

(k) Lumber from Meridian, Miss., to Hobart, Ind., placed for unloading but refused by consignee, was subsequently reconsigned to Chicago. Reconsignment charges were assessed under tariff rule which provided that if a car is placed for unloading at original destination and is reforwarded without being unloaded to a point outside the switching limits it will be subject to published rates to and from point of reconsignment plus reconsignment charge. HELD: In 89 I. C. C. 236 and other cited cases, reconsignment charges assessed under a similar rule were found unreasonable. Reparation awarded. Usher Bros. v. M. & O., 120 I. C. C. 159.

(l) Complainant alleged that the rules and regulations governing the diversion and reconsignment at Sioux City and other Missouri River markets of livestock originating north and west of Sioux City and billed to said markets or to markets beyond are discriminatory against livestock traffic and the Missouri River markets in that they prohibit the reconsignment therefrom, at the through rates applicable from the points of origin, of shipments billed to points beyond on which a change in ownership occurs at the Missouri River markets, and of shipments consigned to such markets after delivery thereat whether there is a change in ownership or not, in violation of sections 1, 2, 3, and 13 of the act. What complainant here seeks seems to be more in the nature of a transit or marketing, rather than a reconsignment, arrangement. The origin territory is in Nebraska and South Dakota on the C., M. & St. P., C., B. & Q., and C. & N. W. None of the defendants maintains arrangements similar to those sought. Under the present rules, if the purchaser wishes to try two markets, he can obtain the benefit of the through rate by billing his shipment to the more distant market and stopping it at the intermediate market. This does not seem to be an unreasonable requirement. The commission has frequently found that it is not unreasonable to apply the combination of locals on a shipment which has been placed for unloading at the original destination and is subsequently reforwarded to a different destination. This is doubly true where the shipment has been unloaded by the shipper and is subsequently reforwarded by him or another to a different destination. There appears on this record no warrant for according to livestock any different treatment in this respect from that accorded to other commodities. The commission has never found that a change in ownership alone would justify application of the combination of locals instead of the through rate. Defendants herein now publish a similar rule in their general reconsignment tariffs, and livestock is not excepted from its application. The commission sees no reason in granting the privilege of a change in ownership under the reconsignment rules and withholding it under the transit arrangements attacked. The Milwaukee and Northwestern apply the same rules at Omaha and Sioux City on all livestock

whether originating on their lines or elsewhere. They can not be found guilty of undue prejudice. The record does not show whether the Burlington accords different treatment to livestock from the southwest stopped to test markets competitive with Sioux City or Omaha from that which it accords at Sioux City and Omaha to livestock from the origin territory here considered. It does show that this defendant accords more advantageous treatment to livestock originating at points on its line west of Sioux City when stopped in transit at Omaha than when stopped in transit at Sioux City. HELD, the rules and regulations attacked applicable on shipments of livestock originating north and west of Sioux City, under which the published rate to and from Sioux City or Omaha, as the case may be, are applicable (a) on livestock billed to Sioux City or Omaha, there unloaded, and subsequently reforwarded to a destination beyond either by the original shipper or by a different owner, and (b) on livestock billed to a point beyond, unloaded at Sioux City or Omaha, there sold, and reforwarded to a destination beyond, are not unreasonable or unduly prejudicial, except (1) that in providing for the collection of a reconsignment charge in addition to the rates to and from Sioux City or Omaha, as the case may be, and in prohibiting the application of the through rate because of change in ownership, they are unreasonable, and (2) that the maintenance by the Burlington of transit arrangements as hereinbefore described at Omaha, while contemporaneously denying like transit arrangements at Sioux City, subjects Sioux City to undue prejudice and unduly prefers Omaha. Sioux City Livestock Exchange v. C. & N. W. Ry., 122 I. C. C. 177.

(m) Complainant alleged that the charges on one tank car of refined petroleum oil, shipped Jan. 8, 1924 from Wichita Falls, Tex., to Westwego, La., were unreasonable to extent they exceeded 24.5 c, plus a reconsignment charge of $6.30. Shipment was orginally consigned to Houston, Tex., and placed on a private track there for inspection and delivery. It was refused and immediately reconsigned to Westwego. It moved over the MKT to Houston, thence over GCL and T & P. In Chestnutt Lumber Co. v. Director General, 89 I. C. C. 236, the Commission found that the assessment, in addition to the rates to and from the point of reshipment, of the reconsignment charge was unreasonable. The rate of 24.5c did not apply in connection with the GCL, over which complainant specifically routed the shipment. The transportation conditions over the various routes are not shown to be similar to those over the route traversed, and the volume of movement or the conditions under which the rate was established from such other points have not been shown. HELD, applicable rates unreasonable to extent they included a reconsignment charge of $6.30 per car, undercharge waived, complaint dismissed. Miller Petroleum Co. v. B. S. L. & W. Ry., 126 I. C. C. 21.

(n) Complainant alleged assessment of reconsignment charges of $18.90 per car on two cars of scrap iron shipped Aug. 30 and Sept. 3, 1924 from Jersey City, N. J., to Syracuse, N. Y., thence reconsigned to Wilkes-Barre, Pa., as unreasonable. Both shipments were consigned to complainants at Syracuse and were routed D. L. & W. delivery. First car moved Jersey Central and D. L. & W. arriving at Syracuse Sept. 3, 1924. Notice of arrival was sent by defendant at 9 a. m. that day, and the car placed on a hold track awaiting delivery instructions. Subsequent to 7 a. m. on Sept. 5 complainants ordered delivery to the Halcomb Steel Co., and on Sept. 6 the car was placed on the private sidetrack of that company. On Sept. 9, the steel company rejected the shipment, whereupon the car was again placed on the hold track awaiting further disposition orders. On Sept. 12 complainants ordered it forwarded to themselves at Wilkes-Barre and furnished a new bill of lading to cover the movement. The car was forwarded Sept. 13 and charges based on local rate from Jersey City to Syracuse, local rate Syracuse to Wilkes-Barre, two reconsignment charges of $6.30 each accruing at Syracuse and demurrage charges at Wilkes-Barre. Second car arrived at Syracuse Sept. 7, and pursuant to reconsignment order received before its arrival, was placed on the private track of the steel Company, Sept. 8. On Sept. 11, the steel company also rejected the car whereupon complainants, on Sept. 12, ordered it reforwarded to themselves at Wilkes-Barre and furnished a new bill of lading to cover the movement. One reconsignment charge of $6.30 was assessed on this car. HELD, $6.30 for first reconsignment on first car not unreasonable but charges attacked covering reconsignment of the shipments from Syracuse were unreason-

able, reparation awarded. Cohen & Son v. D., L. & W. R. R., 128 I. C. C. 727.

(o) Shipments of scrap iron from Jersey City, N. J., to Syracuse, N. Y., placed for unloading, but refused by consignee, were subsequently reconsigned to Wilkes-Barre, Pa. Reconsignment charges were collected at final destination under tariff rules which provided (1) that if car has been placed for unloading at original destination and is reforwarded without being unloaded to a point outside the switching limits, or (2) where delivery is accepted and a new bill of lading issued on basis of local rates to and from reforwarding point, charges to that point are collected at final destination, it will be subject to publishtd raetes to and consignment charge. HELD, In 89 I. C. from points of reconsignment plus re-C. 236; 113 I. C. C. 617, reconsignment charges collected under a rule similar in charges, were found unreasonable. Repall respects, except as to advancement of awarded. Cohen & Son v. D., L. & W., 128 I. C. C. 727.

(p) Contention of carrier that in view of the additional bookkeeping and clerical work incident to the advancement of freight charges and the assumption of risk of being unable to collect charges at final destination, assessment of reconsignment charges in addition to local rates on reconsignment shipments can not be said to be unreasonable, not sustained. Cohen & Son v. D., L. & W., 128 I. C. C. 727, 729.

(q) The record shows no service in addition to that performed under the separate line haul rate which would justify a charge for reconsignment any more than it would if the car had been actually or constructively delivered. Cohen & Son v. D., L. & W. R. R., 128 I. C. C. 727, 730.

§ 3½. Duty of Carrier to Afford.

(a) Complainant attacked charges on one car of yellow pine lumber shipped July 17, 1923, from Douglas, Ga., to Grafton, W. Va., and diverted to Norfolk, Va., as unreasonable and unlawful. Shipment originated at Purvis, Ga., on July 13, 1923, and was milled in transit at Douglas, both points being on the G. & F. There is no question as to transit charges. On July 17, 1923, the transited lumber was forwarded from Douglas, consigned to Grafton, routed G. & F. to Augusta, Southern, Potomac Yards, c/o B. & O. On the afternoon of July 23, 1923, the consignor instructed the agent of the G. & F. at Douglas to divert the car to Norfolk. This diversion order was unrestricted. The Southern did not comply with the tariff provision until July 31 or seven days after adequate instructions had been furnished to it. The record is sufficiently clear to warrant the conclusion that had the request for diversion been promptly transmitted by the Southern to the B. & O. at Potomac Yard, the shipment could have been diverted at that point to Norfolk. HELD: Reparation awarded due to failure of Southern to transmit promptly the diversion instructions to the B. & O., reparation awarded. Huber v. G. & F. Ry., 118 I. C. C. 282.

IV. TARIFFS AND PUBLICATION.

See Tariffs.

§4. Necessity of Publishing.

(a) Shipment of potatoes was delivered to initial carrier consigned to shipper's order, notify consignee at Niagara Falls, N. Y., and routed "Suspension Bridge and N. Y. C." Consignee tendered bill of lading to agent of the Erie at Buffalo with instructions to reconsign to Old Forge, Pa., where it was apparently placed for unloading, but refused by consignee and original consignor so advised. Thereupon, shipment was further reconsigned to Philadelphia, Pa., where it was apparently promptly placed on public delivery track. Combination rates, plus reconsignment charges at Suspension Bridge and Old Forge were collected. Upon contention that reconsignment charges were inapplicable, HELD: Governing tariff provided no charge for reconsignment where a shipment had been placed for unloading and reconsignment charge assessed at Old Forge was, therefore, inapplicable. Reparation awarded. Miller v. P. M. Ry., 115 I. C. C. 461, 463.

§4½. Embargoed Destination.

See Embargoes.

(a) Prior to arrival at original destination shipper requested diversion to embargoed point but was advised that request could not be accomplished without permit. Necessary permit was obtained and shipment was forwarded as requested but at a combination to and from reconsignment point. Tariff permitted reconsignment or diversion to embargoed points where shipments move

under permits, and also provided that where car is placed for unloading and is reforwarded without being unloaded, published rates to and from point of reconsignment will apply. Carriers assert that permit clause has reference to shipments moving from points of origin under permits and that since shipments here was not so made combination was properly applied. FOUND: Application of permit clause not being so restricted and in absence of showing that shipment was actually placed for unloading at reconsignment point, it was subject to application of a lower through rate. Reparation awarded for overcharges. Prairie Oil & Gas Co. v. M. V., 104 I. C. C. 252.

(b) Refusal of Director General, due to an embargo, to reconsign to Syracuse, N. Y., a carload of lumber shipped from Sweetwater, Ala., to Cincinnati, Ohio, necessitating ultimate reconsignment to Detroit, Mich., found to have resulted in collection of reconsignment, demurrage, and storage charges that were unreasonable and inapplicable. Shipment was tendered for transportation without complete routing instructions and while an embargo did exist over certain routes, others over which no embargo existed were open via which shipment could have moved from Cincinnati to Syracuse which would have been consistent with routing instructions given. Reparation awarded. Thames v. Director General, 112 I. C. C. 677.

(c) Complainant attacked rates charged on six cars of potatoes forwarded in December, 1922, and January, 1923, from Maine and New Brunswick, Can., to Providence, R. I., as unjust, unreasonable and unduly prejudicial. It was impossible to ship them to Providence because of an embargo. Complainant ordered them billed to Worcester, an interchange point of the B. & M. and New Haven, and pressed the carriers for the removal of the embargo, hoping in that way to get the shipments into Providence. Five of the shipments arrived in Worcester prior to the date the embargo was removed, were reconsigned to Providence after its removal and were assessed combinations over Worcester. HELD: Rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Providence Fruit & Produce Exchange v. B. & M. R. R., 115 I. C. C. 135.

(d) Complainant alleged combination rates to and from New Haven, Conn., inapplicable on four cars of lumber, two of which were shipped from Denkman, La., one from D'Lo, Miss., and one from Hopkins, Ga., to New Haven, between Jan. 31 and Feb. 10, 1923, and thence forwarded as follows: one to Waltham, Mass., one to Lynn, Mass., one to Providence, R. I., and one to Bemis, Mass. All of the cars were routed via Harlem River-N. Y., N. H. & H., and were consigned to complainants at New Haven. At the time the shipments moved from points of origin, there was an embargo in effect by the New Haven against all freight from its connections at Harlem River and certain other points for all consignees at all points on or via its rails. There were exceptions to this embargo which permitted carloads of freight to move "for final delivery to consignees at stations Harlem River-to New Haven, inclusive from all connections at Harlem River." The New Havens reconsignment tariff provided that "orders for diversion or reconsignment will not be accepted under these rules at or to a station or to a point of delivery against which an embargo is in force. Shipments made under authorized permits are not subject to this condition." No permits were issued in this case. After arrival at New Haven cars were reconsigned, refused because of embargo, and new bills of lading tendered, charges being paid to New Haven, charges collected at combination on New Haven. The carrier had the right to refuse to reconsign to the embargoed points. HELD, charges assessed legally applicable, complaint dismissed. Philbrick Co. v. N. Y., N. H. & H. R. R., 123 I. C. C. 197.

(e) Complainant alleged rates charged on 14 cars of steel from Johnstown, Duquesne, and Beaver Falls, Pa., Canton and Youngstown, O., and Buffalo, N. Y., to Providence, R. I., and on one car of steel from Beaver Falls to Watuppa, Mass., between Feb. 5 and April 17, 1923 were inapplicable, unreasonable, unjustly discriminatory and unduly prejudicial. At the time these shipments moved the New Haven had embargoed carload and less carload freight, with certain exceptions not including steel unless moved under a permit, from all connections. The embargo notice provided that freight moved to the excepted points would not be subject to diversion, reconsignment or reshipment. Complainant was cognizant of this situation and had no permits covering these ship-

ments but, anticipating that it might later procure permits or by other means effect movement to final destinations, it billed to Worcester, Mass., over the B. & A., five cars intended for Providence, and to New Haven, Conn., eight cars intended for Providence and one car intended for Watuppa. It was able promptly to reship the cars from Worcester upon payment of the charges which had accrued up to that point. Local rates to and from Worcester and New Haven were charged. The joint rates from points of origin to Providence and Watuppa were in each instance the same as the rates charged to Worcester and New Haven. The reconsigning rule was rendered inoperative by the provisions of the embargo notice. HELD, rates attacked applicable and not unreasonable or otherwise unlawful, complaint dismissed. Congdon & Carpenter Co. v. N. Y., N. H. & H. R. R., 123 I. C. C. 721.

(f) Lumber consigned to New Haven, Conn., for reconsignment beyond was routed "via Harlem River, N. Y., N. H. & H.," Reconsignment was refused at New Haven because of embargo on shipments via Harlem River for all points on lines of New Haven. Complainants thereupon paid charges up to New Haven and tendered new bills of lading for movement beyond for which local rates were collected. Upon contention that accepting new bills of lading nullified the embargo and, in effect, waived its provisions, HELD: No permits having been issued for movement beyond New Haven carrier rightfully refused to reconsign to embargoed points. However, as local shipments from New Haven were not embargoed new bills of lading could be accepted upon payment of freight charges to New Haven. In no other way short of waiting until embargo was lifted could shipments have moved out of New Haven without unloading cars. Charges assessed were therefore applicable. Philbrick Co. v. N. Y., N. H. & H., 123 I. C. C. 197.

(g) Certain destinations were embargoed except as to shipments moving under permits, the embargo notice excepting shipments to various points for final delivery but specifically prohibiting reconsignment therefrom to points against which the embargo was placed. Shipments here were billed without permits to the unembargoed points and forwarded therefrom to the embargoed destinations as reshipments, local rates being charged. Upon contention that by permitting shipments to so move lower joint rates were made applicable and that acceptance of shipments at reshipping points constituted a waiver of the embargo, HELD: Only by use of the reconsigning rule could these movements become through traffic. Here the reconsigning rule was rendered inoperative by provisions of the embargo and charges assessed were therefore applicable. Congdon & Carpenter Co. v. N. Y., N. H. & H., 123 I. C. C. 721.

§5. Construction In General.

(a) Shipment from Spirit Lake, Iowa, to Bloomington, Ill., reconsigned to Black Rock (Buffalo), N. Y., was tendered unrouted. From Spirit Lake to Bloomington carrier forwarded shipment via La Salle, Ill., whereas a lower rate applied via Peoria. From Spirit Lake to Black Rock a through rate applied via Peoria. Upon contention that because shipment, Spirit Lake to Bloomington, was local, carrier could not be charged with knowledge that it would be reconsigned, and that reparation should only be awarded for difference between rate charged through La Salle and rate applicable through Peoria to Bloomington, HELD: Had carrier routed shipment through Peoria complainant would have been entitled to lower rates effective over that route, and fact that carrier could not forsee further transportation from Bloomington to Black Rock can not deprive complainant of all incidents of transportation and charge effective over route the shipment should have moved. Shipment found misrouted and reparation awarded. Bloomington Asso. of Commerce v. C., R. I. P., 109 I. C. C. 191.

(b) Shipment tendered Southern Ry. at Boonville, Ind., bill of lading specifying Big Four delivery, Elkhart, Ind. Upon arrival reconsignment to South Bend ordered, shipment moving thereto via N. Y. C. Reconsignment rules not providing for reconsignment at through rate via route of movement, combination to and from Elkhart was charged. Complainant instanced fact that Big Four is part of N. Y. C. system and referred to lower through rates from Boonville to South Bend over five different routes with Southern as initial and N. Y. C. as terminal lines; also to lower rates from Boonville to Elkhart and from Illinois points to South Bend and La Porte over various routes for comparable distances. FOUND: Since shipment moved from Boonville to

Elkhart over lowest available route carriers can not be held for misrouting because complainant was unable to effect reconsignment, of which carriers had no notice prior to order therefor, at through rate available over other routes. Nor does record show public need for establishment of another route from Boonville to Elkhart. Combination assessed found not unreasonable. Russell v. N. Y. C., 109 I. C. C. 193.

(c) Interstate rate and reconsignment charge collected for the intrastate movement, Tulsa to Okmulgee, Okla., of fabricated iron and steel tank material, k. d., originating at Parkersburg, W. Va., found legally assessed. Common carriers are under legal obligation to apply their lawful rates and charges, which places upon them duty of determining, in first instance, the essential character of the commerce. When it is considered that on day shipment arrived at Tulsa from interstate point of origin, and before placed for unloading, complainant surrendered original billing, which was unnecessary except to effect reconsignment, and directed movement to another point to which reconsignment was authorized, the presumption is strong that carriers properly considered character of the shipment to be interstate. Parkersburg Rig & Reel Co. v. St. L.-S. F., 109 I. C. C. 235.

(d) Shipments of tobacco moved from points in Virginia and North Carolina to Richmond, where delivery was accepted by consignee, who took charge thereof, paid incoming charges thereon, and without unloading, and without the carrier or its agent acting for it, arranged for further transportation to Norfolk, for export. Reconsignment charges in addition to rates to and from point of reshipment were assessed in accordance with applicable tariff rules. HELD: While there was no intention to move tobacco beyond Richmond until after its arrival at that point, the inbound and outbound hauls were wholly unrelated and movements beyond Richmond were reshipments. Following Chestnutt Lumber Co., 89 I. C. C. 236 and other cited cases, the assessment of reconsignment charges in connection with such shipments was unreasonable. Reparation awarded. Taylor Co. v. S. Ry. Co., 109 I. C. C. 431.

(e) During an acute car shortage the American Ry. Asso. issued an order requiring certain carriers, including defendant, to discontinue local loading of western-owned cars and to move such cars toward western junctions for delivery to owning lines. Defendant's agent construed this order as prohibiting either the eastbound movement of western-line equipment after arrival at original destination or its reconsignment or diversion in transit. Upon contention that defendant's refusal to permit reconsignment or diversion of western-owned cars when under load consigned to complainant resulted in assessment of unreasonable demurrage charges, HELD: A carrier may not arbitrarily set aside its tariff provisions without due notice in proper form. However, while defendant's agents misconstrued the order, complainant was unable to point out any car on which reconsignment was requested and refused and on which demurrage accrued. Assessment of demurrage charges found not unreasonable. Lexington Elevator & Mill Co. v. B. & O., 109 I. C. C. 542.

(f) Reconsignment charges in addition to rates to and from point of reconsignment, assessed on shipments of lumber, found unreasonable. In 89 I. C. C. 236 and 91 I. C. C. 615, similar findings were made. In case here involved there was no delivery, actual or constructive, prior to second movement, whereas in cited cases there was a delivery. However, in both cited and instant cases the line-haul charges collected were same as though there had been two separate and distinct shipments. The record shows no service in addition to that performed under the separate line-haul rates which would justify a charge for reconsignment any more than it would if cars had been actually or constructively delivered. Reparation awarded. Wilgus v. P. R. R., 113 I. C. C. 617.

(g) Peaches from Harriman, Tenn., a joint-agency station, were originally consigned to Potomac Yard, Va., and New York, bills of lading being made out on forms of either the Southern or the C., N. O. & T. P. Ry. Latter road, a part of the Southern system, does not reach Potomac Yard or form part of any direct route to that point, consequently, all shipments were forwarded via the Southern's direct route to Potomac Yard, thence reconsigned to Pittsburgh. A lower rate to Pittsburgh existed via a longer route through Cincinnati in connection with the C., N. O. & T. P., and shipper alleged misrouting upon theory that agent at Harriman should have so routed

shipments. HELD: Cars moved toward originally intended destinations over the direct route, which is over the Southern's eastern lines. Use of the C., N. O. & T. P. lading forms being merely accidental and reconsignment instructions not being given until after cars reached Potomac Yard, if shipper desired movement over longer route instructions to that effect should have been inserted in bills of lading. Gentile Bros. Co. v. S. Ry., 113 I. C. C. 670.

(h) Combination rates and demurrage charges assessed on shipments of lumber originally moving from Eutaw, Ala., to Louisville and Cincinnati, shipment to latter point being reconsigned to Latty, Ohio, and all subsequently reconsigned to Nicetown Station, Philadelphia, found inapplicable. Carriers contended that cars were accepted at Louisville and Latty only as new shipments subject to local rates to and from those points upon theory that shipments could not have been reconsigned because of a tariff rule which prohibited reconsignment to embargoed points. Such rule, however, placed a limitation only on reconsignments "to a station or point of delivery" against which an embargo has been placed and here no embargo was in effect against points above outlined, including Nicetown Station. Moreover, circumstances under which shipments were handled and reshipped did not change their essential character as through reconsigned shipments and lower joint rates were applicable thereon. See also 51 I. C. C. 174; 92 I. C. C. 469. Reparation awarded. Elledge v. Director General, 113 I. C. C. 704.

(i) Complainant attacked combination rate charged on two cars of wrought iron pipe shipped September 11 and 18, 1919, from Chester, Pa., to Billings, Okla., and diverted to Beggs, Okla., as unreasonable and inapplicable. Allegation of unreasonableness is barred. Shipments were routed over Pennsylvania to Philadelphia, Southern Steamship Co. to Houston, Tex., for C. R. I. & P. delivery at Billings. The shipments moved from Houston on October 27, 1919, over G. C. & S. F. to Ardmore, Okla., Rock Island to Billings. On October 1, 1919, prior to the movement of the shipments from Houston, complainant requested an agent at Okahoma City to divert the cars to Beggs, Okla., a local point on the Frisco. The diversion was not accomplished. Upon arrival at Billings the cars were reconsigned to Beggs and moved over the direct route via Enid, Okla., in connection with the Frisco. Charged 74c to Billings and 45c beyond. HELD: Rate attacked applicable, complaint dismissed. Tidal Osage Oil Co. v. Director General, 115 I. C. C. 237.

(j) Complainant alleged assessment of a reconsignment charged of $2.70 per car on shipments of various commodities at Monroe, Mich., and destined to its various plants within the switching limits there during the two years prior to the filing of the complaint was, and is, unjust, unreasonable and unlawful in violation of sections 1 and 6. Complainant's plants are in three groups, designated North Side, South Side and West Side. All are within the switching limits of Monroe and are served only by defendant. All traffic for Monroe on defendant's line is taken first to Warner yard, where the trains are broken up and the cars switched to the different deliveries. Warner yard is within the switching limits of Monroe 0.5 miles from North Side, 1.3 miles from South Side and 2.25 miles from West Side. Except to one or two consignees no deliveries are made at Warner yard, but defendant maintains a public team track at its freight station, about 0.5 miles south of that yard. Upon arrival of complainant's shipments at Warner yard the cars are placed on the storage tracks and a switching list is made up. This is telephoned to complainant's office usually within 35 minutes after the arrival of the train and within 30 minutes reply instructions are generally given. Prior to July, 1923, complainant had its shipments billed merely to the Consolidated Paper Co. at Monroe, but since that date it has had most of its cars consigned to the particular group of plants where it desired delivery to be made. Under this latter procedure the reconsignment charge is only made in case the billing fails to specify the group of plants at which delivery is desired and instructions are given after the arrival of the train at Warner yard, or where the delivery instructions are changed to show a different group after the arrival of the shipment at Warner yard. Complainant's contention that Warner yard is not a terminal yard within the meaning of the tariff can not be sustained, and, bearing in mind that the purpose of the reconsignment rule is to induce the original

billing of freight direct to the point of unloading, rule 11 must be considered as applicable in the circumstances here under review. HELD: Reconsignment charges attacked applicable and reasonable, complaint dismissed. Consolidated Paper Co. v. N. Y. C. R. R., 115 I. C. C. 579.

(k) Complainant alleged defendant's failure properly to divert a car of cucumbers, shipped June 6, 1923, from Allendale, S. C., to Pittsburgh, Pa., and diverted en route to New York was in violation of sections 1 and 15. Shipment was originally consigned to Pittsburgh, routed C. & W., C. C. C. & O., C. & O., B. & O., and Pa. R. R. 21st St. On June 7, about 5 P. M., complainant placed instructions with defendant's agent at Allendale for diversion of the shipment to New York, Pennsylvania delivery, Pier 29. The telegraph office at Allendale had closed for the day and the request was filed in the customary manner. Diversion orders are handled by defendant's general freight agent at Augusta, Ga. On the morning of June 8 the telegraph lines between Allendale and Augusta were busy handling messages concerning peach trains and other matters so that these instructions did not reach Augusta until 2 P. M. On the evening of June 7 the car had passed through Augusta and had been delivered at Spartanburg, S. C., to the C. C. & O. On June 8 it moved through St. Paul, Va., and was delivered at Elkhorn City, Ky., to the C. & O. On June 9 the latter carrier located and diverted the shipment and delivered it to Huntington, W. Va., to the B. & O. It arrived at New York for Pennsylvania delivery on June 14. No routing instructions, except specification of delivery, were given by the shipper when diversion was requested and defendant fulfilled its obligation of forwarding the shipment over the lowest rated route known to it. HELD: No violation of the act, complaint dismissed. Johnston v. C. & W. C. Ry., 118 I. C. C. 19.

(l) Complainant attacked the reconsignment charge assessed at St. Paul, Va., by the C. C. & O. on 12 cars of hay shipped during May and June, 1924, as inapplicable, unreasonable and unduly prejudicial. Shipments originated at points in Ohio and Indiana and were originally billed to St. Paul. After arrival at that point complainant requested that they be reconsigned to various Georgia and Florida destinations. Reconsignment charge $5.85. The higher charges resulted from complainant's failure to comply with the provisions of rule 9 with respect to placing the reconsignment orders and are not attributable to any neglect on the part of defendant. HELD: Reconsignment charge applicable and not unreasonable or otherwise unlawful, complaint dismissed. Toberman Mackey & Co. v. C. C. & O. Ry., 118 I. C. C. 565.

(m) Governing tariff provided for application of rates to and from point of reconsignment, plus reconsignment charges, if no through rate applied via point of reconsignment. Carrier's agent assessed local rates to and from reforwarding point on shipments of barley moving from points in South Dakota and Minnesota to Minneapolis, thence reforwarded to Milwaukee, apparently regarding the movement from Minneapolis as new shipments rather than reconsignments. HELD: In absence of documentary evidence that written notice of reconsignment was given by shipper and received by carrier's agent, the failure of carrier to assess a reconsignment charge was proper. Zimmerman v. Director General, 115 I. C. C. 407.

(n) Shipments intended for various plants within switching limits of Monroe, Mich., were upon arrival placed by delivering carrier in its Warner Yard, and later, upon instructions, switched to particular plants at which delivery was desired. Governing reconsignment tariff permitted a single change in designated place of delivery without charge if order therefor be received prior to arrival of car. Upon contention that designation of particular deliveries desired, after arrival, does not constitute reconsignment; that Warner Yard, not being a terminal yard because not possessing facilities for effecting delivery of traffic, can not be considered as a destination; and that shippers are therefore entitled to specify the particular sidetracks at which they desire cars to be spotted, HELD: Purpose of reconsignment rule is to induce billing direct to point of unloading, and since here the delivery orders were not furnished until after arrival of cars, reconsignment charges assessed were both applicable and reasonable. Consolidated Paper Co. v. N. Y. C., 115 I. C. C. 579.

(o) Following 101 I. C. C. 389, and other prior cases, assessment of a reconsignment charge in addition to rates to and from point of reshipment on ship-

ments placed for unloading and subsequently reconsigned, found unreasonable. Reparation awarded. Lynchburg Chamber of Commerce v. S. Ry., 115 I. C. C. 625.

(p) Failure of Southern Ry., in conformity with tariff provision in effect at time of shipment and after adequate instructions had been furnished it, to promptly transmit a diversion order to its connection, resulting in shipment moving through to originally billed destination from which it had to be forwarded, found to have resulted in damage to complainant measured by difference between charges collected and those which would have accrued at applicable rate from origin to ultimate destination via point at which diversion should have been affected, plus applicable charge for reconsignment. Reparation awarded. Huber v. G. & F., 118 I. C. C. 282.

(q) Reconsignment charges assessed on shipments of hay reconsigned from St. Paul, Va., to various Georgia and Florida destinations found applicable and not unreasonable or otherwise unlawful. Tariff under which charges were assessed provided lower charges where reconsignment was requested before arrival of shipment at billed destination but shipper failed to comply therewith, its reconsignment instructions being given after arrival. Moreover, conditions surrounding assessment of lower charges are not shown and mere inference that they were similar to those surrounding shipments here involved is not sufficient to sustain a finding of undue prejudice or discrimination. Toberman, Mackey & Co. v. C., C. & O., 118 I. C. C. 565.

(r) Upon arrival of shipment of lumber at Detroit, Mich., reconsigned from Marine, Ill., delivery was requested to the Greeley Coal & Lbr. Co., but no room being available on tracks of that company, shipment was constructively placed and due notice thereof furnished. Later shipment was refused and in accordance with instructions was delivered to F. M. Pauli Co., who accepted it and paid all charges thereon. Upon contention that reconsignment charge made for attempted movement to the Greeley Company was without tariff authority, HELD: Such charge was applicable under governing reconsignment tariff which provided for its assessment where, as here, a single change is made in name of consignee subsequent to 24 hours after arrival of car at destination. Milne Lbr. Co. v. M. C., 118 I. C. C. 580.

(s) Reconsignment charges collected on a shipment of coal originally billed from Vanwood, W. Va., to Elkhart, Ind., reconsigned to New Paris, Ind., found inapplicable. Governing tariff specifically provided for assessment of a lower charge where, as here, reconsignment instructions are placed prior to arrival of shipments. Refund of overcharges directed. Russell v. C., C., C. & St. L., 120 I. C. C. 243.

(t) Assessment of reconsignment charge in addition to local rates on potatoes from Oldham, S. Dak., originally billed to Chicago and reforwarded after placement to various points, found unreasonable. See also 89 I. C. C. 236; 91 I. C. C. 615. Reparation awarded. Earl Bros. v. C., M. & St. P., 120 I. C. C. 299.

(u) Shipment of lumber from Charleston, S. C., to Boston, Mass., moved as routed by shipper. Certain routes were embargoed but not route of movement, and upon request for diversion of shipment to Armory, Mass., complainant was notified that same could not be effected on shipments moving under permits. Shipment moved through to Boston where demurrage accrued. HELD: As shipment moved via an unembargoed route over which no permit was necessary and delivering carrier at Boston was in possession of diversion instructions prior to arrival of car, a reconsignment charge less than that assessed was applicable, and demurrage assessed was illegal, due to erroneous detention at Boston. Reparation awarded. National-American Wholesale Lumber Assn. v. A. C. L. R. R., 120 I. C. C. 665.

(v) The responsibility for reconsignment rules rests solely with the carrier on whose lines they apply. Sioux City Live Stock Exchange v. C. & N. W., 122 I. C. C. 177, 186.

(w) Lumber from White Sulphur, W. Va., to Harrisburg, Pa., ordered reconsigned to Hershey, Pa., by letter addressed to agent of Norfolk & Western who referred it to agent of Western Maryland at Hagerstown Junction, Md., was held by latter carrier at Harrisburg beyond free time and demurrage and storage charges accrued. Upon contention that detention of car and handling of request amounted to negligence on part of Western Maryland, HELD:

Carrier's reconsigning tariff provided that request for reconsignment must be made or confirmed in writing to its general freight agent at Baltimore, and under doctrine laid down in 266 U. S. 92, tariff regulations could not be waived by acceptance of reconsignment order by its agent at Hagerstown Junction. As request was not made in accordance with tariff provisions no duty was placed upon carrier to reconsign shipment and storage and demurrage charges assessed were therefore applicable. Shreiner Lbr Co. v. Director General, 123 I. C. C. 551.

(wa) Charges collected on caterpillar tractors and parts from Stockton, Calif., to Dallas, Tex., based on rate from Stockton to Dallas, plus reconsignment charges at San Antonio and stop-over charge at Houston, where shipment was partially unloaded, found inapplicable. While governing tariff authorized reconsignment at San Antonio, it did not authorize stop-over at Houston, and movement therefrom must be treated as a reshipment. Refund of overcharges directed. Holt Co. of Texas v. S. P., 128 I. C. C. 555.

(x) Complainant alleged the charges collected for reconsignment of various cars of scrap iron shipped between April 1, 1924 and April 12, 1926 from New York, New Jersey and New Hampshire to Allentown, Pa., were unreasonable. Shipment from Harrison was originally consigned to Bethlehem, Pa., but was diverted in transit to Harrisburg, Pa. After placement on the consignees private track it was reconsigned to Steelton, Pa. It was there placed for delivery and refused by consignee thence reconsigned to complainant at Allentown. Charged sum of the local rates from Harrison to Harrisburg, Harrisburg to Steelton, and Steelton to Allentown, reconsignment charges at Allentown of $6.30 for the reforwarding from Harrisburg and $6.30 for the reforwarding from Steelton. Shipment from Trenton was originally consigned to Bethlehem there placed for delivery and refused by consignee, whereupon it was reconsigned to complainant at Allentown. Charged local rates to and beyond Bethlehem, plus demurrage and reconsignment charge of $6.30. Shipment from Binghamton, N. Y., and Trenton were originally consigned to Bethlehem, after placement on private tracks of consignee at that place the shipments were rejected and subsequently reconsigned to complainant at Allentown, charged sum of local rates to and beyond Bethelehem, reconsignment charge of $6.30 on each shipment. Complainants assail only the reconsignment charges. In Chestnutt Lumber Co. v. Director General 89 I. C. C. 236 the Commission found that the socalled reconsignment charge was inapplicable on shipments the lading of which was changed in whole or in part at the original destination. HELD, reconsignment charges inapplicable to shipments which were partly unloaded at original destination, and unreasonable as applied to shipments which moved to final destination with bulk unbroken, reparation awarded. Sofransey v. Reading Co., 129 I. C. C. 617.

§ 6. Retroactive Application.

See Facilities and Privileges §19.

(a) The commission has repeatedly found that a reconsignment arrangement can not be applied retroactively. Providence Fruit & Produce Exchange v. B. & M. R. R., 115 I. C. C. 135, 136.

(b) Combination rates charged on potatoes from points in Maine to Worcester, Mass., and reconsigned to Providence, R. I., found not unreasonable or otherwise unlawful. Applicable tariff at time of movement restricted through rates to perishable freight diverted before arrival at original billed destination, but carriers subsequently removed restriction by permitting reconsignment at through rate after arrival at Worcester. Complainant pointed out that nonperishable freight could be reconsigned at through rate after placement at Worcester; also that potatoes could be stored at Boston or Providence and subsequently forwarded at through rate to New York. These facts, however, are insufficient to warrant an award of reparation; moreover, reconsignment arrangements can not be applied retroactively. See 83 I. C. C. 388. Providence Fruit & Produce Exchange v. B. & M., 115 I. C. C. 135.

§6½. Rules and Regulations.

(a) Shipment of grapes from Portland, N. Y., originally consigned to and accepted by complainant at Memphis, Tenn., was subsequently reshipped to New Orleans on a separate bill of lading. Upon contention that shipment was entitled to reconsignment privilege at Memphis and that lower joint rate con-

temporaneously in effect from Portland to New Orleans was applicable, HELD: Original billing called for delivery at Memphis and there being no intention to reconsign the car prior to its arrival at that point, subsequent movement to New Orleans constituted a new contract of carriage. The car was therefore reshipped from Memphis and not reconsigned and combination rate to and from Memphis assessed was applicable. Canale & Co. v. Director General, 115 I. C. C. 415.

(b) Charges collected under reconsignment rule on tank-car load of petroleum from Wichita Falls, Tex., to Houston, Tex., placed on private sidetrack at that point for inspection and delivery, but refused and thence reconsigned to Westwego, La., FOUND unreasonable. Rule provided that cars placed for unloading at original billed destination and reforwarded without being unloaded were subject to published rates and from point of reconsignment plus recosignment charge. However, in 89 I. C. C. 236, charges assessed under a similar rule were found unreasonable, and in 89 I. C. C. 241, charges assessed on petroleum in tank cars under substantially similar circumstances as here involved were found unreasonable and a rule prescribed which provided for assessment of charges at the through rate from origin to second billed destination, plus usual reforwarding or reconsignment charge, which rule was established by carriers here subsequent to movement under consideration. Miller Petroleum Co. v. B., S. L. & W., 126 I. C. C. 21.

§6½a. Road Haul Rates Applicable.

See Tariffs §18.

(a) Rate assessed on shipments of fuel oil moving from Tulsa, Okla., to St. Catharines, Ontario, reconsigned to Pittsburgh and again to Woodlawn, Pa., over a circuitous route, found illegal. Contemporaneously, a lower unrestricted rate applied via a more direct route and all carriers participating in movement were parties to tariff naming such lower rate. Reparation awarded. Kyoleum Co. v. Director General, 104 I. C. C. 1.

(b) Negligence on part of originating carrier who failed to accord diversion request prompt attention resulting in shipment going through to originally billed destination and necessitating reforwarding therefrom at combination rate higher than a joint rate contemporaneously in effect between origin and final destination, found to have resulted in collection of unreasonable charges. Had such carrier fulfilled its obligation car could have been intercepted in ample time to protect joint rate. Reparation awarded. Newsome Feed & Grain Co. v. C., C., C. & St. L., 104 I. C. C. 269.

(c) Rates assessed on shipments of saw logs from Tobin's Siding and Ramsay, Mich., to Sheboygan, Wis., thence reconsigned to Wausau, Wis., found inapplicable and unreasonable to extent that factor from points of origin to reconsignment point exceeded lower contemporaneous rate on "Saw Logs and Bolts for Manufacture—Products to be reshipped," logs having been manufactured at Wausau and products reshipped. By virtue of reconsigning tariff, haul from Sheboygan to Wausau became part of a through movement, and it follows logically that all conditions attaching to factor from Sheboygan to Wausau attached likewise to rate for through movement. Reparation awarded. Oelhafen-Mondeau Co. v. C. & N. W., 104 I. C. C. 295.

(d) Shipments of coal were originally billed from Clinton to South Bend, Ind. Upon request of shipper as to their whereabouts and upon information from carrier that they were at Kankakee, Ill., diversion to Chicago was ordered. Carrier's information, however, was erroneous, the shipments having moved through to original destination, from which they were back-hauled to Momence and diverted. Charges assessed, based on the rate from Clinton to Chicago, plus out-of-line charges for the haul Momence to South Bend and return, found not unreasonable, it being shown that such charges were less than those which would have accrued had diversion not been effected, and the shipments moved as originally intended from Clinton to South Bend. Eagle Coal & Mining Co. v. C. & E. I. Ry., 107 I. C. C. 607.

(e) After shipment had received one reconsignment, complainant directed further reconsignment but was advised by carrier that same could not be effected at through rate. Thereafter, complainant in prolonged correspondence insisted upon reconsignment at through rate and in one letter directed that shipment be not held pending reply. Carrier, however, continued to request disposition orders and finally upon directions from complainant desired delivery was effected. Governing tariff permitted only one

change in destination and provided that any subsequent change necessitating movement would be treated as a reshipment. FOUND: Combination to and from second reconsignment point was legally applicable but demurrage and track-storage charges assessed on and after date of receipt by carrier of the letter directing that delivery be not withheld were illegal. Reparation awarded. Milne Lbr. Co. v. C. & N. W., 107 I. C. C. 653.

(f) Interstate rate and reconsignment charge collected for the intrastate movement, Tulsa to Okmulgee, Okla., of fabricated iron and steel tank material k. d., originating at Parkersburg, W. Va., found legally assessed. Common carriers are under legal obligation to apply their lawful rates and charges, which places upon them duty of determining, in first instance, the essential character of the commerce. When it is considered that on day shipment arrived at Tulsa from interstate point of origin, and before placed for unloading, complainant surrendered original billing, which was unnecessary except to effect reconsignment, and directed movement to another point to which reconsignment was authorized, the presumption is strong that carriers properly considered character of the shipment to be interstate. Parkersburg Rig & Reel Co. v. St. L. S. F., 109 I. C. C. 235.

(g) Shipments of tobacco moved from points in Virginia to Richmond, where delivery was accepted by consignee, who took charge thereof, paid incoming charges thereon, and without unloading, and without carrier or its agents acting for it, arranged for further transportation to Norfolk, for export. Reconsignment charges in addition to rates to and from point of reshipment were assessed in accordance with applicable tariff rules. HELD: Movements to Richmond are not within commission's Jurisdiction because intrastate in character. See 204 U. S. 403. On other hand, reconsignment charges assessed because of movement beyond that point and incidental to it, are so subject. Taylor Co. v. S. Ry. Co., 109 I. C. C. 431, 433.

(h) Complainant attacked combination rate charged on one car of fresh tomatoes shipped on May 9, 1922 from Palmetto, Fla., to Norfolk, Va., and there reconsigned to New York, as unjust, unreasonable and illegal in violation of sections 1 and 6. It was originally consigned to Norfolk and moved S. A. L., to Portsmouth, Va., where it was delivered to the Belt line which switched it to the N. & W. The latter placed it for unloading in Norfolk. It was rejected by the consignee and the consignor then directed the Seaboard to reconsign it to New York but specified no routing. The N. & W., under instructions from the Seaboard, delivered the car to the Belt Line, which switched it to the Pennsylvania. The governing tariff provided for the application of rates to and beyond the reconsignment point when the rate from original to final destination did not apply through the reconsignment point. Apparently it was intended to assess charges at the combination on Norfolk, composed of 62 and 29 c., to and beyond that point, but it is not clear from the record whether they were so assessed. It was clearly the duty of the Seaboard to forward the car through Richmond if a cheaper rate applied over that route. It is not shown, however, that a cheaper combination could be made over that route, and under a reasonable construction of rule 6 the joint rate was likewise inapplicable. That rule undoubtedly contemplated the back hauling of shipments on the part of the Seaboard only when necessary to meet the through rates applicable over other lines through the reconsigning point. There was no such competitive route through Norfolk. Nor is there any evidence that it was an unreasonable rule. HELD: Shipment not misrouted and combination of 91 c. based on Norfolk applicable and not unreasonable, complaint dismissed. Olivitt Bros. v. N. & P. B. L. R. R., 113 I. C. C. 262.

(i) Complainant attacked charges collected on two cars of lumber shipped in Sept. 1923, from Grayburg, Tex., to St. Louis, Mo., and reconsigned from East St. Louis, Ill., as unreasonable and in excess of those applicable. Shipments moved from Grayburg on Sept. 21 and 24, 1923, consigned to complainant at East St. Louis. They were routed by the consignor over T. & N. O., and Frisco. While enroute these instructions were changed by the initial carrier to show C. & E. I. as the delivering carrier at East St. Louis. The shipments arrived at St. Louis over the Frisco and notice of the arrival of one of the cars and apparently also of the other was mailed to complainant at St. Louis by the latter carrier on Oct. 1, 1923. This notice was returned to the Frisco with the notation "car billed to East St. Louis; deliver accord-

ingly; this is not accepted as notice." The Frisco thereupon turned over the cars to the Terminal for delivery to the C. & E. I. at East St. Louis to which latter carrier they were delivered accordingly and placed by it in its hold yards in the East St. Louis switching district. On Oct. 4 and 5, 1923, the C. & E. I. advised complainant that the cars were being held at the yards referred to and asked for disposition orders. The Frisco does not reach East St. Louis and the rate of 29.5 c. did not apply there over the Frisco to St. Louis and Terminal beyond, the line over whose rails it does livery, but applied only on shipments delivered by the latter to certain other carriers at that place, including the C. & E. I. Shipments not misrouted, but they were overcharged to extent the charges collected for switching from St. Louis to the C. & E. I. at East St. Louis. HELD: Transportation charges not unreasonable but illegal to extent that those to East St. Louis exceed charges based on 29.5 c., reparation awarded, complaint dismissed. Milne Lumber Co. v. S. L. S. F. Ry., 113 I. C. C. 369.

(j) Shipment arrived at New London, Conn., and reconsignment to Boston ordered. On following day complainant by telegraph requested "Boston & Maine auction delivery" but shipment having gone forward, arrived at Boston and was placed on tracks of the New Haven where no delivery was made or attempted. Subsequently it was shipped to auction tracks. Upon contention that interstate character of shipment terminated when it was placed on the New Haven's tracks. FOUND: Since character of the shipment was interstate from time it left Peshastin, Wash., the point of origin, intrastate switching charge collected for the movement from the New Haven's tracks to the auction track was inapplicable. Applicable interstate tariff provided a lower charge and for its absorption by the New Haven. Reparation awarded. Gwin, White & Price v. N. Y., N. H. & H., 112 I. C. C. 707.

(k) Shipments of tomatoes from Palmetto, Fla., to Norfolk, Va., reconsigned to New York without routing instructions. Governing tariff provided for combination rates where no joint rates applied through reconsigning point. Joint rate applied from Palmetto to New York via Richmond, Va., but use of this route entailed a back haul. Upon contention that shipment was misrouted and that applicable rate was joint rate in effect via Richmond. HELD: While it was carrier's duty to forward car through Richmond if a cheaper rate applied over that route, it is not shown that a cheaper combination could have been made. Joint rate was inapplicable, inasmuch as reconsignment rule of governing tariff contemplated back hauling of shipments only when necessary to meet through rates of other carriers, and there was no such competitive route through Norfolk. Shipment therefore was not misrouted and combination based on Norfolk was applicable. Olivitt Bros. v. P. B. L. R. R., 113 I. C. C. 262.

(l) Combination rate charged on lumber moving from Philadelphia, Pa., to Erie station in Paterson, N. J., there refused by consignee and reconsigned to Broadway station on the New York, Susquehanna & Western R. R., in the same city, based on rates to and from reconsignment point, found not unreasonable. While a lower through rate applied from Philadelphia to these two stations in connection with the Erie and the New York, Susquehanna & Western, separately, under complete routes, such lower rate was not applicable over the Erie as an intermediate carrier through Erie station to Broadway station. Complainant here seeks two possible deliveries at Paterson under a single rate and to direct carrier to publish such through rate over that route would be to compel the Susquehanna to short haul itself. Wilgus v. P. R. R., 113 I. C. C. 617.

(m) Combination rates and demurrage charges assessed on shipments of lumber originally moving from Eutaw, Ala., to Louisville and Cincinnati, shipment to latter point being reconsigned to Latty, Ohio, and all subsequently reconsigned to Nicetown Station, Philadelphia, found inapplicable. Carriers contended that cars were accepted at Louisville and Latty only as new shipments subject to local rates to and from those points upon theory that shipments could not have been reconsigned because of a tariff rule which prohibited reconsignment to embargoed points. Such rule, however, placed a limitation only on reconsignments "to a station or point of delivery" against which an embargo has been placed and here no embargo was in effect against points above outlined, including Nicetown Station. Moreover, circumstances under which shipments were handled and reshipped did not change

their essential character as through reconsigned shipments and the lower joint rates were applicable thereon. See also 51 I. C. C. 174; 92 I. C. C. 469. Reparation awarded. Elledge v. Director General, 113 I. C. C. 704.

(n) Complainant attacked charges on two cars of yellow pine lumber from Eutaw, Ala., reconsigned to Nicetown station, Philadelphia, Pa., as unreasonable and illegal. First shipment left Eutaw March 11, 1918, and moved in C. & E. I. car 60110. The second moved April 15, 1918, in Southern 28035. Car 60110 was consigned to complainant at Louisville, Ky., and arrived there on March 18, 1918. On March 12 he instructed the agent of the Southern at Louisville to notify C. F. Felin & Co., consignee at Philadelphia, of its arrival and to accept disposition from that firm. This was done and on March 20 the consignee wired the Southern at Louisville to reconsign the car to it at Nicetown station, Philadelphia, P. & R., delivery. It was informed that the car could not be reconsigned as the joint rate would not apply because of existing embargoes. It therefore wired the agent at Louisville on April 2 that the car could be forwarded on basis of the Louisville combination. This was done on April 3. Car 28035 was consigned to Cincinnati, O., and arrived there on April 20, 1918. On April 24 complainant wired the C. N. O. & T. P. at that point to reconsign the car to Latty, O. The car was reconsigned and on April 30 the consignee was notified of its arrival at Latty on that date. On May 4 complainant wired the C. N., at Latty to reconsign the car to consignee at Nicetown station, Philadelphia, P. & R. delivery. A joint rate of 27c was in effect from Eutaw to Philadelphia applicable over the routes of movement on the dates shipments left Eutaw. The applicable reconsignment tariffs provided for reconsignment at Louisville and Latty at the joint rate from point of origin to final destination, with a reconsigning charge of $5 per car if the order for reconsignment was given after arrival of a shipment at destination and before being placed for delivery. The rule places a limitation only on reconsignment to a station or point of delivery against which an embargo has been placed. No embargo existed against Nicetown station, Philadelphia, as a point of delivery on the dates the shipments originated. The circumstances under which the shipments were handled at and reshipped from Louisville and Latty did not change their essential character as through shipments reconsigned at those points and the joint rate of 27c was applicable. HELD: Charges inapplicable to extent they exceeded 27c, plus demurrage charge of $3 and reconsignment charge of $5 on car 60110 and demurrage charges of $15 and reconsignment charges of $10 on car 28035, reparation awarded. Elledge v. Director General, 113 I. C. C. 704.

(o) Complainant attacked rate and reconsignment charge assessed on a car of scrap iron, reforwarded February 25, 1924, from Burnham, Pa., to Cumberland, Md., as unjust and unreasonable and in violation of the fourth section. Shipment was originally consigned by complainants from Buttonwood to Burnham. It was refused by the original consignee whereupon complainants reforwarded it to Cumberland. A reconsignment charge of $6.30 and sixth class rate of $5.10 beyond Burnham was collected. Rate sought $2.52. The fourth section is supported by a showing that the $5.10 rate exceeded the combination of $3.91 composed of $2.52 from Burnham to State Line, Pa., plus $1.39 beyond. HELD: Rate applicable and subsequently established unreasonable to extent it exceeded $2.52 and assessment of a reconsignment charge unreasonable, reparation awarded. Cohen & Son v. P. R. R., 115 I. C. C. 307.

(p) Complainant attacked failure of defendants to comply with diversion instructions compelled it to pay unreasonable and/or unlawful rates on a car of yellow pine lumber shipped August 31, 1922, from Camden, Ala., to Pottsville, Pa., and ordered diverted to Tamaqua, Pa. Shipment was made to complainant to itself at Pottsville without routing instructions and moved L. & N. to Montgomery, Ala., W. Ry. of A. and A. & W. P. to Atlanta, Ga., Ga. R. R. to Augusta, Ga., A. C. L. to Richmond, Va., R. F. & P. to Potomac Yard, Va., Pennsylvania to Harrisburg, Pa., and P. & P. beyond. The contention is that the failure of the Pennsylvania to effect diversion while the shipment was in its possession or to transmit the order to the Reading in time for that carrier to have diverted the shipment prior to its arrival at Pottsville. The Pennsylvania admits liability for the demurrage at Pottsville, but denies all other liability on the ground that

it made every reasonable and logical effort to comply with complainant's order. HELD: Rates and charges collected not unreasonable and not unlawful to extent of demurrage charges for which Pennsylvania is liable, reparation awarded. Stuckey Odom Lumber Co. v. L. & N. R. R., 115 I. C. C. 403.

(q) Following 113 I. C. C. 617, reconsignment charges assessed in addition to full local rates to and from point of reconsignment, on shipments of hoisting machinery and paint, from Cleveland, Ohio, to Long Island City, N. Y., for lighterage delivery, found unreasonable. Reparation awarded. Brown Hoisting Machinery Co. v. P. R. R., 115 I. C. C. 218.

(r) Complainant alleged that charges on one car of pine lumber, shipped Nov. 15, 1922 from Charleston, S. C., to Boston, Mass., and reconsigned to Armory, Mass., were and are unreasonable. Shipment was tendered to A. C. L., consigned to complainant at Boston, the bill of lading specifying routing A. C. L., N. Y., N. H. & H. R. R., D. E. L. Y. It moved over A. C. L. to Pinners Point, Va., Pennsylvania to Jersey City, car float to Sixtieth St., New York, N. Y. C., to Chatham, N. Y., B. & A., to Boston, where it was turned over to the New Haven for delivery to the consignee on or about Dec. 3. The shipment remained at Boston until on or about Dec. 13, when it was reforwarded to Armory over the New Haven on a new bill of lading consigning it to complainants for delivery to the Hampden Lumber Co. Charged 77 cents made up of 60.5 cents to Boston and 16.5 cents beyond. There was nothing in the tariff naming the joint rate of 42 cents from point of origin to final destination that would have precluded complainants from routing the shipment through Boston if it had been billed to the final destination in the first instance. HELD, shipment overcharged to extent it exceeded 42 cents plus reconsignment charge of $2.70, reparation awarded. National American Wholesale Lumber Asso. v. A. C. L. R. R., 120 I. C. C. 665.

(s) Shipments originally routed by complainant were delayed en route because of congestion. Service Order No. 22 of commission provided for disregard by carriers of shipper's routing instructions and forwarding of shipments over routes which would expedite movement and prevent congestion, the rate designated by shipper in billing to be protected unless lower rate applied via route of movement. Complainant requested diversion under that order, shipments so moved, and rate over route of movement was assessed. HELD: Situation here is similar to a case where shipper's routing instructions and rate are inconsistent, under circumstances of which carrier's duty is to inquire as to which instruction shall govern. See Conf. Ruling 474 (c). Carrier here accepted diversion request subject to service order and it was incumbent upon it to have notified complainant if its intention was not to protect the rate specified in original billing. Having failed therein the applicable rate was that in effect over route named in billing. Reparation awarded. Selden-Breck Const. Co. v. C., M. & St. P., 120 I. C. C. 134.

(t) Combination rate was assessed on cotton linters moving from Cooper, Tex., to Pittsburgh, Pa., and reconsigned to Newburgh, N. Y. Contemporaneously a lower combination rate via Marion, Ind., was in effect. Upon contention of carriers that as factor to Pittsburgh was a joint rate, under Conference Ruling 220 (g), they could not lawfully protect any lower combination of locals, HELD: Had final destination been Pittsburgh, this contention would be sound, but under reconsignment theory this was a through shipment from Cooper to Newburgh, and since applicable tariff did not require application of the joint rate to reconsignment point plus the rate beyond, and there was no joint rate in effect from Cooper to Newburgh, the lowest combination which made on Marion, was applicable. Reparation awarded. Fraser v. B. & O., 120 I. C. C. 675.

(u) Collection of reconsignment charges in addition to rates to and from Sioux City, Iowa, or Omaha, Nebr., on livestock originating north and west of Sioux City, stopped in transit to try the market, and subsequently reforwarded to destinations beyond, either by original shipper or by a different owner, found unreasonable. A change in ownership alone does not justify application of combination of locals instead of through rate. In 89 I. C. C. 236, and other cases the commission found that assessment in addition to the rates to and from original destination of any reconsignment charge was unreasonable. Moreover, reconsignment rules for general application providing for a change in name of consignor were approved in the Reconsignment Case, 47 I. C. C. 590, and there is no rea-

son for granting the privilege of a change in ownership under the reconsignment rules and withholding it under the transit arrangements. Sioux City Live Stock Exchange v. C. & N. W., 122 I. C. C. 177.

(v) Complainant alleged that charges on one car of grapes shipped August 31, 1923 from Reedley, Calif., to Croxton, N. J., thence reconsigned to Scranton Pa., were unreasonable and illegal, and in violation of section four. Shipment moved Santa Fe, Wabash, T. St. L. & W. and Erie to Croxton, whence it was reconsigned to Scranton. Delivery was made at Scranton on or after Sept. 22 1925 and charges collected on commodity rate of $1.73 to Croxton and second class rate of 56.5c from Croxton to Scranton plus reconsigning charge of $6.30 per car. The eastbound movement via the Erie was over that carriers main line through Susquehanna and Lackawaxen, Pa. The movement from Croxton was over Erie via Lackawaxen to Johnson Jct, Pa. thence D. & H. to Scranton. The $1.73 rate was applicable to both Scranton and Croxton. This rate was unrestricted as to routing and was applicable from Reedley to Scranton via Susquehanna and Carbondale, Pa., or via Lackawaxen and Johnson Jct. The distance from Susquehanna to Croxton over route movement is 189 miles, and from Croxton to Lackawaxen and Scranton the distances are 107 and 159 miles, respectively. At the time of the movement the Erie governing reconsignments and diversions at Croxton provided that, to points on the direct route covered by through rates from point of shipment to ultimate destination, reconsignment would be made at the through rate plus $6.30 per car, but that if such reconsignment entailed either a detour or back haul over lines comprising the Erie system, a stated charge would be made for the additional mileage in addition to the reconsignment charge of $6.30 per car. 292 miles, which is the additional haul resulting from the reconsignment, should be used in computing the charge for additional mileage under the detour or back haul provisions of the tariff HELD, 56.5c charged for that portion of the haul from Croxton to Scranton inapplicable; through rate from Reedley to Scranton of $1.73 plus $6.30 reconsignment, and 9.5c per 100 pounds for additional detour mileage was applicable, reparation awarded. California Table Fruit Co. v. A. T. & S. F. Ry., 126 I. C. C. 700.

(w) Shipment of hay from Manhattan, Kans., to Birmingham, Ala., was upon refusal at that point reconsigned to Jasper, Ala., a point intermediate to Birmingham. Combination rate to Birmingham plus local rate back to Jasper was assessed. Contemporaneously a lower combination rate unrestricted as to routing applied via Memphis to Jasper. HELD: Contention that Memphis rate was applicable through Jasper to Birmingham and back to Jasper is founded upon an unreasonable construction of the tariff. Manifestly a rate from one point to another does not contemplate movement beyond destination and back again. Combination rate based on Birmingham was, therefore applicable. Arnold & Co. v. S. Ry., 126 I. C. C. 141.

(x) Charges on grapes from Reedley, Calif., to Croxton, N. J., reconsigned to Scranton, Pa., assessed on basis of through rate to Croxton plus second-class rate to Scranton, FOUND inapplicable. The through rate applied both to Scranton and Croxton and governing tariff provided that to points on direct route reconsignment would be made at through rate plus reconsignment charge except on shipments involving a back haul, in which event charges would be computed on a mileage basis, plus reconsignment charge, for back hauls not exceeding 300 miles. Here, movement involved a backhaul exceeding 300 miles and class rate was assessed. However, as the through rate was unrestricted as to routing and shipments could have moved via a route involving a back haul less than 300 miles, charges based on mileage over the shorter route should have been assessed. Reparation awarded. California Table Fruit Co. v. A., T. & S. F., 126 I. C. C. 700.

(y) Where shipper, on requesting diversion of shipment, did not specify route, but merely asked diversion and delivery on basis of through rate, it was entitled to have shipment moved by cheapest available route and at lowest rate that applied thereto. W. L. Shepherd Lumber Co. v. Atlantic Coast Line R. Co., (Ala., 1927) 112 So. 323.

(z) Shipment of oats from Porum, Okla., to Oakland, Calif., there stored and subsequently reconsigned to McCloud, Calif., found to have been improperly billed from the transit point and charges not collected in accordance with complainant's instructions, thereby

depriving him of a portion of inbound rate provided by tariff. Tariff rule provided that if dealer desired consignee to pay rate from transit point to destination refund of proportion of charges to transit point would be made. Carrier's agent at Oakland was instructed to collect charges from consignee at McCloud on basis of full local rate from Oakland to McCloud. Instead charges were collected on basis of division of the through rate from Porum to McCloud, which was contrary to instructions and served to defeat the rule. Reparation awarded. Albers Bros. Milling Co. v. A., T. & S. F., 128 I. C. C. 53.

(aa) On coal routed by shipper from Annabelle, W. Va., to Goshen, Ind., complainant was quoted a joint rate. Shipment was diverted en route to Benton Harbor, Mich., and since joint rate did not apply over that route, higher combination rate was assessed. Upon contention that as lower joint rate applies over other routes from points in the Annabelle group to group in which Benton Harbor is included, it should also apply over route of movement, HELD: Agent at point of origin was not advised that shipment was to be reconsigned, or as to final destination, and since it moved as routed, it was not misrouted. Moreover, earnings under rate charged do not indicate that it exceeded a maximum reasonable basis and failure to take advantage of lower rate over restricted routes does not establish unreasonableness of rate charged or necessity for additional routes. Sellers v. C., C., C. & St. L., 128 I. C. C. 263.

(bb) Lumber from Cottondale, Fla., to Gastonia, N. C., reconsigned to Union, S. C., was assessed combination rates. Contemporaneously lower joint through rates, unrestricted as to routing, permitted movement to Union through Gastonia. Upon contention that had shipment been originally consigned to Union it would have moved over a more direct route not involving the extra haul, and that through rates were not applicable under reconsigning rule providing that no reverse or extra haul would be performed at through rates, HELD: Contention is untenable. Tariff did not prohibit movement via Gastonia and fact that shipment traveled over this route because of a reconsigning order does not deprive shipper of benefit of joint rates. If it had been carriers' purpose to restrict application of joint rate they should have done so by clear and unequivocal language. See 100 I. C. C. 357. Moreover, rates assessed under a similar situation in 83 I. C. C. 512, were found inapplicable. Reparation awarded. Thames v. S. Ry., 128 I. C. C. 508.

(cc) Apples from Wenatchee, Wash., to New York, ordered diverted in transit to Philadelphia, moved to Jersey City, where diversion was effected. Joint commodity rate to Jersey City and local rate beyond was assessed. Complainant contended that joint rate applied from origin to final destination, but carriers insisted that under governing tariff the through rate could not be protected unless diversion was made at a point on direct line. FOUND: Tariff provision would not have prevented routing shipment through Jersey City if it had been originally consigned to Philadelphia and within meaning of tariff movement from Jersey City to Philadelphia is not out of route. Moreover, in 96 I. C. C. 229, on a shipment from Pacific coast billed to New York and reconsigned at Croxton, N. J., to Philadelphia, the through rate was held applicable. Had carriers here desired to restrict application of through rate they should have done so in clear and unequivocal language. See 47 I. C. C. 59, 61. Refund of overcharges directed. Northwestern Fruit Exchange v. G. N., 128 I. C. C. 538.

(dd) If it was the intention of defendants to restrict the application of the through rate to particular routes and the diversion and reconsignment privileges to particular points or routes, they should have so provided by clear and unequivocal language. Northwestern Fruit Exchange v. G. N. Ry., 128 I. C. C. 538, 540.

(ee) Complainant alleged rate charged on three cars of petroleum fuel oil, shipped May 1, 1923 from Grandfield, Okla., originally destined to Granite City, Ill., and diverted to East Chicago, Ind. was unreasonable. Shipments were tendered Rock Island at Grandfield, and routed by the shipper to Granite City over Rock Island to Oklahoma City, Okla., Frisco to St. Louis, Mo., and Terminal beyond. On May 3, complainant advised a representative of the Rock Island at Tulsa, Okla., that the shipments had been routed Rock Island, Terminal delivery at Granite City, and asked that they be diverted to East Chicago, Ind., over the Rock Island, Penn-

sylvania delivery. The Rock Island placed the diversion orders with its representatives at Hutchinson, Kas., and Kansas City, Mo., through which junctions the shipments would have moved, if they had been routed in accordance with the advice given in connection with complainants diversion instructions. The Rock Island subsequently ascertained that the shipments were delivered on May 5, 1923 to the Frisco at Oklahoma City. It then instructed the Frisco to divert the shipments to East Chicago, which was done. They moved from Oklahoma City over the Frisco to St. Louis, thence C. & E. I. and E. J. & E. to destination I. H. B. delivery. There were no joint rates over the route of movement or over any other route in connection with the Frisco to East Chicago. There was in effect a joint rate of 29.5c via the Rock Island from both Oklahoma City and Grandfield to East Chicago, charged Granite City combination. The record shows the Rock Island made a diligent effort to locate the shipments before they were delivered to its connections and the failure to divert the shipments was not the result of negligence on the part of its employees. The route over the shipments were diverted was not inconsistent with the original routing, or contrary to tariff regulations. HELD, shipments not misrouted, shipment overcharged, reparation awarded. Barnsdall Refineries v. C., R. I. & P. Ry., 129 I. C. C. 443.

(ff) Complainant alleged that the rate charged on a car of yellow pine lumber, shipped Aug. 28, 1922 from Woodbury, Ga., to East St. Louis, Ill., and reconsigned to Buffalo, N. Y., was inapplicable. Shipment originated on the M. & B. and was consigned to East St. Louis routed "M. & B., Sou. Chattanooga, N. C. & St. L., Paducah, C. B. & Q. Ry. delivery". It was reconsigned to Buffalo, charged 56c, authority not shown, plus reconsignment charge of $2.25. Complainant contends that at the time the shipment moved a 42c rate was in effect from point of origin to Buffalo without restriction as to routing, and shows that at the time the reconsignment was ordered it directed that such a rate should be protected. It does not show the route over which the shipment moved. Misrouting was not alleged, that issue being barred by statute before the complaint was filed. HELD, complaint dismissed. Milne Lumber Co. v. N. Y. C. R. R., 129 I. C. C. 457.

(gg) Complainant alleged combination commodity rates charged on three cars of coal shipped May 24, 1923 from Boonville, Ind., to Elkhart, Ind., and reconsigned to South Bend, Ind., were unreasonable and unduly prejudicial. Shipments moved Southern to Louisville, Ky., and Big Four to Elkhart. They were reconsigned en route to South Bend, and moved over N. Y. C. to Elkhart and 15 miles beyond. Defendants reconsignment rules did not provide for reconsignment at the joint rate over the route of movement, and charges were collected at rates of $2.08 to Elkhart and $1.11 beyond. Applicable rate from Elkhart to South Bend was $1.01, overcharged 10c per ton. HELD, applicable rates not unreasonable or otherwise unlawful, complaint dismissed. Russell the coal man v. C., C., C. & St. L. Ry., 132 I. C. C. 25.

(hh) Complainant alleged commodity rate charged on a car of lumber from Kurthwood, La., to Omaha, Neb., May 18, 1925 was inapplicable and unreasonable. Shipment was originally consigned to Marine, Ill. No routing specified by complainants. While shipment was on the I. C. complainant instructed that defendant to reconsign it to Omaha and to protect "lowest through rate". Shipment was reconsigned by I. C. at East St. Louis, Ill. It moved R. R. & G., to Le Compte, La., C., R. I. & P. to Memphis, I. C. to Omaha, charged 44.5c applicable over route traversed, plus a reconsignment charge of $2.70 which is not assailed. A joint rate of 38.5c the lowest through rate was not applicable over a route embracing the I. C. except on traffic received by that carrier at Council Bluffs, Ia., but complainants were not so notified. The reconsignment instructions were not to protect a joint rate or any specific rate, but the "lowest thru published rate". Such instructions obviously meant the lowest through rate applicable over the route traversed from point of origin to the point at which the shipment was reconsigned. The instruction was not sufficient to operate as a notice to defendants that complainants wanted a rate which was not applicable over the route traversed to East St. Louis. HELD, defendants were not under a duty to notify complainants that the 38.5c rate was not applicable, complaint dismissed. Lehr Lumber Co. v. R. R. & G. Ry., 132 I. C. C. 335.

(ii) Complainant alleged class rate charged on a car of automobiles shipped

Oct. 15, 1923 from Flint, Mich., to Marlin, Tex., and reconsigned to Brownwood, Tex., were unreasonable and inapplicable. Shipment consigned to complainant notify Primm Chevrolet Co. at Marlin. Routed by complainant "G. T., R. I., M. K. T., S. P." and rate of $2.845 inserted in the bill of lading. Shipment moved G. T. W. to Chicago, Rock Island to Kansas City, Mo., M. K. T., to Denison, Tex., H. & T. C. to Marlin. Oct. 25, 1923 complainant states he telephoned the G. T. agent at Flint to divert the shipment to Brownwood rerouting it G. T., R. I., M. K. T., St. L. S. F., and St. L. S. F. & T. and requesting the joint thru rate of $2.845 be protected. Charged first class rate of $2.845 to Waco and first class $1.11 beyond. The $2.845 rate was applicable from Flint to Marlin over the route specified in the bill of lading, as corrected, which is the route over which the shipment moved and to Brownwood over the route specified in complainants letter of confirmation of the telephone order, but it was not applicable over the route shipment moved to ultimate destination. Defendants point out that the $2.845 rate was not applicable to Brownwood over any route beyond the point where the car was located at the time the reconsignment order was received; that defendants were not obligated to so notify complainant under the applicable tariff rules; and that it was impossible to reconsign the car to Brownwood over any route that would afford protection of the joint through rate, or to move the car via the route named in the letter of confirmation. The situation here presented is different from that in which the carrier was able at the time the reconsignment order was given to divert the shipment to the route over which the lower rate named in the order applied. If the Commission accepts complainants contention that the protection of the rate named in the order was a condition precedent to reconsignment and that defendants were obligated to notify complainant that such rate could not be protected, it follows that the forwarding of the shipment to Brownwood was unauthorized. The shipment could have been refused at that point and the defendants compelled to return it to Marlin without expense. Instead, by accepting the shipment at Brownwood the failure to observe this condition was waived. The fact that the shipment was accepted without notice that the $2.845 rate had not been protected, does not relieve the responsible party of its liability to pay the applicable charges. HELD, charges assailed were applicable, not unreasonable, complaint dismissed. Chevrolet Motor Co. v. C., R. I. & P. Ry., 132 I. C. C. 337.

(jj) Upon further hearing the finding in former report, 104 I. C. C. 734, that rates on a shipment of tomatoes from Gibson, Tenn., to Youngstown, Ohio, were unreasonable to extent they exceeded lower rates in effect to Pittsburgh, Pa., rate points, and the award of reparation, affirmed. Original record indicated that shipment moved over L. & N. to the Ohio River, and the B. & O. beyond. Further evidence, however, showed that shipment moved to Cleveland over the L. & N., and the C., C., C. & St. L., and was thence reconsigned to Youngstown. Upon contention that as rate to Pittsburgh rate points does not apply through Cleveland, and as the C., C., C. & St. L. was not a party defendant, the commission's order for reparation can not run against that carrire, FOUND: Rate to Pittsburgh rate points was unrestricted as to routing and was applicable over same line and route shipment moved through Youngstown. Moreover, as the C., C., C. & St. L. was a party to joint rate beyond the river, it was not essential that it be a party defendant, the liability of carriers parties to a rate being joint and several. Coulbourn Fruit Co. v. B. & O., 129 I. C. C. 441

(kk) Shipments of fuel oil from Granite City, Ill., and diverted to East Granfield, Okla., originally destined to Chicago, Rock Island & Pacific; St. Chicago, Ind., were tendered routed Louis-San Francisco; Merchant Bridge Terminal delivery. In requesting diversion to East Chicago, complainant erroneously advised agent of Rock Island at Tulsa, Okla., that shipments had been routed over that line, Merchant Bridge Terminal delivery, and before actual routing could be ascertained shipment had been delivered to the Frisco. Thereupon, in conformity with its tariff rules, the Rock Island placed diversion instructions with the Frisco. FOUND: Initial shipments before delivery was made to carrier made diligent efforts to locate its connections and failure to divert was not result of negligence on part of its employees. Moreover, route over which shipments were diverted was not inconsistent with original routing or contrary to tariff regulations, and ship-

ments were not misrouted. Barnsdall Refineries v. C R. I. & P., 129 I. C. C. 443.

(ll) On shipments of lumber originating at Woodbury, Ga, consigned to St. Louis, Mo., and reconsigned to Buffalo, N. Y., complainant contended that reconsignment instructions directed that a lower unrestricted rate in effect from origin point to Buffalo be protected. Complainant failed, however, to show route over which shipment moved. FOUND: Applicability of a rate to a given shipment depends upon whether or not such shipment moved over lines of carriers parties to tariff naming the rate, and in absence of such information the commission is unable to determine applicable rate. Milne Lbr. Co. v. N. Y. C., 129 I. C. C. 457.

(mm) Shipments of scrap iron from various points, originally consigned to Bethlehem, Pa., but there refused, and in a few instances partially unloaded, were subsequently reconsigned to Allentown, Pa. Rates were assessed under tariff rule providing that cars placed for unloading at original billed destination but reforwarded therefrom without being unloaded, to a point outside switching limits, would be subject to published rates to and from reconsignment point plus reconsignment charge. FOUND: In 89 I. C. C. 236, so-called reconsignment charge was found inapplicable on shipments the lading of which was changed in whole or in part at original destination, and in 91 I. C. C. 615, and other cited cases, reconsignment charges provided under a similar rule were found unreasonable. Principles announced in those cases are applicable here Reparation awarded. Sofransey Co. v. R. Co., 129 I. C. C. 617.

(nn) Carload of peaches from North Mountain, W Va., originally consigned to Cincinnati, Ohio, but diverted. without routing instructions to Pittsburgh, was routed by carrier over lowest rates routes, via Everson, Pa. Subsequently shipment was reconsigned to Toledo, Ohio, and combination rates to and from Pittsburgh, plus reconsignment charge, were assessed. Lower joint rate from origin to final destination, sought by complainant, was restricted, precluding its use via Everson, over which route shipment moved, but defendant had no knowledge that Pittsburgh was not final destination of shipment and and can not be charged with misrouting. Rates assessed found applicable and not unreasonable, but reconsignment charge found unreasonable and its discontinuance required. Purse Bros. v. B. & O., 129 I. C. C. 727.

V. PROCEDURE AND REPARATION.

See Procedure Before Commission; Reparation.

§ 7. In General.

(a) Complainant, under section 6 of the act, alleged that charges collected on a car of watermelons shipped July 21, 1921, from Oliver, Ga., to Kansas City, Mo., and forwarded to Rock Island, Ill., were illegal. Shipment moved C. of Ga., N. C. & St. L., L. & N. through St. Louis, M. P. to Kansas City, the original destination, thence back over the Rock Island to Rock Island. Charged combination over Kansas City, rate requested through rate of 76c to Rock Island direct. Defendants deny any knowledge of reconsignment. Under the circumstances it was incumbent upon complainant to prove that the tariff provision requiring that the "request for reconsignment must be made or confirmed in writing" had been complied with. Lack of proof on this question precludes any determination by the commission that the charges attacked were illegal. There is no proof that complainant paid the charges or is the real party in interest, the freight bill and bill of lading are not in evidence, there is no testimony with respect to the date of arrival or departure from Kansas City, or that any request for reconsignment was ever made. HELD: Charges not illegal, complaint dismissed. Ward Bros. v. C. of Ga., 118 I. C. C. 183.

§9. Jurisdiction Of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) Shipments of tobacco moved from points in Virginia to Richmond, where delivery was accepted by consignee, who took charge thereof, paid incoming charges thereon, and without unloading, and without carrier or its agent acting for it, arranged for further transportation to Norfolk, for export. Reconsignment charges in addition to rates to and from point of reshipment were assessed in accordance with applicable tariff rules. HELD: Movements to Richmond not within commission's jurisdiction because intrastate in character. See 204 U. S. 403. On other hand reconsignment charges, assessed

because of movement beyond that point and incidental to it, are so subject. Taylor Co., v. S. Ry. Co. 109 I. C. C. 431, 433.

§10. Damages and Reparation.

See Loss and Damage; Reparation.

(a) Complainant sought reparation on a shipment of cucumbers, alleging that failure of carrier to properly divert en route resulted in their deterioration and consequent decline in value; also that manner in which its diversion order was handled was prima facie evidence of negligence and indicated a lack of system in handling of such orders. HELD: The commission may award reparation only for violations of the act, not here shown, and claims for loss and damage, and measure of damages applicable thereto are cognizable only in courts. Here the carrier fulfilled its obligation by forwarding shipment over lowest rated route known to it, no routing instructions having been furnished by shipper when diversion was requested. Johnston v. C. & W. C., 118 I. C. C. 19.

(b) Failure of Southern Ry., in conformity with tariff provision in effect at time of shipment and after adequate instructions had been furnished it, to promptly transmit a diversion order to its connection, resulting in shipment moving through to originally billed destination from which it had to be reforwarded, found to have resulted in damage to complainant measured by difference between charges collected and those which would have accrued at applicable rate from origin to ultimate destination via point at which diversion should have been effected, plus applicable charge for reconsignment. Reparation awarded. Huber v. G. & F., 118 I. C. C. 282.

REDUCED RATES

I. CONTROL AND REGULATION.
§ 1. Jurisdiction of Commission.
§ 2. Power to suspend.
II. LEGALITY OF REDUCED RATES.
§ 2½. In general.
§ 3. Charitable institutions, fairs or emergency.
§ 4. Government or municipal shipments.
§ 4½. Reasonableness and discrimination.
§5. Returned, old shipments, or emigrant movables.
§ 6. Company material.
§ 6½. To encourage markets or meet competition.
§6½a. Restricted routes.
III. TARIFFS AND CONSTRUCTION.
§7. In general.
§8. Reparation.
IV. PROCEDURE.
§9. In general.
§10. Evidence and burden of proof.

CROSS REFERENCES

See Discrimination §2, §3½a, §12; Divisions §5; Evidence §64; Loss and Damage §9; Passenger Fares and Facilities §5, §7¼; Released Rates; Reparation; Through Routes and Joint Rates.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction Of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) To deny reduced rating on a specific commodity to small jobbers and communities solely because to do so would enable them to compete on more nearly equal terms with jobbers in large centers of population would be in contravention of one of the primary purposes of the act. Congoleum-Nairn v. C. & N. W. 109 I. C. C. 447, 449.

(b) Section 15a of the act does not affect commission's authority to require reductions in particular rates which are found unreasonable. Oklahoma Traffic Assn. v. A. G. S. R. R., 113 I. C. C. 635, 644.

(c) Plainly the commission is justified in condemning a rate on the ground that it is unreasonably low, where it is shown that it will cause loss rather than gain to the publishing road or roads and will thus impose a burden upon other traffic. In suspension proceedings, in view of the burden of proof, it is justified in condemning a proposed rate, protested as too low, if the carriers which sponsor it do not sufficiently show that it will cause gain rather than loss. But

the authority goes further. It is justified in condemning the proposed rate as too low if the evidence warrants the conclusion that it will, because of its lowness, tend to precipitate changes in rate structure or in traffic which will be harmful to the public interest, having in mind its responsibility for railroad earnings in general under section 15 a. Ex-Lake Iron Ore from Chicago to Granite City, 123 I. C. C. 503, 504.

II. LEGALITY OF REDUCED RATES.

See Legality of Rates.

§2½. In General.

(a) Commission does not desire to interfere with the initiative of railroad managements in reduction of rates, unless compelling reasons affecting public interest so require. Ex-Lake Iron Ore from Chicago to Granite City, 123 I. C. C. 503, 504.

(b) Commission is justified in condemning a rate on ground that it is unreasonably low, where it is shown that it will cause loss rather than gain to publishing roads and thus impose a burden upon other traffic. In suspension proceedings, it is justified in condemning a proposed rate, protested as too low if carriers sponsoring it do not show that it will cause gain rather than loss, or if evidence warrants conclusion that because of its lowness, it will tend to precipitate changes in rate structure or in traffic which will be harmful to public interest, having in mind commission's responsibility for railroad earnings in general under section 15a. Ex-Lake Iron Ore from Chicago to Granite City, 123 I. C. C. 503, 504.

§3. Charitable Institutions Fairs or Emergency.

(a) Upon complainant's contention that taxpayers, where books are furnished free to students, or purchasers wherethey are not furnished free, would derive benefit of any reduction in rates, and that such reduction would be desirable in the public interest, FOUND: That while carriers are permitted to haul traffic for State governments free or at reduced rates, the commission may not require them to maintain rates, because of interest of taxpayers and purchasers of schoolbooks, lower than may be required in absence of that interest. American Book Co. v. A. A. R. R., 129 I. C. C. 372, 374.

§4. Government or Municipal Shipments.

(a) Under Act July 27, 1866, §§ 11, 18, 14, Stat. 297, 299, and in view of appropriation acts for army transportation for years 1916, 1917 (Act March 4, 1915, 38 Stat. 1076, 1077; Act. Aug. 29, 1916, 39 Stat. 633, 634), requiring land grant railroads to transport troops, munitions of war, and property of the United States at rates not exceeding 50 per cent. of those paid by private shippers for same kind of service, where land grant railroad, before transportation of military impedimenta, filed with Interstate Commerce Commission a special tariff applicable thereto, there being no tariff available to the public at large including such items, HELD such railroad was not entitled to recover for transportation service on basis of such special tariff, in absence of express agreement or proof that contracting officers had knowledge of it when the shipments were made. Southern Pac. Co. v. United States, 47 Sup. Ct. 123.

(b) War Department, making shipments of military impedimenta, HELD not chargeable as matter of law with knowledge of special tariff previously filed by carrier without authorization. Southern Pac. Co. v. United States, 47 Sup. Ct. 123, 124.

(c) Railroad, seeking to recover for transportation of military impedimenta on basis of reasonable value, HELD to have burden of establishing such value. Southern Pac. Co., v. United States, 47 Sup. Ct. 123, 124.

(d) While the carriers are permitted to haul traffic for the state governments free or at reduced rates, the Commission may not require them to maintain rates, because of the interest of taxpayers and the purchasers of school books, lower than may be required in the absence of that interest. American Book Co. v. A. A. R. R., 129 I. C. C. 372, 374.

§4½. Reasonableness and Discrimination.

See Discrimination; Reasonableness of Rates; Restricted Rates (b); Through Routes and Joint Rates §24 (b).

(a) Proposed reduced rates on pig iron from southern producing points to St. Louis and Kansas City, Ohio River crossings, and related and intermediate

points, found justified. Proposed rates, while not upon a reasonable maximum basis, are not less than reasonable minimum rates and will not throw a burden upon other traffic. Moreover, such rates will compare favorably with rates on like traffic from northern producing points to same destination and will not result in any undue prejudice. Pig Iron from Southern Points, 104 I. C. C. 27.

(b) Proposed establishment of a specific commodity rate on wagon skeins from Chattanooga to Montgomery lower than applicable class rate now in effect, found justified. Wagon Parts to Southern destinations, 104 I. C. C. 179.

(c) Proposal to reduce rates on grain, seed, and products from points in Colorado, Wyoming, Kansas, Oklahoma, and Missouri to points in Louisiana west of Mississippi River, and restrict routing in connection therewith through Arkansas but not through Texas, found justified as to carriers not operating routes through Texas but unlawful with respect to carriers operating such Texas routes which are as short as, or shorter than, those operated by them through Arkansas. Transportation conditions do not warrant proposed restriction, which would also result in violation of section 3 of the act. Proposed reductions will restore rate basis previously in effect from origin territory, will remove many fourth-section departures, and harmonize an existing maladjustment of rates in destination territory. Grain and Products from Western States, 104 I. C. C. 272.

(d) Proposal to reduce rates on grain, seed and products from points in Colorado, Wyoming, Kansas, Arkansas, Oklahoma, and Missouri to points in Louisana west of Mississsippi River, found justified. Proposed reductions will, among other things, restore rate basis previously in effect from origin territory. Grain and Products from Western States, 104 I. C. C. 272, 275.

(e) Louisiana points: Proposal to reduce rates on grain, seed, and products from points in Colorado, Wyoming, Kansas, Arkansas, Oklahoma, and Missouri to points in Louisiana west of Mississippi River found justified. Proposed reductions will, among other things, remove many existing departures from long-and-short-haul provision of section 4 of the act. Grain and Products from Western States, 104 I. C. C. 272, 275.

(f) In original report, 101 I. C. C. 363, 374, commission provided for reduction of higher rates on anthracite coal from Pennsylvania mines to destinations in upper New York State over longer joint line routes to level of those applicable over single line routes between same points. Upon showing by carriers that single-line rates were prescribed in 35 I. C. C. 220 for single line hauls only, that those rates would not be reasonable maxima for joint-line hauls, and that a reduction of the joint-line rates to one-line basis would result in a serious and unwarranted loss in revenue, a difference of 13 cents between single and joint-line routes, approved. Such difference found not unreasonable or great enough to place retail coal dealer served by joint routes under any serious handicap in competing with dealer served by single line at same point. Moreover, where not unduly circuitous, it is desirable that all routes be maintained. Anthracite Coal Investigation, 104 I. C. C. 514.

(g) Proposal to decrease minimum weight on salt from eastern shipping points except Groups B and C rate points to destinations in Arizona, California, Mexico, Nevada, New Mexico, Oregon, and Utah, found justified. Proposed decrease will remove handicap of shippers west of Chicago in marketing their salt in competition with salt produced in Utah and California, and result in less damage to shipments in transit. Minimum Weight on Salt, 104 I. C. C. 631.

(h) Proposed reductions in domestic rates on crude petroleum from the El Dorado-Smackover field in Arkansas to Texas ports, found justified. There is little, if any movement under present rates and carriers would sustain no reduction in revenues of consequence if reduced rates are permitted to become effective. Petroleum from Arkansas, 104 I. C. C. 651.

(i) Establishment of reduced rate on crude petroleum from El Dorado, Ark., district to Houston, Tex., pursuant to 104 I. C. C. 651, found to remove undue prejudice and preference existing by reason of maintenance of lower rate from same district to New Orleans. Reasonableness of reduced rate to Houston not impeached. United Central Oil Corp. v. M. P., 107 I. C. C. 1.

(j) Proposal to reduce rates over certain lines on coal from points in south-

ern Illinois, Murphysboro, Centralia, and Du Quoin districts to St. Louis and nearby points in Missouri, with a view to securing a lower differential over the Belleville, Ill. group, by restoring rates previously in effect and thus restore proper relationship to intrastate rate to East St. Louis, found not justified. Proposed reduction would ultimately effect a corresponding reduction from other origin groups to this destination territory and this in turn might lead to reductions from those groups to other destination territories. Coal from Southern Illinois, 107 I. C. C. 415.

(k) Authority to establish reduced rates on certain commodities from eastern defined territories, Groups D to J, inclusive, to Pacific coast terminals, without observing long-and-short-haul clause of section 4 of the act, based on market competition and a desire to place Mid-Western manufacturers on a rate equality with eastern competitors who enjoy cheaper water transportation by reason of their location near Atlantic seaboard denied. Section 500 of transportation act, 1920, declares it to be the policy of Congress to foster and preserve in full vigor both rail and water transportation. While rates proposed are reasonably compensatory traffic diverted from water routes would inappreciably effect net revenues of rail lines, they would be disproportionate to losses the water lines would suffer, and might impair latter's ability to maintain their present standard of service. Commodity Rates to Pacific Coast Terminals, 107 I. C. C. 421.

(l) To deny reduced rating on a specific commodity to small jobbers and communities solely because to do so would enable them to compete on more nearly equal terms with jobbers in large centers of population would be in contravention of one of the primary purposes of the act. Congoleum-Nairn v. C. & N. W., 109 I. C. C. 447, 449.

(m) Proposed reduced charge for handling, storage, and wharfage of imported fertilizer and fertilizer materials at Pensacola, Fla., and Mobile, Ala., in order to meet charge on potash salts at Pensacola and on all fertilizer materials at Gulfport, Miss., found not justified. While the situation presents a maladjustment injurious to Mobile, commission can not permit its partial correction even for a temporary period by establishment of a charge which record clearly shows to be below a reasonable minimum. Handling, Storage, and Wharfage of Fertilizer, 109 I. C. C. 609.

(n) Respondents proposed reduced rates and an increased minimum weight on sewer pipe wall coping and flue lining from Fort Dodge, and other Iowa points to destinations in northern Illinois, southern Wisconsin, southeastern Minnesota. At present class E rates apply on sewer pipe, carloads from Iowa to these points. Rates proposed are commodity rates lower than class E rates, and to Chicago district, northern Illinois, and southeastern Minnesota are 2 c. lower than the present rates, to southern Wisconsin 3 c. lower. The rates to Minnesota were reduced to permit Iowa manufacturers to compete at destinations in that state with manufacturers at Red Wing, Minn. HELD, rates found justified. Sewer pipe and related articles, 113 I. C. C. 239.

(o) Rock Island, proposed to reduce its carload rates on grain and grain products from Nebraska, Iowa, Illinois, Missouri, Kansas and Arkansas to Louisiana, and on alfalfa feed, brewers grain from Oklahoma points to the same destinations, proposing to restrict the routing in connection with the reduced rates so that they would not apply over routes through Texas. Respondent maintains routes through both Texas and Arkansas. Traffic and transportation conditions are substantially similar in Oklahoma, Arkansas, Louisiana and Texas. The routes through Texas as to this traffic are generally shorter than those through Arkansas. M. P., now maintains rates which do not apply through Texas from the general territory under consideration, and from some points common to both it and respondent, on a parity with those which respondent seeks to establish over the routes through Arkansas. The M. P., operates no routes through Texas. HELD, proposed schedule not justified without prejudice to the filing of new schedules establishing the proposed reduced rates applicable over routes through both Arkansas and Texas. Grain and grain products to Louisiana, 113 I. C. C. 259.

(p) Earnings of carriers in western district, as a whole, not shown to have been such as to warrant any general downward revision of rates on products of agriculture, or of other industries subject to depression. Revenues in Western District, 113 I. C. C. 3, 39.

(q) Local and joint class rates be-

tween points in Arizona, on the one hand, and points in California, New Mexico, and El Paso, Tex., on the other hand, found unreasonable. Rates assailed are materially higher than those prescribed in 21 I. C. C. 640, and 74 I. C. C. 207, for application in the Pacific Northwest and at present in effect throughout the northern half of the Mountain-Pacific group. Operating and transportation conditions in territory here under consideration compare favorably with those in much of the territory in which the lower rates apply. Temporary scale of distance rates prescribed which will accord the Pacific Southwest substantially same scale of rates as now applies in the Pacific Northwest. Arizona Corp. Commission v. A. E. Ry., 113 I. C. C. 52.

(r) Rates on fresh meats and packing-house products, c. l. and l. c. l., from Pueblo, Colo., to points in New Mexico found unreasonable and unduly prejudicial as compared with rates on like traffic from El Paso and Fort Worth, Tex., Oklahoma City, Okla., Wichita, Kans., and Cactus, Ariz., to same destinations. Reasonable scale of distance rates based on the so-called Cactus-El Paso scale laid down in 81 I. C. C. 115 and 100 I. C. C. 4, for application in same general territory for like distances prescribed and reparation awarded. Nuckolls Packing Co. v. A., T. & S. F., 113 I. C. C. 229.

(s) Proposed reduced rates and increased minimum weight on sewer pipe, wall coping, and flue lining, from Fort Dodge and other Iowa producing points to destinations in Illinois, Wisconsin, and Minnesota, found justified. Proposed rates are commodity rates lower than the class rates at present applicable and are for the avowed purpose of enabling manufacturers in Iowa to compete with manufacturers located at various producing points in same general territory. Evidence submitted points out disadvantages Iowa manufacturers are under in marketing their products and shows that proposed rates are not too low as compared with rates from other producing points. Sewer Pipe and Related Articles, 113 I. C. C. 239.

(t) Proposal to reduce rates on grain and products from points in Nebraska, Iowa, Illinois, Missouri, Kansas, Oklahoma, and Arkansas, to Louisiana, routed through Arkansas, and to restrict routing so that such reduced rates will not apply over routes through Texas, found not justified. In 104 I. C. C. 272, commission found such restriction of routing not justified by transportation conditions and that resulting disadvantages to Texas mills would be unlawful in violation of section 3 of the act. No evidence has been submitted in present record to warrant a different conclusion. Grain and Products to Louisiana, 113 I. C. C. 259.

(u) Proposed reduced rates on coal from Springfield and Riverton, Ill., to Keokuk, Iowa, Hannibal, Mo., and other destinations, found not justified. The failure to make reductions apply uniformly from all mines in Springfield district would result in splitting that district into two groups for which there has been no justification. Moreover, attempt of carriers to establish lower rates from Springfield and Riverton would, if successful, destroy the differential relationship between the Illinois producing groups prescribed in The Illinois Coal Cases, 1920, 62 I. C. C. 741, which decision contemplated establishment of the differential basis therein prescribed to destinations in eastern Iowa, including Keokuk. Bituminous Coal from Illinois, 112 I. C. C. 369.

(v) Proposed reduced rates on car trucks without journal bearings from points in c. f. a. and trunk-line territories to Atlantic seaboard for export, designed for purpose of stimulating traffic and aiding American manufacturers in meeting keen foreign market competition, found not unreasonable. Schedules, however, found not justified, since proposed rate from Pittsburgh district to New York would result in undue prejudice to Athenia and Lodi, N. J. Car Trucks to Atlantic Seaboard, 112 I. C. C. 583.

(w) Section 15a of the act does not affect commission's authority to require reductions in particular rates which are found unreasonable. Oklahoma Traffic Assn. v. A. G. S. R. R., 113 I. C. C. 635, 644.

(x) Proposed reduced proportional rates on grain and products from Kansas City, Mo., to Beaumont and Port Arthur, Tex., and New Orleans, La., and points taking New Orleans rates, for export, designed solely to augment traffic on line of Kansas City Southern Ry., found not justified. While proposed rates do not

seem violative of either sections 1 or 3 of the act applying the usual standards, approval of schedules will inevitably lead to a disruption of grain-rate structure, have marked effects upon distribution and marketing, the extent of which commission can not adequately foresee, and must of necessity impair the revenues of carriers and their ability to render satisfactory service. See also 69 I. C. C. 589, 611. Grain and Products, 115 I. C. C. 153.

(y) Respondents, I. C., C. & E. I., and Wabash, proposed to reduce their rate on ex lake iron ore, in carloads, from Chicago, Ill., to Granite City, Ill. The primary question presented for determination is whether the proposed rates fall short of being reasonable minimum rates. Each case must be judged upon its own particular facts, and a rate which may appear unduly low under one set of circumstances may not so appear under another set of circumstances. Here the record clearly justifies the conclusion that in view of the present heavy movement of empty coal cars over the routes in question from Chicago to Granite City, and in view of the fact that the traffic to which the proposed rate is to apply is well adapted to movement in trainload quantities and probably will so move, the proposed rate will be financially advantageous to respondents HELD, proposed rates justified. Ex Lake Ore from Chicago to Granite City, 120 I. C. C. 75.

(z) Proposed reduced rates on ex-lake iron ore from Chicago to Granite City, Ill., found justified. Carriers showed that they carry a large volume of coal from mines near Granite City to Chicago with a practically complete empty-return movement due to present rate proving too high to attract the ore traffic. The rate proposed, which is not less than a reasonable minimum, will enable a furnace at Granite City to share in ore movement by lake and enable it to increase its output in competition with rival plants located in Chicago district and elsewhere. Rail carriers will not be deprived of any important traffic and the extremely low all-rail rates now in effect offset the probability of a rate war. Moreover, rail-lake-and-rail route to Granite City is a natural one possessed of marked economic advantages, and its increased utilization seems clearly in public interest. Ex-Lake Iron Ore from Chicago to Granite City, 120 I. C. C. 75.

(aa) Upon contention of shipper that evidence tending to prove that traffic under proposed reduced rates will move in trainloads should be given no weight because it is commission's policy not to permit establishment of rates applicable only to trainloads, HELD: Principle referred to does not apply to a case which deals with rates per carload. However, fact that traffic to which the carload rate will apply will in all probability move in trainload quantities is pertinent in considering whether rate will burden other traffic. Ex-Lake Iron Ore from Chicago & Granite City, 120 I. C. C. 75, 81.

(bb) Where there is no showing that like rate advantages are withheld from competing shippers under similar circumstances and conditions, fact that a single shipper will be sole user of a proposed reduced rate does not constitute a violation of section 3 of the act. Ex-Lake Iron Ore from Chicago & Granite City, 120 I. C. C. 75, 81, 82.

(cc) Respondents M. & St. L. and Soo Line, proposed domestic proportional rate, representing reductions, over their respective lines and their eastern rail connections from Minneapolis and Duluth, Minn., and a few points grouped therewith, to points in trunk line and New England territories on grain and grain products, in carloads, originating at points in Montana, North Dakota, northwestern Minnesota and a few points in South Dakota. The proposal represents an effort on the part of respondents to secure some of the traffic that is now moving from the affected territory over rail-lake-routes through Duluth and Buffalo, N. Y. The rates from the affected territory to Minneapolis and Duluth are generally on a parity and over all rail lines the same is true of the present rates beyond. However, from Duluth to Buffalo relatively low cargo steamer rates are available on grain, which added to the ex-lake rates on grain or its products from Buffalo to the destination territory make through rates that are less than the all rail rates. It follows that these lake-rail rates, when added to the inbound rail rates to Duluth, make lower through rates from the affected territory to the east than are made on the Minneapolis or Duluth combination over all rail routes. What respondents mainly seek is a curtailment of the movement of grain from the fields directly through

Duluth and over the lake-rail lines, coupled with a corresponding increase in the movement of grain direct to Minneapolis and thence out over all rail lines, either as grain or its products. The proposed rates are to apply only on traffic from points where the inbound rates to Minneapolis are not less than those from the same points to Duluth, except that some additional reductions, are proposed in order to avoid departures from the fourth section. The present all rail rates from Minneapolis and Duluth are proportionals to and from such points as Milwaukee, Wis., and Chicago and Peoria, Ill., and are equal through those gateways. Those applicable through Sault Ste Marie, Mich., are the same in amounts but are published as joint rates. The proposed rates are joint rates 6c lower than the combinations. Joint lake-rail rates 4c lower than the all rail rates apply on these commodities from Minneapolis to the destination territory in connection with the package steamers of the Great Lakes Transit Corporation. The package steamers do not handle cargo grain. Respondents admit that the proposed rates are less than reasonable maxima, and there is no evidence to the contrary, but they seek to show that they are reasonable minimum rates, that they would add something to their net revenues and would not burden other traffic. The proposed joint rates are limited to apply only on traffic from points in the affected territory. They would not apply on traffic from certain intermediate points just west of Minneapolis. The rates from these points, made on the Minneapolis-Peoria combination, would exceed those from the points farther west made by use of the proposed joint rates as factors east of Minneapolis, but departures from the long and short haul provision would be avoided by an appropriate tariff provision which is part of the suspended schedules. On traffic to eastern destinations the eastern lines, parties to the proposed rates, serve as participating carriers not only Minneapolis but all of the competing western mills and grain markets. They owe a like duty to each of these communities. They may not unduly prefer Minneapolis to the undue prejudice of the others. Minneapolis already has relatively more favorable rates than these competing western markets, and those proposed would increase the preference. The Commission is not convinced that there is such a difference in conditions as would justify the proposed preference of Minneapolis. The rates proposed by the Soo would apply through Canada in connection with the C. P. and only to Boston rate points, reached by the eastern connections of that line. Clearly the Commission has jurisdiction to prohibit such eastern connections from joining in an unlawful rate even though part of the transportation is within Canada. It is not clear that a reduction to Boston rate points alone would not also result in undue preference of those destinations. Approval of the proposed rates would lead directly to a disruption of the grain rate structure, have marked effects on marketing and distribution, and of necessity impair the revenues of the carriers and their ability to render satisfactory service. That there would be any substantial benefit to respondents, Minneapolis, to the producers of wheat, is doubtful. Competition would undoubtedly force other carriers serving Minneapolis to meet the proposed rates and respondents could not hope to secure any substantially greater share of the traffic than they do under the present rates, unless as a reward of forcing these reductions. Corresponding reductions from competing communities would follow and Minneapolis would be in no better relative position than now. The farmers could hardly gain from the reduction. The Minneapolis interests claim that the reduction is necessary in order that they may maintain their position in the milling industry, and accordingly it is not probable that any part of the reduction would be passed back to the farmer. It is the rates to the primary markets rather than the rates from the primary markets that are of most importance to the farmer. HELD, proposed schedules not justified. Grain and grain products to eastern points, 122 I. C. C. 551.

(dd) Respondents proposed to reduce their rates on vegetable stearine, other than coconut, in carloads and less carloads, from New York, Philadelphia and Baltimore rate points to Virginia cities and points taking same rates. There are no commodity rates. In southern classification, coconut stearine is rated second class. It would be unduly prejudicial to maintain higher rates on coconut stearine than those on palm kernel, palm and mixed stearines. HELD, establishment of proposed rates on palm kernel, palm and mixed stearines, while maintaining higher rates on coconut

stearine, would result in undue prejudice. Schedules not justified. Vegetable stearine from New York to Virginia cities, 123 I. C. C. 151.

(ee) In 120 I. C. C. 75, division 4 found that a proposed reduced rate on ex-lake iron ore, in carloads, from Chicago, Ill., to Granite City, Ill., by respondents, I. C., C. & E. I., and Wabash had been justified. Reduced rate is a rate of $1.20, applicable on iron ore originating in the iron ranges of northern Michigan, Wisconsin, and Minnesota and brought to Chicago by lake. It superseded a rate of $1.40 under which there had been practically no movement. The purpose of the reduction was to make movement possible. The mere fact that the ton mile yield of the $1.20 rate is materially below average ton mile costs of the I. C., is obviously not proof that it is a noncompensatory rate, but it does furnish reason for careful examination of the affirmative evidence. Line haul movement in solid train loads does not necessarily imply either a single consignor or a single consignee. The fact that the traffic to which the $1.20 carload rate will apply will in all probability move largely in train load quantities, is clearly pertinent in considering whether the rates will cause gain or loss to respondents. HELD, $1.20 rate not unlawful under section 3, schedules justified. Ex-Lake iron ore from Chicago to Granite City, 123 I. C. C. 503.

(ff) Respondents, C. & O. and N. & W., proposed reduced rates on bituminous coal, in carloads, from mines on their lines in Virginia, West Virginia and Kentucky to Cincinnati, O., and destinations in the Cincinnati district on both sides of the Ohio river. The reduced rates were not proposed because respondents considered the present rates too high but only for the purpose of removing an advantage in rates of 10c per ton which mines in certain districts on the L. & N. have at present over mines in these districts on respondents lines. The rate adjustment which would be changed by the suspended schedules is limited, and it is not altogether clear that protestants apprehension that the lower rates would spread over a considerable territory is well founded. Each of the carriers, respondent and protestant, moves coal over its own rails from mines thereon to Cincinnati. Neither respondent participates in that haul from mines on the lines of a protestant. Respondents in reducing their own rates would work no undue prejudice, within the meaning of section 3, to mines on the L. & N. or B. & O. or to those carriers, and it is not even intimated by protestants that the proposed rates would be less than minimum reasonable rates. HELD, suspended schedules justified. Coal to Cincinnati, 123 I. C. C. 561.

(gg) Proposed reduced proportional rates from Minneapolis and Duluth, Minn., and points grouped therewith, applicable over the Minneapolis & St. Louis and Soo Line, respectively, and their eastern rail connections, to points in trunk-line and New England territories, on grain and products originating in Montana, the Dakotas, and northwestern Minnesota, designed by above-named carriers in an effort to secure some of the traffic now moving via rail-lake-rail routes through Duluth and Buffalo N. Y., found not justified. Such rates would lead directly to a disruption of the grain-rate structure, have marked effects on marketing and distribution, and of necessity impair revenues of carriers and their ability to render satisfactory service. Moreover, Minneapolis already has more favorable rates than competing western markets, and rates proposed would increase the preference. Grain and Products to Eastern Points, 122 I. C. C. 551.

(hh) Proposed reduced rates on vegetable stearine, other than coconut, by establishment of any-quantity rates, from New York, Philadelphia, and Baltimore rate points to Virginia cities and points taking same rates, found not justified. Establishment of proposed rates on palmkernel, palm, and mixed stearines, while contemporaneously maintaining higher rates on coconut stearine, would result in undue prejudice. See 98 I. C. C. 331; 120 I. C. C. 169. Vegetable Stearine from New York Rate Points, 123 I. C. C. 151.

(ii) Finding in original report 120 I. C. C. 75, justifying reduced rate on ex-lake iron ore from Chicago to Granite City, Ill., affirmed on reargument. Proposed rate is not unreasonably low as compared with other ex-lake rates from Lake Erie ports to Ohio and Kentucky points, and evidence indicates that ore will move in solid trainloads thus eliminating the large empty-return movement under former rate and insuring carriers a source of gain rather than loss. Moreover, it will not precipitate changes in

rate structures that will be harmful to public interest, nor is it unlawful under section 3, as alleged, but on the other hand will open up to Granite City markets heretofore inaccessible, will leave all-rail routes in possession of substantial rate advantages, and will open for use lake routes which have marked natural economic advantages for ore transportation. Ex-Lake Iron Ore from Chicago to Granite City, 123 I. C. C. 503.

(jj) Commission is justified in condemning a rate on ground that it is unreasonably low, where it is shown that it will cause loss rather than gain to publishing roads and thus impose a burden upon other traffic. In suspension proceedings, it is justified in condemning a proposed rate, protested as too low, if carriers sponsoring it do not show that it will cause gain rather than loss, or because of its lowness, it will tend to precipitate changes in rate structure or in traffic which will be harmful to public interest, having in mind commission's responsibility for railroad earnings in general under section 15a. Ex-Lake Iron Ore from Chicago to Granite City, 123 I. C. C. 503, 504.

(kk) Proposed reduced rates on bituminous coal from mines on Chespeake & Ohio and Norfolk & Western in Virginia, West Virginia and Kentucky, to Cincinnati, in order to remove an advantage of 10 cents per ton which mines in adjacent districts on L. & N. enjoy, found justified. Present rate scheme has never been approved by commission or by carriers, but has been tolerated because of relatively unimportant tonnage which moved originally from mines on L. & N. to Cincinnati. Moreover, carriers in reducing their own rates would work no undue prejudice, within meaning of section 3; carriers do not intimate that proposed rates would be less than minimum reasonable rates; and narrow scope of adjustment obviates any necessity for exercise of commission's restraining powers under section 15a of the act. Coal to Cincinnati, 123 I. C. C. 561.

(ll) Rates on sulphur from Bryanmound, Tex., refined in transit at Freeport, Tex., thence reforwarded to Fresno, Livny, and Los Angeles, Calif., found unreasonable to extent they exceeded lower rates prescribed in 74 I. C. C. 641, for application on sulphur from Bryanmound and origin points in same general territory to south Pacific coast points when accorded transit at Lake Charles, La., and Texarkana, which rates were subsequently made applicable on traffic accorded transit at Freeport. Reparation awarded. Stauffer Chemical Co., v. H. & B. V., 123 I. C. C. 657.

(mm) Rules governing free transportation of attendants with race horses, polo mounts, and show horses, in carloads, moving by express, FOUND unreasonable to extent they accord transportation to fewer attendants than herein prescribed based on kind and number of horses per car. Express Company's proposal to restrict number of attendants to two per car in all instances, FOUND not justified. Record indicates that race horses being nervous, temperamental, and highly susceptible to disease, require a greater number of attendants per car than either polo or show horses which are more tractable and of more even temperament. Moreover, as record shows that two and one attendants per aisle, respectively, are usually sent with and are necessary for proper care of race horses and other horses, this number should be transported without charge in addition to minimum rates per car. Reasonable rules prescribed for future. Horse Asso. of America v. Amer. Ry. Exp. Co. 126 I. C. C. 103.

(nn) Upon complaint seeking reduction in rate on grain from Aberdeen and contiguous territory in South Dakota within westbound transcontinental Group F, to points in Montana, Idaho, Washington, and Oregon, so as to permit complainants to transit grain at Aberdeen which now moves to Minneapolis and Sioux City from various points in Group F for transit, thence reforwarded to north Pacific coast points at same rate as applies from Aberdeen, HELD: Record establishes that existing adjustment is a benefit rather than a disadvantage to South Dakota shippers and is advisable in view of investigations of terminal elevators at Minneapolis. Moreover, present group adjustment has been in effect for many years and to accord this particular section of Group F a lower rate than applies from remainder of that group would result in undue preference to shippers in that territory and eventually lead to demands for similar reductions from points generally in the group. Aberdeen Commercial Club v. C. P. R. R. 126 I. C. C. 498.

(oo) Rates on lumber from points in Maine to destinations in New England, found reasonable in 43 I. C. C. 641, but

reduced by carriers to allow lumber interests to compete with Pacific coast shipments via Panama Canal, were subsequently increased to former level. Upon contention that such increase was in violation of section 4 (2) of the act, FOUND: Purpose of section 4 (2) is to prevent carriers from increasing rates after water competition has been eliminated by reduced rates. Here, voluntary reduction was not to destroy competition but to preserve it, but since it has continued undiminshed, restoration of rates to former basis does not fall within prohibition contained in that section. See 249 U. S. 557. Moreover, in 85 I. C. C. 270, commission stated it would not adjust rates from competing producing territories in order to equalize manufacturing costs. Woodstock Lbr. Co. v. B. & A., 129 I. C. C. 255.

(pp) Second-class l. c. l. rates on returned empty wooden bobbins from Massachusetts points on the Boston & Maine Railroad to Skowhegan, Me., found not unreasonable or otherwise unlawful as compared with third-class rates contemporaneously maintained in same territory on returned empty wooden spools and with second-class rates on textile spools in official territory. Maine Spinning Co. v. B. & M., 129 I. C. C. 266.

§5. Returned, Old Shipments or emigrant movables.

See Evidence §12 (3s); Through Routes and Joint Rates §15 (l).

(a) Rates on carload shipments of newsprint-paper winding cores, returned, from various points in eastern and c. f. a. territories to destinations in New York and New England States, found unreasonable to extent they exceeded contemporaneous sixth-class rates from and to same points. Record affords no basis for condemning level of rates applicable to l. c. l. shipments. Reasonable c. l. rates prescribed for future and reparation awarded. Washington Publishers' Asso. v. A. C. & H. B., 104 I. C. C. 4.

(b) Upon contention that shipments of returned newsprint-paper winding cores were not in fact returned shipments because title to cores had passed from mill owners, and movement after resale was separate and distinct from initial movement. FOUND: Provisions of contracts under which cores are sold to newsprint-paper users who in turn resell them to paper manufacturers are designed largely to facilitate bookkeeping and insure return of the cores. Inherent nature of such shipments rather than technical distinction raised should be regarded as controlling. Washington Publishers' Asso. v. A. C. & H. B.,104 I. C. C. 4, 8.

(c) Repeated use of returned empty containers or kindred articles employed in connection with initial movement is in interest of conservation and of commerce, and, as to articles of this nature, including newsprint-paper winding cores, the "returned" element may properly be taken into consideration, together with other factors, in determining reasonableness of rates thereon. Washington Publishers' Asso. v. A. C. & H. B., 104 I. C. C. 4, 8.

(d) Fifth-class rates assessed on worn-out and discarded boiler flues and tubes found applicable and not unreasonable. Complainant contends for scrap-iron rates upon theory that commodity shipped is merely scrap iron "reclaimed" under "another process equivalent to remelting," and that it should not be penalized because it reconditions and manufactures this material into gates and fences. However, scrap-iron rates are generally restricted to apply on scraps or pieces having value for remelting purposes only, the tariffs as a police measure also often requiring iron to be broken at point of origin so that it can not be put to any other use. Tubes and flues here shipped did not meet these requirements. Iowa Gate Co. v. B. & O., 104 I. C. C. 169.

(e) Shipments of salvaged miscellaneous iron and steel machinery parts billed as "salvaged government material" were assessed fifth-class rate on second-hand iron and steel machinery and parts. Complainant contends for lower scrap-iron rate, but offered no evidence to identify alleged sales of scrap iron with material involved other than copies of invoice dated five months and more than a year after delivery of shipments, upon which tonnage shown does not correspond with that shipped. FOUND: In absence of positive evidence that description of goods upon face of bills of lading and freight bills was erroneous, charges assessed not shown to have been illegal. Washington Salvage Co. v. P. R. R., 104 I. C. C. 291.

(f) Rate on "scrap or pieces of iron or steel having value for remelting purposes only" found not applicable to shipments of obsolete lathe parts. In instant

case the lathe parts were in no case broken up, and, therefore, did not come within the term "scraps or pieces" as used in tariff description. McCabe Lathe & Machinery Corp. v. N. Y., N. H. & H., 107 I. C. C. 311.

(g) Tariff rule provided for free return transportation of articles transported for exhibition at expositions and fairs held under public auspices. Polo ponies moved from Wichita, Kans., to Riverside, Calif., and Colorado Springs, Colo., where they were used in polo tournaments, then returned to Wichita. Carrier demanded applicable rates for such return movement, arguing that a polo tournament is not "an exposition or fair held under public auspices" whereas shipper contends that a polo game is an "exhibition" of the ponies corresponding to the riding of saddle horses or driving of coach horses at fairs. FOUND: View that a polo tournament is merely an exhibition of ponies accords to their riders a role quite below that played by them. Such a tournament is a series of games testing the skill of both riders and ponies, in which the former are the dominant factor. Rates assailed for return movement found applicable. Vickers v. A., T. & S. F., 107 I. C. C. 575.

(h) Rates and minimum weight applicable on returned empty iron or steel drums, c. l. and l. c. l., between points within official classification territory, found not unreasonable or otherwise unlawful, as compared with other rates and minimum weights in the same and other territories on same and other returned empty containers. Commission has recognized that in many instances rates for return movement of these commodities are upon less than a reasonable maximum basis. Western Paper Makers' Chem. Co. v. A. A. R. R., 109 I. C. C. 133.

(i) Commission has recognized that in many instances the rates provided by carriers for movement of returned empty used packages and containers were upon less than a maximum reasonable basis and has approved cancellation of exceptionally low rates on these commodities. See 54 I. C. C. 1. Western Paper Makers' Chem. Co. v. A. A. R. R., 109 I. C. C. 133, 136.

(j) Volume of traffic between points in official classification territory found not to warrant establishment of rates on returned empty iron or steel drums on other than class basis. On the contrary, class basis appears peculiarly appropriate for this traffic, involving, as it does, shipments from numerous points scattered throughout this territory but with no considerable volume from any one point. Western Paper Makers' Chem. Co. v. A. A. R. R., 109 I. C. C. 133, 136, 137, 138.

(k) Minimum weight on returned empty used iron or steel drums found not unreasonable as compared with minimum weights on same commodity new. The old drums are frequently painted, accumulate more or less dirt and rust in use, and not infrequently contain a small quantity of original contents, features tending to produce variations in weight justifying higher minimum weights on the old drums than on the new. Western Paper Makers' Chem Co. v. A. A. R. R., 109 I. C. C. 133, 138.

(l) Upon complaint seeking a lower rating on worn-out or burned-out electric automobile armatures than on new ones, HELD: The general rule in classifying is that used or secondhand articles will be given lower ratings than new articles of same kind only when old articles have no value except as junk. Departures from this rule are in cases of return shipments of various articles, such as bags or other containers used in connection with shipments. Old automobile electric armatures clearly are more than junk, and no justification appears for giving them the junk rating. Oklahoma Traffic Asso. v. A. & R. R. R., 109 I. C. C. 457, 461.

(m) Class rates on empty bottles, l. c. l., returned from points in West Virginia to Tazewell, Va., found unreasonable as compared with rates accorded other Virginia and West Virginia points. Reasonable distance scale of rates prescribed for future. Was-Cott Corp. v. K., G. J. & E., 109 I. C. C. 468.

(n) Shipments of ambulance axles purchased from the Government after manufacture of army ambulances was virtually discontinued were billed as "scrap iron." Carrier's inspector at point of origin classified shipments as "vehicle axles," and after further inspection at destination charges were collected at rates on "billets," into which the axles were manufactured. Tariff carrying the scrap-iron rate provided for its application on "scraps or pieces of iron or steel having value for remelting purposes only." HELD: Following Alaska Junk Co., 98 I. C. C. 551, rates on "vehicle axles"

were legally applicable, since the words "value for remelting purposes only" define nature of the articles and do not make the rate to be applied dependent upon use to which the commodity is put, and iron or steel articles having a recognized commercial value other than that of the elementary metal from which manufactured do not properly come within description of scrap. Southern Steel & Rolling Mill v. L. & N., 109 I. C. C. 539.

(o) Complainant attacked sixth class rates charged on worn out auto truck rims with solid rubber tires attached, carloads, from points on the New Haven in New York, Connecticutt, Rhode Island and Massachusetts to plant of complainant at Jersey City, N. J., as unreasonable, unjustly discriminatory and unduly prejudicial. The rims with tires attached are rated sixth class and was established following 68 I. C. C. 748. Worn out rims with tires attached do not require expeditious service or high grade equipment, are not susceptible to damage to any appreciable extent, and there is an outbound movement of the salvaged scrap rubber and of the products manufactured from the rims. Shipments are transported on car floats owned and operated by the New Haven and follow the same route to the end of Manhattan Island. They are handled over the float bridge of the Jersey Central which is opposite the Fulton terminal in Jersey City thence they are switched by the latter carrier to complainant plant. HELD, rate attacked unreasonable to extent they exceed the rates on scrap iron. Ames & Co. v. N. Y., N. H. & H. R. R., 112 I. C. C. 624.

(p) Rates on l. c. l. shipment of household goods and second-hand trailer from Bozeman, Mont., to Alameda, Calif., found applicable and not unreasonable. Commodity rate assessed on household goods was listed under item "Household Goods, taking 1st class rating under heading 'Household Goods or Emigrant Movables,'" complainant contending that it was also applicable on trailers which were included under general description "Emigrant Movables." There was no single description covering "Household Goods or Emigrant Movables" but each item was listed separately, household goods being included under both items. Trailers, however, were covered only by item "Emigrant Movables," but rate thereunder was not applicable to l. c. l. shipments. The commodity rate was therefore applicable on household goods but not on the trailer, a first-class rate being properly applied on latter. Desch v. N. P., 115 I. C. C. 401.

(q) Fourth-class rate on l. c. l. shipments of empty iron or steel acetylene gas cylinders returned from Butte, Mont., to Seattle, Wash., found unreasonable to extent it exceeded one-half of fourth-class rate, any quantity, subsequently established on this and various other kinds of empty returned containers from Seattle and other Pacific coast points to various destinations in western territory. Reparation awarded. Sherman & Reed v. C., M. & St. P., 118 I. C. C. 56.

(r) Rates on old secondhand barrels from Cynthiana and Poindexter, Ky., to Rochester and Syracuse, N. Y., found not unreasonable or otherwise unlawful as compared with lower rates contemporaneously in effect from Lexington and Winchester, Ky., to which Cynthiana and Poindexter are intermediate. The fourth-section departures were protected by an appropriate application, considered and disposed of in 100 I. C. C. 513, and orders entered in cited case will result in correction of the situation presented. Carriers showed that because of light loading of barrels, the earnings on shipments here considered were low; also that rates charged compare favorably with rates in general on old secondhand barrels from points in interior Kentucky, other than Lexington and Winchester, to territory north of the Ohio River. Liberty Cooperage & Lbr. Co. v. L. & N., 120 I. C. C. 379.

(s) Complainant attacked class rates charged on carload and less carload shipments of second-hand empty containers returned from points in Wisconsin and Michigan to Duluth, Minn., were unreasonable, unjustly discriminatory, unduly prejudicial and in violation of section four. Shipments were unrouted and some moved over Mineral Range to Houghton, Mich., thence D. S. S. & A. to Duluth. Charged forth class, less carloads and class D carloads. Prior to Dec. 30, 1919 returned empty secondhand containers were rated one-half of fourth class in the western classification. On that date the rating was raised to fourth class for less carloads and class D for carloads. On March 22, 1922 the South Shore established specific carload commodity rates, equivalent to one-half of fourth class rates, to apply on empty containers from and to certain points. On Nov 15, 1922 the South Shore pub-

lished rates on the basis of one-half of fourth class to apply on returned empty containers, any quantity, and this basis is still in effect. HELD, charges attacked unreasonable to the extent they exceeded charge which would have accrued at one-half of fourth class rate, subject to fourth class minimum charge, reparation awarded. Fitger Co. v. D. S. S. & A. Ry., 123 I. C. C. 27.

(t) Complainant attacked first class rate of 66.5c charged on old worn out engraved copper rolls, returned for reengraving, in less carloads, from Northumberland, Pa., to New York, N. Y., as unreasonable. Distance hauled 214 miles. The rating attacked has been applicable on engraved or etched copper rolls, whether old or new, for 14 years. No loss or damage claims have been presented on these shipments. On the evidence presented the principal if not the only question raised is whether the old engraved rolls shall have a lower rating than the newly engraved rolls. HELD, neither the rate assailed nor the classification rating applicable are unreasonable, complaint dismissed. Sunbury Converting Works v. D. L. & W. R. R., 123 I. C. C. 89.

(u) The Commission is not prepared to lay down the principle that old or second hand articles must be treated differently from new or that value is the controlling element in making rates. Such of these articles or parts as are in fact scrap are entitled to the scrap rate, but if they have any value as the articles which they originally purported to be, the Commission does not feel that it can require carriers to transport them at other than the regular tariff rates applicable to the new or originally transported article. Sunbury Converting Works v. D. L. & W. R. R., 123 I. C. C. 89, 92.

(v) Fourth-class l. c. l. and class D. c. l. rates charged on shipments of casks, kegs and cases containing empty bottles returned from points in Wisconsin and Michigan to Duluth, found unreasonable to extent they exceeded one-half of fourth-class rate subject to a fourth-class minimum charge contemporaneously in effect to St. Paul, Minneapolis, Chicago, and Milwaukee, which lower rate subsequently established from and to points here involved and were previously found reasonable by commission from various points to Duluth in 73 I. C. C. 637 and 95 I. C. C. 3. Reparation awarded. Fitger Co. v. D., S. S. & A., 123 I. C. C. 27.

(w) Rating and rate on engraved copper rolls returned for reengraving, l. c. l., found not unreasonable as compared with ratings and rates on new copper rolls, copper rivets, and other articles, or with commodities taking lower ratings and rates when worn-out than when new. Comparisons submitted by complainant, since unsupported by evidence concerning classification characteristics of these commodities, can not be given much probative value. On the other hand, evidence of carriers on that point indicates, as to some of the articles at least, that the new and old forms are practically distinct commodities. Moreover the policy has been followed in numerous cases that old or secondhand articles must not be treated differently from new. See 23 I. C. C. 432, 437. Sunbury Converting Works v. D., L. & W., 123 I. C. C. 89.

(x) Second-class rate applicable on reels in less than carloads charged on an l. c. l. shipment of wire-steel reels returned from Torrance, Calif., to Niles, Mich., found not unreasonable or otherwise unlawful. A lower c. l. commodity rate was in effect on second-hand reels or spools but complainant could not profitably use this rate as it was not feasible for it to accumulate a carload. Reference is made to lower l. c. l. rates on typewriters and lawn mowers from and to these points, also for returned shipments of iron and steel blocks and card-decking racks but latter named commodities are used to facilitate packing and loading westbound c. l. shipments of automobiles. Here the shipments were sporadic, the plant of complainant at Torrance has been closed for more than a year, and further shipments are unlikely. Manifestly, establishment of a commodity rate or an exception to usual classification for an l. c. l. movement under such circumstances would not be justified. Thomas Traffic Co. v. P. E. Ry., 123 I. C. C. 535.

(y) Complainant sought rates on shipments of iron and steel articles, applicable on "scraps and pieces of iron and steel which have value solely for remelting purposes" upon contention that articles had no commercial value; there was no demand for them in their original form, and they were actually remelted. HELD: To come within description contended for, articles must be reduced to

fragments, scraps or pieces so as to render them useless for any purpose other than remelting, for it is the nature of articles shipped, not price at which it is sold, use to which it is put, or commercial demand, that determines whether rate on scrap iron and steel applies. See 98 I. C. C. 551 and other cited cases. Here evidence indicated that articles were transported in their original form, and were described individually in bills of lading. Charges collected on that basis were therefore applicable, not unreasonable or otherwise unlawful. Hyman-Michaels Co. v. N. & W., 126 I. C. C. 195.

(z) Charges on returned empty containers are not and never have been based upon the cost of service. National Asso. Ice Cream Mfrs. v. Express Co., 128 I. C. C. 143, 145.

(aa) Joint rate on secondhand dredging machinery from Iron Mountain, Mont., to Baker, Oreg., found not unreasonable as compared with lower rate previously in effect from Montana points to Portland, Spokane, and Seattle, nor with lower rate on secondhand sugar-making machinery from Sunnyside and Yakima, Wash., to Chinook, Mont. Lower rates were established to take care of specific movements, and were merely paper rates as no other traffic moved thereunder. Class A rate is the normal and reasonable rate for sporadic movements of this character, whereas rate charged was but a percentage of the Class A basis. Sweet Bros. v. N. P., 128 I. C. C. 543.

§6. Company Material.

See Advanced Rates §9½; Discrimination §6.

(a) Shipment of wrought-iron scrap from Etowah, Tenn., to Cleves, Ohio, purchased under contract f. o. b. Cincinnati, from L. & N. R. R., then under Federal control and sold by complainant, f. o. b. Cleves, was assessed the rate Etowah to Cleves. FOUND: As material was purchased from railroad administration on price basis delivered at Cincinnati, charges collected in excess of that named in effective tariff for transportation from Cincinnati to Cleves were assessed in violation of section 6 (7) of the act. Reparation awarded. Hyman-Michaels Co. v. Director General, 128 I. C. C. 689.

§6½. To Encourage Markets or Meet Competition.

See Market Competition.

(a) Respondents proposed to reduce to 90c the all rail rate on canned goods, including fruits, vegetables, milk and fish, carloads, minimum 60,000 pounds, from Pacific coast points to eastern defined territories, Groups B to J inclusive, Group N and portions of Group M. Present rate is $1.05 to whole of eastern defined territories, Groups A to N, except Colorado common points, to which it is 98c. Certain of the figures are estimates and others are drawn from different sources, but there seems to be no doubt that the all rail lines have not kept pace with the intercoastal lines. Nevertheless, it is not altogether clear, contrary to what respondents would have the Commission believe, that the spread between the transcontinental and intercoastal rates is wholly responsible. Consideration of the record leads to the belief that at the present rate of $1.05 the transcontinental carriers are laboring under a disadvantage in competing with the intercoastal lines for the traffic in Pacific coast canned goods, but it indicates also that the proposed rate is lower than necessary to meet the competition in a reasonable degree. HELD, suspended schedules not justified, without prejudice to the filing of a rate of 98c. Canned goods from Pacific coast, 132 I. C. C. 520.

§6½a. Restricted Routes.

See Restricted Rates.

(a) Proposal to reduce rates on grain and products from points in Nebraska, Iowa, Illinois, Missouri, Kansas, Oklahoma, and Arkansas to Louisiana, routed through Arkansas, and to restrict routing so that such reduced rates will not apply over routes through Texas, found not justified. In 104 I. C. C. 272, commission found such restriction of routing not justified by transportation conditions and that resulting disadvantages to Texas mills would be unlawful in violation of section 3 of the act. No evidence has been submitted in present record to warrant a different conclusion. Grain and Products to Louisiana, 113 I. C. C. 259.

III. TARIFFS AND CONSTRUCTION.

See Tariffs.

§7. In General.

(a) Scrap steel rails from Detroit to

Kenosha, Wis., purchased "f. o. b. Chicago" moved under through bills of lading at joint rates. Upon complaint alleging overcharges due to failure of director general to refund charges down to basis of lowest published rate from Chicago to Kenosha, upon theory that movements from Detroit to f. o. b. point was separate and distinct from those beyond. HELD: Complainant would have been entitled to lowest rate from Chicago to Kenosha had shipments originated at Chicago or had billing indicated that rails were "company material" entitled to free transportation to that point. However, shipments originated at Detroit, moved on through bills of lading correctly describing commodity without indicating that it was company material. Moreover, through movements were intended by consignor and nothing indicates that movement to Chicago was to be a nonrevenue haul or that transportation should begin there. Claim arises out of terms of contract of sale Oshkosh. The shipments to Grand tion. Joint rate assessed found applicable. Briggs & Turivas v. Director General, 112 I. C. C. 313.

(b) Fifth-class rate was assessed on secondhand wire rope. Contemporaneously a lower rate applied on "junk, consisting of * * * Old Rope." Upon contention that rope shipped was of more value than ordinary junk; was intended to be used further; and that rate assessed was therefore applicable, HELD: Item covered old rope without restriction. It apparently was not contemplated that articles included in the item could not be put to further use as such articles as old tierces and barrels are listed. If carriers intended to limit application of rates they should have done so by proper tariff provision. Moreover, in 88 I. C. C. 217 it was held that old rails were entitled to rate under heading "Scrap Iron and Scrap Steel," although they were to be further used. Reparation awarded. Zimmerman-Wells-Brown Co. v. Director General, 122 I. C. C. 199.

REFRIGERATION

I. CONTROL AND REGULATION.
- § 1. Jurisdiction of Commission.
- § 1½. Private refrigerator lines.

II. DUTY TO FURNISH.
- § 2. In general.
- § 3. Incidental services and charges.
- §3½. Icing and re-icing.
- §3½a. Top icing.

III. REASONABLENESS OF CHARGES.
- § 4. In general.
- § 4½. Facilities used.
- § 4½a. Private refrigerator cars.

IV. TARIFFS AND PUBLICATION.
- § 4¾. In general.
- § 5. Obligation to file.
- § 6. Construction in general.
- § 6½. Rules.

V. WEIGHTS.
- § 7. Minimums.

VI. REPARATION.
- § 8. In general.
- § 9. Liability for damage.

CROSS REFERENCES

See Allowances §8 (3⅛); Cars and Car Supply §9⅝, §9⅞ (3); Precooling; Perishable Freight; Protective Service; Top Icing.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction Of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) Refrigerator cars in which vegetables and fruits are shipped are largely owned by private corporations. However, rail carriers own the stock in these companies and control their policy. Commission's control over these cars is through rules and regulations of carriers hauling them. Protective Service Rules on Perishable Freight, 104 I. C. C. 79.

§1½. Private Refrigerator Lines.

(a) Refrigerator car companies are not common carriers subject to the interstate commerce act. Refrigeration Charges on Vegetables, 120 I. C. C. 555, 557.

(b) Defendants question jurisdiction of the Commission to consider the reasonableness of the refrigeration charges assailed, to prescribe reasonable charges for the future, or to award reparation on the ground that the charges applies in part to transportation without the ter-

ritorial boundaries of the United States. In numerous cases the Commission has considered joint rates between Canada and the United States, found them unreasonable, and awarded reparation against the United States lines defendant for the full amount of the damages sustained. Simpson v. G. T. W. Ry., 129 I. C. C. 430, 431.

II. DUTY TO FURNISH.

§2. In General.

(a) Carriers are required to furnish refrigeration service to shippers at a reasonable cost. Doughty v. A. C. L., 123 I. C. C. 522, 524.

§3. Incidental Services and Charges.

See Additional Charges and Services; Special Rates and Services; Switch Tracks and Switching §5; Transportation.

(a) Freight charges assessed by rail carriers for hauling ice in bunkers of express refrigerator cars from an ice plant to point of loading perishable produce for express shipment, found properly collected and not unlawful. Complainant contended that since it did not make out or authorize bills of lading charges were illegally assessed; that carriers' tariff does not provide similar charge for ice in bunkers antecedent to movement of perishable produce by freight; and that charges were therefore unduly prejudicial to express shippers. However, carriers' failure to publish special rates for ice in bunkers can not impair the validity of customary rates which are published to apply on ice moving in any equipment. Moreover, fact that rules governing express refrigeration are not so favorable as freight-service rules does not constitute undue prejudice in view of difference in service afforded. Allen & Co. v. B., C. & A., 122 I. C. C. 351.

§3½. Icing and Re-icing.

See Top Icing.

(a) Charge of $50 per car for icing shipments of grapes moving from points in Canada to Boston, found not unreasonable. No evidence was introduced tending to show that charge was unreasonable, complainant's case being based solely upon assumption that cars needed only a few dollars' worth of ice upon arrival at icing point. Consignors however were at fault in indicating on bills of lading that cars were to be iced in transit to full capacity at all regular icing stations. Had they noted instead that cars were not to be re-iced the applicable charges would have amounted to but $10 per car. Kingman Co. v. C. V. Ry., 104 I. C. C. 445.

(b) Rule in exceptions to official classification provided for absorption by carriers of icing and re-icing charges. Territorial application of this rule was restricted to points on lines of originating and issuing carriers for which tariff is published, the Wabash being only carrier so named. Upon contention that under the rule charges for icing in transit of shipments of dressed poultry were in excess of published tariff rates. HELD: Restriction of above rule is clear. Individual tariffs of carriers performing icing service provided for separate charges for icing and there is general provision in exceptions to official classification for application of tariffs of individual carriers in respect of miscellaneous charges, including icing. Charges, with exception of those assessed by Wabash, found applicable. Charges by Wabash found inapplicable and reparation awarded. Schweitzer Co. v. Director General, 109 I. C. C. 663.

(c) Upon contention that assessment of commodity rates on top-ice in lettuce crates was unjustly discriminatory and unduly prejudicial to shippers of vegetables and unduly preferential of shippers of packing-house products, fresh meats, and analogous commodities, in that tariffs provide for free transportation of ice and salt for preservation of latter commodities, HELD: Vegetables are not sold in competition with fresh meats and fish and transportation conditions surrounding the two are dissimilar. Moreover, mere showing that a practice exists with respect to transportation of ice with shipments of certain commodities which differs from that applicable to transportation of ice with lettuce, is not sufficient to establish unjust discrimination or undue prejudice. Hulsey-Bessent Co. v. D. & R. G. W., 118 I. C. C. 707, 709.

(d) Proposed increased refrigeration charges on vegetables, except cabbages and tomatoes, from points in Louisiana and Mississippi to destinations in all other States and in Canada, found not justified. Carriers submitted evidence and data on cost and quantity of ice in bunkers cost of hauling ice in bunkers, cost of repairing and maintaining refrigeration devices, cost of switching to

and from icing stations, and cost of supervision. While cost may exceed the aggregate charge, the cost studies submitted by carriers do not prove that fact, contain many infirmities, and are not persuasive. Refrigeration Charges on Vegetables, 120 I. C. C. 555.

(e) Complainant alleged that reicing charges on an interstate carload shipment of oranges at Potomac Yard, Va., were unjust and unreasonable, and that rule 225 of Dearborn's tariff I. C. C. 1 is unjust and unreasonable. Shipment moved from Nacatee, Fla., March 25, 1925 destined to Waycross, Ga. On the same day it was diverted to Potomac Yard. After its arrival there, the shipment was diverted on April 2, 1925 to Rochester, N. Y. The original bills of lading bore notations "under full refrigeration" and "reice at all regular stations." For reicing the car at Potomac Yard defendants assessed a charge of $4.05. The fact relied upon by complainant namely, the bunker capacity of the car as stated in the tariffs, does not alter the fact that the car was delivered at Potomac Yard with the requirement amount of ice and the further fact that 1,800 pounds were furnished at that point. The erroneous statement in the tariff, however, should be corrected immediately. Complainant further contends that rule 225 should provide that cars arriving at regular reicing stations will be reiced immediately on arrival at carriers expense, even though bunkers are three-fourths or more full of ice. The record is insufficient to warrant any change in this tariff rule upon the ground of unreasonableness. HELD, charge assessed applicable, complaint dismissed. Chase & Co. v. C. H. & N. Ry., 122 I. C. C. 383.

(f) Freight charges assessed by rail carriers for hauling ice in bunkers of express refrigerator cars from an ice plant to point of loading perishable produce for express shipment, found properly collected and not unlawful. Complainant contended that since it did not make out or authorize bills of lading charges were illegally assessed; that carriers' tariffs do not provide similar charge for ice in bunkers antecedent to movement of perishable produce by freight; and that charges were therefore unduly prejudicial to express shippers. However, carriers' failure to publish special rates for ice in bunkers can not impair the validity of customary rates which are published to apply on ice moving in any equipment. Moreover, fact that rules governing express refrigeration are not so favorable as freight-service rules does not constitute undue prejudice in view of difference in service afforded. Allen & Co. v. B. C. & A., 122 I. C. C. 351.

(g) Complainant contended that express company failed or refused to furnish information to shippers relative to icing and re-icing charges on express shipments, and showed in certain cases that expense bills rendered at destination were not properly itemized. HELD: While consignee is entitled to this information as a matter of right, there is no provision of law which obliges the express company to furnish it to a party other than the one paying express charges. Allen & Co. v. B., C. & A., 122 I. C. C. 351, 358.

(h) Re-icing charges assessed at Potomac Yard, Va., on vegetables from Wilmington and Rocky Point, N. C., consigned to Potomac Yard and diverted to Philadelphia, found applicable and not unreasonable. Tariff rule provided for re-icing when cars were stopped on shipper's orders at intermediate points between origin and destination, or while held at original or diverted destination and later forwarded. Here no diversion orders were received until after shipments arrived at Potomac Yard, and cars were re-iced in accordance with tariff regulations. While in instant case shipments moved on regular schedule often cars require re-icing before forwarding instructions are received, and it is not unreasonable to make an additional charge for such service. Moreover, assessment of charges could have been avoided had shipments been billed to final destination or diversion orders furnished prior to arrival of shipments at Potomac Yard. Doughty v. A. C. L., 123 I. C. C. 522.

III. REASONABLENESS OF CHARGES.

§4. In General.

See Commodity Rates §2½ (i); Reasonableness of Rates.

(a) Icing and Re-icing: Charge of $50 per car for icing shipment of grapes moving from points in Canada to Boston found not unreasonable. No evidence was introduced tending to show that charge was unreasonable, complainant's

case being based solely upon assumption that cars needed only a few dollar's worth of ice upon arrival at icing point. Consignors, however, were at fault in indicating on bills of lading that cars were to be iced in transit to full capacity at all regular icing stations. Had they noted instead that cars were not to be re-iced the applicable charges would have amounted to but $10 per car. Kingman Co. v. C. V. Ry., 104 I. C. C. 445.

(b) Stated refrigeration charges on melons from Maricopa County, Ariz., to Texas common points, Denver, and points east thereof, found not unreasonable but unduly prejudicial to extent they exceed contemporaneous stated refrigeration charges from points in Bakerfield district in California to same destinations by more than $10 per car. Maricopa County Farm Bureau v. A. & S., 109 I. C. C. 472.

(c) Cost of supervision, cost of ice, cost of transporting ice, repairs to bunkers, and cost of switching at re-icing stations are all items of expense that may properly be considered in determining cost of performing a refrigeration service, 56 I. C. C. 449, 527, to which should also be added a certain element of risk which the carrier must assume in rendering the service, 20 I. C. C. 106, and a fair profit upon the transaction, 214 U. S. 299. Maricopa County Farm Bureau v. A. & S., 109 I. C. C. 472, 474, 475.

(d) Tariff rules covering icing charges provided that such charges would be in addition to freight charges, but individual tariff of carrier performing icing service provided that such charges would be borne by carrier. Following 77 I. C. C. 678, wherein commission found that where a tariff contains conflicting provisions the one according lowest rates or charges shall govern, charges assessed for icing in transit of shipments of dressed poultry from Chicago to New York found inapplicable and illegal. Reparation awarded. Schweitzer Co. v. Director General, 109 I. C. C. 663, 665, 666.

(e) Complainant attacked refrigeration charges on spinach, carloads, from Texas to eastern destinations as unreasonable for the standard refrigeration service rendered, and to the extent they exceed charges which would accrue under a modified cost of ice basis particularly during the winter season, Dec. 15 to March 15 inclusive. Destinations are in Trunk line territory. Stated refrigeration charges are $95 to New York, Jersey City and Philadelphia, $100 to Boston, and $90 to the other destinations. It does not appear that the service required on this traffic under a modified cost of ice basis during any season of the year would be substantially less than that required under standard refrigeration. HELD: charges attacked not unreasonable, complaint dismissed. Miller v. I. G. N. Ry., 112 I. C. C. 538.

(f) Refrigeration charges on spinach from certain Texas points to eastern destinations found not unreasonable. Carriers offered evidence tending to show that charges assailed were not in excess of cost of the service plus a reasonable profit, the method used in such cost studies being the same as those described in 20 I. C. C. 106 and 56 I. C. C. 452. Moreover, icing under standard refrigeration is performed at numerous points along the route, and cost is affected more by number of icings than by aggregate amount of ice furnished. Nor does it appear that service required on this traffic under a modified cost-of-ice basis during any season of the year would be substantially less than that required under standard refrigeration. Miller v. I. & G. N., 112 I. C. C. 538.

(g) Expense for refrigeration, for special terminal service for reconsignment and for inspection should not be covered by line haul rates. Gugenheim Goldsmith Co. v. G. H. & S. A. Ry., 113 I. C. C. 459, 462.

(h) Complainant attacked refrigeration charges on three cars of peaches shipped in Oct., 1924, from Burt and Lockport, N. Y., to Grand Rapids, Mich., and Oshkosh, Wis., as unreasonable and unjustly discriminatory. Two shipments originated at Lockport and one at Burt, and all were originally consigned to Cleveland, O., under standard refrigeration. After arrival at Cleveland each car was reiced and afterwards reconsigned to Chicago, Ill. After arrival there each car was re-iced and later again reconsigned, two to Grand Rapids and one to of defendant's line from Chicago to des- Rapids were back hauled over a portion tination. Defendant collected $4 per ton for the ice furnished while cars were held for reconsignment orders, and stated refrigeration charges per car of $60 to Oshkosh and $45 from Chicago to Grand Rapids. The applicable stated refrigeration charges per car were: From points of origin to Cleveland, $50; Chicago, $60; Grand Rapids, $55; Oshkosh,

$65. Chicago to Grand Rapids, $45 per car. HELD: The present record is meager and affords no basis for finding that the applicable charges were unreasonable or otherwise unlawful, complaint dismissed. Graham v. N. Y. C. R. R., 115 I. C. C. 325.

(i) Proposed charges for use of refrigerator cars in Southeastern States, for transportation of fruits, vegetables, and other perishable freight, l. c. l., covered by one bill of lading, from one consignor to one consignee at one destination, minimum weight 12,000 pounds, any deficit in weight to be charged for on basis of highest-rated article in shipment, found justified. Present rates for handling of l. c. l. shipments of perishable products have been in effect for many years and do not contemplate transportation in refrigerator equipment. The use of refrigerator equipment for such traffic constitutes a new service, the charges for which carriers have justified. Charges on Refrigerator Equipment, 115 I. C. C. 198.

(j) Where a tariff rule providing for assessment of stated refrigeration charges is silent with respect to question of back hauls, such rule is subject to same interpretation to which the commission would resort in the case of a rate from and to certain points which is not restricted as to routing. In such cases commission's repeated ruling has been that although all carriers participating in movement are parties to tariffs the through rates will not apply where there has been a back haul. Graham v. N. Y. C., 115 I. C. C. 325.

(k) Respondents proposed to increase refrigeration charges on carload shipments of vegetables, other than cabbage and tomatoes, from Mississippi and Louisiana to destinations in all other states and Canada. Present charges for refrigeration of vegetables, except as modified in 98 I. C. C. 55, followed 56 I. C. C. 449. They are so-called stated refrigeration charges under which the carriers undertake for a specified amount per car to provide complete refrigeration service from point of origin to groups of destination. The proposed schedules would effect increases of $10 per car from all points in Mississippi, $5 per car from Louisiana groups A and B, and $10 per car from Louisiana group C. If the suspended schedules become effective tomatoes and cabbages will take the same refrigeration charges from Louisiana as other vegetables and from Mississippi $10 per car less than other vegetables. The cost of ice is the largest single item entering into the cost of the refrigeration service here considered. There appears to be no doubt that an average of slightly more than 9,000 pounds of ice was placed in the bunkers of the cars used for test purposes. But it does not follow that 9,000 pounds may properly be used as one of the bases upon which to calculate the cost of service under service conditions as distinguished from test conditions. No evidence of the out of pocket cost of hauling the ice was submitted by respondents. They have not justified their estimates of average ice haulage cost. Inasmuch as numerous witnesses agreed that the principal cost of repairs to bunkers was the general deterioration caused by the carriage and melting of ice, rather than by the dropping of the ice onto the grates, it seems obvious that the same fixed cost may not fairly be used as a factor in hauls of widely varying lengths. Respondents have fairly well supported the use of a figure of 35 cents for cost of switching to and from icing stations. Respondents have elected to rest their justification of the proposed increased refrigeration charges upon a showing that the present charges are less than the sum of the cost elements considered. That showing is not persuasive. The cost may exceed the aggregate charge but they have not proved it, and suspended schedules not justified. Refrigeration Charges on Vegetables, 120 I. C. C. 555.

(l) Proposed increased refrigeration charges on vegetables, except cabbages and tomatoes, from points in Louisiana and Mississippi to destinations in all other States and in Canada, found not justified. Carriers submitted evidence and data on cost and quantity of ice in bunkers, cost of hauling ice in bunkers, cost of repairing and maintaining refrigeration devices, cost of switching to and from icing stations, and cost of supervision. While cost may exceed the aggregate charge, the cost studies submitted by carriers do not prove that fact, contain many infirmities, and are not persuasive. Refrigeration Charges on Vegetables, 120 I. C. C. 555.

(m) Shippers in protesting proposed increases in refrigeration charges on vegetables conceded that much of the distress in the industry is direct result of labor, climatic, and market conditions for which carriers can not be held re-

sponsible, but insist that just such conditions as these fall peculiarly within the purview of the Hoch-Smith resolution. HELD, that whatever condition of the vegetable-growing industry, there is no warrant in law for requiring carriers to furnish refrigeration service at charges which are less than compensatory. Refrigeration Charges on Vegetables, 120 I. C. C. 555, 560, 561.

(n) The burden of justifying proposed increased refrigeration charges rests upon carriers. Refrigeration Charges on Vegetables, 120 I. C. C. 555, 562.

(o) Where tariff provided carload rates for strawberries shipped in refrigerated cars, shipper paying carload rate transportation, though not loading car to maximum, must pay flat rate icing charges thereon. Allen v. New York, P. & N. R. Co., 15 Fed. (2d) 532.

(p) Complainant alleged that the refrigeration charges exacted on 22 cars of tomatoes from Port Huron, Mich., originating at points in Mississippi, to Toronto and Montreal, Can., were unreasonable. At Port Huron they were placed under refrigeration for the purpose of checking the ripening process and to prevent deterioration. Refrigeration charges of $55 and $65 per car to Toronto and Montreal, respectively, were collected. HELD, charges assailed not unreasonable, complaint dismissed. Simpson Co. v. G. T. W. Ry., 129 I. C. C. 430.

(q) Complainant alleged that the rate applicable on two cars of watermelons shipped from Stanton and Williston, Fla., to Sacramento, Calif., on May 15, and 29, 1922 was unreasonable. Class C of $2 was applicable. On Jan. 1, 1922 prior to the movement the carriers made a country wide reduction of 10% in the class and commodity rates applicable on farm products, including watermelons. Through error the supplement to the tariff publishing the rate assailed contained a clause limiting the reduction to distance class rates and through commodity rates. On June 1, 1922 subsequent to the movement, the clause was eliminated and the class C rate applicable on watermelons became $1.80. HELD, rate assailed was unreasonable to extent it exceeded $1.80, undercharges waived, complaint dismissed. Shafton Co. v. S. P. Co., 132 I. C. C. 715.

(r) Refrigeration charges on tomatoes from Port Huron, Mich originating at Mississippi points, to Toronto and Montreal, Canada, found not unreasonable. Port Huron is the nearest point to destination in a group designated in refrigeration tariff as Group B, which embraces all points in southern peninsula of Michigan. Complainant's contention that because their shipments moved to Port Huron under ventilation they should receive special consideration in the form of lower refrigeration charge, not sustained. Refrigeration could have been had from any point in above group, but complainant elected to take service only from Port Huron, and if they did not desire full refrigeration from that point they had option of moving shipments at actual cost of ice plus charge of $7.50 per car. Moreover, in 56 I. C. C. 449, commission approved present grouping, and record here does not justify disturbing adjustment there authorized. Simpson Co. v. G. T. W., 129 I. C. C. 430.

(s) Refrigeration charges on beets and carrots with "clipped tops" in straight or mixed carloads, from points in lower Rio Grande Valley of Texas to destinations east of Mississippi River and north of Ohio River, found not unreasonable, discriminatory, nor unduly prejudicial as compared with charges on fruits and vegetables from same and various other points. Evidence including carrier's cost study, analyzed in Appendix 2 of record, does not warrant a disturbance of charges. Carfiel & Morris v. N. Y. C., 129 I. C. C. 658, 663, 667.

IV. TARIFFS AND PUBLICATION.

See Tariffs.

§4¾. In General.

(a) Complainant's order for refrigerator cars stated "Shipments to move under full tank refrigeration," no other instructions being given. Car furnished was iced for loading and was forwarded under standard refrigeration, being reiced at four points en route. Contention that because no instructions were given other than to furnish a car iced for loading, shipment should have started with bunkers loaded and moved without further icing en route, not sustained, the applicable tariff providing that when shipments are received from shipper without instructions as to character of service desired, shipments would be handled under full tank refrigeration. Johnston v. A. C. L., 118 I. C. C. 1.

(b) Shipper ordered a half-tank refrigerator car but on date order was placed no car of this type was available. Carrier furnished a full-tank car which was accepted, loaded, and forwarded, bills of lading bearing notation "Full tanks ice." HELD: Under applicable tariffs and circumstances of this case shipper had option of either accepting the full-tank car, or waiting until a car of type ordered became available, but having elected to follow former course, the published tariff charge covering full-tank refrigeration assessed was applicable. Moreover, record fails to establish that carrier received reasonable advance notice, to which it was entitled under its tariffs, of type of car desired. Chase & Co. v. A. C. L., 118 I. C. C. 289.

§6. Construction in General.

(a) Tariff rules covering icing charges provided that such charges would be in addition to freight charges, but individual tariff of carrier performing icing service provided that such charges would be borne by carrier. Following 77 I. C. C. 678, wherein commission found that where a tariff contains conflicting provisions the one according lowest rates or charges shall govern, charges assessed for icing in transit of shipments of dressed poultry from Chicago to New York found inapplicable and illegal. Reparation awarded. Schweitzer Co. v. Director General, 109 I. C. C. 663, 665, 666.

(b) Complainant alleged that by reason of erroneous classification and refrigeration charges assessed on cars of cantaloupes, made prior to June 20, 1923, from Heber, Calif., to interstate destinations in United States and Canada, were unjust, unreasonable, discriminatory and unlawful. Perishable Protective tariff carries in item 1130 a list of perishable commodities. Over the list appears the following: "Perishable commodities are articles which are susceptible to deterioration or decay, and/or which may be protected by refrigeration, icing, ventilation or against cold, including." The list includes both cantaloupes and melons. HELD: classification of cantaloupes as melons was not in error and charges attacked not unlawful. HELD: complaint dismissed. Brown v. C. R. I. & P. Ry., 112 I. C. C. 545.

(c) Shipment was routed for Erie delivery in New York City without any particular point being specified. Upon arrival at Croxton, N. J., the point at which such shipments destined to New York are held, consignee was notified and car ordered to Duane Street, New York. Due to congestion at that station, carrier requested and consignee acquiesced in elimination of shipment from its order. Car remained on hand and subsequently an order for Duane Street delivery was received and executed. Demurrage and extra refrigeration charges for the hold period during which shipment awaited disposition orders found applicable under tariffs providing for their assessment under above circumstances. Northwestern Fruit Exchange v. E. R. R., 112 I. C. C. 29.

(d) On plums originally billed from Sanborn, N. Y., to Lockport, N. Y., instructions were given carrier to initially ice only. Upon arrival car was reconsigned to Philadelphia with instructions to furnish full standard refrigeration. Separate refrigeration charges were assessed for the two movements. Upon contention that proper charges were for standard refrigeration for the entire movement, which shipper would have been entitled to had request therefor been originally made, FOUND: As there was no such request, shipper entered into separate contracts for refrigeration services in connection with the two movements, and tariff rules did not provide for cancellation of charges for original movement and application of standard charges from original origin point to ultimate destination, the charges collected were applicable and not unreasonable. Rinelli v. N. Y. C., 112 I. C. C. 111.

(e) Tariff item carried a list of perishable commodities in which was included both cantaloupes and melon. Another item showed tables of perishable commodities, one column being cluded both cantaloupes and melons. headed "Melons, all kinds." By supplement the first item was amended, in so far as it applied to cantaloupes, by a note making reference to item "Melons, all kinds," the latter being subsequently amended by listing the varieties of of melons, cantaloupes being named separately. HELD: There being no evidence that prior to filing of this complaint any question was raised as to application of charges on basis of those provided for "Melons, all kinds," the classification of cantaloupes as melons was not in error and refrigeration charges assessed accordingly on ship-

ments moving from Heber, Calif., to interstate destinations and to Canadian points were not unlawful. Brown v. C., R. I. & P., 112 I. C. C. 545.

(f) The refrigeration tariff is subject to the same interpretation to which the commission would resort in a case of a rate from and to certain points which is not restricted as to routing. In such cases the commission has repeatedly found that although all the carriers participating in the movement are parties to the tariffs the through rates will not apply where there has been a back haul. Graham v. N. Y. C. R. R., 115 I. C. C. 325, 326.

(g) Complainant alleged that by reason of defendant's error proper refrigeration instructions were not given on a car of cucumbers shipped July 2, 1924, from Mount Olive, N. C., to Chicago, Ill., with the result that he paid refrigeration charges in the amount of $80 in violation of sections 1 and 7 of the act. On July 1, 1924, agent of complainant placed an order with defendants' agent at Mount Olive for five refrigerator cars for loading "shipments to move under full tank refrigeration." N. P. car 93648 containing 10,600 pounds of ice was one of the cars so placed. The car was loaded with cucumbers and consigned to Chicago. No further instructions were given as to icing and the car was forwarded under standard refrigeration, and was re-iced at four points enroute to Chicago. The proper tariff charge of $80 was assessed. The reasonableness of this charge is not assailed. Complainant contends that the shipment was improperly forwarded under refrigeration because no instructions were given other than to furnish a car iced for loading. Complainant intended that the car should start with the bunkers loaded with ice and move without further icing en route. Tariff provided that when shipments were received from the shipper without instructions as to the character of service desired but with ice in tanks or bunkers of car the shipment would be handled under refrigeration. HELD: Applicable charges not unreasonable, complaint dismissed. Johnston v. A. C. L. R. R., 118 I. C. C. 1.

(h) Where a tariff rule providing for assessment of stated refrigeration charges is silent with respect to question of back hauls, such rule is subject to same interpretation to which the commission would resort in case of a rate from and to certain points which is not restricted as to routing. In such cases commission's repeated ruling has been that although all carriers participating in movement are parties to tariffs the through rates will not apply where there has been a back haul. Graham v. N. Y. C., 115 I. C. C. 325.

(i) Complainant alleged that the refrigeration charges on several hundred cars of cantaloupes shipped between March 1, 1920 and June 20, 1923 from Arizona and California to destinations in United States and Canada were inapplicable in violation of section 6. Complainants rest their case that cantaloupes are not melons within the meaning of the tariff, and that the charges are applicable because cantaloupes are "perishable freight n. o. i. b. n. No attack is made against the reasonableness of the refrigeration charges as such. Because cantaloupes and melons sometimes are frequently shown separately in freight tariffs does not establish that cantaloupes are not melons within the meaning of the tariff. Cantaloupes, although frequently referred to by that name, are commercially classified under the term melons and that a cantaloupe would be generally understood to be a kind of melon, and being in fact a variety of muskmelon, it can not reasonably be asserted that they are not melons. HELD, classification of cantaloupes as melons are not in error, and charges attacked not unlawful, complaint dismissed. Di Giorgio Fruit Co. v. A. E. R. R., 128 I. C. C. 31.

§6½. Rules.

(a) Protective tariff rule governing l. c. l. shipments provided that carriers would furnish refrigerator cars when aggregate weight of shipments was not less than 15,000 pounds, with no charge for refrigeration service unless specifically provided for in separate tariffs. Upon contention that shipments of strawberries were l. c. l. shipments entitled to benefits of the rule. FOUND: As each crate was not marked as required by classification to obtain benefit of l. c. l. rate, cars used were ordered for c. l. shipments, shipping orders signed by or for shipper showed minimum weights applicable to c. l. shipments, and bore notations having application only to c. l. traffic under the protective tariff, the stated refrigeration charges applicable thereto were legally assessed. Allen & Co. v. P. R. R., 107 I. C. C. 18.

(b) Proposal to amend rule in perishable protective tariff by excepting free refrigeration service on l. c. l. shipments of fruits and vegetables moving between points in Illinois classification territory, designed for purpose of preventing shippers from billing at existing l. c. l. commodity rates and obtaining transportation and refrigeration service at a lower total charge than would result from shipping under another rule, which provides for l. c. l. refrigeration service at l. c. l. rates, plus stated c. l. refrigeration charge, or, in the case of heavier shipments, than would result from using c. l. rates and stated refrigeration charges, found not justified. While proposed amendment would offset low line-haul rates, resort to charges for special services is not a proper means of maintaining a parity in freight rates. Refrigeration of L. C. L. Perishable Freight, 107 I. C. C. 179.

(c) Rule in exceptions to official classifications provided for absorption by carriers of icing and re-icing charges. Territorial application of this rule was restricted to points on lines of originating and issuing carriers for which tariff is published, the Wabash being only carrier so named. Upon contention that under the rule charges for icing in transit of shipments of dressed poultry were in excess of published tariff rates. HELD: Restriction of above rule is clear. Individual tariffs of carriers performing icing service provided for separate charges for icing, and there is general provision in exceptions to official classification for application of tariffs of individual carriers in respect of miscellaneous charges, including icing. Charges, with exception of those assessed by Wabash, found applicable. Charges by Wabash found inapplicable and reparation awarded. Schweitzer Co. v. Director General, 109 I. C. C. 663.

RELATIVE RATES

See Advanced Rates §5 (1), §5 (2), §11½, §15; Blanket Rates §8, §12½; Class Rates §2 (zz); Classification §20; Commodity Rates §2; Differentials §2, §6; Discrimination §3½, §3½a (zz), §7, §13; Distance Rates; Equalization of Rates III, §8; Evidence §13, §28, §31, §65, §66; Reasonableness of Rates §28; Reparation §12; Through Routes and Joint Rates §8, §13½.

RELEASED RATES

I. CONTROL AND REGULATION.
§ ½. In general.
§ 1. Jurisdiction of Commission.

II. CONSTRUCTION AND APPLICATION.
§ 1½. In general.
§ 2. Duty to inform shipper.
§ 3. Intention to use.
§ 3½. Knowledge of shipper.

III. LEGALITY AND CREATION.
§ 4. In general.

IV. REASONABLENESS.
§ 5. In general.

V. LIMITATION OF LIABILITY.
§ 6. Effect in general.

VI. REPARATION.
§ 7. In general.

CROSS REFERENCES

See Bills of Lading IV; Express Companies §16½; Loss and Damage §2, §2½, §9, §11.

II. CONSTRUCTION AND APPLICATION.

§1½. In General.

(a) Following Crown Overall Mfg. Co., 100 I. C. C. 471, wherein commission made a distinction between rates on which a declaration of value was required as the released value, which is forbidden under section 20 of the act, and those where declaration required is actual value of shipment, in which underlying principle is that articles covered by different groups of valuations are in fact so different from a transportation standpoint as to constitute in effect different commodities, shipments of sheep and hogs moving from South Omaha, Sioux City, and certain other Iowa points to Kansas City and Wichita, on which charges were collected based upon actual values declared by shippers, found not to have been overcharged. Cudahy Packing Co. v. Director General, 104 I. C. C. 705.

(b) Shipper instructed initial carrier's agent to enter released valuation notation on bill of lading covering shipment of dining-room furniture, but such agent, through error, failed to make the notation, and charges applicable on shipments

not made with a declared or released value were assessed. HELD: When carrier knows that shipper wishes to ship at released rates it is its duty to make necessary entry in bill of lading, and if it does not do so any higher rate collected on shipment is unreasonable. Reparation awarded. Baker & Co. v. C., M. & St. P., 109 I. C. C. 399.

(c) Following Crown Overall Mfg. Co., 100 I. C. C. 471, wherein commission differentiated between rates based on actual value and rates dependent upon declared or released value, and wherein it was found that rates based on actual value were not prohibited by Cummins amendment, complaints alleging solely that commodity rates lower than class rates should have been applied on shipments of granite, the values of which were not shown in the billing, regardless of the value of commodity, because tariff provision restricting application of commodity rates to shipments of a maximum value per 100 pounds was void under Cummins amendment, found to be without merit. Sherger & Sons v. B. & M.. 109 I. C. C. 555.

(d) On l. c. l. shipments of glass lighting bowls, lamp globes and shades, class rates based on actual value were assessed. Contemporaneously there were in effect lower commodity rates based upon released value. Complainant admits that value of commodities shipped exceeded value upon which lower rates were contingent, but claims that restriction as to value, not having been authorized by commission, was void, and that commodity rates were applicable despite that fact. HELD: Following Crown Overall Mfg. Co., 100 I. C. C. 471 class rates were applicable. Thomas Day Co. v. Director General, 112 I. C. C. 749.

(e) Complainant attacked fifth class rates charged on 21 cars of dressed granite from Waterbury, Montpelier, Barre and Northfield, Vt., to Michigan, Ohio and Indiana destinations as unreasonable and inapplicable. No evidence was introduced as to unreasonableness. Shipments consisted of dressed granite, boxed. The commodity rates were subject to the condition that the actual value of the commodity should not exceed $2.25 per 100 pounds, and be so certified by the consignor in the bills of lading. The bills of lading showed the value of the commodity to be in excess of $2.25 per 100 pounds or bore no notation as to value whatever. HELD: Shipments not overcharged, complaints dismissed. Carr v. Director General, 118 I. C. C. 569.

(f) Tariff provided a fifth-class rate on animal hoofs and horns, in packages or in bulk, whereas under certain classification exceptions a lower sixth-class rating was provided on "fertilizer material, consisting of the following articles having value only as a fertilizing ingredient, viz: * * * hoofs or horns." Upon contention that restriction "having value only as a fertilizer ingredient" brings in a monetary consideration, and that since commission did not authorize the restriction as to value, sixth-class rates were applicable, and shipments were therefore overcharged, HELD: The restriction of sixth-class rates to hoofs and horns having value only as a fertilizing ingredient manifestly does not make provision of section 20 (11) of the act applicable and fifth-class rates were legally assessed. Tomkins-Summer Co. v. B. & O., 115 I. C. C. 24.

(g) Charges collected on newsprint paper moving from Sault Ste. Marie, Ontario, Canada, to Dallas, Tex., based on actual-value rates plus switching charge at point of origin, found applicable. Complainant contended for lower released rates via route of movement, or lower combination also based on released rates via a different route, insisting that rates based on released value not having been authorized by commission were void under section 20 of the act. However, in 100 I. C. C. 471, commission held that actual-value rates may fairly be distinguished from released rates, and as value in instant case was not declared and authority for publication of released rates had been duly granted, the applicable rate was the rate assessed. Western Newspaper Union v. Director General, 115 I. C. C. 105.

(h) Following 63 I. C. C. 234, and other cited cases, actual-value rates charged on certain shipments of dressed granite found to have been legally assessed. While lower rates contemporaneously applied they were subject to the condition that actual value of commodity should not exceed a certain amount, and that such fact be so specified by consignor in bills of lading. Here bills of lading either showed the value to be in excess of that upon which lower rate was contingent, or bore no notation as to value whatever. Moreover, carriers may

lawfully distinguish between actual-value rates and released rates, and rates based on actual differences in value, the purpose of which is to determine character of commodity shipped, do not violate the Cummins amendment to section 20 of the act. Carr v. Director General, 118 I. C. C. 569.

(i) Released rates afford shipper a choice of two rates, under the higher of which unlimited carrier's liability attaches and under the lower of which the shipper, in consideration of reduced rate, by fair and reasonable agreement declares or agrees that for purpose of claim in case of loss or damage the value of his shipment is a certain amount, or not in excess of a certain amount. Actual-value rates, on the other hand, are published on commodities upon which ranges in value are so wide that articles covered by different groups of valuations are in fact different commodities. In other words, released rates limit carrier's liability, whereas actual-value rates designates the commodity. Carr v. Director General, 118 I. C. C. 569, 571.

(j) The principle underlying rates based on the actual value of the commodity shipped is that the articles covered by the different groups of valuations are in fact so different as to constitute in effect different commodities. Bourgoin & Co. v. M. & W. R. R. R., 123 I. C. C. 545, 546.

(k) First Cummins amendment, which abolished the system of released rates based on agreed valuations, did not abrogate actual-value rates and such rates were continued in effect even on ordinary livestock. See 265 U. S. 265; 39 I. C. C. 79. Second Cummins amendment provided that provisions of first amendment declaring limitations of liability to be unlawful should not apply to baggage or property, except ordinary livestock, concerning which the commission should authorize or require carriers to maintain released rates. If actual-value rates did not act as limitations upon shipper's right of recovery prior to enactment of second amendment, neither did they operate as limitations after that enactment. Cudahy Packing Co. v. Director General, 126 I. C. C. 674, 675.

(l) There is a clear distinction between rates where a declaration of value is required as a released value, and those where the declaration required is the actual value of the shipment, principle underlying latter rates being that articles covered by the different groups of valuation are in fact so different from a transportation standpoint as to constitute in effect different commodities. In actual-value rates there is no holding forth by carrier of an offer to transport goods of higher values at lower rates in consideration of release by shipper of carrier's liability, and value declared is not given as a measure of carrier's liability, but as a part of necessary description of goods. See 100 I. C. C. 471. Cudahy Packing Co., v. Director General, 126 I. C. C. 674, 675.

(m) Fifth-class rates on granite monuments and pieces of axed, lettered, and rock-faced granite from Barre, Vt., to New Castle and Greensburg, Ind., found not unreasonable or otherwise unlawful as compared with lower commodity rates contemporaneously in effect on granite not carved, lettered, polished or traced; with those on granite "carved, lettered, polished, or traced" when declared value does not exceed $2.25 per 100 pounds; or with lower commodity rates on marble for comparable distances. Here, declared value exceeded $2.25 and in 47 I. C. C. 91, the fifth-class rating on natural stone, sawed more than four sides, chiseled, dressed, hammered, or sand rubbed, carved, lettered, polished, or traced, was found justified. Dillie v. C. V., 128 I. C. C. 641.

(n) On granite monuments and pieces of axed, lettered, and rock-faced granite, bill of lading showed actual value as exceeding $2.25 per 100 pounds and fifth-class rate was assessed. Contemporaneously a lower commodity rate applied on granite "carved, lettered, polished, or traced" when declared value did not exceed $2.25 per 100 pounds. Upon contention that no value in excess of $2.25 rate charged was reasonable, but that complainants could have secured lower rate by proper release, FOUND: Tariff statement that value must be declared in writing by shipper "for purpose of enabling carriers to apply the proper rate," is not clear and is likely to mislead a cautious shipper to belief that rates are based upon actual value. Tariff should, therefore, be amended so as to avoid all ambiguity and should provide for form of release contained in uniform bill of lading as provided in 64 I. C. C. 357. Dillie v. C. V., 128 I. C. C. 641, 642.

(o) In Bloom & Co. v. Director General, 80 I. C. C. 283, division 1 found that the fifth class rates charged for the

haul east of Chicago, Ill., or the Mississippi river on shipments of dressed granite and granite monuments, in carloads, from Barre and South Ryegate, Vt., to Omaha, Neb., and Douglas and Casper, Wyo., were inapplicable, and that the applicable rates were certain commodity rates to which void limitations were attached; also, that the through rate of $17.40 per net ton charged on one car of hammered and chiseled granite from Mount Airy, N. C., to Lander, Wyo., was inapplicable, and that the applicable rate was $16.43 per net ton but that this latter rate was not unreasonable. The commodity rates were not released rates but actual value rates and not mere limitations of liability and that restrictions in connection therewith were not void, but that, with the exception hereinafter stated, it has not been shown that complainants shipments were of a value entitling them to the lower commodity rates, and with that exception, that the fifth class rates were applicable. The purpose of the restriction published in connection with the actual value commodity rates sought by complainant was not to limit the carriers liability, but to designate definitely the commodity shipped. HELD, factors to Chicago not unreasonable, complaint dismissed. Bloom & Co. v. Director General, 132 I. C. C. 127.

§2. Duty to Inform Shipper.

(a) Complainant attacked class rate of 61c charged on a car of granite monument bases shipped June 7, 1922 from Hardwick, Vt., to Lafayette, Ind., as unreasonable and illegal. Fifth class rate charged. Same tariff also carried a commodity rate of 34c on stone or granite, nos blocks, slabs, or pieces, rough quarried, chiseled, dressed, hammered, sawed, or otherwise finished, except carved, lettered, polished or traced, published subject to the limitation that the shipper shall declare in writing that the value of the property did not exceed $2.25c per 100 pounds. The value of the shipment was not declared by the consignor nor is it shown that he declined to declare its value. Complainant insists that where a rate is dependent upon a declared value the duty rests upon the carrier to call that fact to the shippers attention and to secure his signature to a proper bill of lading. This the carriers agent failed to do. HELD, rate attacked unreasonable to extent it exceeded 34c, reparation awarded. Lafayette Granite Co. v. B. & M. R. R., 123 I. C. C. 543.

(b) Whenever a shipment is tendered a carrier upon which its tariffs provide for the application of alternative rates dependent upon the value thereof, the duty rests upon the agent of the carrier to call attention of the shipper to the different rates and secure his signature to a proper bill of lading. Lafayette Granite Co. v. B. & M. R. R., 123 I. C. C. 543, 544.

III. LEGALITY AND CREATION.

See Legality of Rates

§4. In General.

(a) On l. c. l. shipments of glass lighting bowls, lamp globes, and shades, class rates based on actual value were assessed. Contemporaneously there were in effect lower commodity rates based upon released value. Complainant admits that value of commodities shipped exceeded value upon which lower rates were contingent, but claims that restriction as to value, not having been authorized by the commission, was void, and that commodity rates were applicable despite that fact. HELD: Following Crown Overall Mfg. Co., 100 I. C. C. 471, class rates were applicable. Thomas Day Co. v. Director General, 112 I. C. C. 749.

(b) A rate proposal which would make the rate dependent upon the method used in manufacturing the commodity rather than on the nature of the commodity is unlawful. Cotton linters from southwest, 118 I. C. C. 419, 434.

(c) The purpose of maintaining released rates was that the shipper might have a choice of two rates, under the higher of which unlimited carriers liability attaches and under the lower of which the shipper. in consideration of the reduced rate, by fair and reasonable agreement declares and agrees that for the purpose of claim in case of loss or damage the value of his shipment is a certain amount, or not in excess of a certain amount. Actual value rates, on the other hand, are published on commodities on which the ranges in values are so wide that articles covered by the different groups of valuations are in fact different commodities. In other words, released rates limit the carrier's liability, whereas actual value rate designates the commodity. Rates based

on actual differences in value the purpose of which is to determine the character of the commodity shipped, do not violate the so-called Cummins amendment to section 20. Carr v. Director General, 118 I. C. C. 569.

(d) Rates charged on shipments of ordinary livestock which were higher than those applicable if standard or basic rates had been declared by consignor found unlawful and void under the second Cummins amendment to section 20 of the act. The effect of that amendment was to render unlawful and void all attempted limitations of liability for loss, damage, or injury to ordinary livestock transported, whatever the form of attempted limitation. Accordingly, rates here which were based on values declared by shippers and which were not required by tariffs to be actual values were in effect attempted limitations of carrier's liability. See 69 I. C. C. 235 and other cited cases. Reparation awarded. Armour & Co. v. Director General, 120 I. C. C. 587.

(e) Upon contention that assessment of equal rates on rough and dressed granite, is unreasonable, discriminatory, unduly prejudicial to complainant and unduly preferential of competitive shippers of dressed granite, since latter is of greater value than rough granite, HELD: Rate assailed is subject to declaration of value by shipper and complainant's competitors can not lawfully apply that rate on dressed granite if its value exceeds the value fixed by the tariff. Bourgoin & Co. v. M. & W. R., 123 I. C. C. 545.

(f) Carrier may regulate extent of its liability according to different freight rates. Lawrence Leather Co. v. Norton Lilly & Co., 15 Fed. (2d) 101.

(g) Under section 20 (11) of the act, all limitations of liability for actual loss, damage or injury in respect to livestock are prohibited. Bedding Charges for Livestock, 128 I. C. C. 167, 176.

IV. REASONABLENESS.

See Any Quality Rates I (t); Reasonableness of Rates.

§5. In General.

(a) Following Crown Overall Mfg. Co., 100 I. C. C. 471, wherein commission made a distinction between rates on which a declaration of value was required as the released value, which is forbidden under section 20 of the act, and those where declaration required is actual value of shipment, in which the underlying principle is that articles covered by different groups of valuations are in fact so different from a transportation standpoint as to constitute in effect different commodities, shipments of sheep and hogs moving from South Omaha, Sioux City, and certain other Iowa points to Kansas City and Wichita, on which charges were collected based upon actual values declared by shippers, found not to have been overcharged. Cudahy Packing Co. v. Director General, 104 I. C. C. 705.

(b) Upon complaint seeking, establishment of released express rates on gold and silver coin and bullion, paper currency, and securities from, to, and between interstate points. FOUND: If such rates were established it would still be necessary to provide same protective service against loss and theft at present accorded this traffic, because some shipments would be made on basis of full valuation. Moreover, taking into account shipments that would be made at released rates, revenues would be far less than cost of maintaining service, and the handling of money in this manner would tend to lessen care now given by employees to prevent loss of packages through negligence or robbery. N. Y. Federal Reserve Bank v. Am. Rv. Exp. Co., 107 I. C. C. 4, 17.

(c) On l. c. l. shipments of glass lighting bowls, lamp globes, and shades, class rates based on actual value were assessed. Contemporaneously there were in effect lower commodity rates based upon released value. Complainant admits that value of commodities shipped exceeded value upon which lower rates were contingent, but claims that restriction as to value, not having been authorized by commission, was void, and that commodity rates were applicable despite that fact. HELD: Following Crown Overall Mfg. Co., 100 I. C. C. 471, class rates were applicable. Thomas Day Co. v. Director General, 112 I. C. C. 749.

(d) Complainant attacked commodity rate charged on rough granite, carloads, from Groton and Barre, Vt., and Milford, N. H., to Elmwood, Ill., as unreasonable, unjustly discriminatory and unduly prejudicial. Between Oct. 16, 1923 and Nov. 17, 1924, 14 shipments moved. Charged 33.5c. A rate of 34c was applicable between Oct. 16 and Dec. 25, 1923 on stone or granite, nos in blocks, slabs, etc., value not to exceed $2.25 per 100 pounds, to be declared by the shipper in

writing for the purpose of enabling the carrier to apply the proper rate. On and after Dec. 26, 1923 the applicable rate was 33.5c. On granite the value of which exceeds $2.25 per 100 pounds, complainant's competitors can not lawfully avail themselves of the rate accorded complainant on rough granite which does not exceed that value. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Bourgoin & Co. v. M. & W. R. R. R., 123 I. C. C. 545.

(e) Fifth-class rate assessed on granite monument bases, found unreasonable to extent it exceeded lower commodity rate contemporaneously in effect and published in same tariff subject to shipper's declaration of value in writing. In conformity with principle announced in 33 I. C. C. 370, 39 I. C. C. 483, duty rested upon carrier's agent to advise complainant of alternative rates and secure his signature to a proper bill of lading. This the agent failed to do. Reparation awarded. Lafayette Granite Co. v. B. & M., 123 I. C. C. 543.

(f) Upon contention that assessment of equal rates on rough and dressed granite, is unreasonable, discriminatory unduly prejudicial to complainant and unduly preferential of competitive shippers of dressed granite, since latter is of greater value than rough granite, HELD: Rate assailed is subject to declaration of value by shipper and complainant's competitors can not lawfully apply that rate on dressed granite, if its value exceeds the value fixed by the tariff. Bourgoin & Co. v. M. & W. R., 123 I. C. C. 545.

(g) Principle underlying rates based on actual value of the commodity is that articles covered by different groups of valuations are in fact so different as to constitute in effect different commodities. See 100 I. C. C. 471. Bourgoin & Co. v. M. & W. R., 123 I. C. C. 545, 546.

(h) Upon complaint seeking same rate on enameled iron bathtubs whether released or unreleased as to value, HELD: Record shows that claims for loss or damage do not amount to more than 2 per cent of the gross revenue for transportation of tubs and that enameled iron bathtubs are sufficiently uniform in value to enable carriers to estimate their liability with reasonable certainty. There is, therefore, no necessity for maintenance of released rates on this commodity. Fisher Supply Co. v. A. & V., 128 I. C. C. 215, 220.

V. LIMITATION OF LIABILITY.

See Loss and Damage §9.

§6. Effect In General.

(a) Following Crown Overall Mfg. Co., 100 I. C. C. 471, wherein commission made a distinction between rates on which a declaration of value was required as released value, which is forbidden under section 20 of the act, and those where declaration required is actual value of shipment, in which the underlying principle is that articles covered by different groups of valuations are in fact so different from a transportation standpoint as to constitute in effect different commodities, shipments of sheep and hogs moving from South Omaha, Sioux City, and certain other Iowa points to Kansas City and Wichita, on which charges were collected based upon actual values declared by shippers, found not to have been overcharged. Cudahy Packing Co. v. Director General, 104 I. C. C. 705.

(b) Rates graded according to actual value do not operate as a limitation upon the shipper's right to recover for actual loss, damage or injury to the property transported, in violation of section 20 of the act, and actual value rates may be fairly distinguished from released rates. Western Newspaper Union v. Director General, 115 I. C. C. 106, 107.

(c) On granite monuments and pieces of axed, lettered, and rock-faced granite, bill of lading showed actual value as exceeding $2.25 per 100 pounds and fifth-class rate was assessed. Contemporaneously a lower commodity rate applied on granite "carved, lettered, polished, or traced" when declared value did not exceed $2.25 per 100 pounds. Upon contention that no value in excess of $2.25 rate charged was reasonable, but that complainants could have secured lower rate by proper release, FOUND: Tariff statement that value must be declared in writing by shipper "for purpose of enabling carriers to apply the proper rate," is not clear and is likely to mislead a cautious shipper to belief that rates are based upon actual value. Tariff should, therefore, be amended so as to avoid all ambiguity and should provide for form of release contained in uniform bill of lading as provided in 64 I. C. C. 357. Dillie v. C. V., 128 I. C. C. 641, 642.

(d) Rates graded according to actual value do not operate as a limitation upon

the shippers right to recover the actual loss, damage, or injury to the property transported, and actual value rates may be fairly distinguished from released rates. Bloom & Co. v. Director General, 132 I. C. C. 127, 128.

REPARATION

I. JURISDICTION OF COMMISSION.
§½. In general.
§1. Necessity of and primary action by Commission.
§2. Necessity of and effect of finding of unreasonableness.
§3. Power to award tort damages.

II. RIGHT TO RECOVER.
§3a. In general.
§3½. Extent of recovery.
§4. Necessity of protest.
§5. Necessity of first paying tariff rate.
§6. Parties entitled to recover.
§7. Statute of limitations.
§7a. When limitation runs.

III. CIRCUMSTANCES DETERMINING RIGHT.
§7½. In general.
§8. Erroneous publication or quotation.
§8½. Previous action of Commission.
§9. Failure to post tariff.
§10. Laches.
§10½. Necessity of showing damage.
§11. Rate via competing route.
§12. Readjustment of rates.
§13. Res adjudicata.
§13a. State shipments.
§14. Special rate.
§15. Unpublished charges.
§16. Voluntary or subsequent reduction.
§17. Willingness of carrier to pay.

IV. LIABILITY FOR REPARATION.
§17½. Interest or court costs.
§18. Measure of reparation.
§19. Parties to make refund.
§20. Release of liability.
§20½. Undercharges or overcharges.
§20½a. Destruction of records.

V. PROCEDURE.
§20¾. In general.
§21. Formal proceedings.
§22. Informal proceedings.
§23. Court pleadings and procedure.
§24. Intervening petitions.
§25. Statements for reparation.

CROSS REFERENCES

See Absorption of Charges V, VII; Actions at Law; Advanced Rates VII; Allowances VI; Attorney's Fees; Bills of Lading VI; Blanket Rates §19½; Cars and Car Supply §6, VI, §33; Claims; Commodity Rates §6; Demurrage V; Differentials V; Discrimination §15, §17; Facilities and Privileges V; Interstate Commerce Commission VI; Long and Short Hauls §13; Minimums §11; Overcharges; Passenger Fares and Facilities IV; Precooling; Reconsignment §10, V; Refrigeration VI; Routing and Misrouting §7¾, §9, §11; Special Contracts §4; Switch Tracks and Switching §9; Tap Lines §12; Telephone and Telegraph Companies IV, §4; Through Routes and Joint Rates §16; Water Carriers §5; Weights and Weighing V.

I. JURISDICTION OF COMMISSION.

See Interstate Commerce Commission I; Jurisdiction of Commission.

§½. In General.

(a) The commission's jurisdiction is limited to damage awards capable of definite ascertainment, it having no power to award punitive or exemplary damages. Crosby v. St. L.-S. F., 112 I. C. C. 239, 243.

(b) Claims for refund of transportation charges upon a "commercial transaction" or under terms of contract of sale are not subject to commission's jurisdiction, the basis of sale being a thing apart from the transportation. Such claims are for a court of law if refunds can not be voluntarily obtained from carriers. Briggs & Turivas v. Director General, 112 I. C. C. 313, 315.

(c) Carriers objected to introduction of evidence on question of damages contending that claims for reparation are barred under section 16 of the act for the reason that in the original and sup-

plemental decision handed down by commission reparation was denied, and that when a subsequent decision was rendered in which reparation was awarded the statutory two-year period had expired. HELD: A similar contention was raised and overruled in 293 Fed. 639, wherein the court found that it is the filing of a complaint within two years after cause of action accrues that gives commission jurisdiction to award reparation, such jurisdiction continuing until commission has determined whether reparation will be allowed even though more than two years may pass before a decision is rendered and before detailed proofs of the quantum of damages are submitted. South Carolina Cotton Mfrs. Asso. v. C., C. & O., 112 I. C. C. 683, 684.

(d) Claim for reparation on shipments made during period of Federal control, found without commission's jurisdiction because complainant did not specifically pray for reparation as required by section 206 (c) of transportation act of 1920. Original report, 88 I. C. C. 569, affirmed. Hungerford Smith Grape Juice Co. v. A. G. S., 118 I. C. C. 169.

(e) Failure of a complaint to allege a violation of section 6, or that charges were inapplicable, does not affect jurisdiction of commission to determine applicable charges. See 102 I. C. C. 355, 357. Western Bridge & Construction Co. v. St. L.-S. F., 118 I. C. C. 607.

(f) Fact that transportation charges have not been paid by a shipper does not deprive commission of its jurisdiction to pass upon lawfulness of such charges. Western Bridge & Construction Co. v. St. L.-S. F., 118 I. C. C. 607, 608.

(g) The commission has no jurisdiction to award punitive or exemplary authority on intrastate traffic which moved during the guaranty period, to approve after August 31, 1920, an award of reparation made by State damages. See 112 I. C. C. 239. Harden v. Pullman Co., 120 I. C. C. 359, 360.

(h) The commission has jurisdiction March 1 to August 31, 1920, whether such authority was actually exercised during the guaranty period or thereafter. The phrase "prior to September 1, 1920," as used in section 208 (a) of the transportation act, 1920, is not to be construed as prescribing a time limitation within which commission was authorized to act, but as fixing the period as to which its approval was necessary to a reduction in rates whether made during the guaranty period by naming lower rates for future, or accomplished after expiration of the period by way of reparation on shipments which moved during the period. Reparation on Intrastate Traffic, 122 I. C. C. 443.

(i) Subject to certain exceptions, the commission's jurisdiction over intrastate rates terminated with termination of Federal control, February 29, 1920. On that date jurisdiction passed to State authorities, subject to the limitation that no rates should be reduced prior to September 1, 1920, unless approved by commission. The commission, therefore, was and is without power to require rate reductions or award reparation on intrastate shipments moving during the guaranty period and the only order it can lawfully make as to such shipments is one of a permissive character. Accordingly conference ruling of March 13 1922, and previous decisions holding that section 208 (a) of the transportation act 1920, does not authorize commission to award reparation on intrastate shipments which moved during the guaranty period adhered to. Reparation on Intrastate Traffic, 122 I. C. C. 443.

(j) Under Transportation Act 1920, § 206 (c), the Interstate Commerce Commission could not award reparation to shipper of goods from eastern points to San Francisco and Seattle for export, who were required to pay the domestic rate rather than the lower export rate, because they had not complied with regulations promulgated by the carrier for obtaining the lower rate, there being no complaint of the rates, as such, and no finding that the regulations, the object of which was to prevent congestion at ports, were unreasonable, but the general necessity for and propriety of them being conceded, and the Commission being merely of the opinion that the application of the regulations to the particular shipments would work injustice, as they did not contribute to congestion any more than if there had been compliance with the regulations; the published tariffs, of which the regulations are part, being binding on the Commission, unless found to be unreasonable. Mellon, Director General of Railroads, v. Erb, 13 Fed. (2d.) 752.

§1. Necessity of and Primary Action by Commission.

(a) Where reparation is sought on

the basis of an existing published rate being unjust and unreasonable, the fact that it is so unjust and unreasonable must first be passed on and established by Interstate Commerce Commission. Jeanneret v. Chicago, B. & Q. R. Co., 17 Fed. (2d.) 978.

§3. Power to Award Tort Damages.

(a) Upon contention that statement that rates assailed "appear not unduly high" was equivalent to a finding that they were not unreasonable, since word "unreasonable" means too high in ordinary sense, and reparation therefore must have been awarded as a penalty or "smart money" for failure to eliminate from tariffs departures from fourth section, FOUND: Commission has no authority to make an award of reparation in order to penalize carriers, as penalties or fines provided for violation of the act are enforceable in court and accrue to the Government. Reparation may be awarded only when complainants have been damaged either by payment of excessive charges or by undue prejudice or other unlawful discrimination, in which latter case special damage must be proved under decisions of Supreme Court. Hudson Mule Co. v. L. & N., 129 I. C. C. 365, 371.

II. RIGHT TO RECOVER.

§3a. In General.

(a) That carrier has used money, paid in advance, in payment of his own obligations does not defeat claim of shipper for his money back on failure to perform. Hunter v. Lauderdale Cotton Mills, (Ala., 1927) 112 So. 215.

§3½. Extent Of Recovery.

(a) Complainant having paid rates in excess of a maximum reasonable basis, its right to reparation is not affected by the proportion of business it was able to do in comparison with its competitors. Nuckolls Packing Co. v. A. T. & S. F. Ry., 113 I. C. C. 229, 232.

(b) As to reparation, it is unnecessary to trace the transaction beyond the initial step, viz., the payment. Lowe Paper Co. v. C. N. E. R. R., 115 I. C. C. 189, 192.

(c) The question for determination is whether the rates attacked were unreasonable in the past to the extent of affording a basis for reparation. The date on which the complaint was filed is not controlling. Cooperative Oil & Paint Co. v. Director General, 122 I. C. C. 227, 228.

(d) The charging of an excessive and unreasonable freight is ipso facto unlawful. Spiller v. St. Louis & S. F. R. Co., 14 Fed. (2d) 284.

(e) The courts generally hold, that, although loss of profit of an established business may be taken into account in an award of damages where they are susceptible of proof, anticipated profits of a new business are too speculative to form the basis of such an award because of absence of provable data from which to estimate them. See 111 Fed. 96, 97. Carnes v. A., T. & S. F., 129 I. C. C. 341, 348.

(f) Reparation on shipments of sugar from San Francisco and Crockett, Calif., limited to period subsequent to filing of complaint because rates charged were on no higher basis than those found reasonable between same points in 48 I. C. C. 657. See also 113 I. C. C. 454. M'Clintock-Trunkey Co. v. McCormick S. S. Co., 129 I. C. C..591, 606.

§6. Parties Entitled to Recover.

See Infra §19; Association: Parties; Procedure Before Commission V.

(a) Complainant's name did not appear in any shipping record, as consignor, consignee, or otherwise. Informal complaint, however, was filed in its behalf and affidavits were furnished showing that while freight charges were paid in first instance by another party, they were charged back to complainant. FOUND: Fact that complainant is a stranger to transportation record does not bar its recovery of reparation where carrier was duly notified of allegations it was required to meet and of party claiming to be damaged. Kyoleum Co. v. Director General, 104 I. C. C. 1, 3.

(b) Freight charges were prepaid by consignor who executed assignment in favor of complainant. FOUND: Consignor found party damaged by reason of exaction of unreasonable rates but reparation awarded to complainant as assignee. Cairo Syrup Co. v. I. H. B., 104 I. C. C. 487, 489.

(c) Shipments were sold f. o. b. point of origin, purchaser being apprised of rate to destination. It is practice of consignor to reimburse consignee, upon his claim, for freight charges paid in excess

of a certain rate. FOUND: In instances where consignor has paid excess charges, it is the party damaged by collection of unreasonable rates and entitled to reparation in amount of such excess. In instances where consignor has not so reimbursed consignee, damage has been to consignee. Rocbond Co. v. A., T. & S. F., 104 I. C. C. 517, 519.

(d) Complainant, the consignor, filed intervening petition purporting to be on behalf of consignees who paid unreasonable freight charges. Consignor was not definitely authorized to file such petition, and did so without consulting consignees, stating that such authorization was not obtained because it guaranteed rates which consignees were to pay. HELD: Filing of reparation claim on behalf of consignees can not be regarded as having been authorized. Rocbond Co. v. A., T. & S. F., 104 I. C. C. 517, 519, 520.

(e) Reparation for exaction of unreasonable rates awarded complainant who succeeded to all assets and liabilities of consignees who paid unreasonable freight charges. Coulbourn Fruit Co. v. B. & O., 104 I. C. C. 734, 737.

(f) Consignee is party entitled to reparation for exaction of unreasonable rates (1) where consignor prepays freight charges and invoices consignee for such charges and for Pittsburgh-plus price of commodity less amount so prepaid, both stated separately in invoice; (2) where consignor does not prepay freight charges, but invoices consignee for Pittsburgh-plus price less amount of freight charges payable, and consignee pays those charges to carrier; and (3) where consignor does not prepay freight charges but invoices consignee for Pittsburgh-plus price and consignee pays carrier freight charges and deducts them from invoice price in remitting to consignor. See 100 I. C. C. 173. Canton Bridge Co. v. B. & O., 107 I. C. C. 141, 144, 145.

(g) Consignees are not entitled to reparation in cases of exaction of unreasonable rates by carriers where consignor prepays freight charges and invoices said consignees for Pittsburgh-plus price of commodity, but not for freight charges so prepaid. See 100 I. C. C. 173. Canton Bridge Co. v. B. & O., 107 I. C. C. 141, 145.

(h) Complainant purchased shipments on a delivered basis and under terms of contract agreed to stand all freight charges in excess of those accruing at a certain rate. Freight charges were paid by consignee who deducted them from invoice price of goods in settlement with complainant. FOUND: Under the circumstances complainant paid and bore illegal charges herein found to have been collected by carriers and is party entitled to reparation. Bowers & Co. v. Director General, 107 I. C. C. 305, 306, 307.

(i) Under arrangement between consignor and consignee, each shared equally in freight charges and profits on shipments. Freight charges were paid to carrier by consignee who filed informal complaint seeking full amount of reparation, consignors not being mentioned therein. Relationship between parties was first disclosed in formal complaint subsequently filed. FOUND: Consignee, in filing informal complaint, acted as agent for undisclosed parties and while informal proceeding could not inure to benefit of consignors because not made parties until formal complaint was filed which was after expiration of the statutory period, from nature of arrangement it was consignee's duty to protect interests of both itself and consignors. Under circumstances, filing of informal complaint by consignee tolled the statute for consignors. Werner v. Director General, 107 I. C. C. 363, 364, 366.

(j) Charges were paid in part by consignor direct and remainder by consignor's agent for its account and by consignee, who was reimbursed therefor by consignor. HELD: Consignor is only party entitled to reparation. Finding in original report, 81 I. C. C. 169, reversed. Mitsui & Co. v. Director General, 107 I. C. C. 469.

(k) Operating company conducted business for a holding and selling company, for which latter company a receiver was appointed. Shipments were consigned to operating company and charges paid by holding and selling company prior to receivership, and by receiver thereafter. Complaint filed on behalf of receiver. Upon contention that since holding and selling company is not a party to complaint, shipments on which it paid charges prior to receivership are not properly covered by complaint. HELD: Receiver, upon appointment, became entitled to custody and control of all property of holding and selling company, and it became his duty to secure all available assets. Complaint was properly filed on his behalf as receiver for the holding and selling company, and as such

he is entitled to reparation due on all shipments delivered during statutory period. Columbia Steel Co. v. B. & O., 109 I. C. C. 46, 49.

(l) Upon contention that complainants were not damaged in instances where shipments were sold on basis of the Pittsburgh price plus rates from Pittsburgh regardless of where shipments originated, their contracts being adjusted so that amount of freight charges paid did not affect them, HELD: Reasonableness of freight rates paid by a shipper is not controlled by agreements shipper may have with another; the commission being only concerned with who paid and/or bore freight charges as such. Columbia Steel Co. v. B. & O., 109 I. C. C. 46, 49.

(m) Reasonableness of freight rates paid by a shipper is not controlled by agreements shipper may have with another; the commission being only concerned with those who paid and/or bore freight charges as such. Columbia Steel Co. v. B. & O., 109 I. C. C. 46, 49.

(n) Complaint filed on behalf of receiver of complainant firm. Upon objection to testimony of witnesses, on the ground that they were not authorized to represent receiver. HELD: Such authorization is unnecessary. Columbia Steel Co. v. B. & O., 109 I. C. C. 46, 50.

(o) Upon contention that complainant who paid freight charges was not damaged because cost of commodity, under contract between complainant and a State, was based upon a rate higher than that found reasonable. HELD: Complainant was in contractual relation with defendant carriers, and if rate was unreasonable complainant suffered damage when it paid such rate, no further proof of damage being necessary. See Darnell-Taenzer case, 245 U. S. 531. Raleigh Chamber of Commerce v. N. S., 109 I. C. C. 52, 54.

(p) Contention that, because of change in complainant's name, it is not a proper complainant in respect of shipments which moved prior to date of such change, not sustained. An authorized change in name of a corporation does not affect its rights or lessen or add to its obligations. See 141 U. S. 520. Copperweld Steel Co. v. B. & O., 109 I. C. C. 99.

(q) Assignment of claims for reparation against director general due to exaction of unreasonable rates found not void within the meaning and purpose of section 3477 of Revised Statutes of United States, which prohibits assignment of claims against the United States. See 256 U. S. 655; 68 I. C. C. 507. Humphreys v. Director General, 109 I. C. C. 157, 159.

(r) Complainants introduced in evidence a list of shipments which named points of origin and destinations, date on which shipments were made, car numbers, weights, charges alleged to have been paid, and amount of reparation alleged to be due. Such list was checked by representatives of carriers, who also at the hearing identified shipments embraced therein. HELD: Such action on part of carriers amounts to an admission that such shipments as were identified by its check were made. Butters Lbr. Co. v. A. C. L., 109 I. C. C. 224, 225.

(s) Consignor sold shipment on a delivered basis. Complainant (the consignee), who merely acted as agent for consignor, filed both informal and formal complaint. Difference between rate collected from complainant on delivery and rate found applicable was paid by consignor. HELD: That consignor is proper party entitled to reparation. Central Commercial Co. v. A., T. & S. F., 109 I. C. C. 639, 640.

(t) Upon contention that assignment of a claim for reparation against director general was null and void under section 3477 of Revised Statutes of the United States. HELD: Where one corporation takes over assets of another by merger, absorbing corporation may enforce claims of merged corporation against United States and such assignments do not fall within prohibition of the statute cited. See 256 U. S. 655. Schweitzer Co. v. Director General, 109 I. C. C. 663, 664.

(u) It is beyond the jurisdiction of the Commission to allow an offset of undercharges on subsequent shipments against the claims for reparation. It is well settled that reparation claims are assignable. Wertheim Coal & Coke Co. v. L. V. R. R., 112 I. C. C. 513, 515.

(v) Complaint was filed by a corporation which ultimately became bankrupt and reparation statement under Rule V of the Rules of Practice was prepared and submitted by its receivers. Upon contention that commission can not legally award reparation to the corporation, which no longer exists, HELD: It being well settled that reparation

claims are assignable, reparation awarded to receivers, who were vested with full power to take into possession all property and assets of the defunct corporation, including this claim for reparation. Wertheim Coal & Coke Co. v. L. V., 112 I. C. C. 513, 515.

(w) Reparation awarded to successor in interest to one of the parties complainant who made shipments and paid and bore unreasonable charges thereon. Wilgus v. P. R. R., 113 I. C. C. 617, 621.

(x) By bill of sale consignor conveyed to complainant all of its property therein described, including suits and claims, and assets owned by it but not carried on its books at any figure. Reparation for exaction of unreasonable rates on shipments moving during period embraced in bill of sale awarded to complainant as successor in interest of consignor who paid unreasonable freight charges. Armour & Co. v. C., M. & St. P., 115 I. C. C. 68, 75.

(y) Beets were purchased by complainant under contracts made with growers which contained no provision as to freight charges. All freight bills were paid by complainant, but in fixing contract price paid to growers, freight charges, among other costs, were taken into consideration. Relying upon Sloss-Sheffield case, 269 U. S. 217, carriers contended that growers of beets in reality bore freight charges and that the transactions were equivalent to purchases f. o. b. destination. HELD: Under provisions of contracts made with growers before beets were grown, complainant acquired title thereto from the time they began to grow and therefore was under obligation to pay and did pay and bear freight charges, as such, there being no provision to the contrary. Complainant therefore found to be properly entitled to reparation for exaction of unreasonable rates. Continental Sugar Co. v. N. Y. C., 115 I. C. C. 124.

(z) Beets were purchased by complainant under contracts made with growers which contained no provision as to freight charges. All freight bills were paid by complainant, but in fixing contract price paid to growers freight charges, among other costs, were taken into consideration. Relying upon Sloss-Sheffield case, 269 U. S. 217, carriers contended that growers of beets in reality bore freight charges and that the transactions were equivalent to purchases f. o. b. destination. HELD: Under provisions of contracts made with growers before beets were grown, compainant acquired title thereto from the time they began to grow and therefore was under obligation to pay, and did pay, and bear freight charges, as such, there being no provision to the contrary. Complainant therefore found to be properly entitled to reparation for exaction of unreasonable rates. Continental Sugar Co. v. N. Y. C., 115 I. C. C. 124, 125.

(aa) Because complainant deducted freight charges from shippers invoice, carriers question whether complainant can be said to have paid and borne unreasonable freight charges. HELD: It is unnecessary to trace the transaction beyond the initial step; viz, the payment. See 88 I. C. C. 492. Lowe Paper Co. v. C. N. E. Ry., 115 I. C. C. 189, 192.

(bb) Upon contention that no reparation can be awarded complainant because shipments were purchased f. o. b. destination, and while freight charges were paid by complainants in first instance, they were deducted from invoice price of commodity, so that complainants were not damaged, HELD: Similar contention was overruled in 88 I. C. C. 492. Jackson Traffic Bureau v. A. & V., 118 I. C. C. 27, 28.

(cc) Shipments were consigned to predecessor company, and upon complaint seeking reparation for exaction of unreasonable rates, both that company and its successor in interest were named as parties complainant. HELD, that predecessor company paid and bore unreasonable charges but successor in interest is entitled to reparation. Northwestern Leather Co. Trust v. M. & O., 118 I. C. C. 37, 42.

(dd) Complainant contracted to manufacture a commodity for a specific sum of money f. o. b. destination. Contract provided that in event of revision of freight rate prior to time materials were shipped, freight allowance was to be adjusted accordingly. Complainant subsequently filed claim for reparation and four years after date of shipment the buyer authorized complainant to act as its agent. Carrier contended that under circumstances reparation could not be awarded. HELD, neither carrier nor commission had knowledge of sales contract and are therefore not concerned with it. Moreover, the latter must deal with freight charges as such and not as part of the price of a commodity. See

269 U. S. 217. Duluth Boiler Works v. A., T. & S. F., 118 I. C. C. 161, 164.

(ee) The fact that complainants paid the freight charges to the carriers would in itself be sufficient to support an award of reparation under section 1. Mississippi Railroad Commission v. A. & V. Ry., 120 I. C. C. 569, 572.

(ff) Mere change in name of complainant does not affect its right to recover an award of reparation for exaction of unreasonable rates. Seaboard Rice Milling Co. v. A., T. & S. F., 120 I. C. C. 263.

(gg) Informal complaint seasonably filed named Armour & Co., an Illinois corporation, as a party complainant. Formal complaint filed within time required by Rule III (g) of Rules of Practice named additional complainants said to be subsidiaries of Armour & Co. HELD, fact that additional parties were subsidiaries of complainant named in informal complaint did not ipso facto entitle them to bring an action in their own name for damages suffered by the former, and not having filed their claims within time provided by statute they are accordingly barred. Armour & Co. v. Director General, 120 I. C. C. 587.

(hh) In a situation where the portion of a through rate which was unreasonable is easily and certainly ascertainable it is no defense to an award of reparation that the parties who paid and bore the reasonable portion of the through rate are not before commission and that complainants who bore unreasonable portion are without assignments from them. Nelson Fuel Co. v. C. & O., 120 I. C. C. 723, 726.

(ii) Regardless of complainants status as successor to the rights of its subsidiary, the record affirmatively shows that the freight charges on all of these shipments were paid by complainant in the first instance, and under 88 I. C. C. 492, it is not necessary to inquire beyond this point in order to entitle complainant to an award of reparation. Texas Co. v. C. B. & Q. R. R., 122 I. C. C. 109, 112.

(jj) The fact that one corporation had transferred its assets to another before it filed a formal complaint would not, in the absence of a conflicting claim, affect its right to reparation for any damage it suffered because of a violation of the act. North Ontario Packing Co. v. O. W. R. R. & N. Co., 122 I. C. C. 360, 365.

(kk) Although the Omaha Box Co., the real party in interest, was not named as complainant within the period prescribed by law, nevertheless the Commission holds that a sufficient cause of action was set up in the filing of the informal complaint, and the fact that either through mistake of fact or law, the wrong party was named does not act as a bar to the rights of the real party in the same proceeding. American Smelting & Refining Co. v. Director General, 123 I. C. C. 136, 138.

(ll) Reparation awarded to complainants, successors in interest to parties who paid and bore unreasonable freight charges. Jones Construction Co. v. L. & N., 122 I. C. C. 18, 20.

(mm) Amendment to complaint showed that a corporation not a party to the complaint ultimately bore unreasonable freight charges, and, upon its dissolution, complainant succeeded to all its assets and liabilities. HELD: Regardless of complainant's status as successor in interest, where, as here, the record affirmatively shows that freight charges were paid by complainant in the first instance, under decision of commission in 88 I. C. C. 492, it is not necessary to inquire beyond this point in order to entitle complainant to an award of reparation. Texas Co. v. C., B. & Q., 122 I. C. C. 109, 112.

(nn) While informal complaints were pending, all assets of complainant which paid and bore charges were transferred to its successor in interest, and complainant then filed formal complaint. Successor was not made a party complainant until date of oral hearing. Upon contention that as complainant no longer had any interest in reparation when formal complaint was filed, claims on shipments delivered more than two years prior to date successor become a party complainant were barred, HELD: Transfer of assets would not in absence of a conflicting claim affect complainant's right to reparation for damage suffered because of violation of the act. See 93 I. C. C. 547. Fact that successor's claim was not made until more than two years after delivery of shipments is immaterial, as informal complaint was seasonably filed and successor's claim depends upon that filing and transfer of assets and not upon date on which its claim was filed. Reparation awarded. North Ontario Packing Co. v. O. W. R. R. & Nav. Co., 122 I. C. C. 360, 365.

(oo) Reparation awarded to complainants, successors in interest to parties who paid and bore unreasonable freight charges. Northwestern Leather Co. Trust v. M. & O., 122 I. C. C. 517, 519.

(pp) Complainant found to have been damaged due to exaction of unreasonable rates but reparation awarded to its successor in interest. Kohlman Bros. & Sugarman v. L. & N., 123 I. C. C. 56, 58.

(qq) Informal complaint seasonably filed failed to name as a party complainant the real party in interest, such party, however, being named in the formal complaint subsequently filed. HELD: Although such real party was not named within period prescribed by law, a sufficient cause of action was set up in the filing of informal complaint and fact that either through a mistake of fact or law, the wrong party was named does not act as a bar to the rights of real party in same proceeding. See 101 Fed. 171. American Smelting & Refining Co. v. Director General, 123 I. C. C. 136, 138.

(rr) In accordance with Rule III (s) of Rules of Practice, reparation awarded upon a new complaint to complainants and interveners not parties to the proceeding prescribing reasonable rates to basis of which reparation is sought, upon showing of good cause and unusual circumstances. Decker & Sons v. U. P. 123 I. C. C. 621, 622, 623.

(ss) It is not necessary to go beyond the first step in determining whether complainant was entitled to reparation and that the first step was taken by complainant when it paid the freight charges. Walrath & Sherwood Lumber Co. v. C. & N. W. Ry., 126 I. C. C. 97, 102.

(tt) The commission can not attempt to go beyond transportation charges as such to determine equities of parties under sales contracts. Sinclair Crude Oil Co., v. A., T. & S. F., 126 I. C. C. 73, 80.

(uu) Reparation awarded complainants under assignments to them of all rights to reparation from consignors of shipments. Statements describing shipments indicated no other interested shippers, and each assignment gave as consideration $1 and other good and valuable consideration. Assignments were executed and acknowledged by a notary public and from weight of evidence appear to be valid. Sinclair Crude Oil Co. v. A., T. & S. F., 126 I. C. C. 73, 80.

(vv) Upon contention that complainant who paid freight charges was not damaged because all such charges were later charged back to shippers, HELD: In determining an award of reparation it is not necessary for the commission to go beyond the first step, which step was taken by complainant when it paid the freight charges. See 88 I. C. C. 492; 245 U. S. 531. Walrath & Sherwood Lbr. Co. v. C. & N. W., 126 I. C. C. 97, 101, 102.

(ww) Upon further hearing, additional defendant carriers objected to being made parties to amended complaint, contending that in being brought into the case after considerable testimony had been taken they were denied a full hearing in contemplation of law and that no valid order could, therefore, be entered against them, HELD: This contention is without merit since substantially all previous evidence was reintroduced at further hearing, and complainants made it plain that they did not rely upon original record as to such carriers. Maritime Asso., Boston Chamber of Commerce v. A. A. R. R. 126 I. C. C. 199, 202.

(xx) Upon contention that complainant was not entitled to reparation because freight charges were included in selling price, HELD: Complainant paid and bore the freight charges as such, and, if rates were unreasonable, no further proof of damage is necessary. See 245 U. S. 531. Caruso, Rinella, Battaglia Co. v. N. S. R. R. 126 I. C. C. 555, 560.

(yy) Assignment of corporation's claim against Director General of Railroads on reparation award to another corporation, into which assignor merged, was not violative of Rev. St. § 3477 (Comp. St. § 6383), relative to assignments of claims against the United States, in view of Federal Control Act, § 10 (Comp. St. 1918, Comp. St. Ann. Supp. 1919, §3115¾j), notwithstanding action was brought under Transportation Act, § 206 (Comp. St. Ann. Supp. 1923, § 10071¼cc), after termination of federal control, since Federal Control Act and Transportation Act must be construed together. Empire Refining Co. v. Davis, Director General, 6 Fed. (2d.) 305.

(zz) Under Federal Control Act. (Comp. St. §§ 3115¾a-3115¾p), claim

for reparation is enforceable against Director General of Railroads, as against contention that he is branch of government and not liable, and that he cannot advance funds due from another. World Pub. Co., v. Davis, Agent. Tulsa Paper Co., v. Same. Democrat Printing Co., v. Same, 16 Fed. (2d) 130.

(3a) Where plaintiff purchased shipment of sand and gravel from original consignor f. o. b. shipping point and resold shipment f. o. b. destination to consignee, who paid freight charge and deducted same from purchase price, plaintiff is real party paying overcharge and does not require assignments from its consignee to recover overcharges. Norfolk Southern R. Co. v. Freeman Supply Corporation, (Va., 1926) 133 S. E. 817.

(3b) Assignment by consignee to consignor of claim for overcharge in freight paid by former in consideration of its deduction of freight charge from purchase price need not be under seal. Norfolk Southern R. Co. v. Freeman Supply Corporation, (Va., 1926) 133 S. E. 817.

(3c) Where goods were sold f. o. b. destination, with provision that buyer should be liable for or get benefit of any rise or decline in published freight rates, fact that holding of Interstate Commerce Commission that rate was excessive under Interstate Commerce Act, (§ 1 Comp. St. § 8563) amounted to a decline in rates which inured to benefit of buyer, HELD not to preclude seller, on theory that it had sustained no loss, from recovering in suit under section 16 (Comp. St. § 8584), on reparation order of Commission. Louisville & N. R. Co. v. Sloss-Sheffield Steel & Iron Co., 46 Sup. Ct. 73.

(3d) Shipments were purchased f. o. b. origin point, freight allowed, but freight charges were paid at destination by complainant and amounts deducted from consignors' invoices. HELD: Essentially, shipments were purchased f. o. b. destination, and freight charges, in which consignors have a proprietary interest, were but part of the delivery purchase price. However, complainants paid freight charges, as such, in first instance, and therefore are within the contemplation of finding in 88 I. C. C. 492 and entitled to reparation. Oklahoma Traffic Asso. v. A. & V., 128 I. C. C. 89, 93.

(3e) Reparation awarded complainant who showed that companies to whom shipments were consigned were merely trade names and that on all shipments made or received under those names, it paid and bore the freight charges. Nebraska Bridge Supply & Lbr. Co. v. A. G. S., 128 I. C. C. 94, 96.

(3f) Complainant showed that it paid unreasonable charges on its shipments. Upon contention of carriers that it is not clearly shown that such complainant also bore those charges, HELD: A shipper is damaged when he pays unreasonable transportation charges and it is unnecessary for him to go beyond the first step in order to be entitled to an award of reparation. See 88 I. C. C. 492. Davies & Thomas Co. v. C. R. R. Co. of N. J., 128 I. C. C. 241, 242.

(3g) Reparation was denied consignee upon his complaint because it did not appear that he, as complainant, paid the unreasonable freight charges. Subsequently consignor filed complaint herein seeking reparation on same shipments. Upon contention that complainant in present case entered no objection to claim set forth in prior case and was therefore estopped from asserting claim for reparation, HELD: Contention is without merit. Complainant's failure to intervene in former proceeding does not constitute estoppel. Reparation awarded. McKeesport Tin Plate Co. v. A. A. R. R., 128 I. C. C. 259.

(3h) Upon contention that complainant had adduced no evidence in support of its claim for reparation, HELD: Complainant showed that it made certain shipments and paid unreasonable freight charges thereon. A further showing is unnecessary to establish complainant's right to reparation. McKeesport Tin Plate Co. v. A. A. R. R., 128 I. C. C. 259, 260.

(3i) Following 88 I. C. C. 492, reparation awarded complainant who paid the unreasonable freight charges although its witnesses had no personal knowledge as to whether it also bore those charges. Virginian Gasoline & Oil Co. v. B. & O., 128 I. C. C. 621, 626.

(3j) Possession of paid freight bills coupled with witness's knowledge of customary method of payment and his personal investigation of particular claims involved is sufficient to support a finding that complainants paid and bore the charges under review. Bakeries Service Corp. v. B. & M., 128 I. C. C. 695, 696.

(3k) Upon contention that on shipments sold f. o. b. destination, price thus including freight charges, consignee and not consignor, the complainant, is entitled to reparation, FOUND: Where a shipper has paid a rate afterwards declared to be unreasonable he may recover damages in amount of difference between excessive rate and rate declared to be reasonable without proof of actual injury. See 249 Fed. 677. Party who pays the unreasonable rate is damaged. See 55 I. C. C. 469, 481, and other cited cases. Reparation awarded. Jackson v. M. C., 129 I. C. C. 235, 240.

(3l) Upon further hearing, reparation awarded on l c. l. shipments made subsequent to previous hearing, upon complainant's showing that it paid and bore freight charges thereon at rates found unreasonable in original report 107 I. C. C. 101, and upon which carrier objected to proof in affidavit form submitted in accordance with Rule V of Rules of Practice. Hill v. A., T. & S. F., 129 I. C. C. 323.

(3m) On further hearing in former reports 98 I. C. C. 339 and 102 I. C. C. 662, reparation awarded complainants and interveners upon showing that they paid and bore unreasonable freight charges. Although carriers contend that reparation should not be awarded because finding of unreasonableness was absed on relative unreasonableness and not ureasonableness per se, and that proceedings involved increases and reductions in rates under which circumstances reparation is not ordinarily awarded, here only one destination is involved and findings required reductions in all cases, and in 120 I. C. C. 723 it is said that the act condemns exaction of unreasonable rates and makes no distinction between relative unreasonableness and unreasonableness per se. Washington Publishers' Asso. v. B. & O., 129 I. C. C. 360.

(3n) Fact that rate for transportation is taken into account tosome extent in determining the price paid producer does not affect complainant's found to be due, where considerations other than rate also enter into price right to any reparation that may be paid. Beatrice Creamery Co. v. C., M. & St. P., 129 I. C. C. 375, 376.

(3o) Following 88 I. C C. 492, reparation awarded complainant who paid the unreasonable freight charges on shipments in question but deducted amount thereof from invoice price and therefore did not bear the freight charges as such. Oklahoma Traffic Asso. v. St. L.-S. F., 129 I. C. C. 461, 466.

(3p) Filing of informal complaint in which name of complainant differed with that shown in formal complaint, found sufficient to stay the statute, as the two complainants named are parties to both complaints. Baldwin Hardware Co. v. Director General, 129 I. C. C. 708, 709.

(3q) Complainant seeking reparation dismissed, upon showing that parties in interest are same as those who were awarded reparaton in original proceeding that evidence introduced in same as that in original case except as corrected and amplified; and upon conclusion that complaint was brought primarily with a view to securing reparation in larger measure than was accorded in original case. Southwestern Horse & Mule Asso. v. A., T. & S. F., 129 I. C. C. 730

(3r) Reparation order of Interstate Commerce Commission HELD sufficient under Transportation Act 1920, § 206, subd. (a) to support action against Director General of Railroads, though it did not name him as agent of any particular carrier. Ferd Brenner Lumber Co. v. Davis, Director General of Railoads, 9 Fed. (2d.) 960.

§7. Statute Of Limitations.

See Infra §7a; Claims I.

(a) Original petition in intervention did not seek reparation but an amended petition included such claim. Date of filing of amended petition governs with respect to limitation period. Becker, Moore & Co. v. N. Y. C., 104 I. C. C. 11, 12, 15.

(b) Overcharge claim barred prior to June 7, 1924, found not to have been revived by amendment to section 16 (3) of the act, passed on that date, which extended limitation period for filing such claims with commission. See conference ruling of July 28, 1925. Saxony Mills v. M. P., 107 I. C. C. 649.

(c) Informal filing of a claim for reparation by a copartnership, of which complainant named in formal proceeding was a member, found to stay statute of limitations in favor of such complainant, who operated the business alone, under another trade name, immediately prior to partnership. Humphreys v. Director General, 109 I. C. C. 157, 159, 160.

(d) Claim for reparation for unreasonableness found barred by statute of limitations because not filed within two years from date of delivery or tender of delivery as provided by section 16 of the act. Gentile Co, v. Am. Ry. Ex. Co., 109 I. C. C. 171.

(e) Objection of carriers to inclusion in complaint of claims for reparation on shipments moving subsequent to filing thereof, to destinations not specifically named therein, on ground that it would unduly broaden the issue, sustained with respect to allegations under section 1 of the act but not under section 6. Chevrolet Motor Co. v. B. & O., 109 I. C. C. 184, 185.

(f) Claim for reparation due to exaction of alleged unreasonable and otherwise unlawful charges found barred by statute of limitations because filed more than two years after delivery of shipments and more than 90 days after institution of suit by carrier in the courts for collection of undercharges. Latham-Bradshaw Cotton Co. v. B. R., 109 I. C. C. 593.

(g) Action in the courts for collection of undercharges was begun on August 8, 1924. Complaint before commission alleging unreasonable and otherwise unlawful charges was filed November 6. HELD: As under section 16 the limitation period is extended 90 days from time action is begun by carrier for recovery of undercharges, the date on which such action is begun counts as first day and 90 days thereafter would permit filing of complaint not later than November 5. Applying principle laid down in 39 I. C. C. 171, and other cited cases, wherein date on which shipment is delivered is included in ascertaining whether a complaint seeking reparation has been filed within the two-year statutory period provided by the act, complaint here found to have been filed one day late and barred. Latham-Bradshaw Cotton Co. v. B. R., 109 I. C. C. 593, 594.

(h) The amendment of June 7, 1924, to section 16 of the act which provides for an extension of period of limitation to 90 days after collection of charges in respect of transportation service is limited to instances where collection is made without carrier beginning an action in the courts for collection of undercharges. If such action is begun, complaint before commission must be filed within 90 days from institution of such suit, and not from date of payment of charges by shipper to carrier. Latham-Bradshaw Cotton Co. v. B. R., 109 I. C. C. 593, 594, 595.

(i) Claim for reparation for unreasonable rates exacted on shipments moving prior to Federal control, filed with commission more than one year after Federal control terminated, found barred under section 206 (c) of transportation act, 1920. Ross & Fitch v. Director General, 109 I. C. C. 724.

(j) The Commission has only such jurisdiction as is specifically conferred upon it by statute. The two years provision of the act sets a limit to its powers, as distinguished from a rule of law for its guidance in reaching conclusions. Pfister & Vogel Leather Co. v. Erie R. R., 112 I. C. C. 659, 660.

(k) It is the filing of a complaint within two years after the cause of action accrues that gives the Commission jurisdiction to award reparation. And no good reason is perceived why that jurisdiction should not be held to continue when the complaint demands reparation until the Commission has determined whether reparation will be allowed although more than two years may pass before a decision is rendered and before detailed proofs of the quantum of damages are submitted. South Carolina Mfrs. Asso. v. C. C. & O. Ry., 112 I. C. C. 683, 684.

(l) The Supreme Court has held that section 206 of the transportation act, 1920, which provides that the period of federal control shall not be computed as a part of the period of limitation in claims for reparation for causes of action arising prior to federal control, may not be construed retroactively to create liability. United Chem. & Organic Products Co. v. Director General, 112 I. C. C. 687, 689.

(m) Claims for reparation in respect of overcharges on shipments delivered during Federal control, charges on which were paid to director general during that period, found to constitute claims against Federal Government, and are subject, not to limitations imposed under section 16 (3) of interstate commerce act, but to those imposed under section 206 (c) of transportation act, 1920. Period of limitation provided in latter statute extinguishes claims not filed "within two years and six months after termination of Federal control," and since claims here were not filed until more than four years

subsequent thereto, they are barred. Krauss Bros. Lbr. Co. v. Director General, 112 I. C. C. 117, 118.

(n) Carriers objected to introduction of evidence on question of damages, contending that claims for reparation are barred under section 16 of the act for the reason that in the original and supplemental decision handed down by commission reparation was denied, and that when a subsequent decision was rendered in which reparation was awarded the statutory two-year period had expired. HELD: A similar contention was raised and overruled in 293 Fed. 639, wherein the court found that it is the filing of a complaint within two years after cause of action accrues that gives commission jurisdiction to award reparation, such jurisdiction continuing until commission has determined whether reparation will be allowed even though more than two years may pass before a decision is rendered and before detailed proofs of the quantum of damages are submitted. South Carolina Cotton Mfrs. Assn. v. C., C. & O., 112 I. C. C. 683, 684.

(o) Complaint filed by an association for and in behalf of its members failed to name one member as a party complainant. Such member filed an intervening petition but same was not received by commission until after expiration of statutory period of limitation. HELD: As to shipments on which reparation is claimed by this particular member statute of limitations was not tolled by the complaint as filed by association. See 27 I. C. C. 302. South Carolina Cotton Mfrs. Assn. v. C., C. & O., 112 1. C. C. 683, 686.

(p) Complaint alleging overcharges was not resubmitted on the informal docket or formal complaint filed until after expiration of the six months' period after notification that the claim failed of informal adjustment as provided in Rule III (g) of the Rules of Practice. HELD: Barred and not revived by the amendment of June 7, 1924, to section 16 of the act, because barred at or prior to that date. See 107 I. C. C. 649. Dillon v. C., C., C. & St. L. Ry., 112 I. C. C. 745.

(q) Claim for reparation found barred by statute of limitations, all shipments having been delivered more than two years prior to enactment of the amendment of June 7, 1924, to section 16 of the act. That amendment extended time for filing certain claims but did not operate to revive claims which were previously barred. See conference ruling of July 28, 1925. Maloney Tank Mfg. Co. v. B. & O., 113 I. C. C. 379.

(r) Claim for reparation due to exaction of alleged inapplicable and illegal charges, which was barred at or prior to June 7, 1924, the date of the passage of the amendment of section 16 (3) of the act which extended the limitation period for filing such claims with the commission, not considered. See conference ruling of the commission adopted July 28, 1925. Gulf Naval Stores Supply Co. v. L. & N., 113 I. C. C. 551.

(s) Complaint alleged overcharges, while tacitly admitting that charges were correctly computed under existing published rates. It contained no specific allegation of a violation of the act; stated indefinitely origin territory; did not name as defendants any other than delivering line; and statement of shipments named, neither commodities shipped, charges paid, nor routes of movement. HELD, cumulative effect of these defects warrants finding that such complaint was insufficient to stay limitation provisions of the act. Bartling Grain Co. v. M. P., 115 I. C. C. 441, 442.

(t) Complaint seeking reparation was returned to complainant and attention called to vital omissions therein. Subsequently such complaint was refiled. HELD, that statute of limitations must be computed from date of refiling and all shipments made more than two years prior thereto are barred. Bartling Grain Co. v. M. P., 115 I. C. C. 441, 442.

(u) Formal complaint was received by commission within the two-year statutory period provided in the act, but was returned for correction and subsequently refiled after statute of limitations had expired. HELD, that the original filing stopped the running of the statute and complaint as subsequently filed with corrections, is not barred. Lynchburg Chamber of Commerce v. S. Ry., 115 I. C. C. 625, 626.

(v) Claims for reparation which were not filed formally within six months after notification that claim failed of informal adjustment as provided by Rule III (g) of Rules of Practice, or within two years after cause of action accrued

as required by the statute, found barred. Seaboard Live Stock Traffic Bureau v. A., C. & Y., 115 I. C. C. 687, 688.

(w) Claim for reparation on shipments made during period of Federal control, found without commission's jurisdiction because complainant did not specifically pray for reparation as required by section 206 (c) of transportation act of 1920. Original report, 88 I. C. C. 569, affirmed. Hungerford Smith Grape Juice Co. v. A. G. S., 118 I. C. C. 169.

(x) Claim for reparation on shipments moving prior to Federal control found barred by statute of limitations in effect when cause of action accrued. While section 206 (f) of transportation act provided a new statute of limitations, complainant's right to file the claim expired prior to passage thereof and that act could not revive claim because lapse of time not only barred the remedy but also destroyed carrier's liability. See 268 U. S. 633. Original report, 88 I. C. C. 569, affirmed. Hungerford Smith Grape Juice Co. v. A. G. S., 118 I. C. C. 169, 170.

(y) More than two years after, but within three years from date of delivery of shipments, carriers collected undercharges, and 15 days thereafter complaint alleging unreasonableness and overcharges was filed. HELD, prior to collection of undercharges complainant had no ground for complaint. However, by paragraph 3 (d) of section 16 of the act, the intent of Congress was not to permit carriers to collect undercharges under above circumstances and at same time deny shippers the right to challenge reasonableness of rate so collected. Instead, paragraph 3 (d) provides that regardless of whether undercharges are collected by carrier in two years or three years, shipper may file his complaint within 90 days after such charges are paid. Accordingly, here allegations of neither unreasonableness nor overcharges are barred. Crerar Clinch Coal Co. v. A. A. R. R., 118 I. C. C. 171, 172, 173.

(z) From the language of section 16 and its history, it is clear that Congress did not intend to permit carriers to collect undercharges after two years and within three years from accrual of a cause of action and yet deny shippers the right to challenge reasonableness of rate thus collected. Instead, Congress intended, and by paragraph 3 (d) has provided, that regardless of whether undercharges are collected in two years or three years the shipper may file his complaint within 90 days after such charges are paid. Crerar Clinch Coal Co. v. A. A. R. R., 118 I. C. C. 171, 173.

(aa) Prior to amendment of June 7, 1924, to section 16 of the act, a shipper clearly had right to file complaint alleging unreasonableness of a rate which carrier sought by action in court to collect in whole or in part after two years and within three years from the time cause of action accrued. The amendment (Par. 3-d) should not be construed as taking away this right on shipments delivered prior to amendment's passage but on which undercharges are paid subsequent thereto. Its purpose, among other things, was to make certain that the right existed not only where action was brought by carrier to collect undercharges but where, without such action, the undercharges were paid. Crerar Clinch Coal Co. v. A. A. R. R., 118 I. C. C., 171, 173.

(bb) Following Danzer case, 268 U. S. 633, claims for reparation on shipments moving prior to Federal control which were barred under two-year limitation provision of section 16 of interstate commerce act prior to passage of transportation act, 1920, can not be revived. Eshelman & Sons v. Director General, 118 I. C. C. 441, 451.

(cc) Claim for reparation alleging unreasonableness, found barred by statute of limitations, shipments having been delivered more than two years prior to filing of informal complaint. Smith Oil & Refining Co. v. C., M. & St. P., 118 I. C. C. 527.

(dd) Complainant in its complaint erroneously referred to a shipment as moving from and to specified points, whereas in fact it moved in reverse direction. Shipment was fully described by car number, initials, date of movement, and weight of contents. Amended complaint was offered at hearing to correct this error and was allowed by presiding examiner over objection of carriers. HELD, under the circumstances, complaint as amended considered on its merits. Bender Iron & Supply Co. v. K. C. S., 118 I. C. C. 661, 662.

(ee) An award of reparation on intrastate traffic which moved during the guaranty period, March 1 to August 31, 1920, is, in effect, a reduction of a rate prior to September 1, 1920, within the meaning of section 208 (a) of the trans-

portation act, 1920, regardless of the date on which decision making the award was rendered. See 271 U. S. 124. Reparation on Intrastate Traffic, 122 I. C. C. 443, 447.

(ff) Record indicated that car was unloaded more than two years prior to filing of original complaint. Complainant, however, relied upon date of expense bill subsequently issued to show that complaint was seasonably filed. HELD: Date of rendition of an expense bill is not necessarily determinative of date a shipment was delivered or tendered for delivery. Delivery date here deemed to have been date car was unloaded and claim for reparation considered barred. Crystal Springs Mfg. Co. v. I. C., 126 I. C. C. 4, 5.

(gg) Complaint was returned for correction and upon return the corrected copy was stamped as filed. Upon contention that date shown by commission's stamp on copies served upon defendant carriers was more than two years after date of delivery of shipment, or after the asserted cause of action accrued and complaint was therefore barred by the statute, HELD: Date upon which a complaint is received, although subsequently returned for correction and stamped as filed on a later date, is date that tolls the statute. See 102 I. C. C. 252. Crystal Springs Mfg. Co. v. I. C. 126 I. C. C. 4, 5.

(hh) Following Danzer case, 268 U. S. 633, certain reparation claims barred under two-year limitation provision of section 16 of the interstate commerce act, found not revived by provisions of section 206 (f) of transportation act, 1920. Western Newspaper Union v. Director General, 126 I. C. C. 437, 438.

(ii) The statute of limitation applicable to actions on penalties and fines does not apply to an application for reparation on account of discriminatory rates. The law permitting such application and reparation thereon is remedial only. Missouri, K. & T. Ry. Co. v. Dewey Portland Cement Co., (Okla., 1925) 242 Pac. 257.

(jj) Many of the shipments were delivered two years or more prior to the amendment of June 7, 1924, to section 16 of the act, and claims on such shipments are barred. Di Giorgio Fruit Co. v. A. E. R. R., 128 I. C. C. 31.

(kk) Claim for reparation found barred by statute of limitations, shipments having been delivered more than two years prior to amendment of June 7, 1924, to section 16 of the act. See 109 I. C. C. 170. Di Giorgio Fruit Co. v. A. E. R. R., 128 I. C. C. 31.

(ll) Complaint filed more than two years but less than three years after delivery of shipments sought refund of allowance provided by tariff for "drayage and ferriage in lieu of lighterage." Upon contention that complaint was not properly within section 6 of the act, but constituted a claim for damages resulting from carrier's failure to comply with its lawfully published tariff, and was therefore barred by statute of limitations, citing 69 I. C. C. 59 and other cases, HELD: Cases cited are not in point. Complaint is clearly within section 6, being in effect a complaint seeking refund of overcharges, and having been filed within the three-year period prescribed by section 16 of the act is therefore not barred. Taub v. L. V., 128 I. C. C. 105.

(mm) Allegation of unreasonableness included in formal complaint filed more than two years after shipment moved, found barred by the statute, informal complaints seasonably filed having alleged only that rates charged were inapplicable. Chevrolet Motor Co. v. A., T. & S. F., 128 I. C. C. 638.

(nn) Formal complaint alleging both unreasonableness and overcharge on Federal-control shipment was filed within six months after complainant was advised that complaint was not susceptible of informal adjustment. Informal complaint, however, involved an alleged overcharge only and issue of unreasonableness, since not presented within one year after termination of Federal control, found barred. Kinnison Bros. v. Director General, 128 I. C. C. 703.

(oo) Complaint filed within statutory period but twice returned for correction was not resubmitted until almost five years afttr receipt of original complaint. Upon contention that complainant's failure to prosecute the claim amounts to abandonment thereof and complain should therefore be dismissed under doctrine of laches, FOUND: Abandonment as reconized by the commission occurs when a formal complaint is not filed within the six-months' period following notification to parties of termination of informal pro-

ceedings. Here, receipt of original complaint constituted a filing thereof, although no complaint was docketed and served until almost five years thereafter. Circumstances of case do not warrant dismissal on grounds alleged. See 92 I. C. C. 63, 66. Peters Mill Co. v. Director General, 129 I C. C. 331.

(pp) Formal claims for reparation not having been filed within statutory period provided by interstate commerce act, nor within six months after complainant was advised that they were not susceptible of informal adjustment, in accordance with provisions of Rule III (g) of Rules of Practice, although informal resubmission was sought during six-months period, found barred by statute of limitations Columbus Bolt Works. v. P. R. R., 129 I. C. C. 512

(qq) Claim for reparation, on ground of misrouting shipments moving during Federal control, not having been filed within one year after termination of Federal control, found barred by statute of limitations. Dyersburg Milling Co. v. Director General, 129 I. C. C. 739.

§7a. When Limitation Runs.

See Supra §7a; Claims I.

(a) Where question for determination is whether rates assailed were unreasonable in the past to extent of affording a basis for reparation, date on which complaint was filed is not controlling. Cooperative Oil & Paint Co. v. Director General, 122 I. C. C. 227, 228.

(b) The commission has jurisdiction to approve after August 31, 1920, an award of reparation made by State authority on intrastate traffic which moved during the guaranty period, March 1 to August 31, 1920, whether such authority was actually exercised during the guaranty period or thereafter. The phrase "prior to September 1, 1920," as used in section 208 (a) of the transportation act, 1920, is not to be construed as prescribing a time limitation within which commission was authorized to act, but as fixing the period as to which its approval was necessary to a reduction in rates whether made during the guaranty period by naming lower rates for future, or accomplished after expiration of the period by way of reparation on shipments which moved during that period. Reparation on Intrastate Traffic, 122 I. C. C. 443.

(c) An award of reparation on intrastate traffic which moved during the guaranty period, March 1 to August 31, 1920, is, in effect, a reduction of a rate prior to September 1 1920, within the meaning of section 208 (a) of the transportation act, 1920, regardless of the date on which decision making the award was rendered. See 271 U. S. 124. Reparation on Intrastate Traffic, 122 I. C. C. 443, 447.

(d) The date of rendition of an expense bill is not necessarily determinative of the date a shipment described therein was delivered or tendered for delivery. Crystal Springs Mfg. Co. v. I. C. R. R., 126 I. C. C. 4, 5.

III. CIRCUMSTANCES DETERMINING RIGHT.

§7½. In General.

(a) Existence of lower rate from a more distant point on same line or route is not in and of itself sufficient to justify an award of reparation by reason of exaction of higher rates from an intermediate point or points. See 50 I. C. C. 719. Ohio Farm Bureau Federation v. N. Y. C., 104 I. C. C. 490, 492.

(b) Reparation will be awarded for past unreasonableness where shippers support their case wholly upon a finding of unreasonableness in a former proceeding, irrespective of fact that they were not parties to the case in which unreasonableness was found. When commission reaches a conclusion regarding a certain rate that conclusion will be adhered to in subsequent proceedings, unless new facts are brought to its attention, conditions have undergone a material change, or the commission proceeded on a misconception or misapprehension. See 43 I. C. C. 366. Moreover, a finding of past unreasonableness inures to benefit of every person who has paid the unjust rate, provided he initiates his claim within the statutory period. See 236 U. S. 662. Bell & Zoller Mining Co. v. I. C.. 109 I. C. C. 484.

(c) Where shipper has paid rates in excess of maximum reasonable basis, its right to reparation is not affected by the proportion of business it was able to do in comparison with its competitors. Nuckolls Packing Co. v. A., T. & S. F., 113 I. C. C. 229, 232.

(d) Upon further consideration, finding in 85 I. C. C. 365, awarding reparation for exaction of an unreasonable through rate on coal shipped during Fed-

eral control from Shamokin, Pa., to Detroit, Mich., reversed. No joint rate was in effect and a combination based on Black Rock, N. Y., was assessed, the unreasonableness therein being due to factor beyond Black Rock of a nonfederally controlled line which was not made a party defendant. While in 40 I. C. C. 501, commission found that its reparation order for unreasonable through combinations runs against carriers, collectively, who participated in the transportation, in instant case one participating carrier was omitted as a party defendant. Also, while in 91 I. C. C. 571, where combination rate was found unreasonable and one participating carrier omitted as a defendant, commission prorated the reparation by determining reasonableness of factors separately, here the Shamokin-Black Rock factor was not unreasonable. McFadden v. Director General, 113 I. C. C. 387.

(e) Subsequent to hearing and prior to issuance of commission's decision in which certain class rates on high explosives were found unreasonable, carrier published specific commodity rates. Upon supplemental petition of complainant seeking reparation on shipments made subsequent to hearing and on which charges were assessed at specific commodity rates. HELD, change made by carriers in nature of the rates during pendency of proceeding had effect of removing them from application of finding of unreasonableness of the class rates and on such shipments there is no basis for an award of reparation. United States v. Director General, 118 I. C. C. 677.

(f) Fact that movement subsequent to establishment of a reasonable rate prescribed by commission is not as great as anticipated by shipper does not warrant denial of reparation on shipments which actually moved prior to date rate was established. Chicago Heights Mfrs. Asso. v. P. R. R., 120 I. C. C. 739, 740.

(g) The primary purpose of second clause of section 208 (a) of transportation act was to protect the United States from liability on its guaranty to the carriers of the standard return, and this it sought to do by prohibiting any reduction of rates, fares, or charges without consent of commission. See 270 U. S. 466. When it comes to awards of reparation after expiration of the guaranty perion upon intrastate traffic which moved during that period there is equal necessity for review by commission to the end that revenues of carriers may not be unduly reduced and at same time that awards of reparation in meritorious cases may be granted. Reparation on Intrastate Traffic, 122 I. C. C. 443, 447, 448.

(h) Complainant did not specifically ask for reparation on shipments moving subsequent to filing of complaint but did allege that rates "were and are unjust and unreasonable," and prayed for reasonable rates for future and for "reparation for unlawful charges hereinbefore alleged, such sum as in view of evidence to be adduced herein the commission shall determine that complainants are entitled to." At time of original hearing, complainants had uncut timber and were operating their mill. It would be doing less of violence to consider that shipments made during pendency of this proceeding are within scope of pleadings than to assume that complainants did not intend to ask for full relief, or to deny them that relief for want of use of particular words. Moreover, carrier has not been misled to its disadvantage and an award of reparation under circumstances would be in accord with similar finding in 21 I. C. C. 45. Reparation awarded. Burns & Knapp v. B. S. & K. R., 126 I. C. C. 410, 411, 412.

(i) In original report reparation was awarded on shipments of hogs moving during Federal control, carriers having failed to cancel reference to combination rule in connection with rates established by Director General in General Order No. 28, thereby eliminating a portion of increase contemplated in that order. Upon further hearing complainants sought reparation on shipments moving subsequent to Federal control. However, record in former report indicates that complainants recognized the injustice of taking advantage of carriers' inadvertence in order to secure transportation at a subnormal rate during transitional period following Federal control, and intended to have this complaint dismissed. HELD: Complainants' conduct under circumstances was in legal contemplation a voluntary dismissal of its complaint. Former report 104 I. C. C. 607, awarding reparation on shipments during Federal control affirmed. North Packing & Provision Co. v. Director General 128 I. C. C. 306.

(j) The Commission has no authority

to make an award of reparation in order to penalize the carriers, as the penalties or fines provided for violation of the act are enforceable in court and accrue to the Government, and reparation may be awarded only when complainants have been damaged either by the payment of an excessive charge or by undue prejudice or other unlawful discrimination, in which latter case special damage must be proved under the decisions of the Supreme Court. Hudson Mule Co. v. L. & N. R. R., 129 I. C. C. 365, 371.

(k) The commission has frequently found that rule 77 of Tariff Circular 18-A is a substantial compliance with the fourth section of the act and awarded reparatio non shipments moving from or to intermediate points under rates that were higher than those from or to more distant points where rates from or to latter points were subject to rule 77 and the less distant points were intermediate over route traffic moved. Woodward Auto Co. v. C., M. & St. P., 129 I. C. C. 613, 615.

§8. Erroneous Publication Or Quotation

See Erroneous Rates.

(a) Misquotation of a rate by carrier's representative affords no basis for an award of reparation. Fess v. C., H. & G. L., 104 I. C. C. 262.

(b) The mere misquotation of a rate does not justify an award of reparation, for every shipper is presumed to know the rate applicable on his shipment, which must be collected. Bowman Dairy Co. v. Am. Ry. Ex. Co., 118 I. C. C. 529.

(cd) While the misquotation of a rate by a carriers agent is not a basis for the assessment of a lower charge than that applicable under the published traiffs, or for an award of reparation, the Commission has found that where there is a uniform minimum for cars of all lengths, the carrier is not required to furnish a car of any specified length, but is under the duty of establishing a minimum weight that can reasonably be loaded into a car of the size furnished. Folly Town Co. v. Erie R. R., 120 I. C. C. 157.

(e) Misquotation of a rate by carrier's agent is not a basis for assessment of a lower charge than that applicable under published tariffs, or for an award of reparation. See 55 I. C. C. 17. Folly Town Co. v. E. R. R., 120 I. C. C. 157, 158.

(f) Shippers and carriers are alike charged with knowledge of the lawfully published rate and tariff provisions, and the misquotation of a rate by the agent or employee of the carrier is not a sufficient basis for an award of reparation. Newsome Feed & Grain Co. v. P. & L. E. R. R., 122 I. C. C. 329, 330.

(g) In original report reparation was awarded on shipment of hogs moving during Federal control, carriers having failed to cancel reference to combination rule in connection with rates established by Director General in General Order No. 28, thereby eliminating a portion of increase contemplated in that order. Upon further hearing complainants sought reparation on shipments moving subsequent to Federal control. However, record in former report indicates that complainants recognized the injustice of taking advantage of carriers' inadvertence in order to secure transportation at a subnormal rate during transitional period following Federal control, and intended to have this complaint dismissed. HELD: Complainants' conduct under circumstances was in legal contemplation a voluntary dismissal of its complaint. Former report 104 I. C. C. 607, awarding reparation on shipments during Federal control, affirmed. North Packing & Provision Co. v. Director General, 128 I. C. C. 306.

§8½. Previous Action Of Commission.

See Previous Decision of Commission; Reasonableness of Rates §26½.

(a) Upon further hearing, carriers having declined to approve reparation statements submitted in accordance with Rule V of the Rules of Practice, amount of reparation due complainants under decisions in 48 I. C. C. 475, and 55 I. C. C. 595, determined, such complainants having submitted proof and evidence that shipments were made, and that unreasonable charges exacted were paid, by them. Butters Lbr. Co. v. A. C. L., 109 I. C. C. 224.

(b) Reparation will be awarded for past unreasonableness where shippers support their case wholly upon a finding of unreasonableness in a former proceeding, irrespective of fact that they were not parties to the case in which unreasonableness was found. When commission reaches a conclusion regarding a certain rate that conclusion will be adhered to in subsequent proceedings, unless new facts are brought to its attention,

conditions have undergone a material change, or the commission proceeded on a misconception or misapprehension. See 43 I. C. C. 366. Moreover, a finding of past unreasonableness inures to benefit of every person who has paid the unjust rate, provided he initiates his claim within the statutory period. See 236 U. S. 662. Bell & Zoller Mining Co. v. I. C., 109 I. C. C. 484.

(c) Due to fact that records relating to shipments in question were not in all instances available, upon further hearing and submission of satisfactory proof as to paying and bearing of freight charges, reparation awarded for exaction of unreasonable rates on shipments of packinghouse products moving from Ottumwa, Iowa, to Memphis, Tenn., to basis of rates found reasonable in Morrell & Co., 81 I. C. C. 200, wherein commission found such rates unreasonable to extent they exceeded fifth class. Morrell & Co. v. C., B. & Q., 109 I. C. C. 613.

(d) In 62 I. C. C. 211, the Commission found rates on anthracite coal, carloads from Lehigh and Wyoming regions of Pennsylvania to Jersey City, N. J., between 1906 and 1911 unreasonable to extent they exceeded $1.45 and $1.35 per long ton on prepared and smaller sizes. Reparation awarded. HELD, reparation awarded. Wertheim Coal & Coke Co. v. L. V. R. R., 112 I. C. C. 513.

(e) Complainant attacked commodity rate charged on 17 cars of newsprint paper shipped between May 27, 1921 and June 27, 1922 from Millwood, Wash., to Dallas, Tex., as unreasonable and unduly prejudicial. Millwood is on the Spokane International about 7 miles northeast of Spokane, Wash. Distances moved ranging from 2,377 to 2,720 miles, distance over the short line route through Spokane, Billings, Mont., and Denver, Colo., 2,122 miles. HELD, following 102 I. C. C. 729, reparation awarded to basis of $1.12. West Cullum Paper Co. v. A. T. & S. F. Ry., 112 I. C. C. 641.

(f) Previous reports in 37 I. C. C. 652, 53 I. C. C. 741, 57 I. C. C. 584, 64 I. C. C. 633 and 85 I. C. C. 131. Complainant attacked rates on bituminous coal, carloads, from C. C. & O., and V. & S. W., in Virginia to Spartanburg and other points in S. C., as unreasonable. HELD, reparation awarded. South Carolina Cotton Mfrs. Asso. v. C. C. & O. Ry., 112 I. C. C. 683.

(g) In 85 I. C. C. 365, the Commission found the commodity rates on anthracite coal, carloads, from Pennsylvania to Detroit, Mich., during the period of federal control as unreasonable and awarded reparation. The factor of the rate from Shamokin to Black Rock does not appear to have been unreasonable. The Grand Trunk is not a party to the complaint. HELD, complaint dismissed. McFadden v. Director General, 113 I. C. C. 387.

(h) Upon further hearing reparation awarded for exaction of unreasonable rates on shipments of bituminous coal from mines on the C., C. & O. and Virginia & S. W. Railways in Virginia to Spartanburg and other points in South Carolina taking same or related rates. Former reports, 37 I. C. C. 652; 53 I. C. C. 741; 57 I. C. C. 584; 64 I. C. C. 633; and 85 I. C. C. 131. South Carolina Cotton Mfrs. Assn. v. C., C. & O., 112 I. C. C. 683.

(i) Complainant sought reparation on shipments of zinc ore moving from certain Kansas and Oklahoma points to Van Buren, Ark., based upon finding in 93 I. C. C. 119, wherein it was found that rates from the Joplin field to South Ft. Smith, Ark., were unduly prejudicial in favor of competitors operating zinc smelters at East St. Louis and other points in Illinois and Indiana. As proof of damage complainant relied upon comparisons of rates assailed with rates to competing points, and with testimony that service and commodities were the same, and that spelter was manufactured by smelters at those points under practically same conditions and sold on East St. Louis market basis regardless of point of production. HELD: Character of proof submitted, not being in conformity with the rule laid down by Supreme Court in 230 U. S. 184, and by commission in 55 I. C. C. 703, and a long line of other decisions, reparation denied. Falcon Zinc Co. v. N. E. O. R. R., 113 I. C. C. 265.

(j) Upon further consideration, finding in 85 I. C. C. 365, awarding reparation for exaction of an unreasonable through rate on coal shipped during Federal control from Shamokin, Pa., to Detroit, Mich., reversed. No joint rate was in effect and a combination based on Black Rock, N. Y., was assessed, the unreasonableness therein being due to factor beyond Black Rock of a nonfederally

controlled line which was not made a party defendant. While in 40 I. C. C. 501, the commission found that its reparation order for unreasonable through combination runs against carriers, collectively, who participated in the transportation, in instant case one participating carrier was omitted as a party defendant. Also, while in 91 I. C. C. 571, where combination rate was found unreasonable and one participating carrier omitted as a defendant, commission prorated the reparation by determining reasonableness of factors separately, here the Shamokin-Black Rock factor was not unreasonable. McFadden v. Director General, 113 I. C. C. 387.

(k) In 101 I. C. C. 196, division 3 found rates on bananas, and cocoanuts, carloads, from New Orleans, La., and subports taking the same rates, and Gulfport, Miss., to Oklahoma and to Arkansas City, Kas., and to Texas common point territory unreasonable and prescribed reasonable rates and awarded reparation. HELD: Original finding affirmed, except rates not unreasonable prior to September 25, 1922. Dawson Produce Co. v. A. & V. Ry., 113 I. C. C. 454.

(l) Complainant attacked commodity rates charged on 600 cars of salt made between November 1, 1921, and June 30, 1922, and between November 5, 1922, and July 27, 1923, from Burmester, Utah, to Idaho, Montana, Oregon and Washington as unreasonable and unduly prejudicial. Prayer is for reparation based on prescribed rates in 78 I. C. C. 659, wherein distance rates were prescribed from Saltair Junction and Crystal Junction, Utah. Rates were published in accordance with that order July 28, 1923. The carriers voluntarily made them applicable from other salt producing points in Utah, including Burmeste, a local point on the W. P. HELD: Rates attacked unreasonable to extent they exceed the distance rates prescribed in 78 I. C. C. 659 for the distance from Burmester, reparation awarded. Morton Salt Co. v. B. A. & P. Ry., 113 I. C. C. 548.

(m) Rate on sand from Sandusky, Ohio, to Pittsburgh, Pa., found not unreasonable as applied to past shipments, but unreasonable for future to extent it exceeded rate for like distances under the distance scale prescribed in 104 I. C. C. 717 for application from points in western Pennsylvania to points in Ohio. Rates prescribed in cited case forming basis of a general readjustment, a finding that rates applicable prior thereto were unreasonable to extent they exceeded the rates under new basis, and that damages were accordingly sustained, is not warranted. Moreover, reparation will not ordinarily be awarded to basis of a finding resulting in a widespread readjustment of rates. Accordingly, reparation denied in instant case, but reasonable rate prescribed for future. Booth & Flinn v. P. R. R., 113 I. C. C. 613.

(n) Complainant attacked commodity rates charged on bituminous coal, carloads, shipped from January 12, 1923, to June 4, 1924, from Kansas, Missouri, Arkansas and Oklahoma to Kansas City, Mo.-Kas., Independence, Mo., and related points as unreasonable. In 89 I. C. C. 73 the commission prescribed rates to these points. HELD: Rates attacked not unjust or unreasonable, reparation denied. Beatty Coal Co. v. A. V. I. U. Ry., 115 I. C. C. 8.

(o) In 91 I. C. C. 677 the commission found the attacked rates on sugar beets, carloads, between points in Ohio and Michigan unjust and unreasonable and prescribed a reasonable basis of rates. HELD: Reparation awarded. Continental Sugar Co. v. N. Y. C. R. R., 115 I. C. C. 124.

(p) Complainant attacked commodity rate of 61c charged on 28 cars of cottonseed shipped from Memphis, Tenn., to Eagle Pass, Tex., between November 20, 1922, and January 23, 1924, as unreasonable. The distance over route of movement is 887 miles, the rate charged being the Texas common point rate of 45.5c plus differential of 15.5c. In 98 I. C. C. 183 the commission prescribed a reasonable maximum rate on cottonseed between points in the southwest. They were published September 15, 1925, and the rate for that distance would be 52c. HELD: Rate attacked unreasonable to extent it exceeded the rate published in pursuance to 98 I. C. C. 183, reparation awarded. Russell Hickle Seed Co. v. M. P. R. R., 115 I. C. C. 253.

(q) Complainant sought reparation on numerous cars of wheat, corn, bran, and products thereof from numerous points in Nebraska, Idaho, Colorado and Wyoming to numerous destinations, and alleged the applicable rates were unreasonable to extent they exceeded those

which were later published on December 27, 1921, and January 7, 1922, in compliance with 64 I. C. C. 85. HELD: Following 100 I. C. C. 319, reparation denied for lack of proof of alleged unreasonableness of the particular rates attacked, complaint dismissed. Bartling Grain Co. v. M. P. R. R., 115 I. C. C. 441.

(r) Complainant attacked as unreasonable and unduly prejudicial rates, which usually are combinations on the Ohio or Mississippi river crossings, maintained by defendants on shelled peanuts, carloads, from Alabama, Florida, Georgia, South Carolina, and Tennessee to Chicago, Ill., Milwaukee, Wis., Canton and Cleveland, O., South Bend, Ind., Dubuque, Ia., and St. Louis, Mo. In 101 I. C. C. 138, Division 2 found rates to St. Louis not unjust, unreasonable or otherwise unlawful, and rates to other points unreasonable to extent that the factors north of Ohio River might exceed to Chicago 27c, Milwaukee 30c, Canton 26c, Cleveland 26c, South Bend 27c and Dubuque 32.5c, reparation denied. HELD: Original report affirmed and rate attacked from Nashville, Tenn., to Chicago unreasonable to extent it exceeded 58.5c. Reparation awarded since November 19, 1923, the date complaint was filed. United Fig & Date Co. v. A. C. L. R. R., 115 I. C. C. 643.

(s) Case was submitted based on 68 I. C. C. 522. Complainant attacked rates charged on 20 cars of linseed oil shipped from New York and Philadelphia, Pa., to Cleveland, and Chicago, between April 8, 1922, and September 28, 1923, as unreasonable and unduly prejudicial to extent it exceeded rates on cottonseed oil. Charged fifth class of 54.5c from Philadelphia to Chicago, 38c Philadelphia to Cleveland and 40c from New York to Cleveland. HELD: Rates attacked unreasonable to extent they exceeded rates on cottonseed oil, reparation awarded. Glidden Co. v. C. R. R. of N. J., 118 I. C. C. 59.

(t) In 88 I. C. C. 569 the commission found rates on grape juice, in glass, in carloads, from Ohio river crossings to destinations in the southeast on traffic originating at Lawton, Mich., were found unreasonable to extent they exceeded 90 per cent of fifth class. HELD: Reparation awarded. Smith Grape Juice Co. v. A. G. S. R. R., 118 I. C. C. 169.

(u) In 83 I. C. C. 712, affirmed 102 I. C. C. 502, the commission found commodity rates on anthracite birds eye coal from groups A, B and C mines on the D. & H. in Pennsylvania to Thomson, N. Y., unreasonable to the extent they exceeded $2.30 per long ton prior to August 26, 1920, $3.22 from that date to June 30, 1922, and $2.90 thereafter, and rates from the same mines to Ondawa, N. Y., on and after February 1, 1922, unreasonable to extent they exceeded rates found reasonable to Thomson, reparation awarded. HELD: Reparation awarded to intervenor. United Paperboard Co. v. G. & J. Ry., 118 I. C. C. 175.

(v) Complainant attacked rates charged on iron and steel pipe and tank material, carloads, shipped between October 4, 1922, and November 7, 1923, from Louisiana to Arkansas as unreasonable and unduly prejudicial to extent they exceeded distance scale of rates prescribed in 77 I. C. C. 473. Fifth class rates charged. HELD: Rates attacked unreasonable to extent they exceeded those prescribed in 77 I. C. C. 473, reparation awarded. Standard Oil Co. v. T. & P. Ry., 118 I. C. C. 627.

(w) In 80 I. C. C. 143 the commission found combination class rates charged on interstate shipments to and from Lake Denmark and Picatinny, N. J., as unreasonable to extent they exceeded certain components as prescribed therein. HELD: Reparation awarded. United States v. Director General, 118 I. C. C. 677.

(x) In 113 I. C. C. 459, the commission found the rate on bananas and cocoanuts in straight or mixed carloads, from New Orleans, La., to San Antonio, Tex., unreasonable on and after September 15, 1923, to extent it exceeded 97.5c but not unreasonable prior to that date. In 101 I. C. C. 196 and 113 I. C. C. 454 the commission found the rates from New Orleans and Gulfport, Miss., to 24 points in Oklahoma, one point in Kansas and seven points in Texas unreasonable on and after September 25, 1922. HELD: Reparation awarded on and after September 25, 1922, to extent it exceeded 97.5c, reparation awarded. Gugenheim Goldsmith Co. v. G. H. & S. A. Ry., 118 I. C. C. 681.

(y) Complainant attacked rates charged on nine cars of oil well outfits and supplies between April 2 and September 6, 1923, from Oil City, Caddo,

Mansfield and Marion, La., to Smackover and Louann, Ark., as unreasonable. Shipments moved entirely within territory covered by the decision in 77 I. C. C. 473. Class A rates were charged. HELD: Rates attacked unreasonable to extent they exceed those prescribed in 77 I. C. C. 473, reparation awarded. Texas Co. v. K. C. S. Ry., 118 I. C. C. 713.

(z) Complainant attacked rates on wrought iron or steel pipe, carloads, between Texas and Oklahoma as unreasonable. Petrolia and Dallas, the Texas points of origin, are in Texas common point territory. Rates sought are on scale prescribed in 77 I. C. C. 473. HELD: Rates attacked unreasonable to extent they exceed those prescribed in 77 I. C. C. 473, reparation awarded. Lone Star Gas Co. v. C. R. I. & P. Ry., 118 I. C. C. 717.

(aa) Complainant attacked rate of 53.5c charged on iron and steel pipe, carloads, between May 27, 1924, and July 9, 1925, from Ranger, Tex., to Ada., Bristow, Bying, Paden and Seminole, Okla., and from Jefferson, Okla., to Ranger as unreasonable. Reparation is desired to basis prescribed in 77 I. C. C. 473. HELD: Rates attacked unreasonable to extent they exceed those prescribed in 77 I. C. C. 473, reparation awarded. Texas Pacific Coal & Oil Co. v. A. T. & S. F. Ry., 118 I. C. C. 719.

(bb) Upon complaint alleging that rates on shipments of bituminous coal from mines in Kansas, Missouri, Oklahoma, and Arkansas, to Kansas City, Mo.-Kans., Independence, Mo., and related points, were unreasonable in past to extent they exceeded rates prescribed for future in 89 I. C. C. 73. FOUND, rates assailed compare favorably with various rates between other points, and with those prescribed by commission on various low-grade commodities, for comparable distances. Moreover, prescribed rates were in the nature of a general readjustment, following which reparation is not ordinarily awarded. Beatty Coal Co. v. A. V. I., 115 I. C. C. 8.

(cc) Reparation on shipments of grain and products moving between date of decision in the Grain case, 64 I. C. C. 85, and the final date on which reduced rates prescribed therein were required to be established, denied for lack of proof of unreasonableness of particular rates assailed. Sole reliance was placed upon cited case and contention that burden of proof rested upon carriers. Only evidence submitted was a history of rates and certain transportation documents there being an entire lack of tests ordinarily employed in measuring reasonableness of rates. Moreover, the commission's findings did "not become binding until ordered into effect" and "the rates were not prescribed as reasonable on shipments moving prior to the date on which they were ordered into effect, any more than on shipments moving the day after the decision was rendered." See also 100 I. C. C. 319. Bartling Grain Co. v. M. P., 115 I. C. C. 441.

(dd) Complainant contended that rates and ratings assessed on automobile horns were unreasonable to extent they exceeded lower rates and ratings subsequently established in conformity with commission's decision in 78 I. C. C. 313, and sought reparation to that basis, citing cases wherein commission awarded reparation in connection with reductions in classification ratings. HELD, assailed ratings had been maintained for many years and subsequent reductions applied throughout a large territory affecting shippers at many points. Under such circumstances, commission has frequently denied reparation. See 37 I. C. C. 81, and other cited cases. Heinze Electric Co. v. B. & M., 118 I. C. C. 77.

(ee) Upon further hearing, reparation awarded intervener on anthracite bird's-eye coal shipments from Groups A, B, and C mines in Pennsylvania, to Ondawa, N. Y., upon showing that it paid and bore charges and was damaged to extent of difference between charges paid and those that would have accrued at rates found reasonable in previous report 83 I. C. C. 712 and 102 I. C. C. 502. United Paperboard Co. v. G. & J. Ry., 118 I. C. C. 175.

(ff) Upon complaint seeking reparation on shipments of fertilizer and fertilizer materials from Jackson, Miss., to Arkansas and Louisiana destinations, predicated upon findings in Jackson Traffic Bureau, 102 I. C. C. 129, wherein reparation was not sought. HELD, considering fact that case relied upon was part of the Memphis-Southwestern rate adjustment prescribed in 55 I. C. C. 515, and other cases, it can not be said that rates prior thereto were unreasonable merely because they were not on a distance basis. Furthermore, Rule III (s) of Rules of Practice provides that "Except under unusual circumstances, and

for good cause shown, reparation will not be awarded upon a complaint in which it is not specifically prayed for, or upon a new complaint by or for same complainant which is based upon any finding in original proceeding." Jackson Traffic Bureau v. A. & V., 118 I. C. C. 217.

(gg) Carrier failed to establish rates prescribed in 80 I. C. C. 143, until subsequent to date ordered. Complainant filed supplemental petition seeking reparation on shipments made between date rates were found unreasonable and date on which carrier established prescribed rates. Upon contention of carrier that as commission had no evidence as to rates in effect during the interim, it could not make a lawful finding as to reasonableness of those rates. HELD, this contention is without merit. Section 15 of the act specifically empowers commission that whenever after full hearing, it is of opinion that a rate is or will be unreasonable, to determine and prescribe what will be reasonable future rate, and until that rate is established higher rate applied continues to be unreasonable to extent found. Reparation awarded. United States v. Director General, 118 I. C. C. 677.

(hh) On further hearing, reparation awarded complainant on interstate shipments moving subsequent to date of second hearing to and from Lake Denmark and Picatinny, N. J., and on which charges were paid at class rates found unreasonable in original report, 80 I. C. C. 143. United States v. Director General, 118 I. C. C. 677.

(ii) In 89 I. C. C. 170, the Commission found the carload rates on anthracite and bituminous coal from Lake Superior docks to Sioux City, Ia., were unreasonable and unduly prejudicial. The rates from the Lake Superior docks to Sioux City at the time of the original decision were $3.59 on bituminous coal and $3.89 on anthracite coal. The short route distance was 408 miles from Duluth. Commission prescribed $3.35 and $3.53, respectively. The rates on lump coal to Sioux City at the time of the original decision were $3.71 from the northern Illinois district, $4.18 from the Springfield group, $4.30 from the Belleville group, $4.48 from the Southern Illinois district. HELD, rates attacked during the reparation period unreasonable to extent they exceeded from Lake Superior $3.92 and $3.72 prior to July 1, 1922 and on and after that date $3.35 and $3.53; on lump coal from northern Illinois and Fulton-Peoria districts $3.83, from the Springfield group $4.28, $4.50 from Belleville and Centralia groups, $4.61 from the southern Illinois and Duquoin groups prior to July 1, 1922 and $3.45, $3.85, $4.05, and $4.15 subsequently, reparation awarded. Sioux City Chamber of Commerce v. C. B. & Q. Ry., 120 I. C. C. 7.

(jj) In 101 I. C. C. 621, division 4 found that the sixth class rates of $5.10 per long ton on scrap iron, carloads, during Nov. 1921 from Dunbar, W. Va., to Weirton, W. Va., over an interstate route, as unreasonable to extent it exceeded $3.92 per long ton. HELD, reparation awarded. Hilb & Bauer v. N. Y. C. R. R., 120 I. C. C. 421.

(kk) In 83 I. C. C. 737 the Commission found rates on coal in carloads, from mines on the Greenbrier & Eastern R. R. to destinations unreasonable to extent they exceed the group rates maintained from branch line points on the C. & O. in the New River district in West Virginia to the same destinations. In 96 I. C. C. 124, on rehearing, the Commission found the rates unreasonable and unduly prejudicial to the extent they exceeded the New River district rates. HELD, reparation awarded. Nelson Fuel Co. v. C. & O. Ry., 120 I. C. C. 723.

(ll) Complainant attacked class rates charged on eight cars of manganese steel scrap shipped between June 11 and Aug. 28, 1924 from New Castle, Del., to Chicago Heights, Ill., as unreasonable to extent they exceeded $6, prescribed in 92 I. C. C. 194. HELD, rate attacked unreasonable to extent it exceeded $6, reparation awarded. Chicago Heights Mfrs. Asso. v. P. R. R., 120 I. C. C. 739.

(mm) Rates on anthracite and bituminous coal from Lake Superior docks and on bituminous lump coal from various Illinois groups to Sioux City, Iowa, found unreasonable prior to establishment of rates prescribed by commission in the Lake Dock Coal Cases, 89 I. C. C. 170. Sioux City Chamber of Commerce v. B. & O., 120 I. C. C. 7.

(nn) Carriers resisted an award of reparation to basis of rates prescribed in another proceeding by citing previous expressions of commission to effect that reparation will not ordinarily be awarded where a general adjustment is made resulting in both increases and reductions.

HELD, where shippers have been charged rates very much above the general level in same immediate territory, and in making sales have absorbed the difference between its rates and those of its competitors, it has clearly been damaged by such an adjustment to extent that its rates were above the somewhat higher level prescribed. Nat'l. Car Coupler Co. v. A., T. & S. F., 120 I. C. C. 37, 38.

(oo) Original report, finding that rates "are and for the future will be unreasonable" was reopened upon petition of carriers. Thereafter, complainants were permitted to amend their complaint with an allegation of damages. Report on further hearing reiterated the original finding and in addition awarded reparation. Upon contention that wording of commission's reports did not cover unreasonableness in past, HELD: while the word "were" was omitted from finding of unreasonableness in report awarding reparation, the question of past unreasonableness entered into the proceeding when amended complaint was filed. Evidence, upon which original report, later affirmed, was made, being presented some months prior to beginning of reparation period, and second report making provision for proof in affidavit form as to shipments moving subsequent to date of second hearing, shows inconsistency of any attempt to construe the finding as operative only on and after the date of decision in second report. Nelson Fuel Co. v. C. & O., 120 I. C. C. 723.

(pp) Complainant attacked commodity rates charged on cars of gasoline shipped from Casper, Wyo., to Ogden, Price, Provo, and Salt Lake City, Utah, between Nov. 20, 1923 and Dec. 21, 1924 as unjust and unreasonable. Charged to Ogden and Salt Lake City 83.5c and to Provo and Price 96.5c. Reparation is sought to basis of 66c found reasonable from Casper to Ogden, Salt Lake City and Provo in 92 I. C. C. 376 which were established Dec. 22, 1924. HELD, rate attacked to Salt Lake City and Provo unreasonable to extent they exceeded 66c, to Price unreasonable to extent it exceeded 78c and to Ogden via the D. & R. G. W. not unreasonable, reparation awarded. Texas Co. v. C. B. & Q. R. R., 122 I. C. C. 109.

(qq) Complainant attacked commodity rates charged on numerous cars of petroleum products, including gasoline and lubricating oil, shipped between Feb. and Dec. 22, 1924 from Casper, Wyo., Florence & Minnequa, Colo., Richmond and El Segundo, Calif., to various points in Utah, including Ogden, Price and Salt Lake City and to De Beque, Colo., as unreasonable. Charged from Casper of 83.5c to Salt Lake City and 96.5c to Price and De Beque; 67.5c from Florence to Salt Lake City, Price; 85c from Richmond and El Segundo to Salt Lake City and Ogden; and 74.5c from Minnequa to Castle Gate, Utah. HELD, following 122 I. C. C. 109, rate attacked from Florence to the destinations named unreasonable to extent it exceeded 60c, reparation awarded. Continental Oil Co. v. A. T. & S. F. Ry., 122 I. C. C. 335.

(rr) Complainant attacked fifth class rate of 18c charged on tank cars of crude glycerine shipped from Milwaukee, Wis., to U. S. Yards, Chicago, Ill., between Dec. 30, 1923 and July 23, 1924 as unjust and unreasonable. Effective Oct. 28, 1924 a commodity rate of 13c was established. HELD, rate attacked unreasonable to extent it exceeded 13c, reparation awarded. Armour & Co. v. C. M. & St. P. Ry., 122 I. C. C. 380.

(ss) Complainant attacked commodity rates charged on 92 cars of wooden doors shipped between May 20, 1922 and Nov. 9, 1923 from Hoquiam, Wash., to trunk line and New England territories as unreasonable. Hoquiam is about 57 miles west of Centralia, Wash. The rates charged exceeded by various amounts the rates found reasonable in 78 I. C. C. 495, from north Pacific coast territory to the destinations here considered. HELD, rates attacked unreasonable to extent they exceeded rates prescribed in 78 I. C. C. 495, reparation awarded. American Door & Mfg. Co. v. B. & O. R. R., 122 I. C. C. 471.

(tt) In 118 I. C. C. 37, the Commission found the rate charged on green salted hides, in carloads, from Meridian, Miss., to Portville, N. Y., prior to July 1, 1922 was unreasonable to extent it exceeded 75.5c, and subsequent thereto 38c. On Dec. 2, 1926 defendant petitioned for a modification of the order so as to prescribe a rate of 71c. In compliance with 104 I. C. C. 37 the carriers established a rate of 71c. HELD, rate attacked unreasonable to extent it exceeded 79c prior to July 1, 1922 and 71c thereafter, reparation awarded. Northwestern Leather Trust Co. v. M. & O. R. R., 122 I. C. C. 517.

(uu) In 115 I. C. C. 667, division 3 found that the rates on rosin and turpentine, from Louisiana and Texas producing points, to certain destinations in central territory were unreasonable and unduly prejudicial. The record does not support a finding that the rates attacked were unreasonable in the past. The finding of unreasonableness should have been confined to rates for the future. HELD, rates attacked not unreasonable in past, to Kansas City not unduly prejudicial but unreasonable for the future to extent they exceed rates of 36c on rosin and 56c on turpentine, and maximum reasonable and nonprejudicial rates for the future will be as prescribed in the original report. Turpentine & Rosin Producers Asso. v. A. & V. Ry., 122 I. C. C. 549.

(vv) Upon further hearing, finding in former report, 88 I. C. C. 747, that rates on roofing and paving material from St. Louis and Kansas City, Mo., Cleveland and Lockland, Ohio, and Chicago, Aurora, Madison, Marseilles, and East St. Louis, Ill., to Little Rock, Ark., were not unreasonable or otherwise unlawful, affirmed. Complainants point out that reparation has been awarded on commission's special docket covering claims on similar shipments. However, such awards were based upon admission of carriers that rates charged were unreasonable. There is no such admission in this case, record is more complete and fails to establish that rates charged were unreasonable. Cooperative Oil & Paint Co. v. Director General, 122 I. C. C. 227.

(ww) Reparation awarded in former report 96 I. C. C. 412, under finding of unreasonableness of combination rate on lepidolite ore from Embudo, N. Mex., to Wheeling, W. Va., held not to lower shipments which moved over a delivering line not named in the complaint, and over whose line combination rate was not found unreasonable. Opportunity to justify reasonableness of rate over its route was never afforded the delivering carrier, nor were defendant carriers put on notice that reparation was sought on shipments delivered by it. New Mexico Corp. Commission v. A., T. & S. F., 123 I. C. C. 675.

(xx) Complainant attacked fifth class rates charged on 12 shipments of structural steel carloads, from Denison, Tex., to Henryetta, Okla., during August 1924, as unreasonable. Denison is served by the M. K. T., Frisco and K. O. & G., Henryetta served by the Frisco and K. O. & G. Shipments were routed over M. K. T. and Frisco, 209.6 miles, charged fifth class rate of 50.5c based on short single line distance of 150.5 miles over the K. O. & G. Complainant is seeking reparation based on rate of 29c prescribed in Memphis Southwestern Inves-igation, 77 I. C. C. 473, on structural steel for single line distances of 160 and over 150 miles. The joint line scale was 36c. HELD, rate attacked unreasonable to extent it exceeded 36c, reparation awarded. Okmulgee County Commissioners v. M. K. T. Ry., 126 I. C. C. 1.

(yy) In a supplemental report, Burns & Knapp v. B. S. & K. R. Co., 74 I. C. C. 111, the Commission found complainants were entitled to reparation from that carrier, because of unreasonable rates on lumber from Sherman, Ky., to interstate destinations. Original report in 62 I. C. C. 345. HELD, reparation awarded. Burns & Knapp v. B. S. & K. R. Co., 126 I. C. C. 410.

(zz) In Western Newspaper Union v. Director General, 69 I. C. C. 523, the Commission found unreasonable the less carload rating in official classification, and the rates applicable in connection therewith, on stereotype plates, old, worn out, or scrap, broken or unbroken, shipped with type faces unprotected, and valuable only for remelting. HELD, reparation awarded. Western Newspaper Union v. Director General, 126 I. C. C. 437.

(3a) In original report, 118 I. C. C. 524, rates on cordwood from Twin and Crosby, Miss., to Braithwaite, La., were found unreasonable. Complaint alleged that five shipments involved originated at Crosby, but freight bills submitted in evidence indicated that two were shipped from Goodyear, Miss., and as rates from latter point were not assailed no consideration was given those shipments. Upon further consideration the two shipments eliminated from original report found to have originated at Crosby, Goodyear being the point from which they were waybilled. Reparation awarded. E-Z Opener Bag Co. v. P. R. V., 128 I. C. C. 48.

(3b) Complainant alleged rates charged on cordwood, carloads, from Twin and Crosby, Miss., shipped during May and Oct. 1923 to Braithwaite, La., were unreasonable. In E-Z Opener Bag

Co. v. P. R. V. R. R., 118 I. C. C. 524, the Commission found the rates charged unreasonable and awarded reparation. Shipments originated at Crosby and billing point was Goodyear. HELD, reparation awarded. E-Z Opener Bag Co. v. P. R. V. R. R., 128 I. C. C. 48.

(3c) Complainant attacked commodity rate of 42c charged on lubricating oil, in tank car loads, from Galena, Port Arthur, and West Port Arthur, Tex., to Topeka, Kas., as unreasonable and unduly prejudicial. In White Eagle Oil & Refining Co. v. A., T. & S. F. Ry., 122 I. C. C. 223, the Commission found the rate attacked since Sept. 15, 1925 unreasonable and unduly prejudicial to extent it exceeded 32c. Upon reconsideration, HELD, rate attacked not unreasonable on past shipments but for future unreasonable and unduly prejudicial to extent it exceeds 34c, reparation denied. White Eagle Oil & Refining Co. v. A., T. & S. F. Ry., 128 I. C. C. 55.

(3d) Upon further hearing, original report 95 I. C. C. 104, reversed in part, following 118 I. C. C. 725. Rates on scrap brass and copper from certain points in New York and New Jersey to East Liberty and Pittsburgh, Pa., found unreasonable with certain exceptions. Reparation awarded. Union Smelting & Refining Co. v. C. R. R. of N. J., 128 I. C. C. 129.

(3e) Complainant attacked commodity rates charged on numerous carloads of tin plate two years prior to August 24, 1925 from McKeesport, Pa., to New London, Wis., as unreasonable. Charged through rate of 54c. In Borden Co. v. A. A. R. R. Co. 100 I. C. C. 153, the Commission found these rates on and after July 1, 1922 unreasonable to extent they exceeded 51.5c via Manitowoc, Wis., and 51c via Kewanee, Wis. A rate not to exceed 51c via either Manitowoc or Kewanee was prescribed for the future. HELD, rate attacked unreasonable to extent it exceeded those found reasonable in Borden case, reparation awarded. McKeesport Tin Plate Co. v. A. A. R. R. Co., 128 I. C. C. 259.

(3f) In Kendall Refining Co. v. A. & V. Ry., 118 I. C. C. 689, the Commission found not unreasonable the rates on gasoline, in carloads, from Texas and Oklahoma to Bradford, Pa., and denied relief under the fourth section. From the Texas points to Bradford the rates assailed were 71.5c prior to May, 1924 and 70c thereafter. The corresponding rates to Buffalo, N. Y., were 65.5 and 64c. From Oklahoma to Bradford rate assailed 67c, to Buffalo 60.5c. HELD, rates attacked unreasonable to extent they exceed the rates to Buffalo, reparation awarded. Kendall Refining Co. v. A. & V. Ry., 128 I. C. C. 427.

(3g) Complainant attacked commodity rate of 83.5c charged on 16 cars of box shooks between Aug. 13 and Oct. 3, 1923 from Bend, Oreg., to Port Arthur, Tex., as unreasonable to extent it exceeded 79.5c. Complainants case is based primarily on West Coast Lumbermens Asso. v. A. & S. Ry., 78 I. C. C. 746. The rates prescribed in that case were established Oct. 5, 1923. The shipments on which complainant sought reparation moved during the period between Aug. 11, the effective date of the original order, and Oct. 5, 1923 the effective date of the amended order. Complainant introduced no evidence in support of its contention as to the unreasonableness of the rates attacked during that period. HELD, rates attacked not unreasonable, Complaint dismissed. Shelvin Hixon Co. v. O. W. R. R. & N. Co., 128 I. C. C. 565.

(3h) Following commission's decision in 122 I. C. C. 15, reparation denied on paving brick from Murphysboro, Ill., to Martin, Tenn., moving prior to establishment of rates in conformity with general readjustment of rates on brick prescribed in 88 I. C. C. 543. Revision ordered by commission in that case, to basis of which complainant here seeks reparation, affected a large territory and involved numerous increases as well as reductions, under the circumstances of which reparation has been consistently denied. Murphysboro Paving Brick Co. v. I. C. 128 I. C. C. 635.

(3i) Contention of carrier that reparation should be denied on shipments moving prior to change in classification rating, citing 88 I. C. C. 103, and other cases, not sustained. Ratings assailed in cases cited were not shown to have been unreasonable as applied to past shipments. Tennessee Furniture Corp. v. B. & O. C. T., 128 I. C. C. 701, 702.

(3j) In Hill v. A., T. & S. F. Ry., 107 I. C. C. 101, the Commission found the rates on fruits and vegetables, in carloads and less carloads, from California points to Prescott, Ariz., unreasonable and awarded reparation. HELD, reparation awarded. Hill v. A., T. & S. F. Ry., 129 I. C. C. 323.

(3k) Complainant alleged that commodity rates charged on common unglazed doors, in straight carloads, shipped between March 1, 1922 and Dec. 1, 1923 from Oregon and Washington to destinations in trunk line and New England territories were unreasonable. The rates charged were commodity rates from the points of origin to Mississippi river crossings and to Chicago, Ill., plus the fifth class rates beyond. These combination rates applied subsequent to Oct. 21, 1915. Prior to that date joint rates were in effect. In Anson Gilkey Hurd Co. v. S. P. Co. 78 I. C. C. 495, 513, decided Jan. 16, 1923, the combination rates were found unreasonable to the extent that they exceeded 115% of the lumber rates prior to Dec. 24, 1921 and subsequent thereto, to the extent that they exceeded 115% of the lumber rates "in effect between the same points on Dec. 23, 1921". Reparation was awarded. HELD, rates assailed unreasonable to the extent they exceeded the rates from and to the same points on the same commodity found reasonable in Anson Gilkey & Hurd Co. supra, reparation awarded. M & M Wood Working Co. v. O. W. R. R. & N. Co., 129 I. C. C. 329.

(3l) In Washington Publishers Asso. v. B. & O. R. R., 98 I. C. C. 329 and 102 I. C. C. 662, the Commission found the rates on newsprint paper, in carloads, from New England, New York and Canada to Washington, D. C., were unreasonable to extent they exceeded the rates to Baltimore, Md., by more than 2c per 100 pounds, and that the rates from Philadelphia, Pa., to Washington were unreasonable to the extent they exceeded the rates to Baltimore by more than 2c. HELD, reparation awarded. Washington Publishers Asso. v. B. & O. R. R., 129 I. C. C. 360.

(3m) In Coulbourn Fruit Co. v. B. & O. R. R., 104 I. C. C. 734, the Commission found that the rates on strawberries and tomatoes from Kentucky and Tennessee to Youngstown, O., were unreasonable and awarded reparation. Shipment originally moved to Cleveland, O., thence reconsigned to Youngstown, moving over the L. & M., to Cincinnati, O., Big Four to Cleveland, and B. & O. beyond, 753 miles, charged 75.5c to Cleveland and fourth class 24.5c beyond. The rate to Pittsburgh rate points was unrestricted as to routing, and was applicable over the same line and route this shipment moved through Youngstown. Pittsburgh is 72 miles beyond Youngstown. As the Big Four is a party to the joint rate beyond the river it is not essential that it be a party defendant. HELD, original finding affirmed that rate was unreasonable to extent it exceeded 81.5c, reparation awarded. Coulbourn Fruit Co. v. B. & O. R. R., 129 I. C. C. 441.

(3n) Complainant alleged joint rates on rags and waste paper, in carloads, from interstate points to Kingston, Pa., composed of rates to Latrobe, Pa., plus certain arbitraries, were inapplicable. Original report, 88 I. C. C. 535, and 96 I. C .C. 226. HELD, reparation awarded. Barrett Co, v. Director General, 132 I. C. C. 82.

(3o) Complainants alleged that the interstate rates on fresh meats and packing house products in less carloads or peddler car quantities, from El Paso, Tex., to Arizona, New Mexico and Texas were unreasonable. Original report 100 I. C. C. 4 HELD, reparation awarded Peyton Packing Co. v. A. E. R. R., 132 I. C. C. 149.

(3p) Complainant alleged fourth class rating on automobile bow sockets in official classification and fourth class rates were unreasonable to extent they exceeded fifth class ratings and rates. Original report, 109 I. C. C. 184. HELD, reparation awarded. Chevrolet Motor Co. v. B. & O. R. R., 132 I. C. C. 151.

(3q) In Tallulah Cotton Oil Co. v. A. & V. Ry., 126 I. C. C. 723, the Commission found that the rates on cottonseed, carloads, to Jackson and Newton, Miss., from the origin points involved, had been since Nov. 27, 1923, were, and for the future would be unreasonable, reparation awarded. Defendant M. P. points out that compliance with the order will create fourth section departures at several intermediate points. This was caused partly through misinformation as to the distance from the several points, and partly through lack of information as to an available route through Natchez. HELD, rates assailed unreasonable to extent they exceed rates ranging from 16.5c to 24.5c, reparation awarded. Tallulah Cotton Oil Co. v. A. & V. Ry., 132 I. C. C. 558.

(3r) Complainant alleged commodity rates charged on fresh meats and packing house products, in straight or mixed carloads, from Chicago, Ill., Mil-

waukee, Wis., and South St. Paul, Minn., to Houghton, Mich., were unreasonable. Evidence is confined to shipments from South St. Paul. Shipments moved C. St. P. M. & O. and D. S. S. & A., charged 72c on fresh meats and 38.5c on packing house products. In Armour & Company v. C., M. & St. P. Ry., 115 I. C. C. 68, Commission found that these rates were unreasonable to extent they exceeded 57.5c on fresh meats and 34.5c on packing house products. HELD, rates assailed unreasonable to extent they exceeded 57.5c and 34.5c reparation awarded. Weiber & Son v. C. M. & St. P. Ry., 132 I. C. C. 625.

(3s) Upon further hearing, the finding in former report, 104 I. C. C. 734, that rates on a shipment of tomatoes from Gibson, Tenn., to Youngstown, Ohio, were unreasonable to extent they exceeded lower rates in effect to Pittsburgh, Pa., rate points, and the award of reparation, affirmed. Original record indicated that shipment moved over L. & N. to the Ohio River, and the B. & O. beyond. Further evidence, however, showed that shipment moved to Cleveland over the L. & N. and the C., C., C. & St. L., and was thence reconsigned to Youngstown Upon contention that as rate to Pittsburgh rate points does not apply through Cleveland, and as the C., C., C. & St. L. was not a party defendant, the commission's order for reparation can not run against that carrier, FOUND: Rate to Pittsburgh rate points was unrestricted as to routing and was applicable over same line and route shipment moved through Youngstown. Moreoevr, as the C., C., C. & St. L. was a party to joint rate beyond the river, it was not essential that it be a party defendant, the liability of carriers parties to a rate being joint and several. Coulbourn Fruit Co. v. B. & O., 129 I. C. C. 441

(3t) Fourth-class rates on baking powder found not unreasonable or otherwise unlawful. Complainant contends that rate assailed was unreasonable to extent it exceeded fifth-class rate subsequently established following decision in 112 I. C. C. 645, in which fourth-class rating was found unreasonable to extent it exceeded fifth class, and as it was a party to that complaint it now seeks reparation on shipments which moved during the two years previous to date lower rate was established. However, in 20 I. C. C. 43, it was found that subsequent reduction of a rate is not of itself sufficient to justify an award of reparation. Moreover, no reparation was sought in first cited case and Rule III (s) of Rules of Practice provides that reparation will not be awarded upon a complaint in which it is not specifically prayed for or upon a new complaint by same complainant based upon finding in original proceeding. Royal Distributing Co. Inc. v. B. & O., 129 I. C. C. 749.

(3u) Report of Interstate Commerce Commission, after investigation on its own motion, finding that present rates of certain commodities would in future be unjust and unreasonable, HELD not definite adjudication that as of that date rates were unjust and unreasonable, so as to authorize action for recovery of charges between such time and date order was made effective, in view of Interstate Commerce Act, § 15, par. 1, and requiring Commission to make order changing rates, and in view of section 13, par. 2, as amended by Act Feb. 28, 1920, § 416 forbidding Commission in proceedings on its own motion to enter orders for payment of money. Jeanneret v. Chicago, B. & Q. R. Co., 17 Fed. (2d.) 978.

§10½. Necessity Of Showing Damage.

See Allowances VI; Discrimination §15, §17; Interstate Commerce Commission VI; Long and Short Hauls §13.

(a) A shipper is damaged when he pays unreasonable transportation charges, and it is not necessary to go beyond first step. See 88 I. C. C. 492, Albers Bros. Milling Co. v. Director General, 104 I. C. C. 330, 332.

(b) A carrier's failure to comply with certain tariff rules may make it liable to penalty provisions of the act, but such failure is not a sufficient basis for an award of reparation where evidence does not show that shipper was damaged thereby. Curtis v. Director General, 109 I. C. C. 378, 379.

(c) Before any party can recover damages under interstate commerce act he must allege and show not merely the wrong of carrier but that the wrong has in fact operated to his injury. See 230 U. S. 184, 206. Crosby v. St. L.-S. F., 112 I. C. C. 239, 243.

(d) Reparation awarded for undue prejudice where it was shown that complainant was compelled to shrink its

profits in meeting competition of competitors located at the preferred points. Foster Lbr. Co. v. V. & S., 112 I. C. C. 651, 654.

(e) Complainant sought reparation on shipments of zinc ore moving from certain Kansas and Oklahoma points to Van Buren, Ark., based upon finding in 93 I. C. C. 119, wherein it was found that rates from the Joplin field to South Ft. Smith, Ark., were unduly prejudicial in favor of competitors operating zinc smelters at East St. Louis and other points in Illinois and Indiana. As proof of damage complainant relied upon comparisons of rates assailed with rates to competing points; and with testimony that service and commodities were the same, and that spelter was manufactured by smelters at those points under practically same conditions and sold on East St. Louis market basis regardless of point of production. HELD: Character of proof submitted, not being in conformity with the rule laid down by Supreme Court in 230 U. S. 184, and by commission in 55 I. C. C. 703, and a long line of other decisions, reparation denied. Falcon Zinc Co. v. N. E. O. R. R., 113 I. C. C. 265.

(f) Complainant and intervener are not entitled to reparation unless the rating and rates which have prevailed in the past have resulted under all the circumstances in unreasonable charges. There is no proof that complainant or intervener was damaged by reason of any undue prejudice which may have existed. Best Foods v. C. R. R. of N. J., 120 I. C. C. 169, 174.

(g) On further hearing, reparation denied on stave shipments from Crowder, Miss., to interstate points, on account of alleged damage due to undue prejudice in favor of Batesville and Charleston, Miss., competing points shipping to same destinations. Complainant contended that because of lower rates from Charleston it was compelled to absorb excess freight charges to meet Charleston prices. However, it was not shown with reasonable certainty that complainant's sole competition was with Charleston, particularly on shipments to manufacturers using barrels for commodities not known to complainant; that profits were reduced because of lower Charleston rates; or that such rates were the only or proximate cause of injury alleged. Hollingshead Co. v. Director General, 120 I. C. C. 55.

(h) The fact that complainant's competitors were placed in a more favorable position does not of itself establish damage to complainants. Complainant's evidence shows neither the fact nor the amount of damage sustained by reason of any undue prejudice which may have existed. The burden of proof to establish the fact and amount of damage due to unjust discrimination or undue prejudice as the proximate cause is upon complainants. Whittemore's Sons v. N. Y. N. H. & H. R. R., 122 I. C. C. 451, 457.

(i) Where undue prejudice has been established and reparation is prayed not only the injury but the fact and amount of resulting damage must be proved. City Coal Co. v. N. Y. N. H. & H. R. R., 123 I. C. C. 609, 611.

(j) Upon further hearing, reparation awarded upon proof of damage sustained due to exaction of unreasonable rates on shipments of lumber from Sherman, Ky., to interstate destinations, carriers having refused to certify and file with commission complainant's statement prepared under Rule V of Rules of Practice. Former report 74 I. C. C. 111. Burns & Knapp v. B. S. & K. R. 126 I. C. C. 410.

(k) Under Interstate Commerce Act, §16 (Comp. St. 8584) recovery for excessive freight charges exacted in violation of section 1 (Comp. St. § 8563) can be had, without special proof of pecuniary loss, and measure of damages is amount of excess exacted. Louisville & N. R. Co. v. Sloss-Sheffield Steel & Iron Co., 46 Sup. Ct. 73.

(l) Under Interstate Commerce Act, § 16 (Comp. St. § 8584), the liability for exaction of excessive freight charges arises out of the wrongful exaction from the shipper, and not the unlawful receipt or unlawful enrichment of the carrier. Louisville & N. R. Co. v. Sloss-Sheffield Steel & Iron Co., 46 Sup. Ct. 73.

(m) The shipper is damaged when he pays the unreasonable transportation charges and it is unnecessary for him to go beyond this first step in order to be entitled to an award of reparation. Davies & Thomas v. C. R. R. of N. J., 128 I. C. C. 241, 242.

(n) Proof of damage in undue prejudice cases must be of such evidentiary facts as would be required to sustain such a recovery before a court of law. Knoxville Iron Co. v. L. & N. R. R., 128 I. C. C. 513, 514.

(o) Where a shipper has paid a rate afterwards declared to be unreasonable he may recover damages in the amount of the difference between the excessive rate and the rate declared to be just and reasonable without proof of actual injury. The party who pays the unreasonable rate is damaged. Jackson v. M. C. Ry., 129 I. C. C. 235, 240.

(p) The courts generally hold that, although loss of profits of an established business may be taken into account in an award of damages where they are susceptible of proof, anticipated profits of a new business are too speculative to form the basis of such an award because of absence of provable data from which to estimate them. Carnes v. A., T. & S. F. Ry., 129 I. C. C. 341, 348.

§11. Rate Via Competing Route.

See Evidence §47; Routing and Misrouting §5.

(a) Contention that existence over routes other than those of actual movement of rates lower than those charged over routes of movement does not warrant a finding of unreasonableness and award of reparation where shippers are advised of existence of such lower rates, not sustained. Shippers' knowledge of existence of lower rates over other routes can not deprive them of right to reasonable rates over routes of movement. Canton Bridge Co. v. B. & O., 107 I. C. C. 141, 144.

(b) Complainant attacked combination class rate of 92c charged on two tank cars of gasoline, shipped in July, 1924, from Los Angeles, Calif., to Reno, Nev., as unreasonable. Shipments moved 515 miles over Santa Fe to Stockton, thence 281 miles over W. P. to destination, applicable rate fifth class of 38.5c to Stockton and 53.5c beyond. There was contemporaneously in effect over the S. P. a fifth class rate of 84c applicable on gasoline, in tank cars, from and to these points. This rate was subsequently made effective over the route of movement. Distance via S. P. 595 miles. Defendants express a willingness to make reparation to the basis of the 84c rate because their rates were out of line with that of the S. P. HELD: Rate attacked unreasonable to extent it exceeded 84c, reparation awarded. Richfield Oil Co. v. A. T. & S. F. Ry., 118 I. C. C. 214.

§12. Readjustment Of Rates.

See Evidence §66; Relative Rates.

(a) Where a proceeding constitutes a general readjustment of rates involving both increases and reductions reparation will be denied. Cattle & Horse Raisers Asso. v. N. P., 104 I. C. C. 51, 64.

(b) In cases where a readjustment of rates is required throughout an extensive territory, involving both increases and reductions and affecting shippers at many points, substantial justice would not be advanced by awarding reparation. West Coast Lumbermen's Asso. v. A. & S., 104 I. C. C. 695, 702.

(c) Where reductions are established as a result of a general readjustment of rates, reparation will be denied. Chicago Fire Brick Co. v. A. & W., 107 I. C. C. 399, 407.

(d) Reparation is not regarded as proper and none will be awarded in cases involving a general adjustment under which certain rates are found unreasonably high, and others upon less than a maximum reasonable basis. Burlington Shippers' Asso. v. A., T. & S. F., 107 I. C. C. 694, 700.

(e) Where rates established by commission throughout an extensive territory result in a comprehensive readjustment of rates, including both increases and reductions, reparation will be denied. Southwestern Brick Cases, 107 I. C. C. 681, 700; Mason City Brick and Tile Co. v. Director General, 107 I. C. C. 702, 720.

(f) Where a comprehensive and systematic readjustment of rates is prescribed by commission within a large section of territory, claims for reparation will not ordinarily be allowed. Cook v. A., T. & S. F., 109 I. C. C. 493, 496.

(g) Reparation is not regarded as proper and none will be awarded in cases involving a general adjustment under which certain rates are found unreasonably high, and others upon less than a maximum reasonable basis. Burlington Shippers' Asso. v. A., T. & S. F., 109 I. C. C. 694, 700.

(h) Where readjustments of rates have been initiated by carriers, the exercise of their judgment in good faith and within reasonable limits should not be at peril of liability of reparation; and awarding of reparation by no means necessarily follows the reduction of a rate

by their voluntary action. See 58 I. C. C. 46. Western Paper Makers Chemical Co. v. G. & S. I., 112 I. C. C. 221, 222.

(i) Where findings of commission involve a general readjustment of rates, reparation should have no place. Standard Paint Co. v. Director General, 112 I. C. C. 589, 600.

(j) Contention that shipper is not entitled to reparation because rates in issue constitute part of a general readjustment of rates, not sustained. Commission's findings in instant case will produce only reductions; moreover, damages were awarded in the cases relied upon to establish the contention put forward. Nuckolls Packing Co. v. A. T. & S. F., 113 I. C. C. 229, 232.

(k) Reparation will not ordinarily be awarded to basis of a finding resulting in a widespread readjustment of rates. See 102 I. C. C. 753. Booth & Flinn v. P. R. R., 113 I. C. C. 613, 616.

(l) The commission has consistently denied reparation in cases where general readjustments have been made in extensive territories, resulting in both increases and reductions. See 87 I. C. C. 451, 468; moreover, the mere reduction of a rate is insufficient to prove that the higher rate formerly charged was unreasonable. 85 I. C. C. 449. Dulle Milling Co. v. M. P., 113 I. C. C. 742, 743.

(m) Reparation will not ordinarily be awarded to the basis of a finding made in a general investigation resulting in a widespread readjustment of rates causing both increases and decreases and where rates have been prescribed primarily to remove undue prejudice. Beatty Coal Co. v. A. V. I. U. Ry., 115 I. C. C. 8, 14.

(n) Reparation has been denied in a number of cases where the rates have been revised to the basis found reasonable in the original case primarily on the ground that that case resulted in a comprehensive and systematic readjustment in a large territory where both reductions and increases resulted. Iola Cement Mills Traffic Assn. v. A. V. I. Ry., 115 I. C. C. 49, 64.

(o) The commission has consistently denied reparation in cases where general readjustments have been made in extensive territories involving both increases and reductions. Iola Cement Mills Traffic Assn. v. A. V. I. Ry., 115 I. C. C. 49, 64.

(pqrs) Where commission's findings result in a general readjustment of rates reparation will be denied. Turpentine & Rosin Producers Asso. v. A. & V., 115 I. C. C. 667, 674.

(t) Upon complaint seeking reparation on shipments of sugar from points in Utah and Idaho to destinations in Minnesota, Wisconsin, South Dakota, Iowa, and Michigan, to basis subsequently established by carriers in compliance with commission's findings in Sugar Cases of 1922, 81 I. C. C. 448. HELD, the cited case constituted a general readjustment of rates, following which, reparation in the past is generally denied. Accordingly, similar action must be taken in instant case. Utah-Idaho Sugar Co. v. C., R. I. & P., 118 I. C. C. 256, 261, 262.

(u) Principle that reparation should not be awarded following a general rate readjustment effecting both increases and reductions has no application in instances where charges assessed on particular traffic exceed those found reasonable by such substantial amounts as to be intrinsically unreasonable under any adjustment. See 98 I. C. C. 581. Bender Iron & Supply Co. v. K. C. S., 118 I. C. C. 661, 666.

(v) Carriers objected to an award of reparation contending that rates prescribed by commission to basis of which reparation is sought constituted part of a general readjustment of rates. HELD, as this case might have been heard and decided independently of other cases with which it was consolidated, without any different result, it would be unjust to complainants for reparation to be denied, particularly because cases here were heard and decided together at request of carriers and over complainant's protest. Sioux City Chamber of Commerce v. B. & O., 120 I. C. C. 7, 16.

(w) Carriers resisted an award of reparation to basis of rates prescribed in another proceeding by citing previous expressions of commission to effect that reparation will not ordinarily be awarded where a general adjustment is made resulting in both increases and reductions. HELD, where shippers have been charged rates very much above the general level in same immediate territory, and in making sales have absorbed the difference between its rates and those of its competitors, it has clearly been damaged by such an adjustment to extent that its rates were above the somewhat

higher level prescribed. Nat'l. Car Coupler Co. v. A., T. & S. F., 120 I. C. C. 37, 38.

(x) Reparation will be denied where changes required or contemplated by commission's findings are portions of general rate readjustments involving both increases and reductions. Mayfield Chamber of Commerce v. A. & W., 120 I. C. C. 137, 145.

(y) Where the commission previously found proposed increased rates on a commodity justified, fact that 10 years later reductions were ordered in such rates upon a comprehensive record in a new proceeding carries with it no presumption that the earlier decision was erroneous. Under such circumstances claimants have no vested right to awards of reparation based upon theory that unreasonableness must have existed during a period extending from a date two years prior to the filing of their claims until reduced rates prescribed in latter proceeding became or may become effective. Morrell & Co. v. N. Y. C., 120 I. C. C. 537, 544.

(z) The revision ordered by the Commission affected a large territory and involved numerous increases as well as reductions. Under such circumstances the Commission has consistently denied reparation. Murphysboro Paving Brick Co. v. M. & O. R. R., 122 I. C. C. 15, 17.

(aa) The case dealt with general rate readjustments, in which the rates complained of were included. The Commission has frequently said that in such cases substantial justice would not be advanced by awarding reparation to those making such demands, and have denied reparation. Cooperative Oil & Paint Co. v. Director General, 122 I. C. C. 227, 228.

(bb) Rates on the bases approved will result in both increases and reductions. Under similar circumstances the Commission has repeatedly declined to award reparation. Federated Metals Corp. v. B. & O. R. R., 122 I. C. C. 513, 516.

(cc-ee) The usual and not unnatural selection in individual complaints of particular rates or a portion of a particular adjustment, with the view to their reduction and to reparation, should not be permitted to obscure the relations of those rates to the entire adjustment or the larger question of justice to all concerned. As often pointed out, in a general readjustment the carriers do not enjoy a compensating privilege of collecting additional amounts on shipments which have been made under such of the rates as are increased in the revision. The Commission is of opinion that in the circumstances here the relief accorded in respect of future rates meets all the requirements of substantial justice, and reparation is denied. Consolidated Southwestern Cases, 123 I. C. C. 203, 259.

(ff) Reparation denied on paving brick from Murphysboro, Ill., to Hickman, Ky., moving prior to establishment of rates in conformity with general readjustment of rates on brick prescribed in 88 I. C. C. 543. Revision ordered by commission in that case, to basis of which complainant here seeks reparation, affected a large territory and involved numerous increases as well as reductions, under the circumstances of which reparation has been consistently denied. Murphysboro Paving Brick Co. v. M. & O., 122 I. C. C. 15.

(gg) Carriers in contesting a claim for reparation cited cases in which commission refused to award reparation where a general readjustment of rates throughout an extensive territory was involved. HELD: Cases cited in which reparation was denied usually involved increases as well as decreases in rates. Same rule does not apply where a material reduction in every rate is made. Texas Co. v. C., B. & Q., 122 I. C. C. 109, 110, 111.

(hh) Where future rates are prescribed by commission and such rates result in a widespread readjustment of rates of long standing, a reasonable time must elapse between date of the decision and date when rates established pursuant thereto become effective. In such cases reparation on shipments moving between date of the decision and effective date of the order will be denied. Van Dyke Motor Co. v. M. P., 122 I. C. C. 411, 412.

(ii) The commission has repeatedly declined to award reparation following general rate adjustments involving both increases and reductions. Federated Metals Corp. v. B. & O., 122 I. C. C. 513.

(jj) The commission has repeatedly declined to award reparation following general rate adjustments involving increases and reductions. Federated Metals Corp. v. B. & O., 122 I. C. C. 513, 516, 517.

(kk) In prescribing a general readjustment of rates covering a wide territory, necessitating both increases and decreases, the commission will not award reparation. Turpentine & Rosin Producers Asso. v. A. & V., 122 I. C. C. 549.

(ll) Fact that rates are subjected to considerable reductions is in itself no sufficient ground for an award of reparation on past shipments where such rates are a part of a general readjustment involving important increases as well as reductions. But where general level of rates on a commodity is found to have been unreasonable, and practically all of assailed rates are reduced, situation presented is not in nature if a generally readjustment such as those in respect of which commission has consistently denied reparation, but is one in which an award of reparation is warranted. Parkersburg Rig & Reel Co. v. C., R. I. & P., 123 I. C. C. 79, 81.

(mm) It is commission's practice to deny reparation in cases where general readjustments have been made covering more or less extensive territories and with resulting increases and decreases in rates. The usual and not unnatural selection in individual complaints of particular rates or a portion of a particular adjustment, with the view to their reduction and to reparation, should not be permitted to obscure relations of those rates to entire adjustment or the larger question of justice to all concerned. In a general readjustment carriers do not enjoy a compensating privilege of collecting additional amounts on shipments which have been made under such rates as are increased in the revision. Consolidated Southwestern Cases, 123 I. C. C. 203, 259.

(nn) Upon contention of carriers that Memphis-Southwestern Investigation, 77 I. C. C. 473, constituted such a general readjustment of rates as to come within the rule generally followed of denying reparation in such cases, HELD: Issues in instant case are practically the same as those considered in a number of cases in which reparation has been awarded. See 92 I. C. C. 453 and other cited cases. Where scales prescribed in the general adjustment case were not used as a basis for reparation, particular circumstances warranted different conclusions. See 93 I. C. C. 667; 96 I. C. C. 81. Reparation awarded. Standard Oil Co. v. C., R. I. & P., 123 I. C. C. 669, 673.

(oo) Fact that a consolidated proceeding requiring a comprehensive readjustment of rates denied reparation on ground that compliance therewith resulted in both increases and reduction is not sufficient grounds to deny reparation in a subsequent proceeding dealing with same rates where compliance with findings and orders in the original proceedings, heard prior to the consolidated case, would have given complainant a lower rate at time of movement. Buffalo Brick Co., v. M. P. Ry., 126 I. C. C. 744, 746.

(pp) Reparation denied by reason of fact that proceeding in which it is sought involves a comprehensive readjustment of rates resulting in both increases and reductions. Oklahoma Portland Cement Co. v. D. & R. G. W., 128 I. C. C. 63, 84.

(qq) Commission's general practice of denying reparation when rates found unreasonable, and upon which particular shipments moved, are embraced in a general readjustment, involving both increases and reductions, does not apply in a case where the commodity involved was not embraced under the general readjustment; or where the particular class of rates within the region concerned under such readjustment results in reductions only, and the amounts by which the assailed rates exceed those prescribed as maxima for application to the traffic in question are too great to fall within the zone that lies between maximum and minimum reasonable rates. Oklahoma Traffic Asso. v. A. & V., 128 I. C. C. 89, 93.

(rr) It is the general practice of the Commission to deny reparation when the rates found unreasonable and upon which particular shipments moved were embraced in a general readjustment in which both increases and decreases have resulted from the findings. Oklahoma Traffic Asso. v. A. & V. Ry., 128 I. C. C. 89, 93.

(ss) Rate on box shooks from Bend, Oreg., to Port Arthur, Tex., found not unreasonable as compared with lower rate prescribed in 78 I. C. C. 746 on lumber products, including box shooks from the North Pacific Coast Group, including Bend, to group points including Port Arthur, established subsequent to movement herein. Upon further hearing in 104 I. C. C. 695, reparation was denied upon the theory that where, as here, readjustment of rates is required throughout an extensive territory involving both increases and reductions and affecting

shippers at many points, substantial justice would not be advanced by awarding reparation. Moreover, issues and contentions similar to those here presented were advanced in 100 I. C. C. 319, in which have denied reparation. Shelvin-Hixon Co. v. O. W. R. R. & N., Co. 128 I. C. C. 565.

(tt) In cases where a readjustment of rates is required throughout an extensive territory involving both increases and reductions and affecting shippers at many points substantial justice would not be advanced by awarding reparation, and have denied reparation. Shelvin Hixon Co. v. O.-W. R. R. & N. Co., 128 I. C. C. 565, 566.

(uu) Following commission's decision in 122 I. C. C. 15, reparation denied on paving brick from Murphysboro, Ill., to Martin, Tenn., moving prior to establishment of rates in conformity with general readjustment of rates on brick prescribed in 88 I. C. C. 543. Revision ordered by commission in that case, to basis of which complainant here seeks reparation, affected a large territory and involved numerous increases as well as reductions, under the circumstances of which reparation has been consistently denied. Murphysboro Paving Brick Co. v. I. C., 128 I. C. C. 635.

(vv) The Commission has frequently held that an order by it for the reduction of a classification rating of long standing does not create a right to an award of reparation on past shipments. Kalamazoo Vegetable Parchment Co. v. C. K. & S. Ry., 128 I. C. C. 675, 684.

(ww) The prescription of joint rates over a new route which will result in a wide spread adjustment of rates does not warrant an award of reparation on shipments made prior to the time that joint rates over the new route are required to be maintained. White Eagle Oil & Refining Co. v. C. B. & Q. R. R., 129 I. C. C. 467, 471.

(xx) As a general rule reparation is not awarded when a general readjustment reflects increases and reductions, but the rule does not apply when the rates charged exceed those found reasonable by such substantial amounts as to be unreasonable per se under any adjustment. Quanah Cotton Oil Co. v. A., T. & S. F. Ry., 132 I. C. C. 304, 309.

(yy) The principle that reparation should not be awarded following a general rate readjustment effecting both increases and reductions has no application in instances where the charges assessed on particular traffic exceed those found reasonable by such substantial amounts as to be intrinsically unreasonable under any adjustment. Nichols Wire, Sheet & Hardware Co. v. A., T. & S. F. Ry., 132 I. C. C. 347, 348.

(zz) As a general rule the Commission has denied reparation where such general readjustments, including both increases and reductions in rates, have been made in extensive territories. Southern Cement Rates, 132 I. C. C. 427, 467.

(3a) While as a general rule awards of reparation will not be made where the rates affected have been the subject of a general readjustment, this does not apply where the rates charged exceed those found reasonable by such substantial amounts as to be intrinsically unreasonable under any adjustment. Southeastern Sugar Investigation, 132 I. C. C. 477, 503.

(3b) The rates prescribed will result in both increases and reductions. In the case of such general readjustments of rates it is the usual practice of the Commission not to award reparation. Southeastern Sugar Investigation, 132 I. C. C. 477, 503.

(3c) The Commission has repeatedly found that reparation will not ordinarily be awarded to the basis of a finding made in a general investigation resulting in a widespread readjustment of rates causing both increases and decreases and where rates have been prescribed primarily to remove undue prejudice. Nebraska v. C. B. & Q. R. R., 132 I. C. C. 717, 720.

(3d) Complaint seeks reparation on shipments from Augusta and Topeka, Kans., to St. Francis, Kans., which moved via Kansas City, Mo., to basis of rates which may be found reasonable via Superior, Nebr. FOUND: Prescription of joint rates over a new route which will result in a widespread readjustment of rates does not warrant an award of reparation on shipments made prior to time that joint rates over the new route are required to be maintained. White Eagle Oil & Refining Co. v. C., B. & Q., 129 I. C. C. 467, 470.

§13a. State Shipments.

See State Rates and Regulation.

(a) Following Conference Ruling of March 13, 1922, and 74 I. C. C. 703 and

other cited cases, commission is without authority to award reparation, or to consent to an award of reparation made by a State commission, on intrastate shipments which moved during guaranty period following period of Federal control. Armour & Co. v. G. N., 104 I. C. C. 34.

(b) Commission's authority to pass upon unreasonableness of an intrastate rate and a prayer for reparation based thereon ceased with relinquishment of Federal control. See 74 I. C. C. 703 and other cases cited. Armour & Co. v. G. N., 104 I. C. C. 34, 36.

(c) Fact that a State commission has declared in a proceeding commenced subsequent to termination of so-called guaranty period following Federal control that certain intrastate rates collected during that period were unreasonable, and that commission is asked merely to approve that finding, does not enlarge limited jurisdiction conferred upon it by section 208 (a) of the transportation act, 1920, to review rates reduced by State commissions prior to termination of guaranty period, since commission's direct jurisdiction over reductions in intrastate rates was limited to action taken prior to such period. Under no provisions of transportation act or of interstate commerce act is commission given authority to review and approve a finding of a State commission made subsequent to said period and to order award of reparation based thereon. Armour & Co. v. G. N., 104 I. C. C. 34, 36.

(d) The commission has jurisdiction to approve after August 31, 1920, an award of reparation made by State authority on intrastate traffic which moved during the guaranty period, March 1 to August 31, 1920, whether such authority was actually exercised during the guaranty period or thereafter. The phrase "prior to September 1, 1920," as used in section 208 (a) of the transportation act, 1920, is not to be construed as prescribing a time limitation within which commission was authorized to act, but as fixing the period as to which its approval was necessary to a reduction in rates whether made during the guaranty period by naming lower rates for future, or accomplished after expiration of the period by way of reparation on shipments which rates terminated with termination of moved during that period. Reparation on Intrastate Traffic, 122 I. C. C. 443.

(e) Subject to certain exceptions, the commission's jurisdiction over intrastate Federal control, February 29, 1920. On that date jurisdiction passed to State authorities, subject to the limitation that no rates should be reduced prior to September 1, 1920, unless approved by commission. The commission, therefore, was, and is without power to require rate reductions or award reparation on intrastate shipments moving during the guaranty period and the only order it can lawfully make as to such shipments is one of a permissive character. Accordingly conference ruling of March 13, 1922, and previous decisions holding that section 208 (a) of the transportation act, 1920, does not authorize commission to award reparation on intrastate shipments which moved during the guaranty period, adhered to. Reparation on Intrastate Traffic, 122 I. C. C. 443.

(f) An award of reparation on intrastate traffic which moved during the guaranty period, March 1 to August 31, 1920, is, in effect, a reduction of a rate prior to September 1, 1920, within the meaning of section 208 (a) of the transportation act, 1920, regardless of the date on which decision making the award was rendered. Reparation on Intrastate Traffic, 122 I. C. C. 443, 447.

(g) The primary purpose of second clause of section 208 (a) of transportation act was to protect the United States from liability on its guaranty to the carriers of the standard return, and this it sought to do by prohibiting any reduction of rates, fares, or charges without consent of commission. See 270 U. S. 466. When it comes to awards of reparation after expiration of the guaranty period upon intrastate traffic which moved during that period, there is equal necessity for review by commission to the end that revenues of carriers may not be unduly reduced and at same time that awards of reparation in meritorious cases may be granted. Reparation on Intrastate Traffic, 122 I. C. C. 443, 447, 448.

§16. Voluntary or Subsequent Reduction.

See Evidence §64; Reasonableness of Rates §32½.

(a) Fact that a rate was subsequently reduced in compliance with decisions of commission embracing general readjustments, involving both increases and reductions, does not of itself demonstrate unreasonableness of higher rates. Com-

mission declines to give retroactive effect to such rates as a basis for an award of reparation. Cairo Cotton Oil Mill v. M. & O., 107 I. C. C. 299.

(b) While the subsequent reduction of a rate does not show the prior rate to be unreasonable, neither does it act as a bar to reparation when former rate was clearly unreasonable. Knoxville Iron Co. v. L. & N., 107 I. C. C. 627, 634.

(c) The voluntary reduction of a rate by a carrier is not of itself sufficient to justify an award of reparation on shipments moving prior to reduction and mere fact that rate under attack appears to be out of line with a few other related rates does not necessarily prove rate attacked unreasonable. Louisville Cooperage Co. v. L. & N., 112 I. C. C. 228, 229, 230.

(d) Rates on wheat from points in Missouri, milled at Jefferson City, and resulting flour reshipped to destinations in Arkansas found not unreasonable as compared with lower rates subsequently established. Carriers published these lower rates in conformity with commission's suggestion in 80 I. C. C. 620, wherein an extensive readjustment in rates on grain and products was prescribed in this general territory. The commission has consistently denied reparation in cases where general readjustments have been made in extensive territories, resulting in both increases and reductions, See 87 I. C. C. 451, 468; moreover, the mere reduction of a rate is insufficient to prove that higher rate formerly charged was unreasonable. See 85 I. C. C. 449. Dulle Milling Co. v. M. P., 113 I. C. C. 742.

(e) The mere reduction of a rate is insufficient to prove that the higher rate formerly charged was unreasonable. Dulle Milling Co. v. M. P. R. R., 113 I. C. C. 742, 743.

(f) The fact that the rates were reduced shortly after the shipments moved is not sufficient to award reparation. Fentress Coal Co. v. T. C. Ry., 115 I. C. C. 286, 288.

(g) The subsequent reductions applied throughout a large territory and affected at many points shippers who were not parties to the proceeding. Under like circumstances the commission has frequently denied reparation. Heinze Electric Co. v. B. & M. R. R., 118 I. C. C. 77, 78.

(h) Complainant attacked rates charged on iron pipe, carloads, from Louisiana to Arkansas between April 4 and November 21, 1923, are unreasonable. The issue is whether the fifth class rates charged on iron pipe from points of origin other than Shreveport and the class A rates on oil well supplies moving in 1923 were unreasonable and if so, whether reparation shall be awarded to the basis fixed by the commission in 77 I. C. C. 473. HELD: Rates attacked unreasonable to extent they exceeded the rates subsequently established as a result of 77 I. C. C. 473, reparation awarded. Bender Iron & Supply Co. v. K. C. S. Ry., 118 I. C. C. 661.

(i) Complainant attacked combination rates charged on five cars of envelopes from Waukegan, Ill., and West Carrollton, O., to Wichita, Kas., and from Kansas City, Mo., and Otsego, Mich., to Wichita as unreasonable and in violation of the fourth section. Charged combinations of rates basing on the Mississippi river. Defendants offered to make reparation on combination rate of 67.5c from Hamilton, O., to Wichita. A rate of $1.46 was assessed from West Carrollton to Wichita, combination rate being $1.17 to Oklahoma City to which Wichita is intermediate on November 15, 1923, the rate to Oklahoma City was reduced to $1.02 and defendants offer to make reparation on this basis. A rate of $1.295 was charged from Waukegan to Wichita, contemporaneous rate to Oklahoma City was 84c, to which defendants offer reparation. There appears to be no good reason why rates on envelopes to Wichita should not be 150 per cent of the rates on newsprint. Fifth class rate of 53.5c was charged from Kansas City and a rate of 44c was contemporaneously in effect from St. Louis, Mo., to Wichita and from Kansas City to Ponca City, Okla. The Kansas City-Wichita rate was reduced on March 10, 1923, to 34c. A combination rate of 71c was assessed from Otsego to Wichita, applicable rate was 92.5c and subsequent to movement a rate of 43.5c was established from the river resulting in a through rate of 70.7c. Rate charged from Kalamazoo to Wichita exceeded combination of 68.5c, to which defendant offers reparation. A rate of 80.5c was charged from Detroit to Oklahoma City, present rate is 82.5c exceeding the aggregate of intermedi-

ates. HELD: Reparation awarded. Western Newspaper Union v. A. T. & S. F. Ry., 118 I. C. C. 692.

(j) The fact that the rate sought was subsequently established affords no adequate basis for an award of reparation. Central Pennsylvania Lumber Co. v. S. & N. Y. R. R., 120 I. C. C. 239, 240.

(k) The subsequent reduction of rate in and of itself does not justify an award of reparation. Kohlman Bros. & Sugarman v. L. & N. R. R., 123 I. C. C. 56, 58.

(l) Complainant alleged commodity rates on sand and gravel, carloads, from Illinois and Wisconsin to the Mayfair and Weber plants of complainant in the Chicago switching district, were unreasonable, unjustly discriminatory and unduly prejudicial. Rates involved are those from Janesville, Afton, and Beloit, Wis., to Mayfair and Weber in the Chicago switching district. Shipments to Mayfair were transported between July 2, 1923 and Nov. 2, 1923, charged 3.75c reduced on the latter date to 3.25c. To Weber shipments were transported between July 1, 1922 and May 24, 1925, charged 3.75c, and effective May 25, 1925, rate of 3.25 was published, following 96 I. C. C. 325. When reduced rates were published July 1, 1922 the rates from the inner and outer producing zones to the Chicago inner zone were made 3 and 3.25c which were 0.25c less than was authorized in 64 I. C. C. 37. Rates charged not unreasonable or unjustly discriminatory but were unduly prejudicial to extent they exceeded rates to the inner zone, no damage being shown to have resulted from the undue prejudice found to exist, reparation preju- Chicago Fire Brick Co. v. C. & N. W. Ry., 123 I. C. C. 164.

(m) The reduction of rates does not of itself justify conclusion that preexisting rates were unreasonable or afford a basis for reparation. Gum Motor Co. v. A., T. & S. F., 128 I. C. C. 61, 62.

(n) The voluntary reduction of a rate is not of itself sufficient to justify an award of reparation on shipments moving prior to the reduction. See 112 I. C. C. 228; 20 I. C. C. C. 43. Peaslee-Gaulbert Co. v. C. & A. R. R., 128 I. C. C. 103, 104.

(o) The subsequent establishment of the lumber rate on the unfinished handles is not of itself a sufficient reason for awarding reparation to that basis on prior shipments. Oklahoma Traffic Asso. v. A., T. & S. F. Ry., 129 I. C. C. 403, 406.

(p) Complainant alleged that the rates charged from Moultrie, Ga. on numerous shipments of fresh meats and packing house products, in straight and mixed carloads to Baltimore, Md., Washington, D. C., and North Carolina, South Carolina and Virginia; on carload shipments of green salted hides to Somerville, Mass., St. Louis, Mo., Endicott and Gowanda, N. Y., and on carloads of grease to Chicago, Ill., between July 23, 1920 to March 31, 1922 were unreasonable. At the request of complainants rates lower than those assailed were established subsequent to the movement of the shipments here considered. Defendants expressed willingness to make refund to the basis sought. HELD, rates assailed on fresh meats and packing house products in straight and mixed carloads were unreasonable to the extent they exceeded the rates on packing house products in straight carloads by more than 15.5c; rates attacked on green salted hides to St. Louis, Mo., Somerville, Mass., and Endicott, N. Y., unreasonable to extent they exceeded 69.5c, 60, and 80c, respectively. Rates on green salted hides to Gowanda and on grease to Chicago unreasonable to the extent the rates to Ohio river crossings exceeded 53c on green salted hides and 51c prior to August 26, 1920 and 63.5c thereafter, on grease, reparation awarded. Swift & Co. v. G. & F. Ry., 129 I. C. C. 407.

(q) The subsequent reduction of a rate, whether by voluntary action of the carriers or by order of the Commission, is not of itself sufficient to justify an award of reparation. Royal Distributing Co. v. B. & O. R. R., 129 I. C. C. 749, 750.

(r) Subsequent reduction of a rate is not in itself sufficient reason for awardparation to that basis on prior shipping shipments Oklahoma Traffic Asso. v. A., T. & S. F., 129 I. C. C. 403, 406.

§17. Willingness Of Carrier to Pay.

(a) Unfulfilled promises of represen- of Commerce v. A. & V. Ry., 107 I. C. C. tatives of carriers that reduced rates would be made effective afford no justification for an award of reparation. See also 100 I. C. C. 319. Florence Chamber 84, 96.

(b) Complainant attacked commodity rate charged on one car of green coffee shipped from New Orleans, La., to Salina, Kas., on April 13, 1922 as unreasonable. Distance hauled 1,038 miles, charged at rate of 90c. A rate of 73.5c would have been in effect at time of

movement had it not been suspended in I. & S. 1485. The order in that case was vacated prior to hearing, and the 73.5c rate became effective. Defendants are willing that reparation be awarded. HELD, rate attacked unreasonable to extent it exceeded 73.5c, reparation awarded. Lee Mercantile Co. v. C. R. I. & G. Ry., 120 I. C. C. 90.

(c) Rates were found unreasonable but by agreement of parties presentation of proof with respect to complainants' right to reparation was deferred until after determination of lawfulness of rates. Therefore, case was set for further hearing upon question of reparation and method for computing it. Calif. Dressed Beef Co. v. A., T. & S. F., 128 I. C. C. 607, 619.

(d) Rates on pine lumber from points in Oregon, Idaho, and Montana to Bayport, Minn., found not unreasonable or unduly prejudicial as compared with lower rates contemporaneously in effect to St. Paul. Outside of irregularities in the construction and filing of tariffs, complainant showed that rates to Bayport exceeded those to St. Paul; that it sold frames in competition with dealers at that point and Minneapolis, made from lumber from same origin points; and that carriers conceded error in publishing rates assailed and sought authority to make reparation. However, consent of carriers to an award of reparation is not proof of unreasonableness of rates charged; mere fact that rates assailed exceeded those to St. Paul has little probative force as evidence of unreasonableness; nor is competition with dealers in St. Paul and Minneapolis, standing alone, proof of undue prejudice. Moreover, a subsequent increase in rates to St. Paul would seem to indicate that those rates were out of line. Andersen Lbr. Co. v. N. P., 128 I. C. C. 633.

(e) Consent of carriers to an award of reparation is not proof of the unreasonableness of the rates charged. Andersen Lbr. Co. v. N. P., 128 I. C. C. 633, 634.

IV. LIABILITY FOR REPARATION.

See Express Companies XII.

§17½. Interest Or Court Costs.

(a) Reparation for exaction of unreasonable rates awarded without interest, complainant having waived its claim therefor. Watab Paper Co. v. N. P., 107 I. C. C. 131, 134.

(bc) Upon contentionthat if reparation be awarded interest should not be included on ground that commission is without jurisdiction to award interest. FOUND: The commission's power to determine whether or not interest should be included in reparation awards was upheld in 295 Fed. 53. South Carolina Cotton Mfrs. Assn. v. C., C. & O., 112 I. C. C. 683, 685.

(d) Under Federal Control Act (Comp. St. §§ 3115¾a-3115¾p), interest allowed on reparation award by Interstate Commerce Commission is enforceable against Director General of Railroads. World Pub. Co., v. Davis, Agent, Tulsa Paper Co. v. Same. Democrat Printing Co., v. Same, 16 Fed. (2d) 130.

(e) In action to enforce reparation award, Director General of Railroads may be held liable for attorney's fees and costs, under Interstate Commerce Act, § 16 (Comp. St. § 8584.) World Pub. Co., v. Davis, Agent; Tulsa Paper Co., v. Same. Democrat Printing Co., v. Same, 16 Fed. (2d) 130, 131.

(f) Interstate Commerce Commission, in reparation order for excessive freight charges exacted in violation of Interstate Commerce Act, § 1 (Comp. St. § 8563) HELD to have properly awarded interest from date of exaction, and neither fact that validity of such claim for excess charges was disputed, nor that amount of recovery was uncertain, nor that carrier could not have legally made repayment of such excess charges, in view of Elkins Act (Comp. St. §§ 8597-8599), and Act June 29, 1906, until final award, liquidating amount, precluded such recovery. Louisville & N. R. Co. v. Sloss-Sheffield Steel & Iron Co., 46 Sup. Ct. 73.

(g) Where Interstate Commerce Commisison in reparation order, allowed interest on amounts illegally exacted as freight rates from date of exaction, and court, in action on such order, under Interstate Commerce Act, § 16 (Comp. St. § 8584), allowed interest from effective date of order, fact that such affirmance of judgment resulted in compound interest did not amount to error. Louisville & N. R. Co. v. Sloss-Sheffield Steel & Iron Co., 46 Sup. Ct. 73.

(h) Successful plaintiff in suit to restrain enforcement of interstate rates, and for accounting and refund or excess over intrastate rates improperly col-

lected, HELD entitled to interest on each excess payment from its date. Atlantic Coast Line R. Co. v. Standard Oil Co. of Kentucky, 16 Fed. (2d.) 441, 442.

§18. Measure of Reparation.

See Routing and Misrouting §9.

(a) The measure of damages is the market value, either wholesale or retail, at the agreed place of delivery. In the market value, whether it be wholesale or retail, a profit to the shipper or owner almost always inheres. If it did not the owner would not ship and transportation would practically cease. His inducement to pay or to agree to pay the freight is his profit, and when the carrier by loss in transit deprives him of it, he is entitled to recover it back. Burroughs Adding Machine Co. v. M. C. R. R., 120 I. C. C. 19, 20.

(b) Upon complainant's failure to give notice of his claim for special damages either in his complant or otherwise, together with other infirmities of record, proceeding assigned for further hearing to determine extent of such damage. Carnes v. A., T. & S. F., 129 I. C. C. 341, 348, 349.

§19. Parties to Make Refund.

See Overcharges (tt) (ww); Routing and Misrouting §19.

(a) Where shipments during Federal control, originate on a nonfederally controlled line and move to points on lines under Federal control, and illegal charges resulting from an unlawful act of the nonfederally controlled line are collected by the director general from shipper at destination, interline settlement with carrier not under Federal control having previously been made, the director general is proper party to be named as defendant and it is unnecessary to name nonfederally controlled line. Yellow Pine Co. of Philadelphia v. Director General, 104 I. C. C. 371.

(b) Shipment originating on nonfederally controlled line moved to a point on carrier under Federal control. Originating carrier billed illegal demurrage charges as advances and received settlement therefor in interline accounts, director general collecting such charges from shipper at destination. Complaint names as defendant only director general, who contends that because illegal charges were retained by originating carrier after interline settlement, at which time he was unaware of controversy regarding charges, there is no overcharge so far as he is concerned; that he can not be held liable for illegal charges accruing because of action of carrier not under Federal control; and, that proper party has not been named defendant. HELD: Shipper entitled to recover illegal charges from carrier who collects them, whose duty it is then to ascertain, and charge them back to, carrier responsible for their assessment. See also 17 I. C. C. 330. Yellow Pine Co. of Phila. v. Director General, 104 I. C. C. 371.

(c) At request of carriers and in order to facilitate agreement, commission apportioned the rate found reasonable by setting forth amount thereof due each participating carrier, but made no definite finding, and no order to that effect, commission not claiming any authority to so apportion the rate, no joint rate being prayed for, established, or prescribed for future. Watab Paper Co. v. N. P., 107 I. C. C. 131, 135.

(d) Shipment originated on nonfederally controlled line and moved to points on a line under Federal control, illegal charges being collected by director general who paid his portion of overcharges to initial carrier, who failed to refund them to shipper. Complaint seeking reparation for overcharges named, director general only as defendant. Upon contention that initial line is a necessary party and that complainant should be charged with laches in prosecution of its claim, not sustained. A carrier that has collected overcharge can not be excused from repayment of same because it has paid it to another carrier. Moreover, a shipper is entitled to recover illegal charges from carrier collecting them, whose duty it is to then ascertain and charge them back to carrier responsible for their assessment. See also 17 I. C. C. 330; 17 I. C. C. 508; and other cited cases. Bowers & Co. v. Director General, 107 I. C. C. 305, 307.

(e) Shipment originated on nonfederally controlled line and moved to point on a line under Federal control, illegal charges being collected by director general, who forwarded voucher covering his portion of overcharges to initial carrier, who failed to refund them to shipper. Contention by director general that payment of the voucher to initial carrier was payment to complainant, inasmuch as complainant, by letter, conferred authority upon initial carrier to act as its agent,

not accepted. Having filed an overcharge claim with initial line, the letter in question is considered only as a statement of basis of settlement which was then acceptable to complainant. Bowers & Co. v. Director General, 107 I. C. C. 305, 307.

(f) It is not necessary, in complaint alleging overcharges, to name all carriers participating in transportation, since collection of an overcharge is a tort for which they are all jointly and severally liable. Boston Brick Co. v. I. T. 107 I. C. C. 507.

(g) Remaining carriers are jointly and severally liable for any damage resulting from the assessment of an unreasonable joint rate. Bunte Bros. v. C. & N. W. Ry., 112 I. C. C. 557, 558.

(h) The participation by the initial carriers in the violation of the act by exacting the freight rates found to be unreasonable and excessive and sharing in such rates was enough to make such carriers liable for the full amount of damages sustained by the plaintiff in consequence of such violation. The liability enforced against the defendant resulted from its unlawful action in charging excessive and unreasonable rates. That liability is enforcible against the defendants though other parties to such rates which were joint rates were also liable and were not proceeded against. South Carolina Cotton Mfrs. Asso. v. C. C. & O. Ry., 112 I. C. C. 683, 685.

(i) If a through rate, joint or combination, is found unreasonable and reparation is awarded the order entered runs against the carriers, collectively, that participated in the transportation. In the present case, however, one of the carriers which participated in the transportation under a combination rate was not a party defendant. In 91 I. C. C. 571, where a combination rate was found unreasonable and one of the carriers participating in the transportation was not a party defendant, the Commission determined the reasonableness of the factors separately. McFadden v. Director General, 113 I. C. C. 387.

(j) Complaint was filed by a corporation which ultimately became bankrupt and reparation statement under Rule V of the Rules of Practice was prepared and submitted by its receivers. Upon contention that commission can not legally award reparation to the corporation, which no longer exists. HELD: It being well settled that reparation claims are assignable, reparation awarded to receivers who were vested with full power to take into possession all property and assets of the defunct corporation, including this claim for reparation. Wertheim Coal & Coke Co. v. L. V., 112 I. C. C. 513, 515.

(k) Upon further consideration, finding in 85 I. C. C. 365, awarding reparation for exaction of an unreasonable through rate on coal shipped during Federal control from Shamokin, Pa., to Detroit, Mich., reversed. No joint rate was in effect and a combination based on Black Rock, N. Y., was assessed, the unreasonableness therein being due to factor beyond Black Rock of a nonfederally controlled line which was not made a party defendant. While in 40 I. C. C. 501, the commission found that its reparation order for unreasonable through combinations runs against carriers, collectively, who participated in the transportation, in instant case one participating carrier was omitted as a party defendant. Also, while in 91 I. C. C. 571, where combination rate was found unreasonable and one participating carrier omitted as a defendant, commission prorated the reparation by determining reasonableness of factors separately, here the Shamokin-Black Rock factor was not unreasonable. McFadden v. Director General, 113 I. C. C. 387.

(l) Upon contention of receiver of a carrier named as a party defendant that an order for reparation should not be issued against him on shipments made prior to date of receivership, HELD: Awards of reparation are not dependent upon solvency or insolvency of carriers concerned, but if a through rate, joint or combination, is found unreasonable, and reparation is awarded, the order entered may run against carriers collectively that participated in transportation. See also 89 I. C. C. 125. Hansen-Peterson Co. v. A., T. & S. F., 113 I. C. C. 575, 577.

(m) While the financial condition of a carrier may be taken into consideration in the determination of reasonable rates, such carrier is not relieved of any liability for damages because of the fact that it was operating at a loss at the time that the damages were sustained. Continental Sugar Co. v. N. Y. C. R. R., 115 I. C. C. 124, 125.

(n) One defendant carrier in the hands of a receiver was operated at a considerable loss during period covered by complaint alleging unreasonable rates. Upon contention of receivers that it would be inequitable for them to be required to further reduce their capital assets by turning a portion threof over to a complainant for exaction of unreasonable rates. HELD, contention has no support in law. While financial condition of carrier may be taken into consideration in determining reasonable rates, such carrier is not relieved of any liability for damages because of fact that it was operating at a loss at time damages were sustained. Continental Sugar Co. v. N. Y. C., 115 I. C. C. 124, 125.

(o) Carrier originally under Federal control but subsequently relinquished contended that it was never a federally controlled line and could not lawfully refund charges collected without tariff authority on shipments moving during Federal control. Complaint was seasonably filed under section 206 (c) of transportation act, 1920, but carrier urges that this provision does not affect the period within which complaints could be filed against nonfederally controlled roads for violations of the interstate commerce act, and since complaint was not filed within two years after cause of action accrued, it is barred as to this carrier. HELD, possession and control exercised by director general over carriers taken over by him were complete, and he thereby undertook to perform transportation services for shippers through them and assumed full responsibility, so far as the interstate commerce act is concerned, for their wrongful acts. Superior Coal Co. v. Director General, 115 I. C. C. 710, 712, 713.

(p) Carrier submitted evidence designed to show that it is financially unable to pay reparation sought by complainant. HELD, an award of reparation following a finding that a complainant is entitled thereto, is not dependent upon financial condition of carrier. United States v. Director General, 118 I. C. C. 677, 679, 680.

(q) The rate in which this carrier participated was a joint rate and the liability of the participants is joint and several. An omission is not fatal, although no order can be entered against the carrier not named. Russellville Compress Co. v. G. M. & N. R. R., 120 I. C. C. 481, 482.

(r) It is well settled that where an unreasonable joint rate has been charged the liability of the carriers is joint and several. But in the case of a combination rate an entirely different situation is presented. In the present case two of the carriers had no control over any factor of the combination except that maintained by it, nor did either of these carriers contribute in any way to the injury resulting from any unreasonableness existing in the rate maintained by the third carrier. To find in such a case that carriers are jointly and severally liable would be to require two carriers to bear in part the injury done by the third carrier, where the former had no control over the action or rates of the latter. Midwest Refining Co. v. G. N. Ry., 122 I. C. C. 205, 207.

(s) Where an unreasonable rate has been collected, the liability of the parties is joint and several and the Commission may award reparation against one of the carriers which participated in the traffic even though other carriers which performed a part of the service are not made parties defendant. Armour & Co. v. C. M. & St. P. Ry., 122 I. C. C. 380, 381.

(t) In 96 I. C. C. 412, division 4 found that the combination rate of 68c charged on lepidolite ore, carloads, from Embudo, N. M., to Wheeling, W. Va., was unreasonable to extent it exceeded 51c minimum 80,000 pounds. Pennsylvania was not named as a defendant and the order did not include that line as a delivering carrier, but that carrier voluntarily joined with other carriers in the publication of the 51c rate over its route. HELD, reparation awarded on all shipments except those moving via the Pennsylvania. New Mexico Commission v. A. T. & S. F. Ry., 123 I. C. C. 675.

(u) Where an unreasonable rate has been collected, the liability of carriers is joint and several, and commission may award reparation against one of the carriers which participated in the traffic, even though other carriers which performed a part of the service are not made parties defendant. See 60 I. C. C. 595. Armour & Co. v. C., M. & St. P., 122 I. C. C. 380, 381.

(v) Where an unreasonable joint rate has been collected, the liability of parties to such action is joint and several and commission may award reparation against one of the carriers which

participated in the traffic even though other carriers which performed a part of the service are not made defendants. See 91 I. C. C. 571. Root Glass Co. v. E., I. & T. H., 123 I. C. C. 68, 70.

(w) Upon contention that commission has no jurisdiction to award reparation against a Canadian carrier for any portion of transportation which takes place within Canada for the exaction of unreasonable rates, HELD: While in 52 I. C. C. 145 the commission found that railroads constituting a through route for traffic from points in Canada to points in the United States concurring in an unreasonably high through rate are jointly and severally liable, in such cases the reparation award runs against the United States carriers only. See 66 I. C. C. 627; 74 I. C. C. 733. Kroehler Mfg. Co. v. C. N. Ry., 123 I. C. C. 555, 556.

(x) Reparation awarded in former report 96 I. C. C. 412, under finding of unreasonableness of combination rate on lepidolite ore from Embudo, N. Mex., to Wheeling, W. Va., held not to cover shipments which moved over a delivering line not named in the complaint, and over whose line combination rate was not found unreasonable. Opportunity to justify reasonableness of rate over its route was never afforded the delivering carrier, nor were defendant carriers put on notice that reparation was sought on shipments delivered by it. New Mexico Corp. Commission v. A., T. & S. F., 123 I. C. C. 675.

(y) Every carrier who participates in infliction of excessive joint wrongful rates is liable in solido as joint tortfeasor. Louisville & N. R. Co. v. Sloss-Sheffield Steel & Iron Co., 46 Sup. Ct. 73.

(z) It is well settled that carriers participating in an unreasonable joint rate are jointly and severally liable for the unlawful assessment. Boston Wool Trade Asso. v. B. & A. R. R., 128 I. C. C. 185, 186.

(aa) Awards of reparation are not dependent upon the solvency or insolvency of the carriers concerned. They require payment of the sum found due and run against all defendants. Mobile Chamber of Commerce v. M. S. B. & P. Ry., 129 I. C. C. 419, 423.

(bb) The liability of the carriers parties to the joint rate is joint and several. Coulbourn Fruit Co. v. B. & O. R. R., 129 I. C. C. 441, 442.

(cc) Upon contention that complainant is entitled to reparation only from carriers who were defendants in former case in which distance scale was found reasonable for application on commodity involved, FOUND: Reparation was not awarded in that case because scale was for first time found reasonable for application on that commodity. However, in awarding reparation in a subsequent case it was stated that such an award would be merely in nature of a retroactive extension to complainants of a rate basis which, as a result of previous decision, its competitors had long enjoyed. Principle is equally applicable here. Reparation awarded. Texas Refining Co. v. C., R. I & G., 129 I. C. C. 304, 305.

(dd) Insolvent carrier was purchased by a trustee at foreclosure sale, and receiver ordered to continue operation for account of trustee who should be responsible for any deficit resulting from such operation. At time order discharging receiver was issued no record was made of claims for reparation and defendant carrier urges therefore be made. FOUND: Awards of reparation are not dependent upon solvency or that an award of reparation should not require payment of sum found due and insolvency of carriers concerned. They run against all defendant carriers. See 40 I. C. C. 501; 62 I. C. C. 60. Mobile Chamber of Cimmerce v. M. S., B. & P., 129 I. C. C. 419, 422, 423.

§20½. Undercharges or Overcharges.

See Overcharges; Undercharges.

(a) Contention that a shipper is not entitled to an award of reparation for exaction of unreasonable rates where such shipper owes the carrier unpaid transportation charges in an amount much larger than reparation claim not sustained, where such unpaid charges are shown to cover traffic which moved subsequent to reparation period. Moreover, it is beyond the commission's jurisdiction to allow an offset of undercharge on subsequent shipments against a claim for reparation for unreasonable rates exacted on shipments moving in the past. Wertheim Coal & Coke Co. v. L. V., 112 I. C. C. 513, 515.

§20½a. Destruction of Records.

See Accounting §7.

(a) Shipper delayed submission of its

reparation statement under Rule V of the Rules of Practice due, among other things, to its freight bills and other records having been destroyed, such statement having been prepared from records of companies from whom shipments were purchased. Certification thereof by carrier was rejected on ground that its records covering shipments also had been destroyed in accordance with the commission's regulations governing destruction of records. HELD: A complete chain of circumstances and a preponderance of the evidence point to ultimate fact that complainant not only received the shipments but that it paid and bore charges thereon, and since carrier was fully aware of the fact that reparation had been awarded complainant, under such circumstances it can not plead destruction of its records as a defense. Wertheim Coal & Coke Co. v. L. V., 112 I. C. C. 513.

V. PROCEDURE.

§20¾. In General.

See Procedure Before Commission.

(a) Shipper delayed submission of its reparation statement under Rule V of the Rules of Practice, due, among other things, to its freight bills and other records having been destroyed, such statements having been prepared from records of companies from whom shipments were purchased. Certification thereof by carrier was rejected on ground that its records covering shipments also had been destroyed in accordance with the commission's regulations governing destruction of records. HELD: A complete chain of circumstances and a preponderance of the evidence point to ultimate fact that complainant not only received the shipments but that it paid and bore charges thereon. Although commission's regulations permit of destruction of carrier records after a certain number of years they do not require it, and since carrier was fully aware of the fact that reparation had been awarded complainant, under such circumstances it can not plead destruction of its records as a defense. Wertheim Coal & Coke Co. v. L. V., 112 I. C. C. 513.

(b) Contention that reparation should be denied because petition for rehearing was not filed within 60 days after rendition of commission's report as required by rule 15 (e) of the Rules of Practice, not sustained, the record showing that rehearing petition was filed with- 60 days after service of report. South Carolina Cotton Mfgrs. Asso. v. C., C. & O., 112 I. C. C. 683, 685.

(c) Objection to the receiving of evidence tending to prove damages on shipments originating at points located on rails of carriers not named as defendants in complaint, sustained, the language of complaint not being sufficiently broad to cover shipments originating on those lines. South Carolina Cotton Mfrs. Asso. v. C., C. & O., 112 I. C. C. 683, 685.

(d) Complaint did not specifically ask for reparation on shipments moving subsequent to filing of complaint but did allege that rates "were and are unjust and unreasonable," and prayed for reasonable rates for future and for "reparation for unlawful charges hereinbefore alleged, such sum as in view of evidence to be adduced herein the commission shall determine that complainants are entitled to." At time of original hearing, complainants had uncut timber and were operating their mill. It would be doing less of violence to consider that shipments made during pendency of this proceeding are within scope of pleadings than to assume that complainants did not intend to ask for full relief, or to deny them that relief for want of use of particular words. Moreover, carrier has not been misled to its disadvantage and an award of reparation under circumstances would be in accord with similar finding in 21 I. C. C. 45. Reparation awarded. Burns & Knapp v. B. S. & K. R., 126 I. C. C. 410, 411, 412.

(e) Upon further hearing upon question of reparation, parties having been unable to agree upon Rule V statement, president and treasurer of complainant's company testified that complainant paid and bore charges and submitted a statement of shipments made, prepared by complainant's counsel. Contention of carriers that document was not competent evidence because not personally prepared by witness, not sustained. Reparation awarded. Boston Wool Trade Asso. v. B. & A., 128 I. C. C. 185.

(f) Upon complainant's failure to give notice of his claim for special damages either in his complaint or otherwise, together with other infirmities of record, proceeding assigned for further

hearing to determine extent of such damage. Carnes v. A., T. & S. F., 129 I. C. C. 341, 348, 349.

(g) Upon claim for reparation complainant relied upon decisions in 68 I. C. C. 559 and 74 I. C. C. 288, to effect that in absence of routing directions in tariff a joint rate is applicable over any route over lines of carriers parties to tariff, and if carriers desire to restrict application of such rates to particular routes they should do so in clear and unequivocal language. FOUND: That question presented in cases cited was with respect to applicability under an intermediate clause and not the reasonableness of rates under rule 77. Woodward Auto Co. v. C., M. & St. P., 129 I. C. C. 613, 615.

§21. Formal Proceedings.

See Cars and Car Supply VI; Claims.

(a) Except under unusual circumstances, and for good cause shown, reparation will not be awarded upon a complaint in which it not specifically prayed for, or upon a new complaint by or for the same complainant which is based upon any finding in the original proceeding. Jackson Traffic Bureau v. A. & V. Ry., 118 I. C. C. 217, 220.

(b) Complaint which did not specifically allege a violation of section 6 of the act, but stated that rates were "unreasonable and otherwise unlawful" and that complainant paid and bore "illegal excess charges" over and above those which were "just, proper and reasonable," held sufficient to cover overcharges. Crerar Clinch Coal Co. v. A. A. R. R., 118 I. C. C. 171, 172.

(c) Upon complaint seeking reparation on shipments of fertilizer and fertilizer materials from Jackson, Miss., to Arkansas and Louisiana destinations, predicated upon findings in Jackson Traffic Bureau, 102 I. C. C. 129, wherein reparation was not sought. HELD, considering fact that case relied upon was part of the Memphis-Southwestern rate adjustment prescribed in 55 I. C. C. 515, and other cases, it can not be said that rates prior thereto were unreasonable merely because they were not on a distance basis. Furthermore, rule III (s) of Rules and Practices provides that "Except under unusual circumstances, and for good cause shown, reparation will not be awarded upon a complaint in which it is not specifically prayed for, or upon a new complaint by or for same complainant which is based upon any finding in original proceeding." Jackson Traffic Bureau v. A. & V., 118 I. C. C. 217.

(d) Carrier sought dismissal of supplemental complaint on ground that reparation was not specifically prayed for in original complaint, citing Rule III (s) of Rules of Practice which provides that reparation will not be awarded upon a complaint in which it is not specifically prayed for, or upon a new complaint by or for same complainant which is based upon any finding in original proceeding. HELD, this rule has no application where, as here, prayer for reparation is not a new complaint but an amendment of one already filed. See 96 I. C. C. 124. Hollingshead Co. v. Director General, 120 I. C. C. 55, 56.

(e) Complainant's statement of facts under shortened procedure sought reparation to a basis lower than that specified in its complaint, and because of such variance carriers declined to handle the case further under such procedure and it was accordingly set for oral hearing. At the hearing complainant was granted leave to amend its complaint by asking for reparation to a lower basis, to which carriers objected on ground that they were unprepared to defend any rate lower than that specified in the complaint. HELD: That if any amendment was necessary carriers were not taken by surprise at the offer and their objection thereto was properly overruled. Luten Bridge Co. v. A. C. L., 123 I. C. C. 612.

(f) Except under unusual circumstances, and for good cause shown, reparation will not be awarded upon a complaint in which it is not specifically prayed for, or upon a new complaint by or for the same complainant which is based upon any finding in the original proceeding. Royal Distributing Co. v. B. & O. R. R., 129 I. C. C. 749, 750.

§22. Informal Proceedings.

See Claims II.

(a) Letters received by commission in the nature of inquiries can not be relied upon to toll the statute of limitations with respect to claims alleging unreasonableness of rates. Leach v. C., N. O. & T. P., 112 I. C. C. 38.

(b) Application for refund on special docket had been denied, as carrier did not submit a memorandum in support of

rates charged. Murphysboro Paving Brick Co. v. I. C., 128 I. C. C. 635.

(c) Formal complaint alleging both unreasonableness and overcharge on Federal-control shipments was filed within six months after complainant was advised that complaint was not susceptible of informal adjustment. Informal complaint however, involved an alleged overcharge only and issue of unreasonableness, since not presented within one year after termination of Federal control, found barred. Kinnison Bros. v. Director General, 128 I. C. C. 703.

§23. Court Pleadings and Procedure.

See Actions at Law; Allowances §14½; Courts; Procedure Before Commission.

(a) Until the Commission has, as an official body of technical experts, declared the existence of a right to reparation because of shipments of grain made after its finding and opinion and before the effective date of its subsequent order, and by some order fixed the right to such reparation, an action in court may not be maintained. Bartling Grain Co. v. M. P. R. R., 115 I. C. C. 441, 443.

(aa) Under Interstate Commerce Act, § 16 (3), as amended by Transportation Act of 1920 (Comp. St. Ann. Supp. 1923, §8584), providing that suit to enforce an award of damages by the Interstate Commerce Commission shall be filed "within one year from the date of the order," the date of the order is its "effective date," which is the time fixed by the Commission for payment of the award. Standard Oil Co. (Calif.) v. Davis, Director General of Railroads, as Agent, 6 Fed. (2d) 236.

(b) Failure of shippers, prosecuting claims for reparations before Interstate Commerce Commission and later before courts, under Interstate Commerce Act, § 16 (Comp. St. § 8584), to file such claims in pending receivership proceedings against railroad before expiration of time for filing claims fixed by interlocutory decree in such proceedings, HELD not laches, barring recovery on claims filed after favorable judgment in courts. Spiller v. St. Louis & S. F. R. Co., 14 Fed. (2d) 284.

(c) Shippers having obtained judgment for unlawful freight exactions by action under Interstate Commerce Act, § 16 (Comp. St. § 8584), and thereafter intervened in receivership suit against carrier, HELD not estopped to assert priority on theory of trusteeship ex maleficio of carrier, nor relegated to status of general unsecured creditor because section 16 provides for collecting "damages." Spiller v. St. Louis & S. F. R. Co., 14 Fed. (2d) 284.

(d) Shipper's right to reparation under Interstate Commerce Act, § 22, is not exclusive remedy, precluding recovery of illegal freight exactions, on theory of trusteeship ex maleficio (Comp. St. § 8595). Spiller v. St. Louis & S. F. R. Co., 14 Fed. (2d) 284.

(e) Where judgment dismissing complaint in action on reparation award of Interstate Commerce Commission is reversed for new trial, application for attorney's fees must be made to trial court on new trial. Swift & Co., v. New York Cent. R. Co., 16 Fed. (2d) 17.

(f) Reparation award of Interstate Commerce Commission, reciting that conclusions in other cases as to maximum ton-mile rates must be affirmed, HELD adequate finding of maximum rate, as required by Act to Regulate Commerce, § 1 (Comp. St. § 8563), and not a finding of prejudice or preference under section 3 (Comp. St. § 8565), which Commission had no authority to make, under Federal Control Act, § 10 (Comp. St. § 3115¾j), notwithstanding recital that rates were "relatively unreasonable." World Pub. Co., v. Davis, Agent; Tulsa Paper Co. v. Same. Democrat Printing Co., v. Same 16 Fed. (2d) 130.

(g) Where Director General made no objection to claims for reparation respecting shipments made after hearing before Interstate Commerce Commission, contained in statements made under Rules of Practice, rule 5, but certified statement as correct, he could not claim Commission's award was void as to such shipments. World Pub. Co., v. Davis, Agent; Tulsa Paper Co., v. Same. Democrat Printing Co., v. Same 16 Fed. (2d) 130.

(h) Where suit under Interstate Commerce Act, § 16, (Comp. St. § 8584), to recover excessive freight charges exacted in violation of section 1, (Comp. St. § 8563), was based on reparation order of Interstate Commerce Commission, which was entered on shipper's petition stating that certain items had been inadvertently included in prior computations, and praying that reduction be made in

prior order without notice to carrier, which had been heard in all proceedings culminating in prior order, HELD, suit was not based on order invalid as violative of due process clause (Const. U. S. Amend. 5), since, if order complained of was invalid, prior order remained in full force, and was sufficient to support suit, with later order having effect only of remittitur, and errors, if any, in ruling on admissibility of evidence adduced in support of order not grounds for reversal, in view of Act Feb. 26, 1919 (Comp. St. Ann. Supp. 1919, § 1246). Louisville & N. R. Co., v. Sloss-Sheffield Steel & Iron Co., 46 Sup. Ct. 73.

(i) In suit under Interstate Commerce Act, § 16 (Comp. St. § 8584), against railroad, based on reparation order of Interstate Commerce Commission, requiring return of freight charges exacted in violation of section 1 (Comp. St. § 8563), railroad company could not contend that such order was valid in so far as it annulled and set aside a prior reparation order for which it was a substitute, but invalid so far as it ordered reparation, because entered without notice. Louisville & N. R. Co. v. Sloss-Sheffield Steel & Iron Co., 46 Sup. Ct. 73.

(j) Prayer for reparations in shipper's original complaint HELD sufficient to authorize award of reparations for overcharges pending proceedings, as well as for losses suffered in the past, and recovery of damages on account of shipments between time of filing original complaint and time of filing of supplemental petition, approximately 3 years and 3 months later, for reparation on account of shipments made after filing of original complaint, not barred as to first 15 months by the 2-year statute of limitation contained in Interstate Commerce Act, § 16 (Comp. St. § 8584). Louisville & N. R. Co. v. Sloss-Sheffield Steel & Iron Co., 46 Sup. Ct. 73.

(k) Shipper's prayer for reparation in proceedings before Interstate Commerce Commission to recover excessive charges exacted, which included prayer for general relief, held sufficiently broad to justify relief against initial carrier as to rates over its lines to points on lines of connecting carriers, though delay for more than 2 years after filing of original complaint before making connecting carriers parties to proceedings, under Interstate Commerce Act. § 16 (Comp. St. 8584), precluded recovery as to them, save for a 2-year period preceding time when they were joined; the liability of connecting carriers for exacting excessive rates being joint and several. Louisville & N. R. Co. v. Sloss-Sheffield Steel & Iron Co., 46 Sup. Ct. 73.

(l) Although filing of claim for reparation within 2 years is a jurisdictional requirement, under Interstate Commerce Act, § 16 (Comp. St. § 8584), there is no rule imposing on Commission procedure so exacting as to make fatal mere failure to present within that time a detail of a statement of a claim, which under ordinary procedure could be supplied by amendment or bill of particulars, and hence petition praying that "rates and charges herein complained of be declared unjust, unreasonable, and discriminating for a period of at least two years preceding" filing of complaint, and that complainants "may have reparation to the extent of the difference between the rates and charges actually paid" and those found reasonable, was not too general to invoke jurisdiction of Commission under section 13 (Comp. St. § 8581). Louisville & N. R. Co. v. Sloss-Sheffield Steel & Iron Co., 46 Sup. Ct. 73.

§24. Intervening Petitions.

See Interveners.

(a) In accordance with Rule III (s) of Rules of Practice, reparation awarded upon a new complaint to complainants and interveners not parties to the proceeding prescribing reasonable rates to basis of which reparation is sought, upon showing of good cause and unusual circumstances. Decker & Sons v. U. P. R. R., 123 I. C. C. 621, 622, 623.

(b) Intervening petition seeking reparation, filed at hearing by parties newly come into the case, found to unduly broaden the issues presented by the complaint, within contemplation of Rule II (1) of Rules of Practice. Even though reparation was sought in original complaint, a separate wrong to a shipper other than complainant founded upon imposition of same unlawful freight rate wrong by an award of reparation must is a distinct issue, and redress of that depend upon competent evidence particularly relating thereto. To assume that carriers, had they been seasonably forewarned of the issue, would have been unable to develop evidence to controvert interveners' reparation claim would be to deny carriers their day in court, and this the commission may not do. However, objection of intervening petition

may be waived, failing in which interveners may petition for further hearing upon the issue of which carriers have now had abundant notice. Concrete Steel Co. v. B. & O., 123 I. C. C. 677, 678, 679.

(c) The Commission has on numerous occasions permitted intervening shippers to prove by affidavit that they paid and bore the charges on shipments as to which they sought reparation, although such permission of course is always subject to defendants objection. Kalamazoo Vegetable Parchment Co. v. C. K. & S. Ry., 128 I. C. C. 685.

(d) Petition of intervention filed after hearing but prior to oral argument by purchaser of complainant's business and property, asking to be accorded under original issues any relief which might otherwise have been accorded to its predecessor in interest on causes of action accruing subsequent to date of purchase, allowed at oral argument. Harbor Coaling Corp. v. B. & O., 128 I. C. C. 747, 748.

§25. Statements For Reparation.

See Evidence.

(a) Upon further hearing, carriers having declined to approve reparation statements submitted in accordance with Rule V of the Rules of Practice amount of reparation due complainants under decisions in 48 I. C. C. 475, and 55 I. C. C. 595, determined, such complainants having submitted proof and evidence that shipments were made, and that unreasonable charges exacted were paid, by them. Butters Lbr. Co. v. A. C. L., 109 I. C. C. 224.

(b) Due to long period of time which has elapsed since the hearings the commission found that it could not, with fairness to carriers, ask that they accept affidavit proof of shipments which may have moved after the hearings and up to effective date of reasonable rates prescribed for future. It was held that if such shipments have moved the commission will reopen cases for sole purpose of receiving evidence as to payment and bearing of freight charges. Associated Oil Co. v. A. E. R. R., 112 I. C. C. 350, 367, 368.

(c) Shipper delayed submission of its reparation statement under Rule V of the Rules of Practice due, among other things, to its freight bills and other records having been destroyed, such statement having been prepared from records of companies from whom shipments were purchased. Certification thereof by carrier was rejected on ground that its records covering shipments also had been destroyed in accordance with the Commission's regulations governing destruction of records. HELD, A complete chain of circumstances and a preponderance of the evidence point to ultimate fact that complainant not only received the shipments but that it paid and bore the charges thereon. Although commission's regulations permit of destruction of carrier records after a certain number of years they do not require it, and since carrier was fully aware of the fact that reparation had been awarded complainant, under such circumstances it can not plead destruction of its records as a defense. Wertheim Coal & Coke Co. v. L. V., 112 I. C. C. 513.

(d) Upon objection of carriers to proof in affidavit form submitted by shipper in conformity with Rule V of Rules of Practice, further hearing had and amount of reparation determined for the exaction of unreasonable rates found in the original report, 91 I. C. C. 677. Continental Sugar Co. v. N. Y. C., 115 I. C. C. 124.

(e) Complainant, an association, sought inclusion in reparation award of commission of those members who were parties to complaint but who failed to appear at hearing to prove fact of shipment and payment and bearing of freight charges, and expressed a willingness to establish such facts by presentation of receipted freight bills or affidavits. HELD, although commission has on numerous occasions permitted shippers to furnish proof by affidavit as to shipments moving subsequent to hearings such permission has at all times been subject to objections of carriers. While commission is not disposed to deny complainant members of the association who failed to appear an opportunity to do so, it does not feel justified, under the circumstances, in suggesting that carriers waive their right of cross-examination. Upon request therefore the case will be set for further hearing on the question of reparation. Jamestown Chamber of Commerce v. P. R. R., 120 I. C. C. 372, 377.

(f) Carriers objected to proof in affidavit form as to paying and bearing of

freight charges on shipments of scrap iron from Dunbar, W. Va., to Wierton, W. Va., via an interstate route, the rates on which were found unreasonable in 101 I. C. C. 621. Upon further hearing complainant showed that it sold the scrap iron f. o. b. destination, consignee deducting amount of freight charges from invoice price in remitting to the complainant. Complainant therefore found to have borne the charges and to be accordingly damaged by unreasonable rate collected. Reparation awarded. Hilb & Bauer v. N. Y. C., 120 I. C. C. 421.

(g) Upon further hearing, reparation awarded upon proof of damage sustained due to exaction of unreasonable rates on shipments of lumber from Sherman, Ky., to interstate destinations, carriers having refused to certify and file with commission complainant's statement prepared under Rule V of Rules of Practice. Former report 74 I. C. C. 111. Burns & Knapp v. B. S. & K. R., 126 I. C. C. 410.

(h) Upon further hearing, reparation awarded to complainant on l. c. l. shipments of sterotype plates, old, worn out, or scrap, broken or unbroken, shipped with type faces unprotected and valuable only for remelting, which were made both prior and subsequent to original hearing, carriers having objected to proof in affidavit form submitted in accordance with Rule V of Rules of Practice, complainant having shown that it paid and bore unreasonable charges on shipments in question. Original report, 69 I. C. C. 523. Western Newspaper union v. Director General 126 I. C. C. 437.

(i) Objection that one of places of origin involved was not named in complaint, nor in Interstate Commerce Commission's reports and that reparation order was therefore void as to it, could not be sustained, where shipments from such point were set forth in statement made under Rules of Practice, rule 5. World Pub. Co., v. Davis, Agent; Tulsa Paper Co. v. Same; Democrat Printing Co., v. Same, 16 Fed. (2d) 130.

(j) Upon further hearing, reparation awarded on l. c. l. shipments made subsequent to previous hearing, upon complainant's showing that it paid and bore freight charges thereon at rates found unreasonable in orignal report, 107 I. C. C. 101, and upon which carrier objected to proof in affidavit form submitted in accordance with Rule V of Rules of Practice. Hill v. A., T. & S. F., 129 I. C. C. 323.

REPORTS OF CARRIERS

See Accounting.

(a) Report of the commission in response to Senate Resolution No. 100 setting forth the number and nature of reports required to be made to it by the railways of the country; the number and nature of reports required by various utilities commissions and public service commissions; expense to the railways of preparing such reports; and, the number and nature of reports now being made, which can, in the commission's judgment, be dispensed with without detriment to the public interest. Carrier's Reports to Commission, 107 I. C. C. 741.

RESTRICTED RATES

See Absorption of Charges §3; Across-Lake Rates (a); Advanced Rates §5 (2) (m), §17 (x); Concentrating Rates and Privileges; Routing and Misrouting §6; State Rates and Regulation (t); Through Routes and Joint Rates §20a, §24, §25.

(a) Shipments of matches moving from Chico, Calif., to destinations in Washington were assessed a rate to Portland, Oreg., higher than proportional rate applicable over a route other than route of movement to St. Johns, situated within corporate and switching limits of Portland. Lower rate was restricted to destinations other than those here involved and carried a switching charge at Portland also restricted to switching service performed in connection with a line haul. There was no switching in connection with a line haul via route of movement, and an out-of-line haul would have resulted had traffic moved through St. Johns. FOUND: Rates assessed were not unreasonable or otherwise unlawful. Diamond Match Co. v. Director General, 104 I. C. C. 147.

(b) Proposal to reduce rates on grain, seed, and products from points in Colorado, Wyoming, Kansas, Arkansas, Oklahoma, and Missouri to points in Louisiana west of Mississippi River, and restrict routing in connection therewith through Arkansas but not through Texas, found justified as to carriers not operating routes through Texas, but unlawful with respect to carriers operating such Texas routes which are as short as, or shorter

than, those operated by them through Arkansas. Transportation conditions do not warrant proposed restriction, which would also result in violations of section 3 of the act. Grain and Products from Western States, 104 I. C. C. 272, 279.

(c) Applicable sixth-class rate on imported rough-quarried marble blocks from New York to Chicago, applying via standard all-rail routes, found not unjustly discriminatory, unduly prejudicial, or in violation of long-and-short-haul clause of section 4 of the act. While a lower commodity rate applies from Roxbury, Vt., and Lowell, Mass., competing points supplying domestic marble, such lower rate is not applicable through New York, being restricted to apply only over differential Canadian routes embracing carriers different than those involved in standard routes. Liquid Carbonic Co. v. C. & E. R. R., 104 I. C. C. 446.

(d) Proposal of Pennsylvania R. R., to restrict application of its rate on pulp wood from Washington, D. C., to Roaring Spring, Tyrone, Williamsburg, and Lock Haven, Pa., to shipments reaching Washington by water, and on such traffic originating locally at Washington to apply a higher rate in effect from Rossyln, Va., found not justified. West Virginia Pulp & Paper Co. v. B. & O., 104 I. C. C. 495.

(e) Proposal to restrict, throughout official classification territory, application of billet basis of rates to bolt, nail, rivet, or wire rods and chain iron or steel, in coils, so that it will apply on such commodities only when round in cross section, found not justified. Effect of proposed restriction would be to increase rates now effective on rods, in coils, which are not round in cross section. The distinction between round and not round does not reflect any substantial difference in material, stage or process of manufacture, value, or transportation characteristics other than volume of movement. Moreover, burden resting upon carriers to justify increase has not been borne, nor has it been made to appear that resulting difference in rate level would be free from undue prejudice as between round rods and rods of other shapes when shipped in coils. Iron and Steel Articles, 104 I. C. C. 616.

(f) Proposal to restrict routing of petroleum and products from Gulfport, Vicksburg, Natchez, Mobile, Pensacola, New Orleans, Baton Rouge, Mersea, and Port Chalmett, to certain points in Alabama, Tennessee, Kentucky, Ohio, Indiana, and Missouri, designed to avoid wasteful transportation, to secure to initial carrier the long haul to which it is entitled, and to eliminate fourth-section departures, found not justified. While there may be some justification for eliminating a few of the longer routes as contemplated, it is impossible upon the record to designate exact extent of such justification, it being shown that to most of the destinations many of proposed routes are longer than some of those it is proposed to close. Florence Chamber of Commerce v. A. & V., 107 I. C. C. 84.

(g) Proposal to restrict application of class rates from points in Indiana to Minneapolis, St. Paul, and Duluth, so as to eliminate cross-lake routes through Michigan, and thus remove existing departures from long-and-short-haul provisions of section 4 of the act, found not justified. The cross-lake routes which it is proposed to cancel are reasonably direct and move a substantial volume of traffic, and their continuance is also desirable for emergencies during periods of traffic congestion. Class Rates to Twin Cities, 107 I. C. C. 665.

(h) Proposal to restrict proportional rates on anthracite coal from Niagara frontier to East Burlington, Ill., via the New York, Chicago & St. Louis R. R. and its western connections, so as not to apply on traffic destined to Burlington, Iowa, found justified. Iowa R. R. Commrs. v. C. R. R. Co. of N. J., 109 I. C. C. 273.

(i) Tariff provision restricting application of joint rates and providing local or combination rates on iron and steel articles shipped from Pennsylvania and Ohio points, fabricated in transit at Parkersburg, W. Va., and reshipped to Kentucky points and to New Orleans, for export, found unreasonable and unduly prejudicial to extent they exceeded contemporaneous joint rates plus prevailing transit charges. Transit arrangements on joint rates tend to avoid maladjustments, and connecting lines can not dictate to the road that alone serves transit point the manner in which joint rates through that point shall be applied in conjunction with transit arrangements as long as they are not deprived of their long haul, especially where, as here, they perform no greater service on shipments fabricated in transit than they do on shipments not so

handled. Reasonable and nonprejudicial rates prescribed and reparation awarded. Parkersburg Rig & Reel Co. v. B. & O., 109 I. C. C. 569.

(j) Out-of-route charges collected on grain shipped from Ossian and Helmer, Ind., to Jonesville, Mich., there milled in transit and reshipped to other Michigan points, found illegal. Neither tariff publishing the joint through rates with provisions for milling in transit nor transit tariff carried any restrictions as to routing, and term "out-of-route" as carried in transit tariff is not defined. Rates between any given points, where no restrictions are made as to routing, apply over all routes of carriers parties to the tariff naming rates, where such routes are circuitous or not, if there be no back haul. Likewise transit arrangements applicable in connection with such rates, where no special restriction as to transit is contained in the tariff, are coextensive with routes over which the rates apply, provided routes are not employed which necessitate a back haul. Refund of overcharges directed. Jonesville Milling Co. v. N. Y. C., 109 I. C. C. 601.

(k) Shipment of carbide of calcium from Duluth, Minn., to Kingman, Ariz., was routed via short-line route through Denver over line of Union Pacific. A lower rate applied over various other routes, but tariff provision restricted its application in connection with Union Pacific by providing that "rates from or via points on the U. P. will not apply in connection with Santa Fe via junctions in Kansas, nor in connection with the Santa Fe via Denver * * *." Upon contention that phrase "in connection with the Santa Fe" was broad enough to cover transportation by that line anywhere en route, and phrase "via Denver" was broad enough to cover any interchange at Denver and did not limit first phrase to mean "in connection with Santa Fe at Denver," HELD: Inasmuch as delivery at destination could be made only by Santa Fe, effect of such construction would be to exclude Union Pacific entirely from the haul. Tariff, being ambiguous, construed against the framer and lower rate found applicable in connection with all workable lines, except Union Pacific. Reparation awarded. Central Commercial Co. v. A., T. & S. F., 109 I. C. C. 639.

(l) Respondents proposed to restrict application of the Deming, N. M., rates as maxima on grain and its products from Missouri, Kansas, Nebraska, Colorado, and other states to Texas, to traffic moving under the routing provided in transcontinental tariffs carrying rates to Deming from the same points of origin. The burden of justifying the proposed restriction was undertaken by the Frisco, M. P., and Santa Fe. So long as both the transcontinental and the southwestern lines tariffs were unrestricted as to routing the inconsistencies here proposed to be removed were not so marked. But later when the Deming tariffs were restricted in the transcontinental tariffs and the Deming rates, viewed as maxima to other destinations, were left unrestricted in the southwestern tariffs, a conflicting tariff situation resulted. Although it is true, that the lower rates would continue to apply through interior junctions, the fact remains that application of the Deming rate over the route through St. Joseph does not result in a haul which is unduly long as compared with that to many destinations now subject to the same rate. Moreover El Paso is in the extreme western edge of Texas. HELD, schedules not justified. Grain and related articles, 113 I. C. C. 195.

(m) Proposal to restrict application of rates on lumber between points in Florida, including Pensacola, so as to prevent use of such rates in constructing through interstate rates from or to points in that State, designed for purpose of restoring preexisting Jacksonville basis of rates, found not justified. Carriers' contention that Jacksonville combination should be applicable regardless of lower combinations based on Pensacola or other junction points is not sound and would result in unlawful charges to extent that Jacksonville combination would exceed lower aggregate of intermediates over same route. Lumber from or to Florida points, 112 I. C. C. 133.

(n) Proposal to cancel application of joint rates on grain and products from points in Utah and Idaho to destinations in the Southwest and Alabama and Mississippi, over routes through Texas, designed for supposed purpose of removing departures from long - and - short - haul provision of section 4 of the act, found not justified. There is in issue in a pending proceeding the reasonableness of rates to this destination territory as well as to points in Texas, where rates are now higher than to more distant

Louisiana points, and cancellation of joint rates over Texas routes, which are generally shorter than through States north thereof, would result in substantial rate increases which would seriously affect the ability of Texas mills to handle Idaho wheat. Grain and Products from Western Points, 112 I. C. C. 283.

(o) Proposal to restrict to intrastate traffic the applications of present rate upon rough undressed stone from St. Louis, Mo., to Carthage, Mo., now applicable upon both intrastate and interstate traffic, found justified. The present rate, originally applying on intrastate traffic only, became effective upon interstate traffic as result of an error in tariff publication and the proposed restriction will restore the situation which existed prior to the erroneous publication. Comparisons offered by carriers indicate that increased interstate rates are reasonable. Rough Stone from St. Louis, 112 I. C. C. 700.

(p) Carriers contended that there is a well-recognized exception to general condemnation by commission of restrictive rates in cases where combinations are supported by a general policy of carriers concerned in refusing to join in establishment of joint rates on coal to their local markets from points on other coal-carrying roads, citing in support thereof numerous cases in which commission found combination rates on that commodity not unreasonable or unduly prejudicial when maintained in accordance with such a policy. HELD, to merit commission's approval any such policy must be followed without discrimination between shippers similarly situated. Old Ben Coal Corp. v. C., C., C. & St. L., 115 I. C. C. 84, 87, 88.

(q) Mere fact that due to an oversight in routing restrictions of tariff a lower rate between two points applies over an unduly circuitous route, does not prove that higher rate by way of customary route is unreasonable. Desch v. N. P. Ry., 115 I. C. C. 401.

(r) Proposal of the Frisco to cancel proportional rates on grain and products from Omaha, South Omaha, Des Moines, Council Bluffs, and Kansas City, when from beyond, on traffic moving via East St. Louis to destinations in Arkansas on that portion of its line formerly operated by the Jonesboro, Lake City & Eastern Ry., designed to place these destinations on same rate basis mantained to other near-by stations on the Frisco system and to confine routing from these origins to its own line and to the Kansas City gateway, found not justified. If proposed rates are permitted, combinations from Omaha to Arkansas points involved on shipments moving beyond St. Louis or East St. Louis would be higher than on shipments moving beyond Kansas City, and grain operators at St. Louis would be prevented from competing with those at the Missouri River points. Moreover, no evidence was submitted to show that present rates are unduly low. Grain and Products to Arkansas, 115 I. C. C. 457.

(s) Shipments of refuse sand from Detroit, Mich., to Indianapolis, Ind., moved as routed by shipper. Applicable tariffs carried so-called intermediate clause, such clause via one of the routes being unrestricted in its application, whereas via the other route the clause contained phrase "on the same line." HELD, that on shipments moving via the unrestricted route the clause was applicable and lower rates provided thereunder applied. As to shipments moving over the other route the words "on the same line" in intermediate rule required that intermediate point be on line of same carrier as the more distant point to which a rate is published and since rails of delivering line did not reach the farther distant point the intermediate rule did not apply on shipments moving thereover. American Radiator Co. v. D. & T. S. L. R. R., 115 I. C. C. 529.

(t) On petroleum products from Gates and Port Arthur, Tex., to certain Colorado points, tariff rule provided that if rates and charges in an agency tariff applicable from same origin points to Lago, Utah, or Deming, N. Mex., respectively, made lower charges than those provided in another tariff, the lower rates to Lago or Deming respectively would apply. Upon contention that word "respectively" applied to routes and not to rates. HELD, while it may have been carrier's intention to restrict application of lower rate to their own lines, tariff must be construed in accordance with its language. Tariff publishing the rule contained no routing restrictions and made all destinations therein, with one exception, subject thereto; nor was there any restriction that particular destination points must be directly intermediate to points carrying lower rates and if it was desire of carriers to exclude application of the Deming rate to points on their lines they had it in their power to do so

by plain language. Here the tariff was doubtful or ambiguous and must be resolved against framers. Refund of overcharges directed. Texas Co. v. B., S. L. & W., 115 I. C. C. 572.

(u) Shipments of chairs from Winston-Salem, N. C., and blankets from Nashua, N. H., to Casper, Wyo., were tendered unrouted, charges being assessed based on Mississippi River combinations. Lower joint commodity rates contemporaneously applied to San Francisco, the tariff carrying an intermediate clause to effect that when no specific rates are provided for stations located directly intermediate to and on same line or route with stations to which rates are specifically provided, the applicable rate is that to the next more distant point. HELD, intermediate clause not being restricted as to routing so as to preclude movement via Casper and not requiring that unnamed destination point be located between two named points the lower rates under the rule were applicable to Casper over route of movement. Reparation awarded. Chamberlin Furniture Co. v. Director General, 115 I. C. C. 575.

(v) Proposal of L. & N. R. R. to restrict application over its own line of joint rates on slag from Birmingham, Ala., group points to Jacksonville, Fla., for local delivery and for beyond found not justified. Restriction is proposed because the L. & N. has been unable to arrange satisfactory divisions with Atlantic Coast Line which handles the traffic beyond Montgomery, Ala. While proposed restriction would merely make joint rates inapplicable, the record does not show what rates would apply or whether those rates would be reasonable. Slag from Birmingham, 115 I. C. C. 587.

(w) Proposal of carriers to restrict rates on class traffic and various commodities from Duluth, Minn., and several Michigan points to destinations on N. Y., N. H. & H., so as not to apply in connection with Grand Trunk by way of the Niagara frontier, found not in violation of the act. The route in question is by way of a boat line, a portion thereof being wholly in Canada. While proposed cancellation is outgrowth of a dispute between carriers over divisions, which affords no justification for increased rates, and although joint rates are now in effect over the route, the use of which is of material importance to shippers, the principle referred to has no application here, since commission has no authority either to require establishment of joint rates over this route or to prevent their cancellation. Elimination of G. T. Ry. from Certain Routes, 115 I. C. C. 609.

(x) Traffic from certain stations may move via either of two junctions, one of which constitutes normal route. Rates from such stations being unrestricted in their application, applied by way of junction which did not constitute normal route, and when so moving the traffic must pass through intermediate points taking higher rates. HELD, that situation involved a technical violation of long-and-short-haul provision of section 4 of the act because of unrestricted application of rates to the normal or customary route. Indianapolis Board of Trade v. C., C., C. & St. L., 115 I. C. C. 681, 682, 683.

(y) Proposal to eliminate routes via Montgomery, Ala., in connection with joint rates on cotton from L. & N. stations, Long View to Clanton, Ala., inclusive, to destinations in Virginia, the Carolinas, and Georgia, found not justified. While such routing restrictions are designed for purpose of obviating certain fourth-section violations and carriers attempted their justification principally on ground of circuity, no similar restriction is proposed from other points via highly circuitous routes on similar traffic moving via Birmingham. Moreover, to close routes via Montgomery would result in innumerable section 4 violations, as combination rates via that point would exceed joint rates from points on the Southern, west of Decatur, Birmingham, and Montgomery. Routing on Cotton, 120 I. C. C. 185.

(z) Proposed increased rates and routing restrictions on potatoes and cabbage, from points in Virginia on the Norfolk Southern to destinations in c. f. a. territory, for avowed purpose of correcting existing violations of long-and-short-haul provision of section 4 of the act, by which rate from points here involved are lower than rates in effect from Norfolk, found not justified. While comparison with rates in effect between various points for comparable distances indicate that proposed rates, in numerous instances, are reasonable, their establishment, without corresponding advances from competing points in North Carolina, would result in undue prejudice, and leave uncorrected many fourth-section violations in addition to creating

new ones at points where no such violations now exist. Vegetables from Virginia, 120 I. C. C. 319.

(aa) Proposal to restrict proportional commodity rate on horses and mules from Chicago to Ohio River crossings so that it will not apply on shipments routed over or in connection with the C., C., C & St. L. Ry., found not justified. This rate was originally established to meet a rate of the Illinois Central R. R., but the Big Four does not desire to meet competition of that carrier. No justification, however, was shown for higher second-class rates which would result on this traffic from both Chicago and intermediate points. Moreover, the record indicates that proposed restriction is only a temporary expedient, there now being under consideration an adjustment which if made effective, will either materially increase present rate or result in its cancellation over certain routes. Piecemeal revision of rates, however, is not desirable except in unusual circumstances not here present. Horses and Mules from Chicago, 120 I. C. C. 607.

(bb) Pennsylvania, respondent, proposed to restrict the commodity rates on dolomite and fluxing stone, in carloads, from and to points in central territory so as to limit their application to shipments in open top cars. The dolomite used by the glass industry is the residue after two crushings and screenings of limestone have removed, first, the stone of a size suitable for the manufacture of burnt lime, and second, the size suitable for furnaces in the steel industry. This residue is then dried and further screened. In the transportation of dolomite to the glass industry box cars are necessary as dirt and cinders from the locomotives render it unfit for use as a flux. The ordinary dirt or dust, aside from cinders, accumulating in a shipment of dolomite does not affect such use. The suspended schedules cover rates on both dolomite and fluxing stone from points other than Gibsonburg, but the record deals mainly with the rates on dolomite from Gibsonburg to Pittsburgh, Glassport, Washington and Charleroi. There is in effect a commodity rate of $1.66 on dolomite, in carloads, in either box cars or open top cars, from Gibsonburg to the stations named. The effect of the proposed restriction would be to cancel this rate on dolomite in box cars. There is also published a commodity rate of $2.02 per ton on agriculture limestone, in box cars from Gibsonburg. Dolomite is crushed limestone and falls within the general commodity description, agricultural limestone. If the suspended schedules become effective, the $2.02 rate apparently will apply on dolomite in box cars. Fluxing stone and dolomite move in great volume to furnaces in the Pittsburgh district and for that reason rates thereon have been made lower than those on crushed stone. The record is persuasive that the commodity rate on agricultural limestone will not be unreasonable for application on dolomite or fluxing stone in box cars. If respondent decides to make this rate applicable on those commodities in box cars the manner of publication should be clear and specific. As indicated, the tariff situation which would result if the suspended schedules were to become effective would leave room for doubt as to the proper application of the rate of $2.02. HELD, suspended schedules not justified, without prejudice to filing new schedules in conformity with the foregoing conclusions. Dolomite and Fluxing stone, 128 I. C. C. 23.

(cc) Respondents proposed certain restrictions in the application of the rule for constructing combination rates on various commodities, including lumber and other forest products, from southern territory to interstate points from and to which no joint through rates are in effect which would result in increases in rates. The schedules are subject to the combination rule and respondents propose to change them so they will be applicable only when the tariff of the connecting carrier also gives reference to the rule. Under the application of the combination rule, the present combination rates on lumber between certain points are lower than the joint rates between the same points over direct routes, although the joint rates are on the basis in effect throughout the general territory. It would seem inequitable to require carriers forming a route over which combination rates apply to continue a tariff provision under which they receive less for their service than carriers over whose lines joint rates are applicable, particularly when the entire shrinkage authorized by the combination rule falls upon one of the carriers. In such instances the increases in rates incident to the proposed amended reference to the combination rule appear justified. The suspended schedules would not be a step towards [illegible]mination of the obnoxious combination

rule but would merely tend to complicate an already confusing situation by adding an exception to the application of the rule. While the Commission is in sympathy with the efforts of respondents to remedy the inequitable tariff situation under which they are responsible on through traffic for the shrinkage in the local rates of their connections, it can not sanction a change in the tariffs which wou'd not only relieve respondents of the shrinkage of rate factors not published by them but in some instances would also avoid the proper reduction of their own local rates when used as factors of through rates. HELD, proposed schedules not justified, without prejudice to filing of other schedules which will relieve respondent of that portion of the shrinkage chargeable to their connections, but which will not void their responsibility for the portion which properly belongs to them. This does not mean that respondents must in every instance provide for the absorption of the exact amount of shrinkage chargeable to them. The requirements will be made of respondents in good faith publish rates which on the average will approximate that result. Combination rule on lumber, 129 I. C. C. 564.

(dd) Respondents proposed to restrict commodity rates on crude, crushed, crude fluxing, and crushed fluxing limestone, in carloads, from Pennsylvania, Maryland, Virginia and West Virginia to Pennsylvania, New York, New Jersey, Delaware and Maryland so as to limit their application to shipments in open top cars. Fluxing limestone is used by both steel and glass manufacturers in large quantities. It moves to steel industries in open top equipment, as the presence of dirt, cinders, and other foreign substances in the crude limestone does not destroy its usefulness in such industries. In the glass industry it is one of the important materials, constituting about 20% of the mixture required for the manufacture of window glass. It is used to fuse the materials and must contain a certain proportion of calcium carbide or carbonate of line. It is necessary that glass fluxing limestone move in box cars and be protected from water, dirt, and cinders, as any foreign substance renders it unfit for use as a flux, because of resulting bubbles in the glass, as well as discoloration. Should the suspended schedules become effective, sixth class rates would apply on shipments in box cars. Respondents contend that such a result was not the purpose of the suspended schedules but that it was intended to make the ground limestone rates apply on this commodity in box cars. Respondents are prepared to make the charge clear and specific in its terms so that, regardless of the name of this commodity or its description, rates not in excess of those on ground limestone will apply. The record is persuasive that commodity rates not in excess of the rates on ground limestone will not be unreasonable for application on fluxing limestone in box cars. HELD, suspended schedules not justified without prejudice to filing new schedules in conformity with the foregoing conclusions. Fluxing limestone, 129 I. C. C. 574.

RIVER CROSSINGS

See Blanket Rates §12½ (i); Bridges and Tolls; Evidence §52½; Proportional Rates; Rail-and-Water Rates (3h).

(a) Practice whereby east-side lines require west-side lines to bear expense of transferring across the river from East St. Louis, Ill., to St. Louis, Mo., interstate westbound freight moving under combination rates which are same on St. Louis as on East St. Louis, found unreasonable. Usual practice among rail carriers throughout the country is to divide switching expenses when services of an intermediate carrier are utilized in effecting an interchange of traffic, the switching charges being absorbed by carrier that delivers traffic to its connection. Moreover, there is a generally recognized obligation on part of all carriers on through traffic to make delivery on rails of connections, either direct or by bearing charges of intermediate switching line. Reasonable practice prescribed for future and reparation denied. C. R. I. & P. v. B. & O., 113 I. C. C. 681.

(b) Complainant attacked commodity rates on shelled peanuts, carloads, from Nashville, Tenn., to Chicago, Ill. In 115 I. C. C. 643 the Commission found them unreasonable. The combination of proportional rates through Evansville, Ind., as well as through Jeffersonville and New Albany, Ind., is 59.5c, made up of 28.5c rate for 156 mile haul south of Ohio river and 31c for 287 mile haul north thereof. HELD, rate since Nov. 19, 1923, unjust and unreasonable to extent it exceeded 52c, and defendants may continue the present method of publishing rates that break on the river by

establishing factors of 25 and 27c for hauls south and north of the Ohio river, respectively. United Fig & Date Co. v. A. C. L. R. R., 118 I. C. C. 475.

(c) Complainant attacked commodity rates on grain and grain products, carloads, from Missouri, Kansas, Nebraska, North Dakota, South Dakota, Minnesota, Iowa, Wisconsin, Illinois, Indiana, Kentucky and Tennessee to Montgomery, Ala., as unreasonable and unduly prejudicial as compared with rates to Meridian, Miss., Mobile, Ala., and Pensacola, Fla., and in violation of section four. Montgomery is located near the center of Alabama on the Alabama river and is served from the north and west by the L. & N. and M. & O. Meridian is almost due west of Montgomery and is served by the M. & O. Mobile is reached by the M. & O. and L. & N. and Pensacola by the L. & N. Montgomery and Pensacola are in what is generally termed southeastern territory and Meridian and Mobile in Mississippi valley territory. The general basis for rates on grain from the origin territory west of the Mississippi river and that east thereof and north of the Ohio river to territory south of the Ohio river is combination of local and proportional or reshipping rates on certain basing points, known as primary markets or reshipping points. To permit these markets to compete with each other on an equal basis, proportional or reshipping rates are generally so published as to equalize the through rates to consuming territories by way of the different markets. This equalization is accomplished through Louisville and Cincinnati by means of so-called shrinkage rates applied under transit arrangements in effect at those points. The rates on wheat and flour are somewhat higher than the rates on coarse grain from the territory west of the Mississippi to the river crossings. Complainant's attack is directed against the rates from the gateways to Montgomery as compared with those to Meridian, Mobile and Pensacola, considered as factors of through rates. Rates on grain and grain products from the river gateways are and for many years have been higher to Montgomery than to Mobile and Pensacola. The rates from Memphis, Cairo and Louisville to Montgomery are those applicable both on traffic originating at those points and on traffic from beyond, except that from Louisville a rate of 30c is applied as a shrinkage rate under transit arrangements in effect at that point, on traffic originating west of the Illinois-Indiana state line. The rate from St. Louis to Montgomery is a proportional rate, being 5c less than the local rate on coarse grain and 7c less than the local rate on flour from that point. The rates from Memphis and Cairo and the 33c rate from Louisville to Montgomery are the same as the class D rates from and to these points. The local rates on these commodities between points in the southeast are the class D rates or the equivalent thereof, the rates as a rule applying on any quantity. The rates from St. Louis to Montgomery and from all of the river gateways to Meridian, Mobile and Pensacola are lower than the class D rates from and to the same points. From the river gateways the carload rates are generally the same as the less carload rates to Montgomery, but somewhat lower than the less carload rates to Meridian, Mobile and Pensacola. The distances from the river gateways, with the exception of Evansville and Louisville, are substantially greater to Montgomery than to Meridian, and from all of the gateways are less to Montgomery than to Mobile and Pensacola. Defendants have been denied authority under the fourth section to maintain lower rates to Mobile and Pensacola than to intermediate points, and this record does not show that competitive conditions are now such as to compel the maintenance of lower rates on this traffic to those points than to Montgomery. Birmingham and Atlanta are the two largest cities in the southeast. The rates to Montgomery are relatively lower, distance considered, than those to Birmingham from all of the gateways and to Atlanta from the Ohio river gateways, and that from Memphis the rate to Montgomery is fairly well aligned with that to Atlanta. Transportation conditions under which traffic is handled from and through the river gateways to these three points are said to be substantially similar, except for the difference in the hauls. The mere fact that the general level of rates to the Mississippi valley is lower than that to the southeast is not in itself proof of the propriety of the resulting great disparity between the rates to that point here alleged to be prejudiced. It is not claimed that this difference in the rate levels is warranted by any substantial

dissimilarity in the transportation conditions. The record does not establish that the present rates to Meridian, Mobile and Pensacola are maximum reasonable rates and therefore a proper basis for the removal of any undue prejudice or disadvantage which may exist against Montgomery. The Commission is not convinced that the rates to Montgomery do not exceed the limit of reasonableness. Although they compare favorably with the rates on this traffic to other points in the southeast, this is not necessarily the conclusive test. HELD, rates attacked unreasonable to extent they exceed the rates to the river crossings, plus from Memphis 22c, from Cairo, Evansville and Louisville 28c; from St. Louis and Cincinnati 31c; unduly prejudicial to Montgomery and unduly preferential of Meridian, Mobile and Pensacola to extent they exceed by more than 2c the rates to Meridian 2c less than to Mobile and Pensacola. Capital Grain & Feed Co. v. I. C. R. R., 118 I. C. C. 732.

(d) On reconsideration, Ohio River combination rates on pianos from Hammond, Ind., and Steger and Oregon, Ill., to Birmingham, Ala., found not unreasonable or otherwise unlawful. Complainant contended for lower joint rate published in another tariff to Birmingham subject to an intermediate rule. Carriers, however, showed that such rule was intended to apply only to unindexed intermediate points in Mississippi Valley territory in which Birmingham is not located; also that Ohio River basis to Birmingham has been long maintained, and that lower rates are maintained to Mobile under appropriate fourth-section relief. Interpretation contended for is strained and unnatural, raises no reasonable doubt in its favor, and would break down long-standing adjustment by extending the Hammond-Mobile rate under Mississippi Valley bases to points east thereof as for south as the south Atlantic ports. Moreover, record is convincing that complainant was not misled to his damage by the intermediate rule. Original report, 101 I. C. C. 74, affirmed. Forbes & Sons Piano Co. v. A. G. S., 118 I. C. C. 185.

(e) In constructing interstate rates between points in the Southwest, in Texas and Oklahoma differential territories, and in portions of Kansas- Missouri territory, on the one hand, and Memphis, Vicksburg, Natchez, Angola, Baton Rouge, Harahan, and New Orleans, on the other, 4 cents in the case of Memphis and 6 cents in the case of other east-bank crossings authorized to be added as maximum bridge arbitraries or crossing allowances. Consolidated Southwestern Cases, 123 I. C. C. 203, 390, 391.

(f) Heavier traffic density as well as competition between numerous carriers between the Missouri and Mississippi Rivers have resulted in a generally lower basis of rates in that territory than west of the Missouri River. The effect which these influences has had upon the rate structure between the rivers and how it has affected rates from territory west of Missouri River are related in 14 I. C. C. 299 and other cited cases. Boston Wool Trade Asso. v. A., T. & S. F., 129 I. C. C. 681, 687.

ROUTING AND MISROUTING

I. CONTROL AND REGULATION.
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- §1½. In general.
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III. LIABILITY FOR MISROUTING.
- §7¾. In general.
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§9. Measure of damages.
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§15. Statute of limitations.

CROSS REFERENCES

See Bills of Lading §9, §9½, §10; Branch Lines II, §5; Crimes §23; Embargoes; Evidence §47; Express Companies V; Live Stock Shipments (y); Reconsignment; Reparation §11; Restricted Rates (a); Tariffs §18; Through Routes and Joint Rates §6.

II. CARRIER'S DUTY TO TRANSPORT.

§1½. In General.

(a) Upon contention that shipments were misrouted, it being initial carrier's duty to forward over route taking lower combinations, inasmuch as shipments were not specifically routed by shipper, FOUND: Shipments contemplated by tariff as subject to application of lower combinations were those on which inbound billing to intermediate points was surrendered. Here shipments were billed through to destination with no inbound billing to surrender. It is no answer to say that surrender of freight bills in possession of carriers was unnecessary and impossible and that tariff restriction was, therefore, a nullity, since tariffs must be read in strict accordance with their terms. Shipments found not misrouted. Lewiston Elevator Co. v. C. G. W., 104 I. C. C. 473, 474, 475.

(b) The establishment of specific routes in the rate tariffs would prevent any unduly circuitous routing under transit arrangements. Transit on iron and steel, 115 I. C. C. 381, 384.

(c) Complainant attacked commodity rate of 281.5c charged on one less carload shipment of household goods and first class rate of 315c charged on one secondhand trailer shipped Feb. 18, 1925, from Bozeman, Mont., to Alameda, Calif., unreasonable and illegal to extent they exceeded 281.5c on actual weight of entire shipment. Shipment moved N. P. to Spokane, Wash., S. P. & S. to Portland, Ore., and S. P. beyond, 1,593 miles. The entire shipment was released to a value not exceeding 10c per pound. The mere fact that due to an oversight in the routing restrictions the lower rate from Grand Island, Neb., to Alameda applied over the very circuitous route via Bozeman does not prove that rates charged were unreasonable. The tariff has since been amended eliminating the application of the rate via Bozeman. HELD, rates charged applicable and not unreasonable, complaint dismissed. Desch v. N. P. Ry., 115 I. C. C. 401.

(d) Complainant attacked combination rate charged on a car of lumber shipped April 19, 1923, from Hogansville, Ga., to Norton, Va., as illegal. Shipment was delivered to A. & W. P., consigned to Norton, Va., and routed cheapest route. It moved A. & W. P. to Atlanta, Ga., thence L. & N. through Corbin, Ky., and Appalachia, Va., charged 37c made up of 6.5c to Atlanta, 18.5c Atlanta to Middlesborough, and 14c beyond, subject to the combination rule. The rate claimed of 21.5c from Atlanta is a proportional rate applicable to Norton for beyond. The word "beyond" implies a movement beyond Norton, whereas this shipment was consigned to and actually delivered at Norton. Appalachia is intermediate to and, from a transportation standpoint, not beyond Norton over the route traversed by the shipment and by way of which the proportional rate was published. Rule 5b has no application to a situation such as this. HELD, rate charged applicable, complaint dismissed. Pine & Cypress Mfg. Co. v. L. & N. R. R., 115 I. C. C. 557.

(e) Tariff defines an impracticable route as one through a point where roads do not cross each other at grade and where there are no connecting tracks to be used in interchange of traffic. An exception thereto, however, is specific in its provision that rates on livestock shall be based on short-line distances over practicable routes and does not require that rates themselves shall be applicable over routes which thus measure distances. Accordingly, rates on livestock from points in the Texas Panhandle on the Fort Worth & Denver City Ry., to El Paso, Tex., found properly based on distances over route of above-named line, the C. R. I. & P., and former El Paso & Southwestern. Original report 100 I. C. C. 4, affirmed. Peyton Packing Co. v. A. E. R. R., 118 I. C. C. 452.

(f) Complainant alleged that, be-

cause of misrouting, the charges on a car of canned goods shipped Oct. 17, 1923 from Westminister, Md., to Tampa, Fla., were unreasonable. Shipment was routed by shipper W. M. via Clyde Lines at N. Y. and moved over the W. M. to Gettysburg, Pa., P. & R. to Allentown, Pa., and Central N. J. to New York, lighterage. The Clyde Steamship Company does not operate between New York and Tampa. It is the practice of carriers to deliver shipments destined to Tampa routed "Clyde lines" to the Mallory Steamship Company, a corporation operating under the same management as the Clyde lines and handling the transportation business of the latter corporation between New York and Tampa. The shipment was loaded on a lighter and tendered to the Mallory lines. On Nov. 2, 1923 the Mallory lines refused to accept it on account of its damaged condition. On Nov. 7 the shipment was again tendered to the Mallory lines in damaged condition and again refused. On the occasion of each refusal the Mallory lines notified the Central that if the shipment were put in proper shipping condition it would be accepted by them. Complainant learned of the refusal of the Mallory lines to accept the shipment, and telegraphed to the Central "if you can not cooper so acceptable to Mallory, ship all rail Tampa, with understanding claim filed difference rate and other charges." Shipment forwarded by rail, charged 130.5c combination rate. Contemporaneously the rate via route shown in bill of lading was 27c to New York and 28c beyond. HELD, shipment misrouted, reparation awarded. Lewis Chitty Consolidated v. B. & O. R. R., 120 I. C. C. 384.

(gh) On strawberries from Plant City Fla., consigned to Jersey City, N. J., delivery was accepted at Manhattan Produce Yards, N. J., a point four miles short of billed destination. No claim for reparation was made for drayage charges incurred because of carrier's failure to complete delivery, but relying upon 69 I. C. C. 59, complaint alleged misrouting and sought damages resulting therefrom, in amount of difference in price at which strawberries were sold and price they might have brought if delivery had been made at Jersey City. HELD: Contention of misrouting not sustained. There was no deviation from route named in bill of lading, and transportation charges are same to Manhattan Produce Yards as to Jersey City. Situation here involves carrier's failure to complete a transportation service which it contracted to perform, and on which no violation of the act can be predicated. Complainant's remedy, therefore, if any, lies in the courts. Long v. A. C. L., 120 I. C. C. 601.

(i) A route to be legal must be available to all shippers and this requirement can not be waived by private agreement between carrier and a particular shipper. Racine Crushed Stone Co. v. C., M. & St. P., 120 I. C. C. 742, 744.

(j) It is not commission's province to require circuitous or more expensive routes to meet rates of shorter or less expensive routes. However, commission may, in fixing rates by any route, give consideration to rates of other routes and attempt to devise an adjustment which on the whole will provide reasonable rates and at the same time, as nearly as may be, permit various routes to engage in the traffic where they so d e s i r e. Consolidated Southwestern Cases, 123 I. C. C. 203, 374.

(k) It can not be found that shipments, routed by the shipper upon erroneous advice or confirmation as to rate by one of the carriers, were misrouted. Dreer v. L. A. & S. L. R. R., 126 I. C. C. 130, 132.

(l) If a shipper is in doubt about the rate he can tender the traffic to the carrier without routing instructions and thus be entitled to the lowest rate. Amicon Fruit Co. v. L. V. R. R., 128 I. C. C. 34, 36.

(m) The tariff provision does not charge its interpreter with knowledge of operating or other conditions which would eliminate any apparently reasonable and available route. New York Insulated Wire Co. v. N. Y., N. H. & H. R. R., 128 I. C. C. 698, 699.

§2. Accustomed or Natural Route.

(a) The real purpose of rule 5(b) of Tariff Circular 18-A was to relieve carriers from necessity of hauling a shipment from the junction point to a base point and back from the base point to junction point in order to permit application of the base-point combination. In other words, the rule obviates necessity of hauling a shipment via an unreasonable route. Birmingham Tariff Bureau v. Director General, 115 I. C. C. 33, 36.

(b) Bills of lading covering shipments of coal from Wilder and Davidson,

Tenn., forwarded via Cincinnati to Peoria, Ill., and there reconsigned to points in Iowa, showed Peoria as destination. Most of them specified routing via Cincinnati, and others apparently left it optional with carriers to forward via either Cincinnati or Louisville, rate to Peoria being same by either gateway. Contemporaneously joint rates via Louisville authorized reconsignment at Peoria, which lower rates were later made effective via Cincinnati. FOUND, as there was nothing on bills of lading to inform carrier's agent that cars were to be reconsigned beyond Peoria and rates were same via either route, shipments were not misrouted. Fentress Coal Co. v. T. C. Ry., 115 I. C. C. 286.

(c) Mere fact that due to an oversight in routing restrictions of tariff a lower rate between two points applies over an unduly circuitous route, does not prove that higher rate by way of customary route is unreasonable. Desch v. N. P. Ry., 115 I. C. C. 401.

(d) Charges on lumber from Camden, Ala., to Pottsville, Pa., ordered diverted to Tamaqua, Pa., found not unreasonable or unlawful. Shipment was delivered to carrier without routing instructions and while en route was ordered diverted, complainant contending that ample time was given carriers to effect diversion. Carriers used due diligence in attempting to locate shipment but incompleteness and indefiniteness of shipper's order and short notice given within which to locate car, together with fact that shipment moved over a different route than was anticipated, resulted in its moving forward to originally billed destination from which it was ultimately reconsigned. Stuckey-Odom Lbr. Co. v. L. & N., 115 I. C. C. 403.

(e) Distance rates on sand and gravel from Portsmouth, Ohio, to Williamson, W. Va., based on distance via a circuitous route, found unreasonable to extent they exceeded rates based on actual distance via a shorter and more desirable route. Shorter route is free from heavy grades and curves such as are encountered on circuitous route and no good reason appears why rates constructed on lower basis should not have been applied on shipments moving via shorter line. Reasonable rate prescribed and reparation awarded. Good Construction Co. v. N. & W., 115 I. C. C. 629.

(f) Notation by consignor in blank space intended for naming of route on a bill of lading of a specific carrier without specifying rate or junction point must be regarded as an expression of consignor's intention that the road so shown was to participate in a line haul. See also 19 I. C. C. 68, and other cited cases. Commersoila Lbr. Co. v. L. E. & W., 118 I. C. C. 499, 500.

(g) Complainant attacked charges on one car of lumber shipped on Jan. 25, 1923 from Quitman, Ga., to East New York and reconsigned to Ozone Park, N. Y., as unreasonable. Shipment was consigned to complainant at East New York, and was tendered to the South Georgia routed G. & F.-Sou-Charlotte, N. S.-Pa.-L. I. On Jan. 26, 1923 complainant wrote the agent of the L. I. at East New York giving delivery instructions on the shipment. On Feb. 5, 1923 complainant wired the agent of the L. I. to divert it to Ozone Park, on the L. I. Car moved South Georgia, Adel, Ga., G. & F. to Augusta, Ga., A. C. L. to Pinners Point, Va., Pennsylvania to New York and South Brooklyn to East New York. Delivery tendered on March 1, 1923 but refused, the consignee insisting that delivery should be made over the L. I. as shown in the bill of lading. Shipment was reconsigned to Ozone Park and delivery effected by the L. I. on April 23, 1923. Charged 43c to East New York plus $1.26 per ton beyond, plus $2.70 reconsigning and $2.13 demurrage. Had the shipment been forwarded for L. I. delivery over either the Southern or A. C. L. beyond Augusta, the 43c rate plus $2.70 for reconsignment would have applied to Ozone Park. HELD, A. C. L. misrouted shipment, reparation awarded. Underwood Lumber Corporation v. A. C. L. R. R., 120 I. C. C. 175.

(h) Complainant, after one month after the institution of court proceeding by defendants to collect outstanding undercharges, alleged that the additional charges sought to be collected on a car of apples shipped on Nov. 3, 1922 from White Salmon, Wash., to Phoenix, Ariz., were caused by the refusal of the S. P. & S. to allow complainant to designate the routing and by the designation of an impossible and circuitous routing by that carrier, that the charges collected at a rate of $1.83 and additional charges sought to be collected were unreasonable, unduly prejudicial and illegal. White Salmon is local to the S. P. & S., 75 miles east of Portland, Ore. Complainant filed

with agent at White Salmon Nov. 1, 1922 a written order for a refrigerator car to be used for a shipment of apples to Chicago over the S. P. & S., to Spokane and G. N. and its connection beyond. The S. P. & S. which is owned in equal amounts by the G. N., and N. P., owns no refrigerator equipment, its practice being to obtain refrigerator cars from the line over which they move beyond its rails. On Nov. 2, it furnished complainant with a G. N., refrigerator car for the movement to Chicago. Thereafter, however, complainant determined to forward the car, then either partly or wholly loaded, to Phoenix. On Nov. 3, its warehouse foreman tendered the S. P. & S., agent a bill of lading naming Phoenix as the destination and directing routing over the S. P. & S., to Portland and S. P., and Santa Fe beyond. Over this route the distance is 1,656 miles and rate $1.565. Relying upon the car service rules of the S. P. & S., which provided that the G. N., must participate in the movement of its cars when used for loading to point beyond its rails, the agent refused to execute the bill of lading unless it was changed to accord the G. N., a haul. The evidence is conflicting as to whether the agent required the insertion of the routing in the bill of lading which was finally executed or whether he merely explained to complainants warehouse foreman how the G. N., could be given a part of the haul, but however that may be, the shipment was finally accepted by the agent and moved out on a bill of lading specifying routing "SPS-GN-UP-SALT LAKE ROUTE-Santa Fe." Apparently it moved over S. P. & S.. to Spokane, G. N., to Butte, Mont., O. S. L., to Salt Lake City, L. A. & S. L., to Daggett, Calif., and Santa Fe beyond, 2,360 miles, applicable rate a combination of $3.30. HELD, rate assailed unreasonable to extent it exceeded $1.565, reparation awarded. Wuille & Co. v. S. P. & S. Ry., 123 I. C. C. 190.

(i) Charges on grapes from Reedley, Calif., to Croxton, N. J., reconsigned to Scranton, Pa., assessed on basis of through rate to Croxton plus second-class rate to Scranton, FOUND inapplicable. The through rate applied both to Scranton and Croxton and governing tariff provided that to points on direct route reconsignment would be made at through rate plus reconsignment charge except on shipments involving a back haul, in which event charges would be computed on a mileage basis, plus reconsignment charge, for back hauls not exceeding 300 miles. Here, movement involved a back haul exceeding 300 miles and class rate was assessed. However, as the through rate was unrestricted as to routing and shipments could have moved via a route involving a back haul less than 300 miles, charges based on mileage over the shorter route should have been assessed. Reparation awarded. California Table Fruit Co. v. A., T. & S. F., 126 I. C. C. 700.

(j) Shipments of rough quarried marble from Phenix, Mo., to Cleveland Ohio, routed "Best Route" and "Best Route for B. & O. Del.," moved via East St. Louis. Contemporaneously a lower rate applied via Chicago. Citing 16 I. C. C. 525, and contending that under Conf. Ruling 214 (g), carrier's agent could not reasonably be expected to know existence of the lower rate through Chicago, HELD: Rate beyond Chicago was published in separate tariffs of various carriers, Chicago was not an unnatural gateway for shipments involved, and agent at Phenix could therefore reasonably be charged with knowledge of that route. Moreover, "Best Route" implied the cheapest reasonable route and "Best Route for B. & O. Del.," required movement over cheapest route permitting B. & O. delivery. See 42 I. C. C. 719. Therefore carrier's failure to send shipments via Chicago resulted in misrouting. Reparation awarded. Norcross Marble Co. v. B. & O. R. R., 126 I. C. C. 741.

(k) It is not incumbent upon initial carrier to send a shipment tendered with complete routing over a route requiring the interposition of another carrier. See 42 I. C. C. 150. Norcross Marble Co. v. B. & O., 126 I. C. C. 741, 742.

(l) Complainant alleged that less carload shipments of various kinds of paper from Watertown, Brownsville and New Hartford, N. Y., to Lynchburg, Va., were misrouted. Those in 17465 were routed by N. Y. C., the initial carrier, and were transported via Newberry Jct., Pa., Pennsylvania, to Potomac Tfr., Va., R. F. & P. to Richmond, Va., and C. & O. to Lynchburg, and third class through rate of 95c was charged. The same rate was also in effect from Watertown and Brownsville with the Southern as delivering carrier. There was contemporaneously in effect a rate of 81c which applied N. Y. C. to Newberry Jct., Pennsylvania, to Harrisburg, Reading to

Shippensburg, W. M. to Hagerstown, Md., and N. & W. beyond. The 81c rate is made up of 68c to Lone Jack, Va., and 13c to Lynchburg. Lone Jack is a short distance south of Lynchburg and the rate to that point is governed by the southern classification, under which printing paper is rated fourth class. Rates to Lynchburg are governed by the official classification, printing paper being rated third class. Shipment in 16968 delivered at New Hartford to the D. L. & W., forwarded over D. L. & W. and connecting lines, including the C. & O. as delivering carrier, charged joint third class rate of 70c. Combination rate was 57c made up of fifth class of 46.5c to Lone Jack and 10.5c beyond, with routing N. Y. C. and connections to Hagerstown, Md., thence N. & W. to Lynchburg. Lone Jack is beyond Lynchburg over this route. Shipment in 16968 Sub. 1 was originally billed at printing paper, but changed to read at destination wrapping paper. Delivered to N. Y. C. at Watertown without routing instructions and was forwarded over that carrier, Pennsylvania, R. F. & P. and C. & O., charged third class of 95c, 62c rate applicable if shipment had been forwarded via Hagerstown, made up of 50.5c to Lone Jack and fifth class rate of 10.5c beyond. The second component of the lower combination through rate applied from an unimportant nonagency prepay station about 750 miles distant from point of origin. Even if the carriers agent could be expected to have had knowledge of the lower rate in each instance to Lone Jack it would not seem reasonable to expect him to have knowledge of the distant local rate referred to which caused the lower through charge. HELD: initial carriers not guilty of misrouting, complaints dismissed. Lynchburg Chamber of Commerce v. N. Y. C. R. R., 128 I. C. C. 159.

(m) Complainants alleged that unrouted shipments forwarded over a a route taking a third-class rate were misrouted because tariffs published a lower combination over another available route. Carriers rely upon 247 U. S. 477, which holds that the duty to route over cheapest route is not absolute but depends upon reasonableness of available routes. FOUND: While Conf. Ruling 214 (c) provides that duty of carrier's agent is to forward over cheapest route known to him, Conf. Ruling 214 (g) provides that there is a limit beyond which agents can not reasonably be expected to know as to terminal delivery. From a distance standpoint route used was a reasonable one. Moreover, one component of lower combination applied from an unimportant nonagency station 750 miles from point of origin and even if agent had knowledge of the lower rate it would not seem reasonable to expect him to have knowledge of the distant component producing the lower charge. Shipments were therefore not misrouted. Lynchburg Chamber of Commerce v. N. Y. C. 128 I. C. C. 159.

(n) On coal routed by shipper from Annabelle, W. Va., to Goshen, Ind., complainant was quoted a joint rate. Shipment was diverted en route to Benton Harbor, Mich., and since joint rate did not apply over that route, higher combination rate was assessed. Upon contention that as lower joint rate applies over other routes from points in the Annabelle group to group in which Benton Harbor is included, it should also apply over route of movement. HELD: Agent at point of origin was not advised that shipment was to be reconsigned, or as to final destination, and since it moved as routed, it was not misrouted. Moreover, earnings under rate charged do not indicate that it exceeded a maximum reasonable basis and failure to take advantage of lower rate over restricted routes does not establish unreasonableness of rate charged or necessity for additional routes. Sellers v. C., C., C. & St. L., 128 I. C. C. 263.

(o) Reference in a tariff to rule 77 of Tariff Circular 18-A is to be construed in the light of its terms, and does not charge its interpreter with knowledge of operating or other conditions which would eliminate any apparently reasonable and available route. See 81 I. C. C. 662 and 120 I. C. C. 316. New York Insulated Wire Co. v. N. Y., N. H. & H., 128 I. C. C. 698, 699.

(p) Shipments of anthracite coal from Pennsylvania points to Fort Snelling, Minn., moved via St. Paul to Minneapolis, thence to Fort Snelling. Charges were collected on basis of rate to Minneapolis. However, Fort Snelling was not named as a point to which that rate applied, and carriers sought to collect undercharges for local rate from Minneapolis to Fort Snelling. FOUND: While customary route between St. Paul and Minneapolis is via Minnesota Transfer, and shipments moved over

that route, they could have moved via Mendota, Minn., over which route Fort Snelling is intermediate to Minneapolis. Since Fort Snelling generally takes Minneapolis rate on coal from various other points, and that rate was subsequently established over route of movement, applicable rate was unreasonable to extent it exceeded rate to Minneapolis. Waiver of undercharges authorized. Hostler Coal & Lbr. Co. v. P. M., 128 I. C. C. 731.

(q) Defendants urge that the intermediate rule was published in a tariff of a distant line and that even though it were found to be applicable the agent should not be charged with knowledge that it was applicable and that by its use a lower combination would result over an unreasonable and impracticable route. HELD: shipment not misrouted. Pine & Cypress Mfg. Co. v. W. & L. R. R., 129 I. C. C. 321, 322.

(r) The fact that certain routes are desirable is not an indication that other routes are undesirable. White Eagle Oil & Refining Co. v. C. B. & Q. R. R., 129 I. C. C. 467, 468.

(s) In Conf. Ruling 214 G the Commission admonished the shippers to bear in mind that there is a limit beyond which an agent of a carrier could not reasonably be expected to have knowledge as to terminal deliveries or local rates at distant points and on lines of distant roads. The existence of joint rates via recognized gateways upon this traffic would make it unreasonable to require defendants agent to make inquiry as to whether or not a lower combination could be based upon a relatively obscure point beyond the gateways. Windsor Broom Co. v. C. R. R. of N. J., 129 I. C. C. 705, 706.

(t) First-class rate on passenger automobiles from Janesville, Wis., to Mason, City, Iowa, found applicable and not unreasonable or unduly prejudicial. Under a restricted tariff a lower joint commodity rate subject to rule 77 of Tariff Circular 18—A was contemporaneously in effect to Ames. Complaint contended that as Mason City was intermediate to Ames over a circuitous route and shipment moved in compliance with routing restriction the lower rate was applicable. FOUND: That publication of rule 77 does not warrant a finding of unreasonableness where, as in this case, point which is claimed to be intermediate to lower-rated point is intermediate only via excessively circuitous and unnatural routes over which no shipper could reasonably request transportation under provisions of section 1 (4) of the interstate commerce act. Woodward Auto Co. v. C., M. & St. P., 129 I. C. C. 613.

§2a. Commission Service Orders.

(a) Shipments originally routed by complainant were delayed en route because of congestion. Service Order No. 22 of commission provided for disregard by carriers of shipper's routing instructions and forwarding of shipments over routes which would expedite movement and prevent congestion, the rate designated by shipper in billing to be protected unless lower rate applied via route of movement. Complainant requested diversion under that order, shipments so moved, and rate over route of movement was assessed. HELD: Situation here is similar to a case where shipper's routing instructions and rate are inconsistent, under circumstances of which carrier's duty is to inquire as to which instruction shall govern. See Conf. Ruling 474 (c). Carrier here accepted diversion request subject to service order, and it was incumbent upon it to have notified complainant if its intention was not to protect the rate specified in original billing. Having failed therein, the applicable rate was that in effect over route named in billing. Reparation awarded. Seldon-Breck Const. Co. v. C., M. & St. P., 120 I. C. C. 134.

§3. Conflict in Billing Between Rate and Route.

See Bills of Lading §9 (1); Export Rates and Facilities II; Through Routes and Joint Rates III.

(a) Complainant attacked commodity rates charged on gas oil, in tank cars, from Electra and Iowa Park, Tex., to Kassel, La., as unreasonable. Iowa Park is 125 miles and Electra 141 miles northwest of Fort Worth, Tex. Charged 24.5c, rate sought 20.5c, shipper inserting the routes and a rate of 20.5c in the bill of lading. Kassel and Good Hope are two of many points in the New Orleans district that ordinarily take the New Orleans basis of rates, which is 20.5c. Present rate is 22c. When the shipments were tendered on bills of lading specifying the routing and also naming a rate which was applicable in con-

nection with the originating carrier but was inconsistent with the routing specified, it was the duty of the originating carrier to ascertain from the shipper whether the routing specified should be observed or whether the shipments should be forwarded over routes taking the rate named. This it failed to do. HELD, shipments misrouted, reparation awarded. Altitude Petroleum Co. v. Ft. W. & D. C., 118 I. C. C. 572.

(b) Where a shipper indicates a routing inconsistent with the rates specified in the shipping instructions, it is the duty of the carrier to inquire of the shipper which instruction shall govern, failing in which the shipper is entitled to recover the damages suffered. Selden Breck Construction Co. v. C. M. & St. P. Ry., 120 I. C. C. 134, 136.

(c) Shipments of soap and cleaning compounds from Manchester, Conn., to Cincinnati, Ohio, and St. Louis, Mo., were routed by complainant "O. Dom. c/o C. & O. (or N. & W.)" and connecting lines. Rates shown in bills of lading were not applicable over routes named and some of shipments moved before complainant was notified of conflict between route and rate. Charges were collected at applicable combination rates which were higher than rates shown in bills of lading. HELD: St. Louis and Cincinnati can not be said to be "distant points," or the Old Dominion, Chesapeake & Ohio or Norfolk & Western "distant roads" within the meaning of Conf. Ruling 214 (g), and shipments tendered before complainant was notified of conflict between route and rate were, therefore, misrouted. See Conf. Ruling 474 (c); 48 I. C. C. 423; 91 I. C. C. 723. Reparation awarded. Orford Soap Co. v. N. Y., N. H. & H., 122 I. C. C. 71.

(d) Under Interstate Commerce Act, § 7 (U. S. Comp. St. § 8563), Public Service Commission Law, § 33, and subd. 1, and Conference Rulings 214 (c), 474 (c), adopted by Interstate Commerce Commission, where bill of lading did not designate any route, but contained recital, "Freight $1.80 ton," and there were three available routes, two of which had $1.80 rate, while third had $1.30 rate, HELD, that bill of lading contemplated shipment by either of the two routes having $1.80 rate, and shipper was liable for such rate. Davis, Director General of Railroads v. Cayuga Operating Co., 216 N. Y. S. 186.

(e) Conference Ruling 474 (c), adopted by Interstate Commerce Commission to enforce Interstate Commerce Act, §7 (U. S. Comp. St. §8563), requiring carrier, when rate and route inserted in bill of lading by shipper do not coincide, to ascertain from shipper which shall control, necessarily implies that, if only one is given, it shall control, if sufficiently specific. Davis, Director General of Railroads v. Cayuga Operating Co., 216 N. Y. S. 186, 187.

(f) Where bill of lading, signed by shipper and railway, showed choice of particular route, both parties are bound by selection, under Interstate Commerce Act, § 15, as amended by Act. Cong. June 18, 1910, § 12 (U. S. Comp. St. § 8583), in absence of pleading or proof of fraud or mistake, and hence it is error to admit evidence relating to time required to move shipment by another route, or to give instruction that railroad was under duty to ship over most direct route available. Illinois Cent. R. Co. v. Luther, (Ky., 1926) 283 S. W. 1013.

(g) Where bill of lading, signed by shipper and railroad, showed choice of particular route, under Interstate Commerce Act, § 15, as amended by Act Cong. June 18, 1910, § 12 (U. S. Comp. St. § 8583), court should have instructed that shipment over such route was expressly agreed on. Illinois Cent. R. Co. v. Luther, (Ky., 1926) 283 S. W. 1013.

§3½. Conflict Between Billing and Shipping Ticket.

See Bills of Lading §9 (3).

(a) Complainant attacked combination rates charged on cars of soap and cleaning compounds from Manchester, Conn., to Cincinnati, O., and St. Louis, Mo., between Jan. 9 and March 12, 1924 were misrouted. Shipments were delivered with routing instructions "O. Dom, care C. & O. (or N. & W.) and connecting lines." The bills of ladings on the shipments to Cincinnati also contained a rate of 49c in some instances and 46c in other instances, and on the shipments to St. Louis a rate of 63c. Shipments moved New Haven to New York, Old Dominion Steamship Line to Norfolk, Va., C. & O. or N. & W. and connecting lines beyond. Charged 70c to Cincinnati and 87c to St. Louis. Applicable rates over defendants line and certain of its other connections were fifth class rates of 49c to Cincinnati and 66c to St. Louis. The 46c and 63c rates

named in certain of the bills of lading were not applicable over any route. There were no joint rates in effect from Manchester to Cincinnati and St. Louis in connection with the Old Dominion, but the higher class rates were made applicable by that line under its tariff which provided for the absorption of a portion of the charges of the rail carriers. This provision did not apply to the fifth class rates. Under the circumstances, St. Louis and Cincinnati can not be said to be "distant points" or the Old Dominion, C. & O. or N. & W. "distant roads" within the meaning of Conf. Ruling 214 g. Defendants agent misrouted the shipments which were tendered before he notified complainants representative of the conflict between the route and the rate. HELD, shipments tendered prior to Feb. 5, 1924 were misrouted and shipments tendered after that date were not misrouted reparation awarded on basis of 49c to Cincinnati and 66c to St. Louis. Orford Soap Co. v. N. Y. N. H. & H. R. R., 122 I. C. C. 71.

§3½a. Contracts For Routing.

(a) Existence of option contracts on shares of stock of a carrier, issued to shippers and conditioned upon the routing of traffic over the carrier's line, can have little weight in the consideration of whether or not the line of the carrier issuing the option contracts should be eliminated as an intermediate carrier in the routing of transcontinental traffic. The proper remedy for the practice of entering into such contracts, assuming it to be illegal, would be the elimination of the practice rather than of the carrier in the routes. Restrictions in Routing over S. L. & U., 122 I. C. C. 208, 209, 210.

§4. Direct and Cheapest Available Route.

(a) Rate assessed on shipments of fuel oil moving from Tulsa, Okla., to St. Catharines, Ont., reconsigned to Pittsburgh, and again to Woodlawn, Pa., over a circuitous route, found illegal. Contemporaneously a lower unrestricted rate applied via a more direct route and all carriers participating in movement were parties to tariff naming such lower rate. Reparation awarded. Kyoleum Co. v. Director General, 104 I. C. C. 1.

(b) Lumber from Aberdeen, Miss, to Chicago was routed "c/o C., M. & St. P." Originating line, the M. & O., changed routing instructions to "Wabash-C., M. & St. P. Dely." The Milwaukee, receiving no road haul, refused to accord the Chicago rate and demanded its applicable switching charge. Consignee declined, demurrage accrued, and shipment was reconsigned. Shipment could have been routed by M. & O. over available routes consistent with routing instructions over which the Milwaukee would have received a line haul and desired delivery made at Chicago rate. While governing tariff erroneously showed that consignee was located on a private track connecting with the Milwaukee such error did not relieve the M. & O. of its responsibility to observe routing instructions. See 23 I. C. C. 84 and 83 I. C. C. 490. The M. & O.'s error prevented proper delivery, and where a shipper is compelled to pay demurrage charges through fault of a carrier such charges must be refunded. See 41 I. C. C. 723 and 46 I. C. C. 365. Hector Lbr. Co. v. C., M. & St. P., 112 I. C. C. 418.

(c) On shipments of wheat moving from St Francis, Kans., to Kansas City, Mo., there stored in transit, and reforwarded to Wausau, Wis., delivering carrier only was specified in bill of lading. Initial carrier's act in forwarding shipments from transit point over a route taking a rate higher than that available over another route consistent with delivery instructions specified, found to have resulted in misrouting. Reparation awarded. Hodgson-Davis Grain Co. v. C., B. & Q., 113 I. C. C. 234.

(d) Shipments of tomatoes from Palmetto, Fla., to Norfolk, Va., reconsigned to New York without routing instructions. Governing tariff provided for combination rates where no joint rates applied through reconsigning point. Joint rate applied from Palmetto to New York via Richmond, Va., but use of this route entailed a back haul. Upon contention that shipment was misrouted and that applicable rate was joint rate in effect via Richmond, HELD: While it was carrier's duty to forward car through Richmond if a cheaper rate applied over that route, it is not shown that a cheaper combination could have been made. Joint rate was inapplicable inasmuch as reconsignment rule of governing tariff contemplated back hauling of shipments only when necessary to meet through rates of other carriers and there was no such competitive route through Norfolk. Shipment therefore was not misrouted and combination based on Norfolk was

applicable. Olivitt Bros. v. P. B. L. R. R., 113 I. C. C. 262.

(e) Rates on grain and products from C. & E. I. R. R. stations, through Indianapolis, to Louisville, on traffic destined to southeastern points, and transit arrangements in connection therewith at Indianapolis, found not unreasonable or otherwise unlawful as compared with lower proportionals over same carrier to Princeton, Ind., and thence in connection with the Southern Ry. beyond. The proportionals are part of an equalization scheme whereby Louisville and Evansville, as gateways, are kept on a parity, were established primarily in interest of economical operation, and do not constitute a proper measure for rates through Indianapolis. Their cancellation would not benefit Indianapolis interests, whereas their publication through that point would deprive the C. & E. I. R. R. of its long haul, which, in absence of a convincing showing of public interest and necessity, should not be required. Moreover, carriers show that rates assailed are low as compared with those from same origin points to destinations in Ohio and Michigan for similar distances. Indianapolis Board of Trade v. L. & N., 113 I. C. C. 508.

(f) Complainant attacked commodity rate of $1.15 charged on four cars of peaches shipped July 26 and 27, 1922, from Harriman, Tenn., to Potomac Yard, Va., and New York, N. Y., subsequently reconsigned to Pittsburgh, Pa., as unreasonable and unjustly discriminatory to extent it exceeds 76.5c. Harriman is a joint agency of defendant and C. N. O. & T. P. which is a part of the Southern system, and all four cars were delivered to defendants agent on bills of lading which did not specify either the rate or route of movement. The bills covering three of the cars were on forms of defendant while a C. N. O. & T. P. form was used for one of the cars shipped to Potomac Yard. The C. N. O. & T. P. does not reach Potomac Yard nor form a part of the direct route from Harriman to that point. Over its line in connection with the C. & O. from Lexington, Ky., to Charlottesville, Va., and defendants line beyond, thence Southern, the distance to Potomac Yard is 744 miles, or 98 miles longer than over defendant's line through Knoxville. The distance from Harriman to New York over defendant's line through Potomac Yard is 884 miles as contrasted with 1,015 miles over the C. N. O. & T. P. and connections via Cincinnati. All of the cars were routed by the agent at Harriman over defendant's line to Potomac Yard, the Pennsylvania being designated as the carrier beyond on the two cars destined to New York. While enroute the shipments were reconsigned to Pittsburgh the reconsignment being accomplished at Potomac Yard the movement from the latter point being over the Pennsylvania. Charged 45c to Knoxville and 70c to Pittsburgh. Complainant alleged misrouting, and that rate charged was unreasonable to extent it exceeded the joint through rate of 76.5c contemporaneously applicable from Harriman to Pittsburgh over C. N. O. & T. P. with routing through Cincinnati. Viewed from the standpoint of the original destinations of these shipments, any route to either destination which might be formed in connection with the C. N. O. & T. P. would be circuitous and involve short hauling the Southern considered as a system embracing the former carrier. It was well known to the shipper at the time that from an operating standpoint the C. N. O. & T. P. is a part of the Southern system, and if for any reason it was desired that this car, consisting of a highly perishable commodity, should move over defendant's considerably longer route through Cincinnati instructions to that effect should have been inserted in the space for routing provided in the bill of lading. HELD, shipments not misrouted, rate charged not unreasonable or otherwise unlawful, complaint dismissed. Gentile Bros. Co. v. Southern Ry., 113 I. C. C. 670.

(g) Peaches from Harriman, Tenn., a joint-agency station, were originally consigned to Potomac Yard, Va., and New York, bills of lading being made out on forms of either the Southern or the C., N. O. & T. P. Ry. Latter road, a part of the Southern system, does not reach Potomac Yard or form part of any direct route to that point, consequently, all shipments were forwarded via the Southern's direct route to Potomac Yard, thence reconsigned to Pittsburgh. A lower rate to Pittsburgh existed via a longer route through Cincinnati in connection with the C., N. O. & T. P., and shipper alleged misrouting upon theory that agent at Harriman should have so routed shipments. HELD: Cars moved toward originally intended destinations over the direct route, which is over the

Southern's eastern lines. Use of the C., N. O. & T. P. lading forms being merely accidental and reconsignment instructions not being given until after cars reached Potomac Yard, if shipper desired movement over longer route instructions to that effect should have been inserted in bills of lading. Gentile Bros. Co. v. S. Ry., 113 I. C. C. 670.

(h) In 83 I. C. C. 417 the Commission found the rates applicable over the route of movement on 25 cars of cement, shipped between June 26, 1918, and January 31, 1919, from Richard City, Tenn., to Miami, Daytona, Cocoanut Grove, West Palm Beach, and Canal Port, Fla., as not unreasonable but shipments misrouted. The rates charged and those which would have applied under defendant's interpretation of the tariffs, except for the misrouting, were combination rates based on Jacksonville, Fla., through which point all of the shipments moved; 23c to Daytona, 25.5c to West Palm Beach, Canal Port and Miami and 26c to Cocoanut Grove. Cement is shown in the tariff as taking a specific increase of 2c. It appears, therefore, that even though class rates were applied on the shipments for the movement south of Jacksonville, and that the class rates ordinarily were not included within the Washburn tariff combination rule which provided for single increases, these particular class L rates were nevertheless specifically included within the combination rule, and that such combination rate should have taken but one increase of 2c under G. O. 28. Therefore, the rates which would have been applicable except for the misrouting were 2c less than those charged. HELD, shipments misrouted, and complainant damaged to extent of Jacksonville combination in effect prior to June 25, 1918, plus 2c, reparation awarded. Dixie Portland Cement Co. v. Director General, 115 I. C. C. 111.

(i) Complainant attacked joint rates of 29.5c charged on one car of lumber shipped October 23, 1922, from Bonneau, S. C., to Chatham, Va., and 25.5c charged on one car of lumber shipped November 21, 1922, from Jalapa, S. C., to Danville, Va., as unreasonable and in violation of the fourth section. No. 16397. Bonneau is on the A. C. L., 38 miles north of Charleston, and 294 and 357 miles south of Emporia and Richmond, Va. Chatham is on the Southern, 17.6 miles north of Danville and 45.7 miles south of Lynchburg. Danville is 132 miles west of Emporia over the Southern. Shipment from Bonneau to Chatham was unrouted by complainant and moved A. C. L. via Emporia to Richmond, C. & O. to Lynchburg and Southern to Chatham, 554 miles. A combination rate of 24.5c composed of 6c to Charleston plus 18.5c beyond, 428 miles was in effect. HELD, shipment misrouted. No. 16397-1. Jalapa is 8 miles northwest of Newberry, S. C., Newberry is 43 miles northwest of Columbia. Shipment moved C. N. & L. to Columbia, thence Southern to Danville 304 miles, charged 5c to Newberry and 20.5c beyond. A rate of 20.5c to Lynchburg was applicable over C. N. & L. to Columbia, A. C. L. to Emporia and Southern beyond. HELD, rate attacked unreasonable to extent it exceeded 20.5c, reparation awarded. Traffic Bureau v. A. C. L. R. R., 115 I. C. C. 121.

(j) Complainant alleged charges collected on about 175 cars of crushed rock shipped between July, 1923, and July, 1924, from Dresser Junction, Wis., to Minnehaha Falls, Minn., as unreasonable. Shipments were tendered without routing instructions, moved over Soo to Minneapolis, switched by N. P., to C. M. & St. P. which effected delivery on its public team track. The distance over this route is 55 miles. Charged 5c plus $1.80 per car for the switching performed by the N. P., the 5c rate resulting from the application of the combination rule to factors of 3.5c to Minneapolic and 3c beyond. Complainants evidence was directed to the rate received by the Milwaukee for which is described as a simple operation. Effective August 31, 1925, a joint rate of 3.5c was established. Inasmuch as a rate of 5c without switching charge, applied by way of Minnesota Transfer, the shipments were misrouted. HELD, rate attacked unreasonable to extent it exceeded 3.5c, reparation awarded. Board of Park Commissioners v. C. M. & St. P. Ry., 115 I. C. C. 211.

(k) Complainant attacked combination rates on coal, in carloads shipped during April and May, 1923, from Wilder and Davidson, Tenn., to Peoria, Ill., and diverted to destinations on the M. & St. L. in Iowa as unreasonable and unduly prejudicial. All of complainants shipments moved through Cincinnati, Ohio, to Peoria, Ill., and were there reconsigned. Combination rates assessed. Complainants seek reparation to the

basis of joint rates applicable only via Louisville, Ky., and Peoria. The bills of lading of the shipments showed Peoria as the destination and various routings, some being incomplete. Most of them specified routing via Cincinnati, and others, although the billing was indefinite, apparently left it optional with defendants to send the cars via either Cincinnati or Louisville. The rate to Peoria was the same via either gateway. A short time before the period of movement defendants had published the joint rates via Louisville authorizing reconsignment at Peoria to meet like rates effect to this territory from mines on the L. & N. For some reason these joint rates were not made applicable at that time through Cincinnati, but were later made effective over this route on December 10, 1923. As there was nothing on the bills of lading to inform defendant's agent that the cars were to be reconsigned beyond Peoria and the rates were the same to that point via either gateway, defendants can not be held to have misrouted the shipments. HELD, rates attacked applicable and not unreasonable or otherwise unlawful complaint dismissed. Fentress Coal Co. v. T. C. Ry., 115 I. C. C. 286.

(l) Complainant attacked rate on a car of lumber shipped August 2, 1924, from Milledgeville, Ga., to Edenton, N. C., and there reconsigned to Arlington, Md., as unreasonable and inapplicable. Shipment moved Ga. R. R. to Augusta, Ga., A. C. L. to Wilson, N. C., N. S. through Edenton to Norfolk, Va., thence either C. & O. to Waynesboro, Va., N. & W. to Hagerstown, Md., and W. M. beyond, or C. & O. to Durbin, W. Va., and W. M. beyond. Applicable rate was 43.5c composed of 28.5c to and 18c beyond Norfolk, subject to the combination rule. The gravamen of the complaint is that shipment was misrouted to Edenton thereby depriving complainant of reconsignment to Arlington at a through rate of 35c named over certain routes through Edenton other than in connection with the A. C. L. as an intermediate carrier. Shipment was tendered to the Ga. R. R. with a bill of lading specifying the destination as Edenton and routing over the N. S. These two lines do not connect and the routing was incomplete. Having accepted the shipment without intermediate routing the duty rested upon the Georgia to forward it to Edenton over the cheapest reasonably available route in connection with the N. S. as the delivering line. The Georgia can not be held liable for misrouting because when it designated the intermediate routing it could not foresee the further transportation from Edenton to Arlington. HELD, applicable through rate was 43.5c and not unreasonable, complaint dismissed. Traffic Bureau, Chamber of Commerce v. Georgia R. R., 115 I. C. C. 419.

(m) Complainant attacked commodity rates charged on two cars of yellow pine lumber one shipped March 5, 1924, from Elba, Ala., and the other August 19, 1924, from Richton, Miss., to Booneville, Ind., as unreasonable and inapplicable. Shipment from Elba moved over A. C. L. to Montgomery, L. & N. to Louisville and Southern beyond 733 miles, charged through rate of 36c. Complainants routing instructions consisted of the notation "cheapest routing" on the bill of lading. Direct route from Elba to Booneville is A. C. L. to Montgomery L. & N. to Evansville and Southern beyond 614 miles, 36c rate applicable. Complainant contends that in view of the routing instructions the shipment should have been routed over A. C. L. to Montgomery, L. & N. to Evansville and E. S. & N. beyond, over which routes a combination rate of 34c applied subject to the combination rule. Shipment from Richton moved G. M. & N. to Jackson, Tenn., B. & N. W. to Bells, Tenn., L. & N. to Evansville and E. S. & N. beyond, charged 34c subject to combination rule. HELD, shipment from Elba misrouted, shipment from Richton overcharged to extent rate exceeded 33.5c, reparation awarded, rates attacked not unreasonable. Standard Lumber Co. v. A. C. L. R. R., 118 I. C. C. 703.

(n) Failure of carrier to forward shipments via cheapest reasonable route consistent with routing instructions found to have resulted in misrouting. Bush & Co. v. L. & N., 115 I. C. C. 45, 46.

(o) Failure of initial carrier to forward an unrouted shipment of lumber from Bonneau, S. C., to Chatham, Va., via cheapest available route, found to have resulted in misrouting. Reparation awarded. Lynchburg Traffic Bureau v. A. C. L., 115 I. C. C. 121.

(p) Shipment was tendered to originating line with bill of lading specifying destination and delivering line but no intermediate routing. Upon arrival at

original destination shipment was reconsigned. Upon contention that shipment was misrouted because it was carrier's duty to forward via another available route over which reconsignment could have been effected at a lower through rate. HELD, while duty rested upon initial carrier to forward shipment over cheapest reasonably available route in conformity with routing instructions given, it can not be held for misrouting because same rate applied over route of movement as over route contended for, and carrier when it designated intermediate routing, could not foresee the further transportation accomplished by reconsignment beyond originally billed destination. Lynchburg Chamber of Commerce v. G. R. R., 115 I. C. C. 419.

(q) Shipment of peaches from Powersville, Ga., to Jamestown, N. Y., was tendered with routing instructions "Georgia R. R.-A. C. L. R. R." and moved through Potomac Yard, Va. Contemporaneously a lower rate, unrestricted as to routing, applied via Cincinnati. Contention that shipment was misrouted because not forwarded via lower-rated route not sustained. The customary gateway to the North and East over coastal lines was and is Potomac Yard and if unusual or circuitous movement was desired, bill of lading should have borne necessary instructions. It would place an undue burden on carriers to require them to search tariffs for all possible cheaper routes in absence of routing restrictions. Moreover, under such circumstances shippers should not be permitted to disclaim all responsibility for routing of their shipments. Shipment found not misrouted. Miller v. C. of Ga., 115 I. C. C. 518.

(r) Bill of lading specified delivering carrier. Originating line reserved to itself entire line haul between origin and destination and merely accorded delivering road a switching movement at destination. A lower rate contemporaneously applied via route over which delivering carrier would have received a line haul. FOUND, shipments were misrouted, since it was duty of initial carrier to have so routed the car that delivery could have been effected at cheapest available cost to shipper. See also 21 I. C. C. 451 and other cited cases. Reparation awarded. Kanotex Refining Co. v. A., T. & S. F., 115 I. C. C. 559.

(s) Routing instructions on lumber forwarded from Elba, Ala., to Boonville, Ind., specified "cheapest route." A lower rate applied via a route other than that over which shipments moved. Citing 98 I. C. C. 451 and conference ruling 214 (g), carrier contended that as there was a joint rate in effect it was not duty of its agent to investigate all possible combinations to ascertain whether a lower rate applied over a different route, also that destination point being located on a suburban line comparatively unknown, the duty did not rest upon carrier to hunt up some unnatural connection. Here, however, suburban line operates its freight service by steam and files tariffs with commission. Rate to junction point of that line is named in same tariff pubishing the joint rate to Booneville, and official station list shows Booneville as located on suburban road. By exercise of due diligence the agent could have ascertained existence of the lower combination and originating carrier was, therefore, guilty of misrouting. Reparation awarded. Standard Lbr. Co. v. A. C. L., 118 I. C. C. 703.

(t) Complainant attacked rates charged on wheat, carloads, from Missouri, Kansas and Colorado milled in transit at Marshall, Mo., and on flour produced therefrom forwarded to Oklahoma City, Okla., as unjust, unreasonable, unduly prejudicial and inapplicable. No routing instructions were specified by the shipper in connection with the flour movement from Marshall to Oklahoma City. The shipments moved from Marshall back through Kansas City over the M. P., some of the cars being delivered to the M. K. T. at Wagoner, Okla., others to Ft. S. & W. at Fort Smith, Ark., which lines hauled them to destination. M. P. tariff I. C. C. A4614 in effect when the shipments moved, named a proportional rate of 29.5c from Kansas City to Oklahoma City on wheat, subject to transit under M. P. tariff I. C. C. A4510. Routing instructions were not specified in connection with the movement beyond Marshall and the M. P. admitted liability for misrouting because of failure to forward the shipments over the lower rated St. Louis route, and protected the combination rate of 54.5c from Leavenworth and Kansas City to Oklahoma City by making refund to that basis. The amount ultimately collected did not in any instance exceed the basis applicable over the routes of actual movements and the shipments were not

overcharged. It remains only to determine whether the 29.5c rate from Kansas City to Oklahoma City would have applied over the route through St. Louis. It is true that the tariff naming that rate did not restrict it so that it would apply only via junction points along the shortest system route. Under such circumstances the Commission has ordinarily found that the rate would apply via any junction point. But here we are dealing with a shipment which was stopped enroute and which could not be subject to any basis other than the straight combination of rates to and from the point of stoppage except by force of transit rules. HELD, charges attacked inapplicable, shipments misrouted, rates not unreasonable or otherwise unlawful, complaint dismissed. Victor Milling Co. v. M. P. R. R., 120 I. C. C. 335.

(u) Complainant alleged that, due to defendants failure to route over the cheapest available route consistent with routing instructions, various shipments of oil well supplies and iron pipe from Fruita, Colo., and Price, Utah, to Sunburst and Kremlin, Mont., during July and August, 1922 the rates applied were unreasonable. Price and Fruita are on the D. & R. G. W., 170 and 11 miles, west of Grand Jct., Colo. Shipments from Fruita were routed D. & R. G. W. to Ogden, Utah, U. P. to Butte, Mont., G. N. beyond. Those from Price were routed D. & R. G. W. to Salt Lake City, U. P. to Butte, and G. N. beyond. Shipments actually moved D. & R. G., Salt Lake City O. S. L., Butte, G. N. beyond. Charged on oil well supplies and iron pipe, points of origin to Ogden, 53.5c and 42.5c, Ogden to Helena, Mont., 78c Helena to Sunburst and Kremlin 55.5c and 56.5c. At time shipments moved a commodity rate of 65c on iron pipe and class A rate of $1.195 on oil well supplies from Pueblo, Colo., a point of the D. & R. G. W. east of Fruita and Price to Helena. These rates in connection with the factors beyond Helena would result in lower combination rates from Pueblo to Sunburst and Kremlin than those applied from Price and Fruita to the same destinations. The intermediate rule in the tariff required the unnamed intermediate points to be located between two stations on the line of the same carrier as the more distant points from which through rates were published. There are no points on the D. & R. G. W. west of Fruita and Price from which through rates are published to Helena. HELD, shipments not misrouted, complaint dismissed. Carter Oil Co. v. D. & R. G. W., 123 I. C. C. 596.

(v) Bills of lading covering shipment of lumber originally transported on transit bills of lading but rejected at destination, contained no routing instructions. Upon telephone request therefor, agent was advised to reverse routing shown in transit bills but agent returned shipment via a slightly different route over which same rate applied. Relying upon Conf. Ruling 214-c and 102 I. C. C. 693, complainant contended that as shipment was unrouted it was carrier's duty to forward via cheapest available route which was over a differential route through Canada. HELD: Since instructions were not literally followed, shipment was misrouted, but as same rate applied as over route specified, complainant was not damaged thereby. Moreover, to hold that shipment should have been returned via cheapest route would be to sanction a violation of instructions. Brooks Bros. v. N. Y., N. H. & H., 123 I. C. C. 607.

(w) Complainant attacked charges on five shipments of rough quarried marble from Phoenix, Mo., to Cleveland, O., in Sept. Nov. and Dec. 1924, as unreasonable and that shipments were misrouted. They moved over Frisco to East St. Louis and B. & O. beyond, charged 16c to East St. Louis and 29c beyond. A rate of $7.23 per ton was applicable through Chicago, Ill., composed of 21c to Chicago and $3.53 per ton beyond subject to the combination rule. Shipments were routed by shipper "best route for B. & O. del." The shipments should have been sent through Chicago and were misrouted. HELD: shipment misrouted, reparation awarded. Norcross Marble Co. v. B. & O. R. R., 126 I. C. C. 741.

(x) The direction to send shipments over the "best route" is to be given the same effect as if the shipments were not routed by the shipper at all, and therefore imposes upon the carrier the duty to send them over the cheapest reasonable route, to which the shipper would be entitled on shipments tendered unrouted. The direction "best route for B. & O. del" required the shipments to be sent over the cheapest route that would permit of B & O delivery, either by line haul or in switching service. Norcross Marble Co. v. B. & O. R. R., 126 I. C. C. 741, 742.

(y) Shipments of rough quarried

marble from Phenix, Mo., to Cleveland, Ohio, routed "Best Route" and "Best Route for B. & O. Del.," moved via East St. Louis. Contemporaneously a lower rate applied via Chicago. Citing 16 I. C. C. 525, and contending that under Conf. Ruling 214(g), carrier's agent could not reasonably be expected to know existence of the lower rate through Chicago, HELD: Rate beyond Chicago was published in separate tariffs of various carriers, Chicago was not an unnatural gateway for shipments involved, and agent at Phenix could therefore reasonably be charged with knowledge of that route. Moreover, "Best Route" implied the cheapest reasonable route and "Best Route for B. & O. Del." required movement over cheapest route permitting B. & O. delivery. See 42 I. C. C. 719. Therefore carrier's failure to send shipments via Chicago resulted in misrouting. Reparation awarded. Norcross Marble Co. v. B. & O., 126 I. C. C. 741.

(zaa) When there is no specific routing by shipper, it is the duty of carrier to ship by the cheapest and most available route and charge the lowest rate that has application to such shipment. W. L. Shepherd Lumber Co. v. Atlantic Coast Line R. Co., (Ala., 1927) 112 So. 323.

(bb) No obligation rests upon a carrier to hunt up unnatural connections or practically unknown gateways in order to determine the lowest possible combination rate for a given shipment. Amicon Fruit Co. v. L. V. R. R., 128 I. C. C. 34, 35.

(cc) Upon contention that where shipment is tendered without routing except as to delivering line and shipper makes no inquiry and exerts no effort to determine the cheapest route, his rights are reasonably and fully satisfied if shipment is transported over route taking the cheapest available joint rate, particularly where it is the only route commonly used and recognized, HELD: In 18 I. C. C. 190, it was stated that if shipper is in doubt about the rate he can tender the traffic to carrier without routing instructions and thus be entitled to lowest rate. Contention that existence of a joint rate is a guide in determining routing of shipments tendered without routing instructions and that agents should not be required to look up possible combination rates is without merit. See 40 I. C. C. 146, Amicon Fruit Co. v. L. V., 128 I. C. C. 34, 36.

(dd) The court stated that the duty of the carrier to ship over the cheaper route is not an absolute one; that the duty is upon the carrier only if other conditions are reasonably equal: and that the justification for resorting to a more expensive route may rest either upon the peculiar circumstances of a particular case or upon a general practice. Amicon Fruit Co. v. L. V. R. R., 128 I. C. C. 34, 37.

(ee) The duty of a carrier to forward a shipment over the cheapest possible route is not absolute, but its obligation depends upon the reasonableness of the possible routes available. Lynchburg Chamber of Commerce v. N. Y. C. R. R., 128 I. C. C. 159, 161.

(ff) In the absence of through routing by the shipper which the carrier is willing to observe, it is the duty of the agent of the carrier to route a shipment over the cheapest reasonable route known to him. Shippers must bear in mind that there is a limit beyond which an agent of a carrier could not reasonably be expected to know as to terminal delivery or local rates at distant points and on lines of distant roads to or with which he has no specific joint through routes. Consignors and consignees should cooperate with agents of carriers in avoiding misunderstandings and errors in routing and must expect to bear responsibility in connection therewith. Lynchburg Chamber of Commerce v. N. Y. C. R. R., 128 I. C. C. 159, 161.

(gg) There is an obvious distinction between cases in which it has been found that shipments moving by other than the short route were not forwarded "out-of-route" in the absence of a definition of the term and the present case where "out-of-route" is described in the tariff as a movement not on direct route between origin and destination. Michigan Bean Co. v. D., C. I. & M., 128 I. C. C. 207, 209.

(hh) Bill of lading specified "cheapest route." Carrier forwarded shipments via route taking a joint rate. Contemporaneously a lower combination rate treated by the combination rule was in effect over another route. Complainant contended that following 62 I. C. C. 643; 73 I. C. C. 551, the lower rate was applicable, whereas, carrier, citing Conf. Ruling 214 (g), contended that since a joint rate was in effect it would be unreasonable to require it to search out possible lower combinations. HELD:

In absence of specific routing, it was the duty of carrier's agent to send shipments over cheapest reasonable route, and since point upon which the lower combination made is an important gateway, it can not be fairly said that the route via that point is an unreasonable one. Shipments found misrouted and former report 118 I. C. C. 523 reversed. Lynchburg Chamber of Commerce v. S. Ry., 128 I. C. C. 497.

(ii) In original report, Lynchburg Traffic Bureau v. Southern Ry. 118 I. C. C. 523, Commission found that a carload of lumber shipped on Oct. 17, 1924, from Orangeburg, S. C., to Leesburg, Va., was not misrouted and that the rate charged was not unreasonable or otherwise unlawful, and dismissed the complaint. Shipment moved Southern to Alexandria, Va., and W. & O. D. beyond. Charged joint rate of 38c. Bill of lading specified "cheapest route." Contemporaneously there was published a combination rate composed of 18.5c Southern to Richmond, Va., 9.5c R. F. & P. to Alexandria, and 7.5c W. & O. D. beyond, first two factors being subject to the combination rule, or 34.5c through. In the original report the Commission found that the rate charged was also applicable over the route through Richmond. A further check of the tariffs disclosed that the joint rate was not applicable via Richmond. HELD: shipment misrouted, applicable rate 34.5c, reparation awarded. Lynchburg Traffic Bureau v. Southern Ry., 128 I. C. C. 497.

(jj) In the absence of specific routing, it is the duty of the agent to send the shipment over the cheapest reasonable route. Lynchburg Traffic Bureau v. Southern Ry., 128 I. C. C. 497, 498.

(kk) Fifth-class rate was charged on angles, channels, and beams, moving interstate from Indiana Harbor, Ind., to Indianapolis, Ind. A lower commodity rate contemporaneously applied to Raven, Ill., a point beyond Indianapolis, which rate complainant contended was applicable to Indianapolis by virtue of an intermediate clause in tariff. An examination of tariff, however, discloses that lower rate was contingent upon routing provided therein, and as no routing was provided from Indiana Harbor in connection with one of carriers over which shipment was routed, and tariff specifically provided that rates named therein would apply only when routing instructions were provided in tariff, the rate charged was applicable. Inland Steel Co. v. C. & O., 128 I. C. C. 551.

(ll) Complainant alleged commodity rate charged on one car of oil well machinery shipped Dec. 1, 1922, from Mobile, Ala., to Tulsa, Okla., as unreasonable and inapplicable. Shipment was tendered the M. & O. unrouted, and moved via that line to Memphis, Tenn., thence Rock Island to Hartford, Ark., and Midland Valley beyond, charged $1.465. There was contemporaneously published a class A rate of $1.16 from Mobile to Chetopa and Coffeyville, Kans., over M. & O. to St. Louis and M. K. Y. beyond. The tariff naming the $1.16 rate is not described as applying from or to points in Oklahoma. HELD: rate of $1.16 inapplicable, rate charged not unreasonable, complaint dismissed. Sinclair Oil & Gas Co. v. M. & O. R. R., 129 I. C. C. 281.

(mm) Complainant alleged combination rate of 19c charged on nine cars of wooden ties, shipped in March, April, May and June, 1924, from Seneca, Mo., to Picher, Okla., was inapplicable. Shipments were tendered to the Frisco, on bills of lading specifying routing "C/o Miami Mineral Belt" which carrier was the consignee. Moved Frisco to Quapaw, Okla., Miami Mineral Belt beyond, distance 49.1c miles, charged 19c based on Quapaw. Complainant contends that the shipment should have been routed over Frisco to Baxter, Kas., about 51 miles, and Miami Mineral Belt beyond, distance 57.9 miles, via which route claimed rate was 15c. The Commission has been unable to discover a lower through rate in effect between Seneca and Picher than that charged, shipment not misrouted nor overcharged, complaint dismissed. Goff v. St. L. S. F. Ry., 132 I. C. C. 314.

(nn) Shipments of fuel oil from Grandfield, Okla., originally destined to Granite City, Ill., and diverted to East Chicago, Ind., were tendered routed Chicago, Rock Island & Pacific; St. Louis-San Francisco; Merchant Bridge Terminal delivery. I nrequesting diversion to East Chicago; complainant erroneously advised agent of Rock Island at Tulsa, Okla., that shipments had been routed over that line, Merchant Bridge Terminal delivery, and before actual routing could be ascertained shipments had been delivered to the Frisco. There-

upon, in conformity with its tariff rules, the Rock Island placed diversion instructons with the Frisco FOUND: Initial carrier made diligent efforts to locate shipments before delivery was made to its connections and failure to divert was not result of negligence on part of its employees. Moreover, route over which shipments were diverted was not inconsistent with original routing or contrary to tariff regulations, and shipments were not misrouted. Barnsdall Refineries v. C., R. I. & P., 129 I. C. C. 443.

(oo) Unrouted shipments of stock cattle form New Castle, Tex., to Grand Summit, Kans., moved over the Witchita Falls & Southern; Missouri-Kansas-Texas of Texas; Missouri-Kansas-Texas; and Atchison, Topeka & Santa Fe. Complainant contends that shipments should have been routed over the Wichita Falls & Southern; Missouri-Kansas-Texas of Texas; Gulf, Colorado & Santa Fe, and A., T. & S. F., over which route lower rates applied. Defendant, on the other hand, maintains that the feeding and other charges in connection with latter route would have resulted in aggregate charges much greater than those collected. HELD: In absence of proof that total Charges over route of movement exceeded those over route claimed, allegation of misrouting not sustained. Live Stock Freight Bureau v. A., T. & S. F. 129 I. C. C. 721.

(pp) Carload of peaches from North Mountain, W Va., originally consigned to Cincinnati, Ohio, but diverted, without routing instructions, to Pittsburgh, was routed by carrier over lowest rates route, via Everson, Pa. Subsequently shipment was reconsigned to Toledo, Ohio, and combination rates to and from Pittsburgh, plus reconsignment charge, were assessed. Lower joint rate from origin to final destination, sought by complainant, was restricted, precluding its use via Everson, over which route shipment moved but defendant had no knowledge that Pittsburgh was not final destination of shipment and can not be charged with misrouting. Rates assessed found applicable and not unreasonable, but reconsignment charge found unreasonable and its discontinuance required. Purse Bros. v. B. & O., 129 I. C. C. 727.

(qq) Complainant contracted with shipper for alfalfa meal from Colorado points to be shipped to Dyersburg, Tenn., routed via East St. Louis, Ill., but upon tender of shipments shipper was advised to leave routing open because of congestion at St. Louis and the outstanding embargoes and shipments were forwarded over cheapest route via Memphis. Upon contention that shipments were misrouted as there was no transit rate applicable via Memphis, and charges to ultimate destinations were in excess of those which would have accrued had shipments moved via East St. Louis, FOUND: Record fails to show that carrier or shipper had information that shipments were to be mixed in transit or that ultimate destination was not Dyersburg. Unrouted bills of lading having been issued and accepted, shipments were not misrouted as carrier was lawfully bound to move them over cheapest route, which was via Memphis. Dyersburg Milling Co. v. Director General, 129 I .C. C. 739.

§4¼. Existence of Embargo.

See Embargoes.

(a) Where it is necessary to forward shipments over an indirect route on account of an embargo existing over direct route, shippers should not be debarred from reasonable rates over the accessible route. Orford Soap Co. v. B. & M. R. R., 107 I. C. C. 338.

(b) Initial carrier refused to accept shipments because of existing embargo of connecting lines and they were held at point of origin. On day embargo was canceled further request was made that shipments be accepted but carrier again refused, erroneously informing complainant that "connections advise positively no route open." Complainant thereupon forwarded shipments by a route involving a higher rate and additional reconsignment charges. HELD: As no embargo was in effect on date second request was made by shipper, initial line had no valid reason for refusing to accept shipments. Such refusal found unlawful and reparation awarded for additional reconsignment charges and difference between rate charged and that applicable over alleged embargoed route. Haviland v. A. N., 109 I. C. C. 253.

§4½. Interstate or Intrastate Route.

See Evidence §13 (6).

(a) Shipments of coal from Grants, Ala., to Florence, Ala., originally unrouted, were moved over an interstate route. Due to a strike at time of movement traffic over short-line intrastate route was delayed, so shipper gave instructions that cars be moved via L. & N. from Birmingham. Upon contention that such instructions did not constitute routing over interstate route, but that movement was expected via an intrastate route through Decatur, FOUND: Instructions constituted complete routing and shipments were therefore not misrouted. Moreover, had they moved via intrastate route through Decatur, charges would have exceeded those applicable via route of movement. Florence Chamber of Commerce v. C. of G., 104 I. C. C. 373, 374, 375.

(b) Complainant attacked as misrouted two cars of lumber shipped on August 9, 1923, from Trio, S. C., to Spartanburg, S. C., over an interstate route. They were delivered to the S. A. L. consigned to the C. C. & O. at Spartanburg with notation on the bills of lading calling for C. C. & O. delivery, charged 18.5c. Allegation of misrouting is predicated on the fact that there was a contemporaneous intrastate rate of $33 per car of 24,000 pounds, excess in proportion, equal to 13.75c per 100 pounds in effect from Trio over S. A. L. to Sumter, S. C., thence Southern through Columbia, S. C., to Spartanburg; and that under the bills of lading as issued, defendants should have forwarded the shipments over the lower rated route. It develops that the shipments moved over the original carrier to Bostic Jct., N. C., where delivery was made to the C. C. & O., the consignee, for movement beyond to Spartanburg. The fact that the originating carrier tendered the shipments short of billed destination to consignee, which tender was accepted and the shipments rebilled "deadhead" to another point, did not obligate the original consignor to pay charges in addition to those applicable under its contract of carriage. Nor did the act of the C. C. & O. in rebilling the shipments to Erwin deprive the complainant of the right, under the bill of lading as issued, to have its traffic forwarded over the cheapest reasonable available route, which in the instant case was the intrastate route over which a rate equivalent to 13.75c was applicable. HELD, shipments misrouted by the S. A. L., reparation awarded. Lynchburg Traffic Bureau v. S. A. L. Ry., 115 I. C. C. 537.

(c) Complainant alleged that a car of lumber shipped from Poston, N. C., to Spartanburg, S. C., August 30, 1924, was misrouted and that the charges collected were unreasonable and unlawful. Shipment was given to the initial carrier without routing instructions and moved interstate over S. A. L. to Bostic, N. C., and C. C. & O. beyond 263 miles, charged 18.5c. Defendants admit that the applicable charges were $83.58 per car of 24,000 pounds excess in proportion of $18 to Sumter, S. C., and $20.50 beyond. If the shipment had moved intrastate over S. A. L. to Columbia, S. C., thence Southern, 225 miles, the applicable charges would have been $71.66. HELD, applicable rate not unreasonable or otherwise unlawful but shipment misrouted by the S. A. L., reparation awarded. Lynchburg Chamber of Commerce v. S. A. L. Ry., 118 I. C. C. 287.

(d) Defendants were obligated to forward the shipment over the cheapest reasonable available route, which was the intrastate route. Having failed to do so the shipment was misrouted. Lynchburg Chamber of Commerce v. S. A. L. Ry., 118 I. C. C. 287, 288.

(e) Lumber was tendered to Seaboard Air Line at Trio, S. C., consigned to Spartanburg, S. C., with notation on bill of lading "C. C. & O. delivery." Originating carrier tendered shipments to consignee carrier short of billed destination, which tender was accepted, and shipments were rebilled "deadhead" to an interstate destination. Upon complaint alleging misrouting predicated upon fact that there was a lower intrastate rate in effect between origin and destination named in bill of lading and that shipments should have moved over lower-rated route. HELD, fact that originating carrier tendered shipments to consignee short of billed destination, and rebilled "deadhead," did not obligate consignor to pay charges in addition to those applicable under its contract of carriage. Nor did act of consignee carrier in rebilling deprive consignor of his right to have traffic forwarded over cheapest reasonable route. Shipments found misrouted and reparation awarded. Lynchburg Chamber of Commerce v. S. A. L., 115 I. C. C. 537.

(f) Lumber billed from Poston, S. C., to Spartanburg, S. C., was delivered to initial carrier unrouted and moved via an interstate route. A lower rate applicable via an intrastate route was contemporaneously in effect. HELD, that initial carrier was obligated to forward over cheapest reasonable available route, which was intrastate route, and having failed to do so shipment was misrouted. See also 57 I. C. C. 324. Reparation awarded. Lynchburg Chamber of Commerce v. S. A. L., 118 I. C. C. 287.

(g) In the absence of shipping instructions it is ordinarily the duty of the carrier to ship by the cheaper routes. But the duty is not an absolute one. The obligation of the carrier is to deal justly with the shipper, not to consider only his interest and disregard wholly its own and those of the general public. If, all things considered, it would be unreasonable to ship by the cheaper route, the carrier is not compelled to do so. The duty is upon the carrier to select the cheaper route only "if other conditions are reasonably equal". Resort to the more expensive route may be justified. And the justification may rest either upon the peculiar circumstances of a particular case, or upon a general practice. Whether the practice of the carrier of shipping over the interstate route was reasonable when a lower intrastate route was open to it, presents an administrative question, one of perhaps considerable complexity. Melson v. C. M. & St. P. Ry., 126 I. C. C. 713, 715.

§4½a. Intermediate Rule.

(a) No specific commodity rates were provided on hay from certain Illinois points to St. Louis, Mo., and charges were assessed on class-rate basis. At time of movement, commodity rates were in effect from farther distant point of origin in Illinois, tariff publishing such rates carrying the intermediate clause. Carriers contended that the intermediate clause has no application here because route through farther distant point is not one customarily used. HELD: Since tariff publishing the intermediate clause contains no routing restrictions and route via the farther distant point is not impracticable, the rates charged were inapplicable. Reparation awarded. Toberman Mackey Co. v. C., B. & Q., 122 I. C. C. 299.

(b) Sixth-class rate on lumber from Burks Falls, Ontario, Canada, to Pontiac, Mich., found inapplicable. Contemporaneously tariff carrying an intermediate rule published a lower joint commodity rate from Burks Falls to Owosso, Mich. As Pontiac is intermediate to Owosso over route of movement and as rate was unrestricted in its application, it was therefore applicable to Pontiac and shipments were overcharged. Refund of overcharges directed. Strable Lbr. & Salt Co. v. C. N. Ry., 123 I. C. C. 585.

(c) Shipments of iron pipe and oil-well supplies from Fruita, Colo., and Price, Utah, to Sunburst and Kremlin, Mont., routed Denver & Rio Grande Western via Ogden and Salt Lake City, Utah, respectively, Union Pacific and Great Northern beyond, found not misrouted. Contemporaneously tariff published a lower rate from Pueblo, Colo., a point east of Fruita and Price on the Denver & Rio Grande Western to Helena, Mont., and carried the intermediate rule which provided for application of rates to unnamed points directly intermediate to and on the same line with named stations. However, "on the same line" was interpreted to mean "on the same railroad" in 115 I. C. C. 529, and since there are no points on Denver & Rio Grande Western west of Fruita and Price from which through rates are published to Helena, the lower rate under the intermediate rule did not apply. Carter Oil Co. v. D. & R. G. W., 123 I. C. C. 596.

§5. Lower Rate Via Competing Line Or Route.

See Evidence §47; Reasonableness of Rates §27½.

(a) Contention that existence over routes other than those of actual movement of rates lower than those charged over routes of movement does not warrant a finding of unreasonableness and award of reparation where shippers are advised of existence of such lower rates, not sustained. Shippers' knowledge of existence of lower rates over other routes can not deprive them of right to reasonable rates over routes of movement. Canton Bridge Co. v. B. & O., 107 I. C. C. 141, 144.

(b) Shipments were tendered unrouted and carrier forwarded via a route taking combination rate higher than via another available route. FOUND: Shipments misrouted and reparation awarded. Dewey Bros. Co. v. H. V., 107 I. C. C. 303.

(c) Rate on potatoes from Almora, Minn., to Tinley Park, Ill., via Chicago, found not unreasonable as compared with lower blanket rate contemporaneously in effect over a route via Minneapolis. Thoeming & Co. v. M., St. P. & S. S. M., 107 I. C. C. 658.

(d) Rate charged on sand from Petersburg, Va., to Bunyon, N. C., found unreasonable to extent it exceeded lower contemporaneous rate on like traffic over a route other than route of movement, which lower rate was subsequently established over route of movement. Reparation awarded. Raleigh Chamber of Commerce v. N. S., 109 I. C. C. 52.

(e) Shipment from Spirit Lake, Iowa, to Bloomington, Ill., reconsigned to Black Rock (Buffalo), N. Y., was tendered unrouted. From Spirit Lake to Bloomington carrier forwarded shipment via La Salle, Ill., whereas a lower rate applied via Peoria. From Spirit Lake to Black Rock a through rate applied via Peoria. Upon contention that because shipment, Spirit Lake to Bloomington, was local, carrier could not be charged with knowledge that it would be reconsigned, and that reparation should only be awarded for difference between rate charged through La Salle and rate applicable through Peoria to Bloomington, HELD: Had carrier routed shipment through Peoria complainant would have been entitled to lower rates effective over that route, and fact that carrier could not foresee further transportation from Bloomington to Black Rock can not deprive complainant of all the incidents of transportation and charge effective over route the shipment should have moved. Shipment found misrouted and reparation awarded. Bloomington Asso. of Commerce v. C.. R. I. & P., 109 I. C. C. 191.

(f) Combination rate assessed on an unrouted sporadic shipment of rig irons and nails from Ranger, Tex., to Comanche, Okla., which moved over a route embracing three lines, found unreasonable to extent it exceeded a lower rate contemporaneously in effect via a slightly shorter two-line route. Notwithstanding that shipment was sporadic, complainant is entitled to have its traffic move at a rate that is not unreasonable. The joint rate applying over shorter route is by no means depressed and unquestionably would produce earnings sufficient to be applied over slightly longer three-line route. Reasonable rate prescribed for future and reparation awarded. Lone Star Gas Co. v. C., R. I. & P., 109 I. C. C. 258.

(g) Rate on manure from Harlem River, N. Y., to North Hatfield, Mass., via a route embracing the New York, New Haven & Hartford and Boston & Maine Railroads, found unreasonable to extent it exceeded lower rate contemporaneously in effect from and to the same points in connection with the New York Central and Boston & Maine. Reasonable rate for the future prescribed and reparation awarded. American Sumatra Tobacco Co. v. N. Y., N. H. & H., 109 I. C. C. 383.

(h) Shipment of carbide of calcium from Duluth, Minn., to Kingman, Ariz., was routed via short-line route through Denver over line of Union Pacific. A lower rate applied over various other routes, but tariff provision restricted its application in connection with the Union Pacific by providing that "rates from or via points on the U. P. will not apply in connection with the Santa Fe via junctions in Kansas, nor in connection with Santa Fe via Denver * * *." Upon contention that phrase "in connection with the Santa Fe" was broad enough to cover transportation by that line anywhere en route, and phrase "via Denver" was broad enough to cover any interchange at Denver and did not limit first phrase to mean "in connection with the Santa Fe at Denver," HELD: Inasmuch as delivery at destination could be made only by Santa Fe, effect of such construction would be to exclude Union Pacific entirely from the haul. Tariff, being ambiguous, construed against the framer and lower rate found applicable in connection with all workable lines, except Union Pacific. Reparation awarded. Central Commercial Co. v. A., T. & S. F., 109 I. C. C. 639.

(i) Shipment of clean rice from Galveston, Tex., to Bluefield, W. Va., found overcharged to extent that rate assessed exceeded a lower combination via Memphis, Tenn. While shipments did not move through Memphis lower combination via that point was applicable over routes under the tariffs. Refund of overcharges directed. See board Rice Milling Co. v. A. G. S., 109 I. C. C. 718.

(j) No presumption of unreasonableness attaches to the joint rate over the route of movement because a lower combination was and is in effect over another

route. Baker & Holmes v. I. C. R. R., 112 I. C. C. 407, 408.

(k) Shipments of ties from Bealeton, Culpeper, and Remington, Va., to Canton, Ohio, were moved via Potomac Yard, Va., and combination rates based on the latter named point were assessed. HELD: As these shipments could have moved via Orange at lower combinations they were accordingly misrouted. Reparation awarded. Lafayette Lbr. Co. v. S. Ry., 112 I. C. C. 341.

(l) Combination rate applicable on wheat from St. Francis, Kans., to Kansas City, Mo., there stored and reforwarded to Wausau, Wis., found unreasonable as compared with rates from St. Francis to points beyond Kansas City for comparable distances, and to extent it exceeded a lower rate contemporaneously in effect from St. Francis to South Omaha, and from St. Francis to Wausau over a route other than route of movement. Reparation awarded. Hodgson-Davis Grain Co. v. C., B. & Q., 113 I. C. C. 234.

(m) Shippers are not to be denied a reasonable rate over one route merely because a lower rate could have been secured by use of another route. Hodgson-Davis Grain Co. v. C. B. & Q., 113 I. C. C. 234, 236.

(n) Combination rate on alfalfa seed from Clayton, N. Mex., to Kansas City, Mo., via Trinidad, Colo., found unreasonable to extent it exceeded lower joint rate contemporaneously in effect via a longer route through Pueblo. Reparation awarded. Peppard Seed Co. v. A., T. & S. F., 113 I. C. C. 309.

(o) Fifth-class rate on petroleum products from Brunswick, Ga., to Richmond, Va., found unreasonable to extent it exceeded lower commodity rate subsequently established from same origin point to Richmond and Petersburg. Subsequently established rate found not unreasonable as compared with lower combination rate contemporaneously in effect via routes other than route of movement, carriers showing that such lower combination was depressed, and, distance considered, that subsequently established commodity rate compares favorably with other rates between points in southern territory. National Oil Co. v. S. A. L., 113 I. C. C. 371.

(p) Rate on peaches from Harriman, Tenn., to Pittsburgh, Pa., via a route through Potomac Yard, Va., found not unreasonable as compared with lower rate contemporaneously in effect via a much longer route through Cincinnati. Fact that a certain rate is in effect between two points over one route is not of itself proof of the unreasonableness of a higher rate over some other route especially where, as in this case, one route is substantially longer than the other. Gentile Bros. Co. v. S. Ry., 113 I. C. C. 670.

(q) Combination rates charged on grain and products from points in Colorado, Kansas, and Nebraska to destinations in Tennessee, Georgia, and Alabama, found legally assessed. Lower joint rates applied to Greenwood, Miss., and New Orleans, La., farther distant points, and while tariff provided for their application to directly intermediate points, it also carried complete routes, none of which operated through intermediate destinations here involved. Complainant here attempts to ignore such routes and construct unauthorized circuitous routes via which destinations would be intermediate to Greenwood and New Orleans. The naming of specific routes to the farther distant points, however, eliminated all other routes, and conclusion set forth in rule 4 (j) of Tariff Circular 18-A which provides that "When a tariff specifies routing the rates may not be applied via routes not specified," is controlling. Russell Grain Co. v. A. G. S. R. R., 113 I. C. C. 701.

(r) Accidents by which shipments move via either of two intermediate points, because like specific class rates are applicable over both routes, should not alone determine the measure of reasonable rates over two lines of same carrier between same points, where no difference in transportation conditions are shown, where difference in distance is slight, and where a lower combination is sometimes figured over the shorter route and sometimes over the longer route. Firestone Tire & Rubber Co. v. Director General, 113 I. C. C. 751, 755.

(s) Joint rate on pine lumber from Bonneau, S. C., to Chatham, Va., found not unreasonable as compared with lower combinations contemporaneously in effect via routes other than routes of movement. Lynchburg Traffic Bureau v. A. C. L., 115 I. C. C. 121.

(t) Combination rates on coal from Wilder and Davidson, Tenn., via Cincin-

nati to Peoria, Ill., thence reconsigned to points in Iowa, found not unreasonable as compared with lower joint rates contemporaneously in effect from and to same origin and destination points via Louisville, Ky. Considering earnings yielded under rates assessed it can not be said that they exceeded a maximum reasonable basis, nor is the fact that they were reduced to the joint-rate basis shortly after shipments moved sufficient to defeat this conclusion. Fentress Coal Co. v. T. C. Ry., 115 I. C. C. 286.

(u) Rate on coal from Hazard, Ky., to Valparaiso, Ind., in connection with the Grand Trunk, found not unreasonable or otherwise unlawful as compared with lower rates contemporaneously in effect over short-line routes to Valparaiso in connection with various other lines, and to a large destination group surrounding Valparaiso. Coovert & Young v. L. & N., 115 I. C. C. 349.

(v) Combination rates on anthracite coal from Rahn No. 11 Colliery, and Lansford Colliery, Pa., to Elkhart, Ind., reconsigned to Edwardsburg, Mich., found not unreasonable as compared with a lower combination contemporaneously in effect via a route other than route of movement, such lower rate being also applicable from these origin points to Chicago and numerous destinations in a large territory in northwestern Indiana and southern Michigan, but not via all junctions, the routing being restricted by carriers to secure to themselves the long haul. Rates sought applied over an available route but complainant elected to use a route 90 miles longer necessitating use of two additional carriers, in addition to securing benefit of a reconsigning service. Russell v. G. T. W., 118 I. C. C. 209.

(w) Rate on gasoline, in tank-car loads, from Los Angeles, Calif., to Reno, Nev., found unreasonable as compared with rates between other points for comparable and greater distances and to extent it exceeded a lower rate contemporaneously in effect from and to same points by way of a longer route and subsequently established via route of movement. Reparation awarded. Richfield Oil Co. v. A., T. & S. F. Ry., 118 I. C. C. 214.

(x) Rates on gas oil in tank-car loads from Iowa Park and Electra, Tex., to Kassel, La., found not unreasonable. While contemporaneously a lower rate applied via other available routes such lower rate is shown by carriers to be subnormal, having been established upon request of shippers to meet a similar rate published by Texas lines to Texas ports. Altitude Petroleum Co. v. F. W. & D. C., 118 I. C. C. 572.

(y) Where originating road and carrier named in shipper's routing instructions form a complete route between origin and destination and shipments are so moved, such originating line can not be charged with misrouting for failing to forward over another lower-rated route necessitating use of intervening lines of railroad. See 42 I. C. C. 150. Petroleum Products Co. v. G., H. & S. A., 120 I. C. C. 24, 25.

(z) On coal originally billed from Vanwood, W. Va., to Elkhart, Ind., shipper specified C. & O. and N. Y. C. routing. Upon arrival at originally billed destination it was reconsigned in accordance with instructions previously given, to New Paris, Ind. Through rate applicable via route of movement was assessed. HELD: Since a lower through rate applied between origin and ultimate destination via a more direct route, such lower rate, being unrestricted as to routing, was applicable via route of movement. Refund of overcharges directed. Russel v. C., C., C. & St. L., 120 I. C. C. 243.

(aa) Rates on coal from Straven and Aldrich, Ala., to Pensacola, Fla., moving over Southern Ry., to Birmingham and L. & N. beyond, found not unreasonable as compared with lower rate subsequently established and contemporaneously in effect via the Muscle Shoals, Birmingham & Pensacola R. R. The Muscle Shoals route was not in use at time of movement due to temporary cessation of operation. Carriers showed that rates to Pensacola are depressed, that existing routes afford adequate service, and that there is no necessity for establishing an additional route via Birmingham. Moreover, in 87 I. C. C. 126, the commission declined to require the L. & N. to open up its Birmingham route for traffic from Alabama Mines because it would result in short-hauling the Southern in some instances and force traffic through the congested terminals of the L. & N. at Birmingham and Montgomery, Pensacola Gas Co. v. L. & N., 122 I. C. C. 326.

(bb) On potatoes moving from Pablo and Whitehall, Mont., to New Orleans,

La., without routing instructions, carriers assessed a combination based on St. Paul, Minn. Contemporaneously a lower combination to and from Omaha, Nebr. was in effect. HELD: As it was not necessary, under rule 5 (b) of Tariff Circular 18—A, that shipments actually move through Omaha to make combination over that point applicable, they were accordingly overcharged. Reparation awarded. Kohlman Bros. & Sugarman v. L. & N., 123 I. C. C. 56.

(cc) Applicable rate on apples from White Salmon, Wash., to Phoenix, Ariz., moving by way of a circuitous route found unreasonable to extent it exceeded lower rate contemporaneously in effect over a more direct route. Shipper here originally directed routing via direct route, but carrier's agent refused to execute the bill of lading until it was changed to accord carrier furnishing refrigerator equipment a road haul. In this territory it is the practice of lines forming indirect routes to meet the rates in effect over short routes and rates lower than those here charged were in effect at time of movement between various points over various indirect routes for comparable distances. Wuille & Co. v. S., P. & S., 123 I. C. C. 190.

(dd) Commission does not apprehend that maintenance of higher rates over one route than over another will necessarily result in all o rmore of the traffic moving over lower-rated route, although it is self-evident that lower rates tend to attract traffic, other things being equal. Consolidated Southwestern Cases, 123 I. C. C. 203, 373.

(ee) Combination rate on nursery or florists' stock, including dormant rosebushes and other plants and bulbs, from Montebello, Calif., to Riverton, N. J., routed by shipper via a southerly route to prevent freezing, FOUND not unreasonable as compared with lower rates contemporaneously in effect via various other routes and formerly in effect over route of movement. Carriers showed that routing in question was canceled because of refusal of carriers in southeastern territory to participate in rates to points north of Potomac River and Virginia cities gateways; that to open route to Riverton would discriminate against other destinations north of the gateways; and that divisions accruing under divisions prescribed in 95 I. C. C. 385, are so low as not to warrant extension of transcontinental basis to points beyond lines of southeastern carriers north of the gateways. Moreover, earnings over route of movement indicate that rate charged was reasonably low. Dreer v. L. A. & S. L., 126 I. C. C. 130.

(ff) Combination rates on gluten feed from Roby, Ind., to Oneonta, Hobart, Stamford, Grand Gorge, and Bloomsville, N. Y., points on the Ulster & Delaware R. R., FOUND unreasonble to extent that rate to Oneonta, the junction point of the Delaware & Hudson and Ulster & Delaware, exceeded lower joint rates contemporaneously in effect via other routes a number of which involve greater hauls than over route of movement, and to extent that rates to points beyond exceeded the joint rates to Oneonta plus the locals of the Ulster & Delaware. Reparation awarded. American Maize Products Co. v. N. Y. C., 126 I. C. C. 137.

(gg) Shipments moved under joint rates. Complainant contended that as lower combination rates contemporaneously applied, shipments were misrouted. HELD: Lower rate sought was based on an unusual combination and in Conf. Ruling 214 (g), shippers were admonished to bear in mind that there is a limit beyond which agents could not reasonably be expected to have knowledge as to terminal deliveries, or local rates at distant points and on lines of distant roads. Here, existence of joint rates via recognized gateways would make it unreasonable to require carrier's agent to make inquiry as to whether or not a lower combination could be based upon a relatively obscure point beyond the gateways. See 98 I. C. C. 451. Shipments were, therefore, not misrouted. Hamburg Broom Works v. C. R. I. & P., 126 I. C. C. 171, 173.

(hh) Rate on newsprint paper from Carthage, N. Y., to Newark, N. J., via National Junction, N. J., FOUND not unreasonable, discriminatory, or unduly prejudicial as compared with lower rate contemporaneously in effect to New York, or from Glens Falls, N. Y., to New York over another route also applicable to Newark, and subsequently established via route of movement. Rate from Glens Falls was established to avoid fourth-section departures because of fact that Newark is intermediate to New York. However, rate to Newark, except on traffic via National Junction, is the same as rate assailed in connec-

tion with all other delivering carriers, and mere fact that carriers voluntarily reduced the latter rate does not establish unreasonableness of the rate so reduced. Newark Call Printing & Publishing Co. v. C. R. R. of N. J., 126 I. C. C. 569.

(ii) Complainant alleged that unrouted shipments forwarded over a route taking a third-class rate were misrouted because tariffs published a lower combination over another available route. Carriers rely upon 247 U. S. 477, which holds that the duty to route over cheapest route is not absolute but depends upon reasonableness of available routes. FOUND: While Conf. Ruling 214 (c) provides that duty of carrier's agent is to forward over cheapest route known to him, Conf. Ruling 214 (g) provides that there is a limit beyond which agents can not reasonably be expected to know as to terminal delivery. From a distance standpoint route used was a reasonable one. Moreover, one component of lower combination applied from an unimproved nonagency station 750 miles from point of origin and even if agent had knowledge of the lower rate it would not seem reasonable to expect him to have knowledge of the distant component producing the lower charge. Shipments were therefore not misrouted. Lynchburg Chamber of Commerce v. N. Y. C., 128 I. C. C. 159.

(jj) A shipper is not to be denied a reasonable rate merely because he could have secured a lower rate by use of another route. See 122 I. C. C. 689. California Packing Corp. v. S. P., 128 I. C. C. 631, 632.

(kk) Rates on building material from Jackson, Miss., to Forsythe, Tenn., found unreasonable as compared with lower rates, unrestricted as to routing, contemporaneously in effect from Vicksburg, Miss., to Memphis and Forsythe, over some of which routes Forsythe is intermediate to Memphis. Reasonable rate prescribed for future and reparation awarded. Jackson Traffic Bureau v. A. & V., 128 I. C. C. 744.

(ll) Shipments moved under joint through rates. Contemporaneously a lower combination rate was in effect, tariff governing one factor of which made reference to the combination rule which provides a specific method for constructing through rates made on combination. Citing Sligo Case, 62 I. C. C. 643, and other cases, complainant contended that lower combination rate should have been applied. FOUND: In accordance with Conf. Rulings 220 (g) and 443 the only lawful rate was the joint through rate assessed. Therefore, principle laid down in cases cited did not apply. North American Cement Corp. v. W. M., 129 I. C. C. 90, 91.

(mm) Combination rate on copper wire from Black Eagle, Mont., to Northport and Lexington, Nebr., and Topeka, Kans., found applicable. Lower joint rates sought were specifically restricted to routes via "Western Gateways" 9 and 10, "except as otherwise specifically provided" and shipper's routing instructions precluded use of these routes over which joint rate applied. Sinclair Pipe Line Co. v. G. N., 129 I. C. C. 251.

(nn) Shipment of oil-well machinery, tendered unrouted, moved from Mobile, Ala., to Tulsa, Okla., over Mobile & Ohio, Midland Valley delivery. Contemporaneously a lower rate applied over M. & O., M.-K.-T. delivery, to Chetopa and Coffeyville, Kans., points midway on the right and left sides of a triangle formed by the M.-K.-T., with Parsons, Kans., at the apex and Tulsa lying intermediate to Osage and Muskogee, Okla., on base line. Tariff carried an intermediate clause providing for rates to unnamed directly intermediate points. Upon contention that as Tulsa is unnamed in tariff and is intermediate to Coffeyville via Parsons and Chetopa, shipment was misrouted and charges collected inapplicable, FOUND: Tariff is not described as applying from or to Oklahoma points, and since only points directly between Coffeyville and Chetopa are those between Coffeyville and Parsons, and Parsons and Chetopa, shipment was not misrouted nor rates collected inapplicable. Sinclair Oil & Gas Co. v. M. & O., 129 I. C. C. 281.

(oo) Shipment of lumber from Logan, Ga., to Paintsville, Ky., found not misrouted. Complainant contended that, under an intermediate clause, a lower combination was in effect over an indirect route, but Logan was a nonagency station, and even if lower rate was applicable agent should not be charged with such knowledge. Conf. Rulings 91 and 214 (g) and 98 I. C. C. 451. Pine

& Cypress Mfg. Co. v. W. & L., 129 I. C. C. 321.

(pp) Upon reconsideration, maintenance of combination rates on rosin from points in the South and Southeast to Hamilton, Ontario, Canada, accorded transit at Ivorydale (Cincinnati), Ohio, higher than joint rates from more distant points over the same route, in the same direction, the shorter being included with the longer distance, when shipments are accorded transit at Latonia or Central Covington, Ky., found to contravene the long-and-short-haul provision of section 4 of the act. See 35 I. C. C. 27, and other cited cases. Moreover, such rates contravene the fourth section notwithstanding fact that such rates are joint rates from points within United States to Canadian destinations. See Conf. Ruling 447; 66 I. C. C. 627, and other cited cases. Former report 112 I. C. C. 381. Procter & Gamble Co. v. A. & V.. 129 I. C. C. 385.

(qq) Rates on automobiles, c. l., from Lansing and North Flint, Mich., to Santa Fe, N. Mex., found not unreasonable or otherwise unlawful as compared with lower rates contemporaneously in effect to Columbus, N. Mex. Contention that as Santa Fe was intermediate to Columbus, lower rate applied under an intermediate rule which provided for application of Columbus rate as maximum to intermediate points, not sustained. Shipment was routed over A., T. & S. F., and Santa Fe is not intermediate to Columbus over that route. See 118 I. C. C. 631. Mirabel Motor Co. v. M. C., 129 I. C. C. 411.

(rr) Rate on petroleum fuel oil from Grandfield, Okla., originally destined to Granite City, Ill., and diverted to East Chicago, Ind., found inapplicable. A lower combination, applicable under the combination rule, was contemporaneously in effect over route of movement. Reparation awarded. Barnsdall Refineries v. C., R. I. & P., 129 I. C. C. 443.

(ss) Shipments moved under joint rates via Chicago or St. Louis. Contemporaneously a lower combination was in effect via Memphis-Normal, Tenn., and complaint contends that shipments should have moved over that route. Carrier points out that Normal is a local point 7.4 miles from Memphis and that factor used in making combination is a local rate with which originating lines could not be expected to be familiar. HELD: In Conf. Ruling 214 (g) shippers were admonished to bear in mind that there is a limit beyond which agent of carrier can not be reasonably expected to have knowledge as to terminal deliveries or local rates. Moreover, existence of joint rates via recognized gateways makes it unreasonable to require carrier's agent to make inquiry as to whether or not a lower combination could be based upon a relatively obscure point beyond the gateways. See 98 I. C. C. 451. Winsdor Broom Co. v. C. R. R. Co. of N. J., 129 I. C. C. 705, 706.

§5½. Particular Junction or Terminal. See Junction Point Rates.

(a) Shipment of manure billed from Harlem River, N. Y., to North Hatfield, Mass., was delivered to the New Haven unrouted and moved over that road to Northampton, Mass., and the Boston & Maine beyond. North Hatfield is within the city limits of Hatfield. The latter point and Whatley are situated exclusively on the New Haven and serve the same community as North Hatfield. Upon contention that initial carrier misrouted the shipment by delivering it to the B. & M. at Northampton, HELD: Destination specified in bill of lading was North Hatfield, served exclusively by the B. & M., and initial carrier can not be presumed to know that shipper would have been satisfied with delivery at any other destination. Nor is there any indication that complainant intended shipment to be delivered at Whatley, a station to which the freight must be prepaid, here the shipment moving "collect." American Sumatra Tobacco Co. v. N. Y., N. H. & H., 109 I. C. C. 383.

(b) Complainant attacked commodity rate of 50 c. charged on a car of asphalt shingles and prepared roofing, shipped Dec. 26, 1923 from New Orleans, La., to Palatka, Fla., routed by complainant I. C., Frisco, A. B. & A., G. S. & F., as unreasonable and in violation of section four. Shipment moved as routed by I. C., to Aberdeen, Miss., the Frisco to Birmingham, Ala., A. B. & A., to Cordele, Ga., and G. S. & F., to destination. At time of movement there were in effect rates of 33 c. from New Orleans to Jacksonville and 6 c. beyond. The rate of 6 c. from Jacksonville to Palatka was applicable over G. S. & F., but only via Lake City, Fla., in connection with S. A. L.

from Jacksonville. The shipment did not move via Jacksonville and was not misrouted. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Baker & Holmes v. I. C. R. R., 112 I. C. C. 407.

(c) Complainant alleged it has been subjected to payment of demurrage and reconsignment charges by reason of the failure of defendants to follow routing instructions on a car of lumber shipped Oct. 29, 1923 from Aberdeen, Miss., to Chicago, Ill., and that said charges are unjust and unreasonable. Complainant delivered the shipment to the M. & O., at Aberdeen with routing instructions shown in the bill of lading "in care of the C. M. & St. P." There is no direct connection between the M. & O., and Milwaukee. M. & O., delivered the shipment to the Wabash at East St. Louis, Ill., on a transfer waybill with routing changed to read "Wabash-C. M. & St. P. dely." The Wabash hauled the shipment to Chicago and notified the consignee of its arrival. The consignee demanded delivery on the team tracks of the Milwaukee, but it was advised that the Milwaukee would not accept the shipment for such delivery except under the applicable switching rate of 6.5 c. as that line had not received a road haul on the shipment. The consignee declined to assume the obligation to pay these charges in excess of the Chicago rate and refused the shipment. The Wabash applied promptly to the complainant for disposition of the car and under constructions eventually received reconsigned it to another consignee at Chicago. Had the shipment been routed by the M. & O. over certain available routes which would have afforded the Milwaukee a line haul consistent with the routing instructions, the desired delivery could have been made at the Chicago rate. The error of the M. & O., prevented a proper delivery of the shipment. HELD, M. & O. misrouted the shipment, demurrage and reconsignment charges ordered refunded. Hector Lumber Co. v. C. M. & St. P. Ry., 112 I. C. C. 418.

(d) Complainant attacked freight, demurrage and reconsignment charges on a car of wheat bran and wheat shorts, originating at Wray, Col., and reshipped Nov. 20, 1924 from Kansas City, Mo., to Atlanta, Ga., as in violation of section 6. Shipments originated on the Burlington in Colorado and Kansas and moved to Atlanta, Ga., through the East St. Louis, Ill., gateway. Beyond East St. Louis the routing specified in the bills of lading was as follows: I. C., to Cairo, Ill., M. & O., to Corinth, Miss., Southern to Huntsville, Ala., and N. C. & St. L., to Atlanta. Shipments were actually delivered to the N. C. & St. L., defendant, at Chattanooga, Tenn. Complainant had routed the shipments as noted with the expectation of securing at Atlanta as an intermediate point the application of a rate of 50.5 c. published from the points of origin to Westwego Elevators, La. The balance of the route claimed to be open through Atlanta to Westwego Elevators was A. & W. P., and W. Ry. of Ala., to Selma, Ala., thence L. & N., to New Orleans. Shipments prepaid on basis of 50.5 c. Upon their arrival at Atlanta defendant demanded additional charges based on a through rate of 70 c., Ohio river combination on Cairo. Burlington tariff names rates on grain and grain products from the points of origin on complainants shipments to Westwego Elevators on the New Orleans basis, and designates the specific routes over which such rates will apply. The tariff also provides for the application of such rates at intermediate points on the N. C. & St. L. I. C., does not reach Westwego Elevators with its own rails, but switching charges of delivering line shall be absorbed by the I. C., and under such circumstances it was not necessary to name the switching line in the routing instructions. The routes to New Orleans through East St. Louis as described in the tariff are complete. There is therefore no authority for a route through Atlanta under the rates here concerned. HELD, routings to Westwego Elevators specified in the tariff were not made incomplete by the failure of defendants to name in connection therewith the switching line between that point and New Orleans, charges exacted not unlawful, complaint dismissed. Hogan Bros. v. C. B. & Q. R. R., 113 I. C. C. 223.

(e) Lumber from Aberdeen, Miss., to Chicago was routed "c/o C. M. & St. P." Originating line, the M. & O., changed routing instructions to "Wabash-C. M. & St. P. Dely." The Milwaukee, receiving no road haul, refused to accord the Chicago rate and demanded its applicable switching charge. Consignee declined, demurrage accrued, and shipment was reconsigned. Shipment could have been routed by M. & O. over available routes consistent with routing instructions over which the Milwaukee would have received a line haul and desired delivery

made at Chicago rate. While governing tariff erroneously showed that consignee was located on a private track connecting with the Milwaukee such error did not relieve the M. & O. of its responsibility to observe routing instructions. See 23 I. C. C. 84 and 83 I. C. C. 490. The M. & O.'s error prevented proper delivery and where a shipper is compelled to pay demurrage charges through fault of a carrier, such charges must be refunded. See 41 I. C. C. 723 and 46 I. C. C. 365. Hector Lbr. Co. v. C., M. & St. P., 112 I. C. C. 418.

(f) Routing instructions specifying points at which shipment was to be re-iced was inserted in bill of lading but no rate, and shipment so moved, a combination rate being assessed. Shipper contended for a lower joint rate and insisted that initial carrier could have routed the shipment through certain junctions via which a rate lower than that over route of movement would have been applicable; also that since it was not required to show on bill of lading points at which carriers should re-ice the shipment, therefore, carriers were not required to follow icing instructions given. HELD: Joint rate contended for was not applicable via route of movement and since no misrouting is alleged in the complaint any allegation with respect thereto is barred because not brought in issue within the statutory period provided for in the act. Combination assessed found applicable. Armour & Co. v. Director General, 113 I. C. C. 1.

(g) Shipments of wheat moving from St. Francis, Kans., to Kansas City, Mo., there stored and reforwarded to Wausau, Wis., were tendered to the C., B. & Q. at the storage point routed "C. & N. W. Delivery." Upon contention of complainant that shipments were misrouted because the Burlington failed to turn over shipments to the Missouri Pacific or Wabash at Kansas City, HELD: Having tendered shipments to the Burlington, that carrier was under no duty to surrender them to its competitors at that point. See 22 I. C. C. 349. Hodgson-Davis Grain Co. v. C., B. & Q., 113 I. C. C. 234, 235.

(h) Lumber from Grayburg, Tex., consigned to East St. Louis, Ill., was routed by consignor over the T. & N. O. and Frisco. While enroute initial carrier changed instructions to show C. & E. I. delivery. Shipment arrived at St. Louis on the Frisco's rails and arrival notice mailed complainant was returned with notation "car billed to East St. Louis; deliver accordingly; this is not accepted as notice." Desired delivery was then effected and shipment held in hold yards of C. & E. I. in East St. Louis. Shipper then requested reconsignment to a point situated in St. Louis on the Wabash, line haul, switching, demurrage, and reconsignment charges being collected for entire service performed. HELD: The Frisco's rails not reaching East St. Louis the rate charged applied thereto over that line only on shipments delivered by it to certain other carriers at that place, including the C. & E. I. Shipments therefore were not misrouted but were overcharged to extent of charges collected for switching from St. Louis to the C. & E. I. at East St. Louis. Refund of overcharges directed. Milne Lbr. Co. v. St. L.-S. F., 113 I. C. C. 369.

(i) Complainant attacked charges collected on five cars of hoisting machinery and paint from Cleveland, Ohio, to Long Island City, N. Y., on August 30 and September 2, 1914, as unreasonable and illegal. Complainant consigned the shipments to itself care of New Amsterdam Gas Co., Ravenswood station, Vernon and Webster Ave., Long Island City. This local address of the consignee is not a specific station on the tracks of any carrier, but is about one square from the water front within the free lighterage limits of New York Harbor. Shipments moved over Pennsylvania to Greenville Piers, N. J., and were there lightered by that carrier to Long Island City and turned over to the Long Island R. R. Upon arrival at that point the cars were placed for delivery by the Long Island upon its team track where complainant refused to accept them, insisting that the destination named by it in the bills of lading entitled it to lighterage delivery. After the lapse of several days the shipments were moved from the Long Islands team tracks via Greenville Piers to the delivery point desired by complainant. In order to entitle complainant to the through rate from Cleveland to lighterage delivery at Long Island City it was necessary for complainant to specify lighterage delivery upon the bills of lading and this complainant failed to do. HELD: charges collected applicable, except reconsignment charge of $6.30 per car unreasonable, reparation awarded. Brown Hoist-

ing Machinery Co. v. Pennsylvania R. R., 115 I. C. C. 218.

(j) Complainant attacked rate charged on a carload of fresh peaches shipped July 26, 1924, from Powersville, Ga., to Jamestown, N. Y., as unjust and unreasonable. Shipment was tendered to the C. of Ga. on bill of lading naming Jamestown as the destination and specifying routing Georgia R. R.-A. C. L. R. R. Defendants state that it moved over the C. of Ga. to Macon, Ga., Georgia R. R., to Augusta, Ga., A. C. L. to Richmond, Va., R. F. & P. to Potomac Yard, Pennsylvania to Elmira, N. Y., and Erie beyond 1,190 miles. Charged combination of $2, refund made to combination of $1.265 made on Macon. Although the 65.5c factor to Cincinnati was not restricted as to routing, and, therefore applied via Richmond, it appears that the customary gateway to the North and East on shipments moving over the coastal lines was and is Potomac Yard. Complainant was doubtless familiar with the practice in this respect; if he desired an unusual and circuitous movement he should have inserted the necessary instructions in the bill of lading. It would place an undue burden on the agents of carriers at origin points such as Powersville to require them to search the tariffs for all possible routes over which perishable freight might be forwarded at a cheaper rate because of the absence of routing restrictions in the tariffs. Under circumstances such as those described in the instant case, shippers should not be permitted to disclaim all responsibility for the routing of their shipments. HELD, shipment not misrouted and rates applicable not unreasonable, complaint dismissed. Miller v. C. of Ga. R. R., 115 I. C. C. 518.

(k) Complainant attacked combination rate charged on a car of kerosene from Arkansas City, Kas., to Des Moines, N. M., in October, 1924, as unreasonable. Shipment moved Santa Fe to destination where it was delivered to the C. & S. in switch movement. Charged 94.5c but applicable rate was 75c combination on Trinidad, Colo. The bill of lading covering the shipment provided for delivery by the C. & S. Defendant and that carrier joined in a rate of 46c which applied over defendants line to Pueblo, Colo.. and C. & S. beyond. Defendant should have routed the car so that delivery by the C. & S. could have been effected at the cheapest available cost to the shipper. HELD, shipment misrouted, reparation awarded. Kanotex Refining Co. v. A. T. & S. F. Ry., 115 I. C. C. 559.

(l) Complainant attacked charges of 12.5c per 100 pounds plus a reconsignment charge of $7 per car, assessed for switching at Elizabeth, N. J., on one car of lumber shipped June 10, 1922, from Johnston, S. C., to Elizabeth, as unreasonable. The car was consigned to J. D. Loizeaux Lumber Co., and delivery specified was National Biscuit Co. siding. The siding of that company is located on the C. R. R. of N. J. The applicable rate of 43.5c from Johnston to Elizabeth, plus a rate of 12.5c for transporting the car from the tracks of the Pennsylvania at Elizabeth to the siding of the National Biscuit Co., plus a reconsignment charge of $7 per car, were assessed. The car arrived at Elizabeth, was placed for delivery by the Pennsylvania at its freight station yard in Elizabeth, and the consignee was notified of its arrival. On June 24, 1922, consignee ordered the car reconsigned to National Biscuit Siding, C. R. R. of N. J., Elizabeth, N. J. All charges to follow. Under proper routing instructions the rate of 43.5c was applicable from Johnston to the siding of the National Biscuit Company on the C. R. R. of N. J. at Elizabeth. The mere designation of the siding of the National Biscuit Company without specifying the name of the carrier on whose rails the siding was located was not sufficient to insure delivery of the car at the rate of 43.5c. HELD, shipment not misrouted, rate attacked not unreasonable, reconsignment charge unreasonable, reparation awarded. Lynchburg Chamber of Commerce v. E. Ry., 115 I. C. C. 625.

(m) Shipments of machinery and paint from Cleveland, Ohio, to Long Island City, N. Y., intended for lighterage delivery were billed to local address of consignee, which was not a specific station on the tracks of any carrier, its location not being shown in any tariff or billing book. Tariff governing lighterage service contained specific provision to effect that "all shipments requiring lighterage delivery must be receipted to 'New York Lighterage' and billed to Greenville Piers or Manhattan Piers, N. J." Failure of complainant to specify lighterage delivery on bills of lading resulted in demurrage, storage, and other charges and subsequent reconsignment of

shipments. HELD: Extra expenses incurred as result of complainant's initial mistake found applicable and not unreasonable. Brown Hoisting Machinery Co. v. P. R. R., 115 I. C. C. 218.

(n) Consignees' plant at Valparaiso, Ind., is served by the Grand Trunk and cars arriving over other roads must be switched by that line. Coal from Hazard, Ky., moved under bill of lading which specified "GT 'route to protect lowest thru freight rate'" and moved over a route which accorded the Grand Trunk a line haul. Upon contention that shipment was misrouted because not forwarded via a route over which lower rate applied. HELD: Meaning of routing instructions was clear to consignees, having location of their particular plant in mind, but agent at point of origin could not be expected to know location of plant at destination. Moreover, when initials of a particular road appear in space provided on bill of lading for designation of route, this must be regarded as an expression of consignor's desire that such road should participate in movement as a line-haul carrier. See 19 I. C. C. 68. Shipment not misrouted. Coovert & Young v. L. & N., 115 I. C. C. 349.

(o) Shipment was tendered to originating line with bill of lading specifying destination and delivering line but no intermediate routing. Upon contention that shipment was misrouted because it was carriers' duty to forward via another available route over which reconsignment could have been effected at a lower through rate, HELD: While duty rested upon initial carrier to forward shipment over cheapest reasonable available route in conformity with routing instructions given, it can not be held for misrouting because same rate applied over route of movement as over route contended for, and carrier when it designated intermediate routing could not foresee the further transportation accomplished by reconsignment beyond originally billed destination. Lynchburg Chamber of Commerce v. G. R. R., 115 I. C. C. 419.

(p) Lumber was tendered to Seaboard Air Line at Trio, S. C., consigned to Spartanburg, S. C., with notation on bill of lading "C. C. & O. delivery." Originating carrier tendered shipments to consignee carrier short of billed destination, which tender was accepted, and shipments were rebilled "deadhead" to an interstate destination. Upon complaint alleging misrouting predicated upon fact that there was a lower intrastate rate in effect between origin and destination named in bill of lading and that shipments should have moved over lower-rated route, HELD: Fact that originating carrier tendered shipments to consignee short of billed destination, and rebilled "deadhead," did not obligate consignor to pay charges in addition to those applicable under its contract of carriage. Nor did act of consignee carrier in rebilling deprive consignor of his right to have traffic forwarded over cheapest reasonable route. Shipments found misrouted and reparation awarded. Lynchburg Chamber of Commerce v. S. A. L., 115 I. C. C. 537.

(q) Bill of lading specified delivering carrier. Originating line reserved to itself entire line haul between origin and destination and merely accorded delivering road a switching movement at destination. A lower rate contemporaneously applied via route over which delivering carrier would have received a line haul. FOUND: Shipments were misrouted, since it was duty of initial carrier to have so routed the car that delivery could have been effected at cheapest available cost to shipper. See also 21 I. C. C. 451 and other cited cases. Reparation awarded. Kanotex Refining Co. v. A., T. & S. F., 115 I. C. C. 559.

(r) On lumber from Johnston, S. C., to Elizabeth, N. J., routing instructions specified delivery "Nat'l Biscuit Co. siding." That siding is located on Central of N. J. Railroad. Shipment, however, arrived and was placed for delivery on rails of the Pennsylvania. Consignee subsequently ordered reconsignment to "Nat'l Biscuit Siding, Central N. J. Railroad at Elizabeth" and a charge in addition to the rate to Elizabeth was assessed for transportation from the Pennsylvania's tracks to siding of the biscuit company. HELD: Under proper routing the rate to Elizabeth was applicable to siding of the biscuit company but mere designation of siding in routing instructions without specifying the carrier's name on whose rails it was located was not sufficient to insure delivery at the Elizabeth rate. The shipment can not, therefore, be said to have been misrouted. See also 28 I. C. C. 703; 31 I. C. C. 550. Lynchburg Chamber of Commerce v. S. Ry., 115 I. C. C. 625.

(s) Routing instructions on apples from Chelan, Wash., to Chicago, diverted to Newark, N. J., specified Erie delivery. Diverting carrier's agent erroneously routed shipments for Lehigh Valley delivery. Upon complaint seeking damages for cartage, labor, and loss of sales value of part of shipments, containers of which were said to have been broken and contents damaged and frozen in transit, HELD: While shipments were misrouted, damages claimed were not shown to have been occasioned thereby. No claim was made that cartage would not have been necessary had Erie delivery been effected or whether cartage charge would have been greater or less than that paid for cartage from Lehigh Valley, nor was evidence introduced to show that containers were broken or contents frozen while in transit. Moreover, all facts on complainant's behalf were sworn to by his attorney, who had no actual knowledge of any of the transactions. Horel v. G. N., 120 I. C. C. 125.

(t) Routing instructions of shipper on lumber moving from Quitman, Ga., to East New York, N. Y., reconsigned to Ozone Park, N. Y., specified "Long Island delivery." Due to an embargo on delivering line, one of the connecting carriers named in routing instructions changed the waybill to read "South Brooklyn R. R. delivery," and shipment moved forward accordingly. Upon tender of delivery consignee refused shipment, insisting for delivery as shown in bill of lading, and this demand was compiled with. HELD: That the carrier inserting unauthorized routing in waybill was guilty of misrouting. Reparation awarded. Underwood Lbr. Corp. v. A. C. L., 120 I. C. C. 175.

(u) On watermelons moving from Daisy and Hagen, Ga., to Jacksonville Fla., bills of lading called for Atlantic Coast Line delivery. Originating carrier disregarded routing instructions and carried shipment through to destination and tendered delivery on its own rails: HELD: That failure to effect delivery specified in the bills of lading resulted in misrouting. Reparation awarded. G. W. Harp v. S. A. L., 122 I. C. C. 585.

(v) The Commission has admonished shippers to bear in mind that there is a limit beyond which an agent of a carrier could not reasonably be expected to have knowledge as to terminal deliveries, or local rates at distant points and on lines of distant roads. The existence of joint rates via recognized gateways upon this traffic would make it unreasonable to require defendants agent to make inquiry as to whether or not a lower combination could be based upon a relatively obscure point beyond the gateways. Hamburg Broom Works v. C. R. I. & P. Ry., 126 I. C. C. 171, 173.

(w) The shipment routed "via Penn. Ry., care of B. & O. for delivery to Norcross siding" comes within the principle accounted in Stebbins v. D. L. & W. Co., 42 I. C. C. 150, to the effect that it is not incumbent upon the initial carrier to send a shipment tendered with complete routing over a route requiring the interposition of another carrier or other carriers. Norcross Marble Co. v. B. & O. R. R., 126 I. C. C. 741, 742.

(x) Shipment of rough quarried marble from Phenix, Mo., to Cleveland, Ohio, routed "Via Penn. Ry. care of B. & O. for delivery to Norcross siding," moved via St. Louis-San Francisco to East St. Louis, and B. & O. beyond. Upon contention that shipment was misrouted since it did not move via the Pennsylvania, HELD: Shipment falls within principle announced in 42 I. C. C. 150, to effect that it is not incumbent upon initial carrier to send a shipment tendered with complete routing over a route requiring the interposition of another carrier. Therefore, this shipment while technically misrouted, nevertheless was forwarded through East St. Louis through which gateway it would have moved if direct interchange had been made with the Pennsylvania. Complainant therefore suffered no damage by reason of carrier's failure to route as specified. Norcross Marble Co. v. B. & O., 126 I. C. C. 741.

(y) Direction "Best Route for B. & O. Del." required shipments to be sent over the cheapest route that would permit of B. & O. delivery, either by line haul or in switching service. See 42 I. C. C. 719. Norcross Marble Co. v. B. & O., 126 I. C. C. 741, 742.

(z) Bill of lading covering cabbage from Cortland, N. Y., to Williamson, W. Va., specifying "N. & W. Del.," moved via Hagerstown, Md., N. & W. to destination. Contemporaneously a lower combination applied via Columbus, Ohio, and N. & W. through Kenova, W. Va., to Williamson. Relying upon Conf. Ruling 214 (g) and 26 I. C. C. 423,

carriers urge that Kenova route is not commercially known or used for transportation from Cortland to Williamson and that the only recognized route is that over which shipment moved. HELD: Conference ruling cited was not intended to relieve carriers' agents of duty to exercise reasonable care and diligence in securing information necessary for correct routing even though shipments are destined to points or distant roads with which no through rates are maintained. There is no indication that Cortland agent made any effort to ascertain which was cheapest route. Moreover, since carriers transport cabbage from Cortland to Kenova over a route which to Kenova is same as route sought, that route is apparently practical and not unreasonable and shipments were therefore misrouted. Reparation awarded. Amicon Fruit Co. v. L. V., 128 I. C. C. 34.

(aa) Where terminal delivery only is shown in a bill of lading it is carrier's duty to forward shipment over the cheapest reasonable route affording desired delivery. See 42 I. C. C. 719. Amicon Fruit Co. v. L. V., 128 I. C. C. 34, 35.

(bb) Shippers must bear in mind that there is a limit beyond which an agent of a carrier could not reasonably be expected to know as to terminal delivery or local rates at distant point and on lines of distant roads to or with which he has no specific joint through rates. Consignors and consignees should cooperate with agents of carriers in avoiding misunderstandings and errors in routing and must expect to bear some responsibility in connection therewith. This rule is not intended to relieve carriers' agents of the duty to exercise reasonable care and diligence in securing information necessary for the correct routing of shipments, even though the shipments are destined to points on distant roads with which no specific through rates are maintained. Amicon Fruit Co. v. L. V. R. R., 128 I. C. C. 34, 35.

(cc) Bill of lading covering agricultural implements from Syracuse, N. Y., to Williamson, W. Va., specifying "N. Y. C. care of N. & W.," moved to Hagerstown, Md., and N. & W. to destination. Contemporaneously a combination lower than joint rate assessed applied via Columbus, Ohio, and N. & W. through Kenova, W. Va., to Williamson. Carriers rely upon 247 U. S. 277, to support contention that initial carrier was not negligent in forwarding shipment over higher-rated route. In that case it was stated that duty of carrier to ship over the cheaper route is not an absolute one and that justification for more expensive route may rest upon peculiar circumstances of a particular case or upon a general practice. HELD: Decision in case cited is not controlling upon facts submitted and shipments were therefore misrouted. Reparation awarded. Amicon Fruit Co. v. L. V., 128 I. C. C. 34, 36, 37, 38.

(dd) Complainant alleged combination rate charged on a car of denatured alcohol from Philadelphia, Pa., on July 27, 1925, to its siding at Providence, R. I., was unjust, unreasonable and inapplicable. Shipment was consigned to complainant at Providence for "delivery on the N. Y., N. H. & H." Charged 32c to Providence and 11c to Auburn, R. I., plus reconsignment charge of $6.30 and $4 demurrage. Complainant's siding is on the New Haven within the corporate limits of Providence, and the tariff naming the 32c rate provided that it applied to private sidings connected with carriers parties to the tariff at which the particular traffic is usually delivered. Auburn is intermediate to and adjoins Providence. The switching limits of neither place were defined. HELD: legal rate was 32c, reparation awarded. Atlantic Refining Co. v. Pennsylvania R. R., 128 I. C. C. 43.

(ee) Complainant alleged that the misrouting of a car of lumber shipped Oct. 23, 1923, from Logan, Ga., to Paintsville, Ky., subjected it to payment of rates which were unreasonable and unlawful. Shipment moved from Logan over W. & L. to Washington, Ga., Ga. R. R., via Barnett, Ga., to Augusta, Ga., C. & W. C. to Spartanburg, S. C., C. C. & O. to Elkhorn City, Ky., and C. & O. to Paintsville, charged 45c. No routing instructions were given except that the C. & O. was indicated as the delivering carrier. Joint rates were not published from Logan to Paintsville. The rate assessed was a combination of locals. Complainant concedes that the rate charged was the correct rate over the route of movement. Logan is a nonagency station. The train conductor acts as agent when shipments originate at that point. HELD: Shipment not misrouted, complaint dismissed. Pine

& Cypress Mfg. Co. v. W. & L. R. R., 129 I. C. C. 321.

(ff) Complainant alleged charges collected on 14 cars of broom corn from Lindsay, Elk City and Oklahoma City, Okla., to Hamburg, Pa., in Oct., 1921, were unreasonable, unjustly discriminatory, unduly prejudicial and in violation of the fourth section. Cancellation of the joint rates assailed subsequent to the period of movement made effective lower combination of intermediate rates over the route of movement thereby removing the fourth section violations. Seven of the shipments originated at Lindsay, six at Elk City and one at Oklahoma City. They moved over the originating line, Rock Island to Chicago, Ill., or St. Louis, Mo., thence over various carriers beyond. No routing was specified by the shipper except "Pennsylvania delivery" and this for a few of the shipments only. Charged joint rate of $2.265 from Lindsay and Oklahoma City and $2.30 on five of the six shipments from Elk City. Joint rates were maintained on broom corn over certain routes from the origin territory to eastern territory, from Dec. 1919 to April, 1922. Prior and subsequent thereto rates on broom corn between those territories were made on combinations based on Ohio and Mississippi River crossings which were and are lower than the joint rates. Complainant contends that the shipments should have moved over the Memphis-Normal route and that it is entitled to reparation on the basis of misrouting. Pennsylvania delivery could have been accorded shipments moving over the latter route. There were contemporaneously published to Hamburg combinations based on Memphis, applicable over Rock Island to Memphis, thence I. C., M. & O. or N. C. & St. L., and connections. HELD, shipments misrouted by the Rock Island, reparation awarded. Windsor Broom Co. v. C. R. R. Co., of N. J., 129 I. C. C. 705.

(gg) The Commission has uniformly found that where terminal delivery only is shown in the bill of lading it is the duty of the carriers to forward the shipments to the destination named by the cheapest reasonable route affording the desired delivery. Windsor Broom Co. v. C. R. R. of N. J., 129 I. C. C. 705, 707.

(hh) The tariff provision, like all others, is to be construed in the light of its terms, and does not charge its interpreter with knowledge of operating or other conditions which would eliminate one of two apparently reasonable and available routes. To charge a shipper, or to charge the Commission with such knowledge, would nullify the effect of the tariff, as well as enforcement of rule 77. Smith & Sons Co. v. B. & M. R. R., 132 I. C. C. 596, 597.

(ii) Shipment of lumber from Logan, Ga., to Paintsville, Ky., found not misrouted. Complainant contended that, under an intermediate clause, a lower combination was in effect over an indirect route, but Logan was a nonagency station, and, even if lower rate was applicable, agent should not be charged with such knowledge. Conf. Rulings 91 and 214 (g) and 98 I. C. C. 451. Pine & Cypress Mfg. Co. v. W. & L., 129 I. C. C. 321.

(jj) Bill of lading covering shipment of peanuts from Samson, Ala., to Camden, N. J., showing routing "C of Ga.—S. A. L.—P. & N." but no rate, moved C. of Ga., S. A. L. to Richmond, Va., Richmond, Fredericksburg & Potomic to Potomac Yard, Va., and Pennsylvania beyond. Shipment was refused at destination and subsequently sold at auction. Upon contention that "P. & N." was the Philarelphia & Norfolk Steamship Line; that shipment was therefore misrouted and carrier liable for difference between contract price and auction price of peanuts, FOUND: As "P & N" are also initials of Piedmont & Northern which forms a workable route with other named carriers, routing specified did not put carriers on notice that rail-and-water route was desired. Therefore, while shipment was misrouted, record fails to show that complainant was damaged thereby. See Conf. Ruling 190. South Alabama Grocery Co. v. C. of G., 129 I. C. C. 327.

(kk) When shipments are delivered unrouted, no obligation rests upon carrier to participate only in a switch movement to a connecting line in order to protect the lowest rate, if in so doing it foregoes a line haul itself. Enochs Lbr. & Mfg. Co. v. I. C. 129 I. C. C. 505.

(ll) Shipments from Oklahoma points to Hamburg, Pa., routed "Pennsylvania delivery," moved over initial carrier to Chicago or St. Louis, thence over various carriers to destination, charges being collected at applicable joint rate. Contemporaneously, lower combinations

based on Memphis, Tenn., applied from origin points to destination and complainant seeks reparation on basis of misrouting. Upon contention by carrier that under the routing instructions "Pennsylvania delivery," originating line was obligated to deliver shipments directly to the Pennsylvania, FOUND: Commission has uniformly found that where terminal delivery only is shown in bill of lading it is duty of carrier to forward shipments by cheapest reasonable route affording desired delivery. See 42 I. C. C. 719. Shipments found misrouted and reparation awarded. Windsor Broom Co. v. C. R. R. Co., of N. J. 129 I. C. C. 705.

§6. Right Of Carrier to Route or Restrict Routes.

See Restricted Routes.

(a) Shipments of scrap iron from Superior, Wis., to Steelton, Minn., were delivered to carrier unrouted and forwarded via a two-line route at minimum class rate. Shipper constructed lower charges by combining switching tariffs embracing a three-line route. FOUND: Since switching tariff of one carrier applied only on cars having a "road haul," and movement over the three-line route is more in the nature of an intraterminal transfer than a road haul, lower charges were not applicable over route embracing three lines and shipments were not misrouted. Kaner v. C., St. P., M. & O., 104 I. C. C. 710.

(b) Proposal to restrict routing of petroleum and products from Gulfport, Vicksburg, Natchez, Mobile, Pensacola, New Orleans, Baton Rouge, Merea, and Port Chalmett, to certain points in Alabama, Tennessee, Kentucky, Ohio, Indiana, and Missouri, designed to avoid wasteful transportation, to secure to initial carrier the long haul to which it is entitled, and to eliminate fourth-section departures, found not justified. While there may be some justification for eliminating a few of the longer routes as contemplated, it is impossible upon the record to designate exact extent of such justification, it being shown that to most of the destinations many of proposed routes are longer than some of those it is proposed to close. Florence Chamber of Commerce v. A. & V., 107 I. C. C. 84.

(c) Unreasonably high rates may not be maintained in order to control routing of traffic. Arbogast & Bastian Co. v. L. V., 107 I. C. C. 105, 108.

(d) Proposal to restrict application of class rates from points in Indiana to Minneapolis, St. Paul, and Duluth, so as to eliminate cross-lake routes through Michigan, and thus remove existing departures from long-and-short-haul provision of section 4 of the act, found not justified. The cross-lake routes which it is proposed to cancel are reasonably direct and move a substantial volume of traffic, and their continuance is also desirable for emergencies during periods of traffic congestion. Class Rates to Twin Cities, 107 I. C. C. 665.

(e) It is the province of carriers to conduct commerce in channels demanded by the public. Public interest is not conserved by shutting out, through denial of a necessary transportation service, an important agricultural product from markets which it can reach over routes requiring less service than that over other routes primarily because one of the carriers on whose lines traffic originates does not reach those markets over routes which would give it a long haul. Montgomery Cotton Exchange v. S. A. L. 109 I. C. C. 579, 587.

(f) Having tendered the shipments to one carrier, that carrier was under no duty to surrender them to its competitors at that point. Hodgson Davis Grain Co. v. C. B. & Q. R. R., 113 I. C. C. 234, 235.

(g) Complainant attacked combination class rates, and alleged misrouting, on less carload of cotton duck shipped Dec. 22, 1922 from Gonzales, Tex., to Lancaster, Pa., as unjust and unreasonable. Shipment moved all rail route at a combination of $2.055 made up of an any quantity rate of 83.5 c. to East St. Louis, Ill., plus rule 25 class rate of $1.22 beyond. Complainant contended that the shipment should have moved over a rail water and rail route at a commodity rate of $1.295. The shipment moved over the cheapest reasonable all rail route. HELD, shipment not misrouted, complaint dismissed. Armstrong Cork Co. v. S. A. & A. P. Ry., 113 I. C. C. 269.

(h) While the commission is not prepared to say how many transcontinental routes should be maintained at the direct-line rate, it is evident that reasonable restrictions on routing are desirable in the interest of efficient operation. Revenues in Western District, 113 I. C. C. 3, 21.

(i) Proposed restriction to transcontinental routing of the application of the transcontinental Deming, N. Mex., rates as maxima on grain and related articles from defined territories to all destinations in Texas found not justified. Carriers merely referred to inconsistent routing provisions, their history and results, and some of the out-of-line hauls which are or may be made under present tariffs, but did not seriously attempt to justify reasonableness of resulting rates. While they should be permitted, even encouraged, to eliminate wasteful transportation, in seeking, as here, to disrupt a rate adjustment of long standing, they must show that resulting rates will be reasonable, and will not result in other violations of the act. This burden carriers have failed to sustain. Grain and Related Articles, 113 I. C. C. 195.

(j) Proposal to reduce rates on grain and products from points in Nebraska, Iowa, Illinois, Missouri, Kansas, Oklahoma, and Arkansas, to Louisiana, routed through Arkansas, and to restrict routing so that such reduced rates will not apply over routes through Texas, found not justified. In 104 I. C. C. 272, commission found such restriction of routing not justified by transportation conditions and that resulting disadvantages to Texas mills would be unlawful in violation of section 3 of the act. No evidence has been submitted in present record to warrant a different conclusion. Grain and Products to Louisiana, 113 I. C. C. 259.

(k) The different routes via which tariff applies may be shown, together with appropriate reference to the application of rates. When a tariff specifies routing the rates may not be applied via routes not specified. Russell Grain Co. v. A. G. S. R. R., 113 I. C. C. 699, 702.

(l) Respondents proposed routing restrictions under which the rates on cement from Chanute and Iola, Kas., Dewey, Okla., and other points in the Kansas gas belt would not apply over certain routes to destinations in Oklahoma on the Midland Valley and Rock Island. Under the proposed schedules rates to destinations on the Midland Valley would not apply over the M. P. via Greenwood, Ark., and rates to the destinations on the Rock Island would not apply in connections with the Frisco, via Mansfield, Ark., or in connection with the Midland Valley via Hartford Jct., Ark. The cement rates were established following 87 I. C. C. 451. Routing restrictions proposed would eliminate fourth section departures. Respondents do not show that, in general, the routes they propose to eliminate are excessively circuitous. Operating conditions are not shown to be such as to make these routes unnecessary or undesirable in the public interest. They are routes over which the rates to intermediate points in Arkansas are upon a higher level than the rates to points in Oklahoma, indicating that it is respondent's principal purpose to avoid the effects of the provisions of section four of the act rather than to eliminate routes which they would otherwise regard as unnecessary and undesirable. HELD, suspended schedules not justified. Cement to Arkansas and Oklahoma, 118 I. C. C. 657.

(m) On cottonseed meal from Greenwood, Miss., to Angola, La., a combination rate based on Baton Rouge, La., was assessed. A lower joint rate was contemporaneously in effect from Memphis to Angola via Baton Rouge, tariff publishing that rate containing an intermediate rule restricted to apply via direct available routes only. HELD: Application of the lower rate not being confined to a single direct route, but being applicable over all "direct available routes," and record not establishing that route through Greenwood was not an available direct route from Memphis to Angola, such lower joint rate was applicable from Greenwood and shipments were overcharged. Reparation awarded. Planters Oil Mill v. Y. & M. V., 115 I. C. C. 21.

(n) Carriers contended that there is a well-recognized exception to general condemnation by commission of restrictive rates in cases where combinations are supported by a general policy of carriers concerned in refusing to join in establishment of joint rates on coal to their local markets from points on other coal-carrying roads, citing in support thereof numerous cases in which commission found combination rates on that commodity not unreasonable or unduly prejudicial when maintained in accordance with such a policy. HELD: To merit commission's approval any such policy must be followed without discrimination between shippers similarly situated. Old Ben Coal Corp. v. C., C., C. & St. L., 115 I. C. C. 84, 87, 88.

(o) Proposed routing restrictions resulting in increased rates on livestock between points in Louisiana and Texas, on the one hand, and points in Kansas and Okahoma, on the other, found not justified. Carriers failed to show that the rates on livestock other than on stock cattle are not fairly remunerative, and the record is not comprehensive enough to warrant the commission in fixing a degree of circuity as a measure of a reasonably direct route. Livestock from La. and Tex. to Kans. and Okla., 115 I. C. C. 137.

(p) The financial status of a carrier is but one element in determining whether or not a railroad should be eliminated as an intermediate line in routing of traffic and is not necessarily controlling. Restrictions in routing over S. L. & U., 115 I. C. C. 357, 369.

(q) Shipments of barley from South Dakota and Minnesota, during Federal control, moved to Minneapolis, and were reforwarded to Milwaukee, combination rates being assessed. Concurrently, joint rates, restricted to apply only via Winona, Minn., and Wyeville, Wis., via the shortest available route, were in effect from original shipping points to Milwaukee. HELD: As shipments did not move through points through which lower joint rates applied, and no joint rates were applicable over route of movement, the combination of locals assessed was legally applied. Zimmerman v. Director General, 115 I. C. C. 407.

(r) Bill of lading specified delivering carrier. Originating line reserved to itself entire line haul between origin and destination and merely accorded delivering road a switching movement at destination. A lower rate contemporaneously applied via route over which delivering carrier would have received a line haul. FOUND: Shipments were misrouted, since it was duty of initial carrier to have so routed the car that delivery could have been effected at cheapest available cost to shipper. See also 21 I. C. C. 451 and other cited cases. Reparation awarded. Kanotex Refining Co. v. A., T. & S. F., 115 I. C. C. 559.

(s) Proposed restriction in routing of cement from points within Kansas gas belt and Dewey, Okla., to certain destinations in Oklahoma, which would result in the elimination of certain routes through Arkansas, found not justified. While proposed restrictions would correct existing fourth-section departures, routes involved are not shown to be excessively circuitous; on the contrary, to destinations near the Oklahoma-Arkansas lines they are, in many instances, shorter than other available routes. Moreover, operating conditions are not shown to be such as to make these routes unnecessary or undesirable in public interest, and the fact that they are routes over which rates to intermediate points in Arkansas are upon a higher level than rates to points in Oklahoma would indicate that carriers' principal purpose is to avoid effects of provisions of section 4 of the act, rather than to eliminate routes which they would otherwise regard as unnecessary and undesirable. Cement to Arkansas and Oklahoma, 118 I. C. C. 657.

(t) Respondents proposed (1) the elimination of routes via Montgomery, Ala., in connection with joint rates on cotton and related commodities originating at points on the L. & N., Longview, Ala., to Clanton, Ala., to destinations in North and South Carolina and Virginia and (2) certain restrictions in routing on cotton, in bales, from L. & N. stations north of Birmingham to destinations in Georgia. From the point of origin to the destinations here considered joint rates have been in effect via Montgomery for many years. Following 109 I. C. C. 579, respondent, effective Sept. 20, 1926 established transit at Montgomery on cotton originating at points on its line between Decatur, Ala., and Mobile, Ala. Long View and Clanton are 27 and 56 miles south of Birmingham and 70 and 41 miles north of Montgomery. It is the general practice to handle cotton originating between Birmingham and Montgomery via either of those points. By the schedules filed to become effective Sept. 29 respondents proposed to reestablish the routing via Montgomery from Lomax and Clanton. Attempted justification of the proposed routing restrictions on cotton moving from Long View to Clanton to Carolina mill points is based principally on the circuity of the routes via Montgomery and the resulting fourth section violations if the Montgomery routes are kept open. To Georgia they are sought to be justified on the ground of circuity. HELD, suspended schedules not justified. Routing on Cotton, 120 I. C. C. 185.

(u) Proposal to eliminate route via

Montgomery, Ala., in connection with joint rates on cotton from L. & N., stations, Long View to Clanton, Ala., inclusive, to destinations in Virginia, the Carolinas, and Georgia, found not justified. While such routing restrictions are designed for purpose of obviating certain fourth-section violations and carriers attempted their justification principally on ground of circuity, no similar restriction is proposed from other points via highly circuitous routes on similar traffic moving via Birmingham. Moreover, to close routes via Montgomery would result in innumerable section 4 violations, as combination rates via that point would exceed joint rates from points on the Southern, west of Decatur, applying via Decatur, Birmingham, and Montgomery. Routing on Cotton, 120 I. C. C. 185.

(v) Shipment of broomcorn moving under joint rates from Fairview, Okla., to Atco, N. J., found misrouted. Rates were restricted to apply via Chicago and Joliet, Ill., and via St. Louis or Memphis, in connection with the L. & N. or Southern to Cincinnati, thence over lines parties to the tariff. Route of movement included the Illinois Central, which was not a party to tariff publishing joint rates, and rates assessed were therefore inapplicable. Hamburg Broom Works v. C., R. I. & P., 126 I. C. C. 171.

(w) Proposal to restrict application of rates on coarse grain, basing on Vicksburg or Memphis, and moving from points in Texas to points in Mississippi and Alabama, to certain routes, FOUND not justified, except as to cancellation of routing via McGregor and Waco, Tex. Certain of the rates applying via these points short haul the Gulf, Colorado & Santa Fe, and it is proposed to correct this situation by routing traffic via Fort Worth, which would deprive Waco interests of opportunity to transit. However, this new route would not materially affect length of through haul and carriers are clearly within their rights under section 15 of the act. No justification was offered, however, for various other provisions of proposed schedules restricting rates to certain routes which would adversely affect the Memphis market. Grain and Grain Products, 126 I. C. C. 454.

(x) Complainant attacked combination rate charged on unfigured pine, gum and cypress veneer, in carloads, shipped since Sept. 5, 1924, from West Helena, Ark., to Jackson, Miss., as unreasonable and inapplicable. West Helena is 7 miles from Helena, Ark., and is on the M. P. and M. & N. A. Shipments were tendered to the M. P. unrouted and moved over its line to Memphis, Tenn., and thence I. C. to destination, charged 29.5c, applicable rate being 28.5c, made 11.5c and 17c to and from Memphis. Though the route through Helena was available, there was no obligation on the M. P. to switch these shipments to the Yazoo at that point and forego a line haul in order to protect the lowest rate. It was clearly entitled to a line haul, and as it forwarded the shipments over the cheapest route affording it such a haul, it can not be charged with misrouting. In order to have obtained the benefits of that route the shipper should have tendered the shipments to the M. P. for switching to the Yazoo, to which carrier it should have presented the bills of lading consigning them to Jackson. No sufficient evidence was offered tending to show that the applicable rate over the route of movement was unreasonable, and reparation should not be awarded for the purpose of equalizing the rate over that route with the lower rate over the Yazoo from Helena which the shipper could have used. HELD: Shipments not misrouted, applicable rate not unreasonable, complaint dismissed. Enochs Lumber & Mfg. Co. v. I. C. R. R., 129 I. C. C. 505.

(y) Respondents proposed to restrict the routing of livestock in carloads from Texas to Cincinnati, O., Louisville, Ky., Indianapolis, Ind., and intermediate points. At the present time joint rates on livestock in carloads from practically all points in Texas to these points apply, generally speaking, over all lines participating in the suspended schedules. As the rates from points in Texas are applicable at intermediate points the proposed schedules would result in the cancellation of joint rates to such of these intermediate points as are located on routes which respondents seek to eliminate. The proposed cancellation of routes would adversely affect the livestock industry. The inherent nature of the traffic demands a diversity of routes. Considerable damage would result from holding livestock in transit when certain routes are closed by reason of strikes, washouts, wrecks, and embargoes, or because of quarantine regulations imposed by the United States Bureau of Animal Indus-

try during epidemics such as the foot and mouth disease, and floods such as have just been experienced in the Mississippi valley. This is well known to and recognized by the carriers. Some of the routes sought to be cancelled are important, logical and workable routes, and in many instances are shorter than routes proposed in the suspended schedules. HELD: Proposed schedules not justified. Livestock from Texas, 132 I. C. C. 537.

(z) Proposed elimination of routes via Montgomery, Ala., in connection with joint rates on cotton originating at points in Alabama and Mississippi on the Southern and various other lines, and restriction of such routes so that the Southern will secure the long haul on traffic which it originates or receives from its connections, found justified, except where such restrictions will create unauthorized fourth-section violations. Elimination of routes via Montgomery will not retard movement of cotton from and to points considered; will not subject shippers to increased rates; nor otherwise injure the public interest, as rates now applicable via Montgomery also apply over routes to which traffic is proposed to be confined. Routing on Cotton, 129 I. C. C. 387.

(aa) When shipments are delivered unrouted, no obligation rests upon carrier to participate only in a switch movement to a connecting line in order to protect the lowest rate, if in so doing it foregoes a line haul itself. Enochs Lbr. & Mfg. Co. v. I. C., 129 I. C. C. 505.

(bb) Shipments tendered to Missouri Pacific unrouted moved under combination rates from West Helena, Ark., via Memphis, Tenn., to Jackson, Miss. Contemporaneously a lower rate applied via Helena, Ark., composed of carrier's switching charge to connections at that point plus line-haul rate beyond. Upon contention that shipments should have moved via Helena as it was the cheapest available route, FOUND: While that route was available, Missouri Pacific was under no obligation to switch shipments to the connecting line and forego a line haul itself in order to protect the lowest rate. To obtain the benefits of that route shipments should have been tendered to carrier for switching to connecting line to which line it should have presented bills of lading consigning shipments to Jackson. See 42 I. C. C. 317. As shipments moved over cheapest route affording originating carrier a line haul, it can not be charged with misrouting. Enochs Lbr. & Mfg. Co. v. I. C., 129 I. C. C. 505.

§6½. Rail-and-Water Route.

See Rail-and-Water Rates.

(a) Cotton gathered at Tennessee River landings by packet boat line was carried to Riverton, Tenn., and forwarded by rail to New Orleans under new bills of lading taken out by complainant for sole purpose of showing car numbers therein. Charges were prepaid at through rate shown in bills of lading, which also specified routing via Northern Alabama Ry. That carrier not concurring in packet company's tariff carrying through rate, additional charges were collected at destination. HELD: Nonconcurrence rendered a combination applicable. Moreover, shipments were through shipments and had packet company advised complainant that its tariff did not, as its title-page purported to do, apply via Riverton, complainant unquestionably would have directed rerouting. There being no intention to break continuity of movement, packing company's failure to refuse shipments or hold them pending settlement of conflict between rate and route specified in original bills of lading, resulted in misrouting. Reparation awarded against all carriers for overcharges and against packet company for misrouting. Florence Chamber of Commerce v. N. O. & N. E., 118 I. C. C. 228.

(b) Complainant alleged that a carload of shelled peanuts shipped by it from Samson, Ala., on March 10, 1924, to Camden, N. J., was misrouted. Shipment was tendered to the C. of Ga., on a bill of lading showing "C. of Ga.-S. A. L.-P. & N." and moved over the initial carrier to Athens, Ga., S. A. L. to Richmond, Va., R. F. & P. to Potomac Yard, Va., and the Pennsylvania beyond. No rate was inserted in the bill of lading. Complainant had contracted to sell the peanuts to the consignee for $2737.50 plus freight charges over the rail and water route, the peanuts to be delivered by the P. & N. Steamship Co. boat line. Upon arrival of the shipment at Camden, consignee refused to accept it and, after $143 demurrage had accrued, the

Pennsylvania sold it at auction for $2607.97, deducted from that sum the demurrage charges and $237, the latter representing freight charges at the rate of 79c and a weight of 30,000 pounds applicable over the route of movement and turned over the balance, $2227.97 to complainant. The tariff publishing the rates from Samson at the time of movement provided for participation of the boat line only in rates to Philadelphia. The list of participating carriers showed that "P. & N." meant the Piedmont Northern while "P. & N. S." meant the boat line. As the boat line was not a party to rates to Camden and the tariff showed that "P. & N." was the abbreviation for the Piedmont, which carrier formed a part of a workable route in connection with the other carriers named, it can not be fairly said that the routing specified put defendants on notice that a rail and water route was desired. There was therefore no obligation on their part to use such a route and the refund made on account of their failure to do so was improper. HELD: Shipment was misrouted in not being forwarded in connection with the Piedmont but that no damage resulted therefrom the complaint will be dismissed. South Alabama Grocery Co. v. C. of Ga. Ry., 129 I. C. C. 327.

(c) It is well settled that if a carrier desires his shipment to move over a rail and water route which is cheaper than the all rail route he must specify such routing. South Alabama Grocery Co. v. C. of Ga. Ry., 129 I. C. C. 327, 328.

§7. Shipper's Instructions.

See Bills of Lading §10; Through Routes and Joint Rates VI.

(a) Shipment tendered Southern Ry. at Boonville, Ind., bill of lading specifying Big Four delivery, Elkhart, Ind. Upon arrival reconsignment to South Bend ordered, shipment moving thereto via N. Y. C. Reconsignment rules not providing for reconsignment at through rate via route of movement, the combination to and from Elkhart was charged. Complainant instanced fact that Big Four is part of N. Y. C. system and referred to lower through rates from Boonville to South Bend over five different routes with Southern as initial and N. Y. C. as terminal lines; also to lower rates from Boonville to Elkhart and from Illinois points to South Bend and La Porte over various routes for comparable distances. FOUND: Since shipment moved from Boonville to Elkhart over lowest available route carriers can not be held for misrouting because complainant was unable to effect reconsignment, of which carriers had no notice prior to order therefor, at through rate available over other routes. Nor does record show public need for establishment of another route from Boonville to Elkhart. Combination assessed found not unreasonable. Russell v. N. Y. C., 109 I. C. C. 193.

(b) Carrier disregarded routing instructions and forwarded shipments over a route taking a rate lower than that specified in bill of lading: HELD: Shipments were misrouted, but no damage shown. Lynchburg Traffic Bureau v. E. R. R., 112 I. C. C. 59.

(c) Shipments moved in accordance with routing instructions furnished by shipper, and joint rate assessed. Contemporaneously a lower combination rate applied via another route. HELD: As shipments moved in accordance with instructions, no misrouting resulted. Baker & Holmes Co. v. I. C., 112 I. C. C. 407.

(d) Shipments moved in accordance with routing instructions furnished by shipper, and joint rate assessed. Contemporaneously a lower combination rate applied via another route. HELD: As shipments moved in accordance with instructions, no misrouting resulted and no presumption of unreasonableness attaches to a joint rate over a route of movement because a lower combination was and is in effect over another route. See 24 I. C. C. 626. Nor does fact that lower combination applies over another route constitute a fourth-section violation. Baker & Holmes Co. v. I. C., 112 I. C. C. 407.

(e) Bill of lading originally contained rail-and-water routing instructions but before shipment left point of origin consignor telephoned agent of initial line to change routing to "all rail." Contention that agent was not authorized to ship all-rail and that misrouting resulted not sustained as record warrants conclusion that such instructions were received, and shipment moved over cheapest reasonable all-rail route. Armstrong Cork Co. v. S. A. & A. P., 113 I. C. C. 269.

(f) Lumber from Grayburg, Tex., consigned to East St. Louis, Ill., was routed by consignor over the T. & N. O. and Frisco. While enroute initial car-

rier changed instructions to show C. & E. I. delivery. Shipment arrived at St. Louis on the Frisco's rails and arrival notice mailed complainant was returned with notation "car billed to East St. Louis; delivered accordingly; this is not accepted as notice." Desired delivery was then effected and shipment held in hold yards of C. & E. I. in East St. Louis. Shipper then requested reconsignment to a point situated in St. Louis on the Wabash; line haul, switching demurrage, and reconsignment charges being collected for entire service performed: HELD: The Frisco's rails not reaching East St. Louis the rate charged applied thereto over that line only on shipments delivered by it to certain other carriers at that place, including the C. & E. I. Shipments therefore were not misrouted but were overcharged to extent of charges collected for switching from St. Louis to the C. & E. I. at East St. Louis. Refund of overcharges directed. Milne Lbr. Co. v. St. L.-S. F., 113 I. C. C. 369.

(g) Complainant attacked rate of 32.5c charged on seven cars of staves shipped between October 28 and November 9, 1921, from Blytheville, Ark., originally destined to Jackson, Miss., and reconsigned in transit to Gulfport, Miss., as inapplicable and unreasonable. Blytheville is served by four rail carriers of which the Frisco and Jonesboro need be considered. Shipments were tendered the Jonesboro at Blytheville on bills of lading showing Jackson as the destination and routing instructions as follows: J. L. C. & E.-Frisco-I. C. at Memphis. Contrary to these routing instructions the shipments moved over the Jonesboro to Nettleton, Ark., thence M. P., to Memphis, Tenn. From Memphis movement was over I. C., and while on the lines of that carrier the shipments were reconsigned to Gulfport where delivery was taken and charged 25.5c. On October 29, 1924, defendants instituted court action for recovery of the difference between that rate and 32.5c. The notation J. L. C. & E. in the routing instructions on the bill of lading indicated clearly that a line haul over the Jonesboro was desired and that carrier was under no obligation to deliver the shipments to the Frisco at Blytheville. If the shipper desired the shipments handled in that manner it should have so specified in the routing instructions. Rate of 32.5c was composed of 13.5c to Memphis and 19c beyond. Initial carrier was guilty of misrouting in delivering the shipments to the M. P., at Nettleton instead of to the Frisco at Wilson or Luxora but complainant suffered no damage as the result of the misrouting for the reason that the rate of 32.5c applicable over the route traversed was also applicable over the route by which the shipments should have moved. HELD, rate attacked applicable, shipment misrouted but no damage, complaint dismissed. Hollingshead Co. v. J. L. C. & E. Ry., 115 I. C. C. 19.

(hi) Complainant alleged it was subjected to payment of reconsignment and switching charges by reason of the failure of defendants to route four cars of coal, shipped February 2, 1923, from Gascola, Pa., to Montreal, Can., in accordance with routing instructions, which charges were and are unjust and unreasonable. Shipments were routed Union R. R., B. & L. E., N. Y. C. and G. T. Union R. R. is a switching line whose charges are absorbed by the B. & L. E. The point of connection is at North Bessemer, Pa., where the latter road issues bills of lading. Over the route specified a combination on Huntington, Que., of $4.74 per long ton applied. A joint rate of $4.74 per long ton also was published by the B. & L. E. over another route with delivery by the C. P. Unaware of the $4.74 combination rate, the agent of the B. & L. E. asked the special agent of the Union to secure permission from the shipper to change the routing and substitute in the bill of lading the route over which the joint rate applied. The latter agent testifies he was so authorized. The changed routing was inserted in the waybilling and owing to the fact that the consignee was located on the G. T., it was necessary for the C. P. to reconsign the shipments. Without deciding whether under the circumstances of this case the changed routing did amount to a diversion or reconsignment under the rules of the tariff, it is sufficient to point out that the shipper originally specified in writing the desired routing, and that it is disputed whether any change therein was afterwards authorized by it. Defendants have failed to rebut the validity of the original instructions by producing any written evidence to contradict their terms. This could have been procured at any time after the shipments were forwarded and in its absence defendant must be held liable for added expense incurred by the change in routing. HELD, shipments misrouted by B.

& L. E., reparation awarded. Bixler Coal & Coke Co. v. B. & L. E. R., 115 I. C. C. 248.

(j) Complainant alleged rate of $3.25 per ton charged on one car of coal in March, 1924, from Hazard, Ky., to Valparaiso, Ind., as unjust, unreasonable and unduly prejudicial to extent it exceeded $3.09, and alleged shipment was misrouted. Shipment moved over L. & N. to Cincinnati, Big Four to Granger, Ind., and G. T. beyond, 521 miles. The routing specified in the bill of lading was "G. T. route to protect lowest through freight rate." It also carried the notation "loaded to full visible capacity." Complainant's plant at Valparaiso is served by the G. T. and cars arriving at Valparaiso over other lines have to be switched by the G. T. Contemporaneously there was in effect a rate of $3.09 per ton over shorter routes in connection with the Pennsylvania and other lines. The meaning of the routing specified in the bill of lading was clear to complainants, having the location of their particular plant in mind, but the agent at point of origin could not be expected to know the location of the original consignees or of complainant's plant at destination. Defendant's agents construed the initials "G. T." as requiring a line haul movement over the G. T. HELD, rate attacked not unreasonable or unduly prejudicial and shipment not misrouted, complaint dismissed. Coovert & Young v. L. & N. R. R., 115 I. C. C. 349.

(k) When the initials of a particular road appear in the space provided on the bill of lading for the designation of a route this must be regarded as an expression of the consignor's desire that the line specified should participate in the movement as a line haul carrier. Coovert & Young v. L. & N. R. R., 115 I. C. C. 349, 350.

(l) Complainant alleged due to misrouting unreasonable charges were exacted by defendants on five cars of potatoes shipped between Nov. 30 and Dec. 13, 1920, from Grace, Ida., to Los Angeles, Calif. They moved O. S. L. to Ogden, Utah, thence S. P. to destination, charged combination of $1.135 composed of 74c to San Francisco and 39.5c beyond. A through rate of 65.5c was applicable over the O. S. L. to Salt Lake City, Utah, and L. A. & S. L. beyond. Prior to the movement of these shipments, the agent of the O. S. L. advised complainant that the 65.5c rate was applicable on potatoes, in carloads, but nothing was said as to routing. Complainant advised the agent that he intended to ship five or six cars to Los Angeles. The potatoes were hauled to defendant's station at Grace and loaded into the cars by a laborer employed by complainant for that purpose. The bills of lading under which the cars moved were made out by defendant's agent and showed routing via Ogden and S. P. Complainant's employe who delivered the potatoes signed complainant's name to the bills of lading but did not know that they purported to route the shipments. They were not explained to him by the carrier's agent and he assumed that he was signing only receipts showing that the potatoes had been delivered to the carrier. On previous occasions this employe had signed complainant's name to bills of lading but they were freely explained to him. Defendant's agent who received and billed the potatoes assumed that the rate over the route of movement was 65.5c. It is admitted that the routing here shown was the result of an error on the part of the agent of the initial carrier and the evidence of record indicates that it was complainant's desire and the agent's intention to send the shipments over the route taking the 65.5c rate. The routing shown in the bills of lading, rather than the signing and acceptance thereof, was the proximate cause of the damage. HELD: Shipments misrouted, reparation awarded on 65.5c rate. Hubbard v. O. S. L. R. R., 118 I. C. C. 202.

(m) The notation by the consignor in the blank intended for the naming of the route on the bill of lading must be regarded as an expression of the consignor's intention that the road so shown was to participate in a line haul. Connersville Lumber Co. v. L. E. & W. Ry., 118 I. C. C. 499, 500.

(n) Failure of initial carrier to follow routing instructions given by shipper on staves forwarded from Blytheville, Ark., to Jackson, Miss., and reconsigned to Gulfport, Miss., found to have resulted in misrouting, but no damages found to have been suffered as a result thereof since rate applicable over the routes traversed was also applicable over route by which shipments should have moved. Hollingshead Co. v. J. L. C. & E., 115 I. C. C. 19.

(o) It is duty of carriers to strictly observe routing instructions of shippers and carriers are liable for any damages arising from their failure so to do. Hollingshead Co. v. J., L. C. & E., 115 I. C. C. 19, 20.

(p) Shipments of staves from Blytheville, Ark., to Gulfport, Miss., were routed "J. L. C. & E.-Frisco-Ill. Cent. at Memphis." A rate lower than that assessed applied from Blytheville on the Frisco to Gulfport, but tariffs provided that in order to be entitled thereto shipments tendered to the J. L. C. & E. must be turned over by that line to the Frisco at Blytheville. In other words, under routing governing lower rate the J. L. C. & E. was entitled to a switch movement only. Upon contention that under routing instructions given it was initial carrier's duty to turn these shipments over to the Frisco at Blytheville, HELD: Notation "JLC & E." in routing instructions indicated clearly that a line haul by that road was desired and that carrier was under no obligation to deliver shipment to the Frisco at Blytheville. If shipper desired shipments handled in manner contended for it should have so specified in routing instructions. See also 51 I. C. C. 183. Hollingshead Co. v. J. L. C. & E., 115 I. C. C. 19, 20.

(q) On shipments originating at a nonagency station and moving to a connection where bills of lading were executed, complete routing instructions were inserted on shipping cards or scale tickets. Agent at forwarding point, presumably with complainant's permission secured by telephone, substituted a different route in bills of lading. Consignee was not located on delivering line named in the changed routing and upon arrival of shipments at destination it became necessary to reconsign and switch them to consignee's plant which was situated on the delivering road specified in original instructions. HELD: Carriers having failed to rebut the validity of original written instructions by producing written evidence to contradict their terms, which could have been procurred at any time after shipments were forwarded, misrouting resulted and carrier whose agent changed routing instructions must be held liable for added expense of reconsignment and switching incurred by change in routing. Reparation awarded. Bixler Coal & Coke Co. v. B. & L. E., 115 I. C. C. 248.

(r) Shipper, being unacquainted with rate matters, consulted agents of carriers, was advised to insert routings shown in bills of lading, and shipments so moved. A lower rate contemporaneously applied via other routes. Upon contention that it was carriers' duty to inform their agents of these lower rates, and that their failure to do so resulted in misrouting, HELD: Shipper's lack of knowledge does not relieve it from responsibility of having routed shipments. A shipper is charged with knowledge of lawful rate, and misquotation or misinformation by carriers can not alter specific wording of tariffs. Moreover, carriers are required to strictly observe shipper's routing instructions and assess charges on basis of rates applicable over routes specified. Shipments, therefore, were not misrouted. Underwriters Salvage Co. v. L. & N., 115 I. C. C. 585.

(s) Fifth-class rate charged on a sporadic shipment of fire-damaged sugar specifically routed by shipper from Jacksonville, Fla., to New Orleans, La., found not unreasonable as compared with lower rate contemporaneously in effect over other routes. No evidence was introduced to show that commodity shipped was improperly classified, and fifth-class rating under which it moved should not be condemned merely because commodity rates applied over other routes. Underwriters Salvage Co. v. L. & N., 115 I. C. C. 585.

(t) Complainant sought reparation for loss and damage sustained due to deterioration, by reason of alleged failure of carrier to observe routing instructions on shipment of sweet peppers from Fort Myers, Fla., to Boston, reconsigned to Chicago. HELD: Evidence establishes that shipment moved in accordance with original instructions given, that no additional routing instructions were furnished at time reconsignment was requested and that it was handled through to ultimate destination in an expeditious manner. No misrouting can therefore be attributed to carriers, and claim for loss and damage not resulting therefrom presents a matter over which commission has no jurisdiction. Kingman v. A. C. L., 118 I. C. C. 31.

(u) Rates on coal from Herrin, Ill., to Bannister, Ashley, North Star, and Ithaca, Mich., found not unreasonable. Shipments moved according to shipper's routing instructions. Contemporaneous-

ly, lower rates existed via other routes and two years subsequent to movement similar rates were established over route of movement, but these rates were later withdrawn because found unremunerative. While complainant admitted error in routing, it contended that rates assessed under that routing were unreasonable. However, fact that lower rates exist over other routes is insufficient to establish unreasonableness of rates charged. See 64 I. C. C. 78. Crerar Clinch Coal Co. v. A. A. R. R., 118 I. C. C. 171.

(v) Section 15 of the act gives shippers right to designate in writing the route over which they wish their shipments to travel and, generally speaking, it is duty of carrier to transport shipments over route so designated. Hubbard v. O. S. L., 118 I. C. C. 202, 203.

(w) Rates on bituminous coal from Plymouth and Shrewsbury, W. Va., to Connersville and Newcastle, Ind., moving via route specified by shipper, found not unreasonable as compared with lower rates contemporaneously in effect over other routes. While lower rate contended for applied over all routes except route of movement, the higher rates apply over latter due to fact that they are circuitous; the higher rates therefore apply to intermediate points in a higher rated territory, and rates to such intermediate territory were found not unreasonable in 96 I. C. C. 178. Connersville Lbr. Co. v. L. E. & W., 118 I. C. C. 499.

(x) Notation by consignor in blank space intended for naming of route on a bill of lading of a specific carrier without specifying rate or junction point must be regarded as an expression of consignor's intention that the road so shown was to participate in a line haul. See also 19 I. C. C. 68, and other cited cases. Connersville Lbr. Co. v. L. E. & W., 118 I. C. C. 499, 500.

(y) Bill of lading tendered by shipper specified route and also named a rate which was applicable in connection with originating carrier but inconsistent with routing specified. Lower rates applied over routes other than route of movement. HELD, originating carrier having failed to ascertain from shipper whether routing should be observed or whether shipments should be forwarded over route taking rate named, shipments were accordingly misrouted. Reparation awarded. Altitude Petroleum Co. v. F. W. & D. C., 118 I. C. C. 572, 575, 576.

(z) Complainant alleged charges collected on four cars of building stone shipped between Aug. 18, and Sept. 2, 1922 from Bedford, Ind., to Oklahoma City, Okla., as unlawful and inapplicable. Two of the shipments were originally routed by the shipper C., M. & St. P., Big Four, Frisco; third was routed the same with the additional words, Frisco delivery and the fourth routed C., M. & St. P., Big Four. When the cars reached St. Louis, they were held in the terminal yards of the Frisco, due to a congestion of freight at that point. Complainant desired the cars to go forward as quickly as possible. From information it received it found that the cars could be forwarded over a route other than that named in the bills of lading, namely, over the Cotton Belt, to Brinkley, Ark., and thence Rock Island. Complainant requested the Frisco to divert the four cars to that route. Joint through rate of 42.5 cents was applicable via the routes shown in the bills of lading. Complainant's letter to the Frisco requested a rerouting under the provisions of service order No. 22. The carrier accepted the request without objection. Applicable rate 42.5 cents. HELD, reparation awarded on basis of 42.5 cents. Selden Breck Construction Co. v. C., M. & St. P. Ry., 120 I. C. C. 134.

(aa) It was the duty of the carrier to forward the shipment over the route designated by the shipper. Lewis Chitty Consolidated Co. v. B. & O. R. R., 120 I. C. C. 384, 385.

(bb) Complainant attacked combination charged on sand and gravel, carloads, shipped since March 1, 1924 from points near Beloit, Wis., to Beach and Waukegan, Ill., and Kenosha, Wis., as unreasonable. Shipments originated on the C., M. & St. P., and moved over that line to Rondout, Ill., were there switched to the E. J. & E., to tracks of the C., N. S. & M., and moved interstate over that line to destinations. Full combination of local rates to and from Rondout plus an interchange switching charge of $2.70 were assessed. Subsequently charges were refunded to basis of the combination rate subject to the combination rule plus the switching charge. Reparation sought is the amount of the latter charge of $2.70 per car. Routing specified by complainant provided via Interstate Sand & Gravel Company pit, Libertyville, Ill., care of North Shore Line or via the Liberty Lake

Gravel Company pit, Libertyville, Ill., care the North Shore Line. Instead of moving in this manner the shipments moved through Libertyville and were interchanged at Rondout, 3 miles farther east. Although conceding the interchanging might have been physically possible at Libertyville, defendants testify that various things make it impracticable. From the evidence it appears to be undisputed that the Milwaukee had only a limited use of the tracks at the Libertyville gravel pit and that defendant was refused the enlarged rights essential to its use as a point of interchange with the North Shore for shipments of other persons. The tracks at the Libertyville gravel pits were not shown in the tariff as a point of interchange between defendants. HELD, shipments not misrouted, charges attacked not unreasonable, complaint dismissed. Racine Crushed Stone Co. v. C., M. & St. P. Ry., 120 I. C. C. 742.

(cc) Shipment specifically routed rail-and-water was refused by water carrier because of damaged condition. Complainant, upon learning of refusal to transport, wired carrier, "if you can not cooper so acceptable * * * ship all rail * * * with understanding claim filed difference rate and other charges." Carrier, thereupon, diverted shipment to destination via all-rail route. HELD: It was carrier's duty to forward over route designated by shipper. Necessity for change in routing resulted from damaged condition, and telegram sent by complainant was intended merely to mitigate damages and did not order diversion or relieve carrier of duty of forwarding as routed. Shipment was therefore misrouted. Reparation awarded. Lewis-Chitty Consolidated v. B. & O., 120 I. C. C. 384.

(dd) Shipments of soap and cleaning compounds from Manchester, Conn., to Cincinnati, Ohio, and St. Louis, Mo., were routed by complainant "O. Dom, care of C. & O. (or N. W.)" and connecting lines. Rates shown in bills of lading were not applicable over routes named and some of shipments moved before complainant was notified of conflict between route and rate. Charges were collected at applicable combination rates which were higher than rates shown in bills of lading, HELD: St. Louis and Cincinnati can not be said to be "distant points," or the Old Dominion, Chesapeake & Ohio or Norfolk & Western "distant roads" within meaning of Conf. Ruling 214(g), and shipments tendered before complainant was notified of conflict between route and rates were, therefore, misrouted. See Conf. Ruling 474(c); 48 I. C . C. 423; 91 I. C. C. 723. Reparation awarded. Orford Soap Co. v. N. Y., N. H. & H., 122 I. C. C. 71.

(ee) Shipments moved over route designated by shipper. A rate lower than that applicable over route of movement applied via various routes. Upon contention that because, previous to movement, carrier quoted the lower rate but failed to advise complainant that it was restricted so as not to apply over route specified, it was unreasonable to charge the higher rate, HELD: Shippers and carriers alike are charged with knowledge of lawfully published rates and tariff provisions. Misquotations of a rate by the agent or employee of a carrier is not a sufficient basis for an award of reparation, nor does existence of a lower rate over a competing route, of itself, establish unreasonableness of rate over route of movement. Newsome Feed & Grain Co. v. P. & L. E., 122 I. C. C. 329.

(ff) Combination rates assessed on shipments of structural iron and steel, from St. Louis, Mo., Chicago, Ill., and Bethlehem, Pa., routed by shipper for fabrication in transit at Muskogee, Okla., and reforwarded to Casper, Illco, and Salt Creek, Wyo., found applicable and not unreasonable. While contemporaneously lower joint rates were in effect to Great Falls, Mont., and Spokane, Wash., they were restricted so as not to apply to destinations named, and lower joint rates in effect to Wyoming points were not applicable via Muskogee. Complainants routed shipments over extremely circuitous routes involving an out-of-line haul of at least 800 miles. Had they been forwarded over direct routes, lower rates could have been secured and wasteful transportation avoided. Tulsa Rig, Reel & Mfg. Co. v. M. K. T. R. R., 122 I. C. C. 405.

(gg) On watermelons moving from Daisy and Hagan, Ga., to Jacksonville, Fla., bills of lading called for Atlantic Coast Line delivery. Originating carrier disregarded routing instructions and carried shipment through to destination and tendered delivery on its own rails. HELD: That failure to effect delivery specified in the bills of lading resulted in misrouting. Reparation awarded. G. W. Harp v. S. A. L., 122 I. C. C. 585.

(hh) Under Interstate Commerce Commission ruling, No. 474, carrier may not recover undercharge, where shipper had designated route and rate, and shipment had been made over route charging higher rate than that designated. St. Louis-San Francisco Ry. Co. v. Republic Box Co., 12 Fed. (2d) 441.

(ii) Complainant attacked combination rate charged on one car of coal from Annabelle, W. Va., to Goshen, and reconsigned to Benton Harbor, Ind., as unreasonable, and that the restriction in routing in connection with the Big Four is unreasonable. Shipment was tendered Nov. 25, 1924, to the B. & O., routed "B. & O.-N. Y. C.", and moved over B. & O. to Sandusky, O., thence N. Y. C. to Goshen and under complainants reconsignment order, to Elkhart, Ind., and Big Four beyond, distance 512.5 miles. Sandusky is the usual interchange point between the B. & O. and N. Y. C. Before diverting the car to Benton Harbor complainant was informed by the agent of the N. Y. C. at Goshen that a joint rate of $3.25 would apply. That rate did not apply over the route of movement, applicable combination being $2.90 to Elkhart and $1.32 beyond. The rate sought applies over three different routes, and if shipment had been routed over one of these routes, it would have been reconsigned to Goshen at the joint rate. The agent at point of origin was not informed that complainant's shipment was to be reconsigned, or as to its destination. Defendants complied with the shipper's routing instructions and can not be found to have misrouted the shipment. Earnings under the rate charged do not indicate that it exceeded a maximum reasonable basis, and the failure of complainant to avail himself of a lower rate applicable over other routes does not establish the unreasonableness of the rate over the route of movement, or the necessity for additional routes in the future. HELD: Rate attacked not unreasonable, routing restriction not unreasonable, complaint dismissed. Sellers v. C., C., C. & St. L. Ry., 128 I. C. C. 263.

(jj) On coal routed by shipper from Annabelle, W. Va., to Goshen, Ind., complainant was quoted a joint rate. Shipment was diverted en route to Benton Harbor, Mich., and since joint rate did not apply via that route, higher combination rate was assessed. Upon contention that as lower joint rate applies over other routes from points in the Annabelle group to group in which Benton Harbor is included, it should also apply over route of movement. HELD: Agent at point of origin was not advised that shipment was to be reconsigned, or as to final destination, and since it moved as routed, it was not misrouted. Moreover, earnings under rate charged do not indicate that it exceeded a maximum reasonable basis and failure to take advantage of lower rate over restricted routes does not establish unreasonableness of rate charged or necessity for additional routes. Sellers v. C., C., C. & St. L., 128 I. C. C. 263.

(kk) If a shipper desires his shipment to move over a rail-and-water route, which is cheaper than the all rail route, he must specify such routing. See 68 I. C. C. 485; 83 I. C. C. 483. South Alabama Grocery Co. v. C. of G., 129 I. C. C. 327, 328.

§ 7½a. What Routes Open.

(a) On shipments destined to Atlanta, Ga., complainant with expectation of securing at Atlanta, as an intermediate point, the application of a rate published to Westwego Elevators, La., specified routing beyond East St. Louis gateway via Illinois Cent. R. R. Based upon fact that the Illinois Central does not reach Westwego Elevators with its own rails, complainant contended that routing instructions in tariff were incomplete and permitted any routing not specifically prohibited over lines parties thereto, provided the Illinois Central first be given a road haul. HELD: Routes to New Orleans, where Westwego Elevators are located, through East St. Louis, as described in tariff are complete, and since tariff also provided for absorption by Illinois Central of delivering line's switching charges the routings to Westwego Elevators specified in tariff were not made incomplete by failure to name in connection therewith the switching line between that point and New Orleans. Hogan Bros. v. C., B. & Q. R. R., 113 I. C. C. 223.

(b) Complainant took advantage of unrestricted combination rules published in local tariffs of intermediate short lines by routing shipments over unusual routes. Shipments could have been billed without intervention of intermediate short lines. Tariffs of originating and delivering carriers specifically pro-

hibited use of such rule and computation of rates by its use would require the intermediate roads to haul traffic for less than nothing. FOUND: Holding out principle laid down in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, is not controlling. In no case applying that principle was a carrier required to protect a rate less than nothing or surrender all its earnings to connections; nor does the act permit or require transportation without any charge or at less than no charge. When, as here, such a result is sought to be accomplished it is to be condemned and the commission may intervene to prevent unwarranted dissipation of carrier revenues regardless of where the responsibility lies. Combination rules here produce a result unlawful per se and are of no effect. Standard Oil Co. v. A., T. & S. F., 113 I. C. C. 597.

(c) The commission has frequently found that where tariffs are silent as to routing the rates apply over all reasonably available routes of participating carriers. Miles Medical Co. v. B. & O. R. R., 118 I. C. C. 33, 35.

(d) In original report, 83 I. C. C. 417, cement from Richard City, Tenn., to certain Forida points was found misrouted but reparation was denied because rates charged were those which would have applied except for misrouting. Governing tariff to Jacksonville provided for application of single increases only to separately established commodity rates, and as class rates were charged beyond, increase under General Order No. 28 of director general was applied to both factors. However, Florida basing book, which governed factor beyond Jacksonville, listed cement as taking a specific increase and even though class rates were applied for movement south of that point, they were nevertheless specifically included within the combination rule and should have taken but a single increase. Reparation awarded in amount that charges paid exceeded those which would have applied by use of the rule. Dixie Portland Cement Co. v. Director General, 115 I. C. C. 111.

(e) Shipments of vegetable hampers were unrouted by shipper and moved from Wauchula, Fla., located on the Atlantic Coast Line to Meggetts and Nosbig, S. C. At time of shipment Seaboard Air Line tariff carried a combination rate lower than that charged via route of movement, subject to notation "applicable only via Seaboard Air Line as initial carrier and only on traffic originating at points south and west of Jacksonville." Upon contention that notation included points on all lines in Florida south and west of Jacksonville or on traffic turned over to Seaboard Air Line at that point, HELD: Given a reasonable construction such notation restricted the lower rate to traffic originating only on the S. A. L. south and west of Jacksonville and Wauchula not being located on that line the shipments were not misrouted. Wauchula Development Co. v. A. C. L., 115 I. C. C. 207.

(f) Refusal of carriers to accept and transport intrastate shipments tendered for transportation via a duly published unrestricted interstate route and compelling shipper to change routing in bills of lading to higher intrastate route found to viclate section 15 (8) of the act. Reparation awarded. Standard Oil Co. v. A. C. L. R. R., 115 I. C. C. 239.

(g) Shipments of refuse sand from Detroit, Mich., to Indianapolis, Ind., moved as routed by shipper. Applicable tariffs carried so-called intermediate clause, such clause via one of the routes being unrestricted in its application, whereas via the other route the clause contained phrase "on the same line." HELD: That on shipments moving via the unrestricted route the clause was applicable and lower rates provided thereunder applied. As to shipments moving over the other route the words "on the same line" in intermediate rule required that intermediate point be on line of same carrier as the more distant point to which a rate is published and since rails of delivering line did not reach the farther distant point the intermediate rule did not apply on shipments moving thereover. American Radiator Co. v. D. & T. S. L. R. R., 115 I. C. C. 529.

(h) Shipments of chairs from Winston-Salem, N. C., and blankets from Nashua, N. H., to Casper, Wyo., were tendered unrouted, charges being assessed based on Mississippi River combinations. Lower joint commodity rates contemporaneously applied to San Francisco, the tariff carrying an intermediate clause to effect that when no specific rates are provided for stations located directly intermediate to and on same line or route with stations to which rates are specifically provided, the applicable

rate is that to the more distant point. HELD: Intermediate clause not being restricted as to routing so as to preclude movement via Casper and not requiring that unnamed destination point be located between two named points, the lower rates under the rule were applicable to Casper over route of movement. Reparation awarded. Chamberlin Furniture Co. v. Director General, 115 I. C. C. 575.

(i) Tariff carried intermediate clause providing for application of rates from intermediate stations. Upon contention of carrier that over customary, natural, and logical route a certain point was not intermediate to stations from which rates were published and was therefore not entitled to published rates, HELD: Where tariffs are silent as to routing, the rates apply over all reasonably available routes of participating carriers, and on a haul approximating 900 miles it can not be said that an additional haul of 29 miles would constitute a route not reasonably available. Miles Medical Co. v. B. & O., 118 I. C. C. 33, 35.

(j) Complainant attacked charges assessed on a car of bituminous egg coal shipped from Vanwood, W. Va., to Elkhart and reconsigned to New Paris, Ind., as illegal. Shipment was tendered to the C. & O., consigned to Elkhart, with bill of lading routing C. & O. and N. Y .C. Shipment moved C. & O. to Cincinnati thence Big Four to Toledo, thence N. Y. C. to Elkhart. Upon arrival at Elkhart it was reconsigned to New Paris via Big Four charged rate of $5.68 plus $6.30 reconsigning charge. Shipment moved May 1, 1923. There was in effect a rate of $3.22 on coal from Vanwood to New Paris. The tariff publishing the rate of $3.22 from Vanwood to Elkhart and New Paris does not restrict the routing, and defendants are participating carriers therein. HELD, rate applicable $3.22, plus reconsignment charge of $2.70, overcharge to be refunded, complaint dismissed. Russell v. C., C., C. & St. L. Ry., 120 I. C. C. 243.

(k) Complainant attacked commodity rates charged on wheat, corn, oats and rye, carloads, between May 3 and Sept. 10, 1922 from North Dakota, South Dakota, and Minnesota, originally billed to Minneapolis, Minn., and reconsigned to Superior, Wis., as inapplicable. Shipments moved over G. N. Complainant paid through rates to Minneapolis and 6 cents on corn, oats and rye and 6.5 cents on wheat, beyond. The direct route to Superior from the several points of origin, except Litchfield and Rogers, Minn., is via Willmar and St. Cloud, Minn. The route traversed via Minneapolis is longer. The G. N. offers to refund overcharges on shipments from Litchfield and Rogers. The tariffs of the G. N. provided through commodity rates from points of origin to Superior and to Minneapolis. The through rates were higher to Superior than to Minneapolis, except that from Howes, N. D., the rates to both destinations were equal. Complainant contended that inasmuch as the G. N. published no tariff rule restricting routing to Superior it was authorized to ship over the long route at the through rate. A specific tariff rule restricting the rate to the short route was established on Sept. 25, 1923 after these shipments moved. The route from points of origin herein through Minneapolis to Superior was an open route, and in the absence of restricted routing it must be found that the through rates to Duluth applied over the route traversed. No. 16466 and sub. Nos. 1 to 5. From the points of origin here considered in Minnesota, North Dakota, and Montana the N. P., G. N., and Soo Line, each reaches Duluth, Minn., or Superior, Wis., or both, by a route through Minneapolis which is longer than its direct route. The tariff of each of these carriers naming rates on wheat to Duluth and Superior contains no routing restrictions. Each carrier publishes, from certain of these origin points, the same rate to Minneapolis as to Duluth and Superior. These complainants billed carload shipments of wheat to Minneapolis, surrendered inbound billing, meeting all tariff requirements in that respect, and reforwarded the cars to Duluth or Superior. Charged rate to Minneapolis plus 6.5 cents beyond. The tariff of the Soo Line contained a provision substantially similar to that of the N. P. The absence of routing restrictions and of any addition to that rate provided by tariff, such as the N. P. provided for in its rule 33, made the Duluth rate applicable over any open route designated by the shipper. HELD, reparation awarded. Delmar Co. v. G. N. Ry., 120 I. C. C. 530.

(l) On coal originally billed from Vanwood, W. Va., to Elkhart, Ind., shipper specified C. & O. and N. Y. C. rout-

ing. Upon arrival at originally billed destination it was reconsigned, in accordance with instructions previously given, to New Paris, Ind. Through rate applicable via route of movement was assessed HELD: Since a lower through rate applied between origin and ultimate destination via a more direct route, such lower rate, being unrestricted as to routing, was applicable via route of movement. Refund of overcharges directed. Russell v. C., C., C. & St. L., 120 I. C. C. 243.

(m) On gravel from Montgomery, Ala., to Milton, Fla., the exclusively used route of carriers is through Flomaton, Ala., and Pensacola, Fla. Over a slightly longer route through Duvall, Ala., Milton is intermediate to Pensacola. HELD: Applicable tariff, being subject to rule 77 of Tariff Circular 18-A and unrestricted as to routing, the Pensacola rate applied to Milton over either route. Reparation awarded. Lawrence Construction Co. v. L. & N., 120 I. C. C. 316.

(n) Shipments of wheat, unrouted by shipper and forwarded by carrier from points west of Kansas City, Mo., milled in transit at Marshall, Mo., and product, flour, back hauled through Kansas City for movement to Oklahoma City, Okla., found misrouted. A lower rate contemporaneously applied via St. Louis, Mo., and tariff naming such lower rate did not restrict its application via junction points along the shortest system route. Under such circumstances commission has ordinarily found that unrestricted rates apply via any junction point. It was therefore the duty of carrier to forward such unrouted shipments over the lower-rated route. Victor Milling Co. v. M. P., 120 I. C. C. 335.

(o) Charges on wheat from points west of Kansas City, Mo., milled in transit at Marshall, Mo., and the product, flour, forwarded to Oklahoma City, Okla., found inapplicable. Here, the movement involved a back haul through Kansas City, and charges assessed were based upon those published for out-of-direct line routes. Tariff provision, however, related solely to charges where out-of-line haul exceeded 150 miles, such charges not to be based on the round trip but only for distance from point of origin to transit point. Distances from origin points to Marshall being less than 150 miles, charges assessed were therefore inapplicable. Applicable charges found to be those in effect via an unrestricted route through St. Louis. Victor Milling Co. v. M. P., 120 I. C. C. 335.

(p) Where tariff names rates but does not restrict them via junction points along the shortest system route, under such circumstances commission has ordinarily found that such rate applies via any junction point. Victor Milling Co. v. M. P., 120 I. C. C. 335, 338.

(q) On grain moving from points in Montana, the Dakotas, and Minnesota, to Duluth, Minn., and Superior, Wis., via Minneapolis, Minn., charges were assessed on basis of through rates to Minneapolis, plus proportionals beyond. Lower local rates applied between origins and destinations by way of direct routes. HELD: That such lower rates, because unrestricted as to routing, were applicable also by way of the indirect route through Minneapolis, except where tariffs provided for an additional charge on shipments moving beyond that point. Reparation awarded. Delmar Co. v. G. N., 120 I. C. C. 530.

(r) Combination rate was assessed on shipment of lumber from Charleston, S. C., originally billed to Boston, Mass., and reconsigned to Armory, Mass. At time of movement an unrestricted lower joint rate applied from point of origin to final destination. HELD, If it was carrier's intention to restrict application of joint rate to any particular route and to likewise restrict reconsignment service in connection therewith, they should have done so in clear and unequivocal language. See 81 I. C. C. 495. There being nothing in tariff naming such lower joint rate from point of origin to final destination that would have precluded complainant from routing shipment through Boston if it had been billed to final destination in the first instance, such lower joint rate was applicable and shipment was overcharged. That there were no established divisions over route of movement is immaterial. See 59 I. C. C. 229. Reparation awarded. National-American Wholesale Lbr. Asso. v. A. C. L., 120 I. C. C. 665.

(s) Sand and gravel from Beloit, Wis., to Beach and Waukegan, Ill., and Kenosha, Wis., were routed via complainant's gravel pit, Libertyville, Ill., care of Chicago, North Shore & Milwaukee. Carrier moved shipments through Libertyville to Rondout, Ill., where they were interchanged with the North Shore, line-haul rates plus interchange switching charge being assessed. Complainant alleged misrouting, contending that switching charge would have been avoided had routing instructions been fol-

lowed. HELD: Originating carrier's use of the track at Libertyville was limited, that carrier having been refused its use as a common interchange point. To have allowed complainant free interchange switching at Libertyville while subjecting other shippers to switching charge at Rondout, would have given complainant an undue preference in violation of the act. Moreover, a route to be legal must be available to all shippers and this requirement can not be waived by private agreement between carrier and a particular shipper. Accordingly, shipments were not misrouted. Racine Crushed Stone Co. v. C., M. & St. P., 120 I. C. C. 742.

(t) Complainant attacked commodity rates charged on 64 cars of hay shipped between Jan. 1, 1923 and April 30, 1924 from Illinois to St. Louis, Mo., as unreasonable and in violation of section four. Commodity rates were not specifically provided from the points of origin and charges were assessed on a basis lower than class C, namely 17.5c from points in the western group and 15.5, 16.5 and 17.5c from the central group. At the time of movement commodity rates of 14.5c prior to Jan. 27, 1924 and 15.5c on and after that date were in effect from Cameron, Monmouth and Seehorn, Ill., to St. Louis. The origin groups in the western group are intermediate to Seehorn on traffic from Cameron and Monmouth. The tariff contains no routing restrictions and the route by way of Seehorn is not impracticable. Rate charged from the western group is inapplicable. The origin points in the central group are intermediate to St. Louis on traffic from Cameron and Monmouth. HELD, applicable rates from western group were those in effect from Cameron and Monmouth, rates charged from central group unreasonable to extent they exceeded rates from Cameron and Monmouth, reparation awarded. Toberman Mackey Co. v. C. B. & Q. R. R., 122 I. C. C. 299.

(u) On numerous occasions the Commission has found that if carriers desire to restrict the application of a joint rate to any particular route they should do so by clear and unequivocal language. Curtis Leather Co. v. P. R. R. R., 123 I. C. C. 1, 3.

(v) It is well settled that where no routing is provided in a tariff the rates therein will apply over all routes of the participating carriers. In construing doubtful or ambiguous tariffs the Commission has always resolved the doubt against the carriers publishing the tariffs. Finch Bros. v. C. St. P. M. & O. Ry., 123 I. C. C. 541, 542.

(w) No joint rates were in effect on lumber from Sulligent, Ala., to Wallins, Evarts, Baxter, Harlan, and Livingston, Ky., and combinations were accordingly assessed. Contemporaneously lower rates applied but were restricted in their application to specified routes. Upon contention that such lower rates were applicable to shipments have involved under an intermediate clause carried in the tariff, HELD, As intermediate rule was specifically restricted to apply via routes over which shipments did not move, they were not entitled to lower rates sought and those charged were applicable. Kentucky Lbr. Co. v. L. & N., 122 I. C. C. 119.

(x) Where no routing is provided in a tariff, rates therein apply over all routes of participating carriers. If carriers desire to restrict application of rates they have it in their power to do so by plain language. Finch Bros. v. C., St. P., M. & O., 123 I. C. C. 541, 542.

(y) The different routes via which tariff applies may be shown, together with appropriate reference to application of rates. When a tariff specifies routing the rates may not be applied via routes not specified. Russell Grain Co. v. A. G. S. R. R., 126 I. C. C. 405, 407.

(z) Complainant attacked rates charged on numerous carloads of tin cans shipped from Chicago, Ill., to North Prairie, Wis., from Nov. 28, 1922, to Nov. 19, 1924, as unreasonable and inapplicable. North Prairie is on the Madison southwest of Waukesha. Shipments were tendered unrouted and moved to destination through Milwaukee, Wis., and Waukesha a total distance of 115.7 miles, charged 25c. There was another available route from Chicago to North Prairie via Bardwell, Elkhorn, and Eagle, Wis., 114.8 miles, via which route North Prairie is directly intermediate to Waukesha, to which point a rate of 19.5c applied. The fact that, effective April 7, 1924, defendant restricted the application of the rates published in the governing tariff to the shortest route from point of origin to destination thus making the rate to North Prairie applicable only via the route through Bardwell and Elkhorn, clearly indicates that this route is not considered an impracticable

one, or one so uneconomical as to be not generally usable. And subsequently, on Nov. 20, 1924, the rate to North Prairie was reduced to 21.5c. HELD, from April 7 to Nov. 19, 1924, rate attacked unreasonable to extent it exceeded 21.5c, and prior to April 7, 1924 shipments were misrouted, reparation awarded. Nelson v. C. M. & St. P. Ry., 126 I. C. C. 713.

(aa) Shipments moved under joint rates. Complainant contended that as lower combination rates contemporaneously applied, shipments were misrouted HELD: Lower rate sought was based on an unusual combination and in Conf. Ruling 214(g), shippers were admonished to bear in mind that there is a limit beyond which agents could not reasonably be expected to have knowledge as to terminal deliveries, or local rates at distant points and on lines of distant roads. Here, existence of joint rates via recognized gateways would make it unreasonable to require carrier's agent to make inquiry as to whether or not a lower combination could be based upon a relatively obscure point beyond the gateways. See 98 I. C. C. 451. Shipments were, therefore, not misrouted. Hamburg Broom Works v. C., R. I. & P., 126 I. C. C. 171, 173.

(bb) Shipment of tin cans from Chicago to North Prairie, Wis., tendered unrouted moved via Waukesha, Wis. Contemporaneously a lower rate applied to Waukesha via Bardwell, Wis., over which route North Prairie is directly intermediate to Waukesha, and was applicable to North Prairie under an intermediate clause providing for application of rates to intermediate points. Upon contention that operating and other transportation conditions rendered it inadvisable and uneconomical to use the Bardwell route, and in accordance with statement in 247 U. S. 477 that carriers may resort to the more expensive route where in their opinion the cheaper route is unreasonable, that it was therefore justified in shipping via Waukesha, HELD: Fact that carrier subsequently restricted rates to shortest route thus making rate to North Prairie applicable only via Bardwell, clearly indicates that this route is not impracticable nor so uneconomical as to be not generally usable. Rate via Bardwell was therefore applicable and shipments were misrouted. Nelson v. C., M. & St. P. Ry., 126 I. C. C. 713.

(cc) Where tariff contained no restriction on routing to certain point, any reasonable routing to that point, though not the most direct is permissible. W. L. Shepherd Lumber Co. v. Atlantic Coast Line R. Co., (Ala., 1927) 112 So. 323.

(dd) On coal routed by shipper from Annabelle, W. Va., to Goshen, Ind., complainant was quoted a joint rate. Shipment was diverted en route to Benton Harbor, Mich., and since joint rate did not apply over that route, higher combination rate was assessed. Upon contention that as lower joint rate applies over other routes from points in the Annabelle group to group in which Benton Harbor is included, it should also apply over route of movement. HELD: Agent at point of origin was not advised that shipment was to be reconsigned, or as to final destination, and since it moved as routed, it was not misrouted. Moreover, earnings under rate charged do not indicate that it exceeded a miximum reasonable basis and failure to take advantage of lower rate over restricted routes does not establish unreasonableness of rate charged or necessity for additional routes. Sellers v. C., C., C. & St. L., 128 I. C. C. 263.

(ee) Lumber from Cottondale, Fla., to Gastonia, N. C., reconsigned to Union, S. C., was assessed combination rates. Contemporaneously lower joint through rates, unrestricted as to routing, permitted movement to Union through Gastonia. Upon contention that had shipment been originally consigned to Union it would have moved over a more direct route not involving the extra haul, and that through rates were not applicable under reconsigning rule providing that no reverse or extra haul would be performed at through rates. HELD: Contention is untenable. Tariff did not prohibit movement via Gastonia and fact that shipment traveled over this route because of a reconsigning order does not deprive shipper of benefit of joint rates. If it had been carriers' purpose to restrict application of joint rate they should have done so by clear and unequivocal language. See 100 I. C. C. 357. Moreover, rates assessed under a simlar situation in 83 I. C. C. 512, were found inapplicable. Reparation awarded. Thames v. S. Ry., 128 I. C. C. 508.

(ff) Complainant alleged rate charged on a carload of lumber shipped April 11, 1923, from Cottondale, Fla., to Union, S. C., as inapplicable. Shipment

moved A. & St. A. B. from Cottondale to Chester, S. C., C. & N. W. to Savannah, Ga., thence Southern through Spartanburg, S. C., to Union, distance 630 miles. Shipment was originally billed to Gastonia. After arrival at Gastonia the shipment was reconsigned to Union. Rate of 27.5c to Gastonia and 13.5c from Gastonia to Union were applied. There were and are in effect joint commodity rates on lumber from Cottondale of 27.5c to Gastonia and 27c to Union. These rates were unrestricted as to routing, and permitted shipments for Union to move through Gastonia. If the consignor had originally routed the shipment to Union via Gastonia the 27c rate would have been applicable. HELD: Rate applicable 27c, reparation awarded. Thames v. Southern Ry. Co., 128 I. C. C. 508.

(gg) Shipments of anthracite coal from Pennsylvania points to Fort Snelling, Minn., moved via St. Paul to Minneapolis, thence to Fort Snelling. Charges were collected on basis of rate to Minneapolis. However, Fort Snelling was not named as a point to which that rate applied, and carriers sought to collect undercharges for local rate from Minneapolis to Fort Snelling. FOUND: While customary route between St. Paul and Minneapolis is via Minnesota Transfer, and shipments moved over that route, they could have moved via Mendota, Minn., over which route Fort Snelling is intermediate to Minneapolis. Since Fort Snelling generally takes Minneapolis rate on coal from various other points, and that rate was subsequently established over route of movement, applicable rate was unreasonable to extent it exceeded rate to Minneapolis. Waiver of undercharges authorized. Hostler Coal & Lbr. Co. v. P. M., 128 I. C. C. 731.

(hh) Complainant alleged that the first class rate of 98c charged on passenger automobiles, in carloads, moving subsequent to Feb. 25, 1926, from Janesville, Wis., to Mason City, Ia., was inapplicable and unreasonable and unduly prejudicial. Janesville is on the C., M. & St. P. and C. & N. W. in southern Wisconsin, about 91 miles northwest of Chicago. Shipments moved from Janesville over the St. Paul via Prairie du Chien, Wis., and Calmar, Ia., to Mason City, 255 miles. Rate sought was applicable to Ames, Ia. Ames is on the Ft. D. D. M. & S., 13 miles north of Huxley, Ia. The short line in connection with the St. Paul from Janesville to Ames is 298 miles, through Beloit, Sabula, Delmar Jct., Atkins and Huxley. A shipment could move through Mason City, Spencer, Herndon and Huxley to Ames, 498 miles and over this route Mason City is intermediate to Ames. There are few stations west of Janesville, east of Aberdeen, S. D., on and north of the line of the St. Paul running through Huxley, on or south of the line running from La Crosse, Wis., to Aberdeen that are not between Janesville and Ames over some route of the St. Paul to Huxley, thence Ft. D. D. M. & S. The St. Paul on Feb. 1, 1926, established a joint commodity rate, subject to rule 77 of tariff circular 18-A and applicable from Janesville to Ames over the St. Paul to Huxley and Ft. D. D. M. & S. No other routing instructions were contained in the tariff. The only rate published to Mason City was the first class rate of 98c: HELD, Rate assessed applicable and not unreasonable or unduly prejudicial, complaint dismissed. Woodward Auto Co. v. C., M. & St. P. Ry., 129 I. C. C. 613.

III. LIABILITY FOR MISROUTING.

§7¾. In General.

(a) Bills of lading covering shipments of coal from Wilder and Davidson, Tenn., forwarded via Cincinnati to Peoria, Ill., and there reconsigned to points in Iowa, showed Peoria as destination. Most of them specified routing via Cincinnati, and others apparently left it optional with carriers to forward via either Cincinnati or Louisville, rate to Peoria being same by either gateway. Contemporaneously joint rates via Louisville authorized reconsignment at Peoria, which lower rates were later made effective via Cincinnati. FOUND: As there was nothing on bills of lading to inform carriers' agent that cars were to be reconsigned beyond Peoria and rates were same via either route, shipments were not misrouted. Fentress Coal Co. v. T. C. Ry., 115 I. C. C. 286.

(b) Mere fact that due to an oversight in routing restrictions of tariff a lower rate between two points applies over an unduly circuitous route, does not prove that higher rate by way of customary route is unreasonable. Desch v. N. P. Ry., 115 I. C. C. 401.

(c) Prior to movement carrier's agent quoted complainant a rate but said nothing as to routing. Upon delivery of potatoes for shipment by complainant's employee, the agent inadvertently in-

serted in bill of lading a route taking a higher rate than that quoted. Employee thinking they were receipts signed complainant's name to bills of lading not knowing they purported to route shipments and they moved in accordance with billing and applicable rates charged. HELD: Shipments were misrouted. While generally speaking it is carrier's duty to follow routing instructions of shipper, here routing shown was result of an error on part of carrier's agent whose intent was to route shipments via route taking lower rate. Routing shown in bill of lading, rather than signing and acceptance thereof, was, therefore, the proximate cause of damage. Reparation awarded. Hubbard v. O. S. L., 118 I. C. C. 202.

(d) Complainant alleged that due to misrouting of a car of internal combustion engines, shipped Dec. 12, 1923, from Mount Vernon, O., to Arab, Tex., and forwarded to Ranger, Tex., it was compelled to pay unreasonable charges. Shipment was routed by the shipper B. & O. St. Louis, C. & A. Kansas City, C. R. & P. Ft. Worth, T. & P. Eastland, E. W. F. & G. It moved over B. & O. to St. Louis, M. K. T. to Mangum, Tex., and E. W. F. & G. beyond having admittedly been misrouted by the originating carrier. It arrived at Arab at 8:45 p. m. on Dec. 28, 1923. On Dec. 29, at 10:45 a. m. complainant which had no notice of the misrouting, communicated with the agent of the C. R. I. & P. at Dallas, Tex., and ordered the car diverted to Ranger. The same day at about 1 p. m. complainant was notified by telephone that the shipment had arrived at Arab on Dec. 28. The records not clear as to the rate on which the shipment was forwarded to Ranger. Charged 1.44 and 26c to and beyond Arab. Complainant contends that had the shipment moved as routed it would not have arrived at Arab prior to Dec. 29, and that the order given on that date would therefore have effected its diversion in transit. When the shipment would have arrived had it moved as routed is problematical. Complainants right to divert the shipment was not dependent upon the receipt of notice at Arab, the destination named in the bill of lading. Delivery had been effected when complainants' attempt to divert the shipment was made. HELD, complainant not damaged by reason of the misrouting of the shipment by the originating carrier, complaint dismissed. Lone Star Gas Co. v. B. & O. R. R., 123 I. C. C. 553.

(e) Following previous decisions and informal rulings, shipments routed by shipper upon erroneous advice of carrier's representative that rate applicable over other routes obtained over route of movement, FOUND not to have been misrouted. Dreer v. L. A. & S. L., 126 I. C. C. 130.

§8a. Advice by carrier.

(a) Following previous decisions and informal rulings, shipments routed by shipper upon erroneous advice of carrier's representative that rate applicable over other routes obtained over route of movement, FOUND not to have been misrouted. Dreer v. L. A. & S. L., 126 I. C. C. 130.

§8½. Missing Transit or Other Privilege. See Facilities and Privileges §15.

(a) Complainant attacked rate charged on a car of cedar poles from Gemmell, Minn., to Pinconning, Mich., on March 30, 1922 as unreasonable, unduly prejudicial and inapplicable. Shipment was routed by complainant M. & I., N. P., Soo, D. S. S. & A., M. C., by which route the rate was 40.5 cents. The initial carrier disagreed with complainant as to tariff authority and held the shipment until the D. S. S. & A. was eliminated. The change in routing resulted in the application of a rate of 46 cents and the loss of a transit arrangement for storage and preservative treatment of the poles at Pinconning and forwarding therefrom at the rate from point of origin to final destination plus a $4 transit charge. The record contains no proof that the poles ever moved from Pinconning. There is no basis upon which to compute the amount of damage, if any, arising from the loss of the transit arrangement. HELD, shipment was misrouted by M. & I., reparation awarded. Page & Hill Co. v. M. & I. Ry., 120 I. C. C. 265.

(b) Initial carrier disagreed as to tariff authority for route designated by complainant and held shipment until routing was changed. Changed routing resulted in a higher rate, and complainant sought reparation to basis of rate over route originally designated plus additional charges alleged to have been incurred as a result of loss of a transit arrangement. HELD: As complainant failed to show proof of damage arising from loss of transit arrangement, there is no basis upon which to compute such

damage, if any. Accordingly, reparation awarded against initial carrier for misrouting only. Page & Hill Co. v. M. & I., 120 I. C. C. 265.

(c) Damages not shown to have resulted from misrouting a carload of internal-combustion engines shipped from Mount Vernon, Ohio, to Arab, Tex., and forwarded after arrival to Ranger, Tex. Shipment moved over a route shorter than that specified in bill of lading. On day following its arrival and delivery at Arab, complainant, having no notice of misrouting, requested diversion to Ranger, but was notified by telephone that shipment had already arrived at original destination. Complainant contended that had shipment moved as routed or had carrier notified it of misrouting prior to arrival at Arab, diversion could have been arranged for or effected and the through rate obtained. HELD: That complainant's right to divert was not dependent upon receipt of notice of misrouting, and carrier violated no duty by making delivery at Arab, the destination named in bill of lading. Lone Star Gas Co. v. B. & O., 123 I. C. C. 553.

(d) Complainant alleged that two cars of watermelons shipped July 22 and 23, 1925, from Sumter and Norman Park, Ga., to Potomac Yard, Va., were misbilled by defendants to Cameron Yard, Va., thus delaying delivery and causing deterioration and decrease in value of the commodity. Shipments were consigned to a commission merchant for diversion. Complainant was advised by consignee on July 26 that the cars were due to arrive July 27. Complainant about 11 A. M. July 27, inspected the shipments at a point near Alexandria, Va., which he believed was Cameron Yard. After inspection he agreed to purchase the shipments, and returned to Washington, soliciting orders for the watermelons to be delivered by him the next morning. Consignee gave instructions to the Southern at 5:45 P. M. July 27, to divert the cars to complainant at Washington, and delivery accordingly was made about 12:30 P. M. July 28. Complainant testifies that this was too late for him to make the agreed deliveries to his customers, and that most of his orders were therefore canceled. This complaint is brought to recover $215 the difference between the contemplated selling price and the amount realized. The cars were not held in Cameron Yard but north of the southern limits of Potomac Yard at the usual point of placement for inspection and diversion of cars billed to Potomac Yard over the Southern. Misrouting has not been established. HELD, complaint dismissed. Mossburg v. A. B. & A. Ry., 126 I. C. C. 447.

§ 9. **Measure of Damages.**

See Reparation §18.

(a) Damages due to misrouting are not overcharges above the legal tariff charges. Tidal Osage Oil Co. v. Director General, 115 I. C. C. 237, 238.

(b) Complainant alleged that it has sustained loss and damage, due to deterioration, in the sum of $1,271.75 by reason of the failure of the A. C. L., defendant, to observe routing instructions in connection with the diversion of one car of sweet peppers from Fort Myers, Fla., to Boston, Mass., and reconsigned at Waycross, Ga., to Chicago, Ill. Shipment moved from Fort Myers on Nov. 13, 1924, and was routed by A. C. L., R. F. & P., Pennsylvania and New Haven. On Nov. 14, 1924, it was reconsigned at Waycross to Chicago and was routed by defendant over its line to Petersburg, Va., thence N. & W. and Pennsylvania to destination, where it arrived Nov. 20, 1924. The evidence shows that on Nov. 14, 1924, about 10 A. M. complainant telephoned defendant's Boston office to have the car reconsigned to Chicago, if through rate could be protected; that upon inquiry as to the location of the car complainant expressed the opinion that it was somewhere between Fort Myers and Waycross; that defendant took the matter up promptly by telegraph, located the car at Waycross and had it reconsigned to Chicago. The evidence does not establish that complainant gave any routing instructions in connection with the reconsignment of this shipment or that there was any misrouting by defendant. HELD, complaint dismissed. Kingman Co. v. A. C. L. R. R., 118 I. C. C. 31.

(c) Complainant alleged that four shipments of watermelons forwarded between July 15 and 31, 1924 from Daisy and Hagan, Ga., to Jacksonville Fla., were misrouted. Shipments were sold f. o. b. points of origin and were consigned on straight bills of lading to the Southern Fruit & Produce Co., at Jacksonville, the bills of lading calling for A. C. L. delivery. It appears that one shipment which originated at Hagan was

turned over by defendant to the A. C. L. at Savannah, Ga., and was delivered by the latter carrier at destination. The remaining shipments moved over defendants line to destination, and upon arrival were tendered to the consignee, whose place of business is reached only by defendants tracks. Inasmuch as the delivery specified in the bills of lading was not effected, there is no question but that these shipments were misrouted. If delivery had been made on the tracks of the A. C. L. in accordance with the instructions in the bills of lading and the transaction consummated, complainant would have received under the contract of sale a total of $300. As the transaction turned out he received only $72.62. HELD, shipments misrouted and such misrouting was the proximate cause of damage to complainant in the amount of the difference between the original sale price of the watermelons and the amount he received in final settlement, reparation awarded in sum of $227.38. Harp v. S. A. L. Ry., 122 I. C. C. 585.

(d) Complainant alleged commodity rate charged on three cars of fir lumber shipped June 30 and July 1, 1925 from Terryville, Conn., to Minnesota Transfer, Minn., were inapplicable and shipments were misrouted. The bills of lading contained no routing instructions. Complainant contends that the shipments were unrouted, and therefore, it was the duty of defendant to forward them over the cheapest available route, namely, a so called differential route passing through Canada, over which the rate of 64c applied. Upon receipt of the bill of lading the agent telephoned the office of the consignor for routing instructions and was advised that the same routing as had applied eastbound was proper for the westbound movement. The eastbound bills of lading showed the following routing instructions: C. St. P. M. & P., C. & N. W., E. J. E., Erie, N. Y. N. H. & H., and Soo, E. J. & E., Erie and N. Y. N. H. & H. The westbound rates over these routes was 65c. The shipments were returned over the N. Y. N. H. & H., C. N. E., Erie to Chicago thence C. M. & St. P. at a rate of 65c. Although the telephone instructions were not literally followed, the shipments were nevertheless forwarded over a route over which the same rate applied as was in effect over the route specified. To hold that shipments should have been sent through Canada would be to sanction a violation of the instructions. HELD, shipments were misrouted but that complainant was not damaged thereby complaint dismissed. Brooks Bros. v. N. Y. N. H. & H., 123 I. C. C. 607.

(e) Shipments were sold f. o. b. point of origin at a stipulated price per car. Due to misrouting, resulting in misdelivery, consignee canceled its contract of sale, necessitating resale of shipments. HELD: Acquiescence of consignee to the erroneous delivery could not alter contract of carriage to the detriment of shipper without latter's consent. Had proper delivery been effected, shipments would not have been rejected, and shipper would have received full contract sale price. The damages therefore resulted from misrouting, and are measured by difference between contract of sale and amount which shipper actually received after deduction of freight charges. G. W. Harp. v. S. A. L., 122 I. C. C. 585.

§11. Reparation in General.

See Reparation.

(a) Prior to movement carrier's agent quoted complainant a rate but said nothing as to routing. Upon delivery of potatoes for shipment by complainant's employee, the agent inadvertently inserted in bill of lading a route taking a higher rate than that quoted. Employee thinking they were receipts signed complainant's name to bills of lading not knowing they purported to route shipments and they moved in accordance with billing and applicable rates charged. HELD: Shipments were misrouted. While generally speaking it is carrier's duty to follow routing instructions of shipper, here routing shown was result of an error on part of carrier's agent whose intent was to route shipments via route taking lower rate. Routing shown in bill of lading, rather than signing and acceptance thereof, was, therefore, the proximate cause of damage. Reparation awarded. Hubbard v. O. S. L., 118 I. C. C. 202.

(b) Routing instructions on apples from Chelan, Wash., to Chicago, diverted to Newark, N. J., specified Erie delivery. Diverting carrier's agent erroneously routed shipments for Lehigh Valley delivery. Upon complaint seeking damages for cartage, labor, and loss of sales value of part of shipments, containers of which were said to have been broken and contents damaged and frozen in transit, HELD: While shipments were misrouted, damages claimed were not shown to have been occasioned thereby. No

claim was made that cartage would not have been necessary had Erie delivery been effected or whether cartage charge would have been greater or less than that paid for cartage from Lehigh Valley, nor was evidence introduced to show that containers were broken or contents frozen while in transit. Moreover, all facts on complainant's behalf were sworn to by his attorney who had no actual knowledge of any of the transactions. Horel v. G. N., 120 I. C. C. 125.

(c) Complainant alleged the failure of the Georgia Northern correctly to bill a carload of watermelons from Pritchett, Ga., to Cincinnati, O., violated section 15 and caused delay in transit whereby the shipment arrived in a deteriorated condition and on a declining market. Reparation is sought to the difference between the alleged market value of the car if properly billed and the actual selling price. Shipment was delivered on July 12, 1924, with shipping instructions showing Cincinnati as the destination, L. & N. as delivering carrier. The initial line waybilled the shipment in accordance with instructions except J. G. McPhaul Co. was shown as the consignee instead of the correct name. The shipment arrived July 15 at Latonia, Ky., which is the hold yard of the L. & N. at Cincinnati for freight waybilled to unknown consignees. The agent of the L. & N. telegraphed the initial line on the date of arrival inquiring as to the correct consignee. Upon receipt of advice and placement instructions from the consignee on July 16 the car was placed at East End Yard, Cincinnati, July 17, but due to the accumulation of 126 cars of melons in the yard at that time the car could not be placed for unloading until July 17, car being unloaded July 18. The error in billing on the part of the initial carrier is admitted, but complainant has failed to establish on this record that that error was the proximate cause of the alleged damage. HELD, complainant has not shown that the error of the initial carrier in failing strictly to observe the shipping instructions was the proximate cause of the alleged damage, complaint dismissed. Pearce v. G. N. Ry., 129 I. C. C. 253.

(d) Complainant alleged that the commodity rate charged on 17 cars of stock cattle shipped on April 26, 1923, from New Castle, Tex., to Grand Summit, Kas., was unreasonable, inapplicable and that shipments were misrouted. The single bill of lading contained no routing instructions. Shipments moved W. F. & S. to Wichita Falls, Tex., M. K. T. to Woodward, Okla., and Santa Fe beyond, joint commodity rate $101.50. Complainant contends that the shipments should have been routed over W. F. & S. to Wichita Falls, M. K. T. to Gainesville, Tex., and G. C. & S. F. and Santa Fe beyond, distance 384 miles, rate $67. The line haul charges over the route claimed are less than over route of movement. However, the record contains no showing that the route claimed was a reasonable, available one for the transportation of livestock. Defendants maintain that the feeding and other charges in connection with that route would have resulted in aggregate charges much greater than those collected. In the absence of proof that the total charges applicable over route of movement exceeded those over the route claimed, the allegation of misrouting has not been sustained. HELD: Rate charged applicable, not unreasonable and shipments not misrouted, complaint dismissed. Live Stock Freight Bureau v. A., T. & S. F. Ry., 129 I. C. C. 721.

(e) Bill of lading covering shipment of peanuts from Samson, Ala., to Camden, N. J., showing routing "C of Ga—S A L—P & N" but no rate, moved C. of Ga., S. A. L. to Richmond, Va., Richmond, Fredericksburg & Potomac Yard, Va., and Pennsylvania beyond. Shipment was refused at destination and subsequently sold at auction. Upon contention that "P & N" was the Philadelphia and Norfolk Steamship line; that shipment was therefore misrouted and carrier liable for difference between contract price and auction price of peanuts, FOUND: As "P & N" are also initials of Piedmont & Northern which forms a workable route with other named carriers, routing specified did not put carriers on notice that rail-and-water route was desired. Therefore, while shipment was misrouted, record fails to show that complainant was damaged thereby. See Conf. Ruling 190. South Alabama Grocery Co. v. C. of G. 129 I. C. C. 327.

(f) Upon claim for reparation complainant relied upon decisions in 68 I. C. C. 559 and 74 I. C. C. 288, to effect that in absence of routing directions in tariff, a joint rate is applicable over any route over lines of carriers parties to tariff, and if carriers desire to restrict application of such ates to particular routes

they should do so in clear and unequivocal language. FOUND: That question presented in cases cited was with respect to applicability under an intermediate clause and not the reasonableness of rates under rule 77. Woodward Auto Co. v. C., M. & St. P., 129 I. C. C. 613, 615.

§14. Procedure.

See Procedure Before Commission.

(a) Complainant attacked combination rate of $2.80 charged on a car of eggs shipped August 11, 1919 from Fremont, Neb., to Phoenix, Ariz., as inapplicable to extent it exceeded $2.29. The routing instructions inserted in the bill of lading read "UP care Santa Fe, Reice Grand Island, No. Platte, Denver, La Junta, Albuquerque and Winslow." Shipment moved through the icing points named over the U. P. to Denver, Colo., thence Santa Fe, charged 87.5 c. to Denver and $1.925 beyond. A joint rate of $2.29 was published but restricted to routing beyond Denver over the U. P. Complainant insists that the initial carrier could have routed the shipment through certain junctions in Kansas and a lower rate than that over the route of movement would have been applicable; also that complainant was not required to show on the bill of lading the points at which the carriers should re-ice the shipment, and, therefore, the carriers were not required to follow the icing instructions. These contentions are not germane to the issue; no misrouting is alleged. Any allegation with respect to misrouting is barred. HELD, rate charged applicable, complaint dismissed. Armour & Co. v. Director General, 113 I. C. C. 1.

(b) A complaint which merely alleges that rate charged on a shipment was in excess of rate applicable does not involve an issue of misrouting, and unless an allegation with respect to the latter is brought in issue within statutory period of limitation provided by the act, it can not be considered. See also 87 I. C. C. 130. Armour & Co. v. Director General, 113 I. C. C. 1.

(c) An allegation of overcharges does not embrace an issue of misrouting damages for the latter not being "overcharges above the legal tariff charges." See also 87 I. C. C. 130. Tidal Osage Oil Co. v. Director General, 115 I. C. C. 237, 238.

§15. Statute Of Limitations.

See Statute of Limitations.

(a) Complaint alleging misrouting of shipments moving during Federal control was filed more than one year, but within two years and six months, after termination of Federal control. Shipments were in fact misrouted, and relying upon Conf. Ruling 214 (c) and various formal decisions holding that it is duty of initial carrier to forward unrouted shipments over cheapest available reasonable route, complainant contended that damages resulting from misrouting constitute such overcharges as are contemplated by section 206 (c) of transportation act, 1920, as amended, and that complaint, therefore, is not barred. HELD: Neither conference ruling nor cited cases support complainant's contention, and following 87 I. C. C. 130 damages due to misrouting are not "overcharges above the legal tariff charges" as contemplated by the amendment, Armour & Co. v. Director General, 107 I. C. C. 310.

SAFETY APPLIANCE ACTS

See Automatic Train Control; Cars and Car Supply §7¾; Employers' Liability Acts; Personal Injuries.

(a) After inspection and test of automatic train-stop system of National Safety Appliance Co., of the intermittent-magnetic induction type with forestalling feature, its installation on the following named lines found to meet requirements of commission's specifications and order in Automatic Train-Control Devices, 69 I. C. C. 258. Additional requirements with respect to certain apparatus and operations prescribed in order that greatest degree of safety may be insured: Galveston, Harrisburg & San Antonio Ry. Co. (Houston Division), 104 I. C. C. 549. St. Louis-San Francisco Ry. Co. (Southwestern Division), 104 I. C. C. 565. Southern Pacific Co., (Western Division of Pacific system), 104 I. C. C. 558.

(b) After inspection and test of the automatic train-control system (three speed) of the continuous-induction type, of the Union Switch & Signal Co., its installation on the Shenandoah division of Norfolk & Western Ry. Co., found to meet requirements of commission's spe-

cifications and order in Automatic Train-Control Devices, 69 I. C. C. 258. Additional requirements with respect to certain apparatus and operations prescribed in order that the greatest degree of safety may be insured. Automatic Train-Control Devices, 107 I. C. C. 65.

(c) After inspection and test of the automatic train-stop system of the intermittent magnetic-induction type with forestalling feature, of the Sprague Safety Control & Signal Corp., its installation on the following-named lines found to meet requirements of the commission's specifications and order in Automatic Train-Control Devices, 69 I. C. C. 258. Additional requirements with respect to certain apparatus and operations prescribed in order that the greatest degree of safety may be insured: Chicago, Burlington & Quincy R. R. Co. (Creston Division), 107 I. C. C. 367. Great Northern Ry Co. (Minot Division), 107 I. C. C. 385.

(d) Requirement in reports upon installations of automatic train-control or speed-control devices upon the Oregon-Washington R. R. & Navigation lines, 101 I. C. C. 487, and upon Norfolk & Western Ry., 107 I. C. C. 65, that provision should be made to require acknowledgement by the enginemen of succeeding stop signals, eliminated. Automatic Train-Control Devices, 109 I. C. C. 66.

(e) After inspection and test of automatic train-stop or train-control systems of Union Switch & Signal Co. of the two and three speed continuous-induction types, and of the National Safety Appliance Co. of the intermittent magnetic-induction type without forestalling feature, their installation on following-named lines found to meet requirements of the commission's specifications and order in Automatic Train-Control Devices, 69 I. C. C. 258. Additional requirements with respect to certain apparatus and operations prescribed in order that greatest degree of safety may be insured: Atlantic City R. R. of Reading Co (three speed continuous-induction type), 109 I. C. C. 667. Central R. R. Co. of N. J., New Jersey Southern division (three-speed continuous-induction type), 109 I. C. C. 680. Missouri Pacific R. R., Central Kansas division (intermittent magnetic-induction type without forestalling feature), 109 I. C. C. 199. Union Pacific R. R., Wyoming division (Two-speed continuous-induction type), 109 I. C. C. 147.

(f) In 69 I. C. C. 258 commission required 49 carriers by railroad to install automatic train-stop or train-control devices. This report is made after inspection and test of the two speed continuous-induction train-control system of the Union Switch & Signal Company on the Knoxville division of the Louisville & Nashville. It extends from Corbin, Ky., to Etowah, Tenn., distance 162 miles, single track, 47 locomotives being equipped. HELD: Device approved subject to recommendations made. Automatic Train-control devices, 112 I. C. C. 501.

(g) This report made after inspection and test of the automatic train-stop (automatic) system of the General Railway Signal Company on the first division of the Atlantic Coast Line R. R. Co. Previous report 69 I. C. C. 258. The device was first installed on the A. C. L., in Dec. 1924, on a 24-mile double track section, between Rocky Mount and Ruggles, N. C., with 10 equipped locomotives. In March 1925, a preliminary inspection of this installation was made. The installation inspected and tested was completed on Oct. 1, 1925. HELD: Signal approved, subject to compliance by A. C. L., with certain recommendations. Automatic Train control devices, 113 I. C. C. 245.

(h) This report is made after inspection and test of the automatic train-stop system of the Union Switch & Signal Company on the river division of the C. M. & St. P. Ry. It was first placed in service in January 1925, on a preliminary section of the C. M. & St. P., between Bridge Switch, Minn., and Winona, Minn., a distance of 21 miles, double track, with 10 equipped locomotives. The installation inspected and tested was placed in service March 2, 1926. It extends from a point 5,800 feet west of Bridge Switch, Minn., to the west end of Hastings Yard, Minn., a distance of 108.1 miles, double tracked with 58 equipped locomotives. HELD: Inspection satisfactory except certain modifications required. Automatic train-control devices, 113 I. C. C. 323.

(i) This report is made after inspection and test of the automatic train-stop system of the Sprague Safety Control & Signal Corporation on the first subdivision of the Yellowstone division of the Northern Pacific. This device was first placed in service on the N. P., between Mandan and Judson, N. D., a distance of 21 miles, with 6 equipped locomotives.

The installation inspected and tested was completed in Sept. 1925. It extends from Mandan to Dickinson, N. D., a distance of 109.6 miles, single track. There are 34 equipped locomotives. HELD: Installation satisfactory with certain modifications and recommendations. Automatic Train-control devices, 113 I. C. C. 359

(j) Upon complaint alleging that New York Central R. R., in awarding its contract for installation of an automatic train-stop system upon its line to the General Railway Signal Co., subjects complainant, Sprague Safety Control & Signal Corp., to undue prejudice in violation of section 3 of the act, HELD: That section of the act does not apply to making of contracts by a carrier for purchase of equipment, and fact that equipment is apparatus for automatic train-stop or train-control devices which Commission has authority, under section 26 of the act, to require a carrier to install in accordance with prescribed specifications and requirements, does not extend applicability of prohibitions of section 3 to matters connected with selection or purchase of such equipment. Automatic Train-Control Devices, 112 I. C. C. 259, 260.

(k) Upon complaint alleging that the New York Central R. R., by adopting the automatic train-control device of the General Railway Signal Corp., has violated provisions of section 1 of the act relating to furnishing of safe and adequate car service, HELD: Matter of automatic train-stop or train-control devices is controlled by the specific provisions of section 26 of the act and question of the safety of such devices is governed by specifications and requirements of commission's order thereunder, and not by general car service provisions of section 1. Automatic Train-Control Devices, 112 I. C. C. 259, 260, 261.

(l) While a failure to install an automatic train-stop or train-control device would not constitute a violation of section 1 of the act, a failure to install such a device as required by Commission's orders under section 26 would constitute a violation of such orders and subject carrier to penalties provided for by the latter section. The safety and adequacy of installation of such devices are governed by the specifications and requirements of those orders, which furnish the criteria by which such installation may be judged. Automatic Train-Control Devices, 112 I. C. C. 259, 261.

(m) Upon complaint alleging that section 26 of the act and commission's specifications and requirements are being violated by New York Central R. R., because of latter's failure to include speed control in its installation of an automatic train-stop system and its employment of a forestalling device in connection with that system, HELD: Allegation has no basis under provisions of the commission's orders. Selections and installation of a plain automatic-stop device without speed control is permissible and always has been. Carriers are given a choice as between a plain automatic stop and an automatic stop with automatic speed control and these features may be included separately or in combination. The use of a forestalling feature is also permitted, and there are no restrictions, insofar as traffic or operating conditions are concerned; so that a carrier whose line is one of heavy traffic density may install a device without speed control. Automatic Train Control Devices, 112 I. C. C. 259, 261, 262.

(n) Method of braking employed in automatic train-stop and train-control system of the intermittent inductive type of the General Railway Signal Co., found not to impair efficiency of the air-brake system. Automatic Train Control Devices, 112 I. C. C. 259, 262, 263.

(o) Carriers are best informed as to their own operating conditions, the effect of speed, weather, etc., and must exercise their own judgment as to whether automatic train-stop or train-control devices selected by them will meet requirements when installed and in operation. Automatic Train Control Devices, 112 I. C. C. 259, 263.

(p) The extent to which clearances already established must be changed in connection with installation of automatic train-stop or train-control devices and cost of such changes are important factors to be considered by a carrier before selecting a device. Automatic Train Control Devices, 112 I. C. C. 259, 264.

(q) Upon contention that automatic train-stop or train-control specifications of commission which provide that "The apparatus shall be so constructed as to conform to established clearances for equipment and structures" means that train-control equipment installed on

tracks and locomotives shall not encroach upon standard clearances established and approved for rolling stock and tracks, HELD: Commission's requirements do not set up any standard clearances, that being left to judgment of operating officials of carriers. Although requirement mentions established clearances it does not mean that such clearances, may not be changed in connection with installation of an automatic train-control device. All that it means is that, whatever clearances are established, train-control devices shall conform to them. Automatic Train Control Devices, 112 I. C. C. 259, 263, 264.

(r) It can not be found that the automatic train-stop or train-control system of the intermittent inductive type of the General Railway Signal Co. does not comply with commission's requirements with respect to clearances and operation. These may be demonstrated only after the device is installed and in operation. The same is true with respect to requirement that apparatus shall be so constructed that it will, so far as possible, perform its intended function if a break, cross, or ground occurs in electric circuits. Automatic Train Control Devices, 112 I. C. C. 259, 263, 266.

(s) After inspection and test of automatic train-control (two-speed continuous-induction type) of the Union Switch & Signal Co., its installation on Knoxville division of the L. & N. R. R. found to meet requirements of Commission's specifications and order in Automatic Train-Control Devices, 69 I. C. C. 258. Additional requirements with respect to certain apparatus and operations prescribed in order to insure the greatest degree of safety. Automatic Train-Control Devices, 112 I. C. C. 501.

(t) After inspection and test of the following train-stop or train-control systems, their installation on the following-named lines found to meet requirements of the Commission's specifications and order in Automatic Train-Control Devices, 69 I. C. C. 258. Additional requirements with respect to certain apparatus and operations prescribed in order that greatest degree of safety may be insured. Atchison, Topeka & Santa Fe Ry. Co., Illinois Division (Three speed continuous-induction type of the Union Switch & Signal Co.), 113 I. C. C. 561. Atlantic Coast Line R. R. Co., first division (Intermittent induction automanual type, with forestalling feature, of the General Railway Signal Co.), 113 I. C. C. 245. Chicago, Milwaukee & St. Paul Ry. Co., River division (Continuous induction type of the Union Switch & Signal Co.), 113 I. C. C. 323. Northern Pacific Ry. Co., Yellowstone division (Intermittent magnetic-induction type with forestalling feature of the Sprague Safety Control & Signal Corp.), 113 I. C. C. 359.

(u) This report is made after inspection and test of the automatic train control system of the Union Switch & Signal Company on the Illinois division of the Santa Fe. It extends from East Fort Madison, Ill., to Chillicothe, Ill., a distance of 102.17 miles of which 101.8 miles is double track and 0.37 mile single track. There are 87 locomotives equipped with the device. HELD, the system complies with the requirements except certain recommendations as outlined. Automatic Train Control Devices, 113 I. C. C. 561.

(v) Kansas City Southern requested that the effective date of the order in 69 I. C. C. 258, be suspended in so far as applicant is concerned, under further order. The effective date of the order was originally January 1, 1925, but at the request of the applicant for various reasons, it has been postponed until July 1, 1926, with respect to said applicant. HELD: Effective date of the order should be suspended in so far as it applies to the applicant, until further order. Automatic Train Control Devices, 113 I. C. C. 625.

(w) Line of the Kansas City Southern Ry. Co., found to be of such a character and its operating conditions and traffic density such as not to require at present time the installation of automatic train-stop or train-control devices. Accordingly, the commission's order in 69 I. C. C. 258, suspended in so far as that carrier is concerned. Automatic Train-Control Devices, 113 I. C. C. 625.

(x) This report is made after inspection and test of the automatic train stop system of the Union Switch & Signal Company on the Illinois division of the Illinois Central. The installation inspected and tested is an automatic train stop system of the continuous induction

type with forestalling feature and color cab signals but without automatic block signals. It was completed January 21, 1926, and extends from Champaign, Ill., to Branch Junction, Ill., a distance of 121.8 miles, double track, with 56 equipped locomotives. HELD: System approved subject to certain modifications as recommended. Automatic train control devices, 115 I. C. C. 256.

(y) This report is made after inspection and test of the two speed continuous induction train control system of the Union Switch & Signal Company on the Buffalo Division of the Delaware, Lackawanna & Hudson Railroad. The installation inspected and tested was completed on July 1, 1925. It extends from Elmira, N. Y., to East Buffalo, N. Y., a distance of 141 miles of double track. There are 69 equipped locomotives. HELD: Installation approved with certain modifications. Automatic train control devices, 115 I. C. C. 270.

(z) This report is made after inspection and test of the automatic train stop system of the Union Switch & Signal Company on the Waterloo district, Iowa division, of the Illinois Central, installed by that carrier pursuant to the second order entered in this proceeding on January 14, 1924, as modified July 18, 1924, 91 I. C. C. 426. The device under consideration is an automatic train stop system of the continuous induction type with forestalling feature and color light cab signals. The installation inspected and tested was completed and placed in service on February 5, 1926. It extends from West Waterloo, Iowa, to Fort Dodge, Ia., a distance of 97.5 miles, of single track. There are 37 equipped locomotives. HELD: Approved subject to certain modifications. Automatic train control devices, 115 I. C. C. 387.

(aa) This report is made after inspection and test of the automatic train stop system of the General Railway Signal Co. on the Detroit division of the Pere Marquette Ry. The device was first placed in service on the P. M. between Seymour, Mich., and Clarksville, Mich., a distance of 22.82 miles, single track and 0.75 mile double track, with six equipped locomotives. The installation inspected and tested was completed in December, 1925. It extends from Seymour, Mich., to North Lansing, Mich., a distance of 59.2 miles, single track and 1.6 miles, double track. There are 67 locomotives equipped with the device. HELD: Installation approved with modifications. Automatic Train Control Devices, 115 I. C. C. 426.

(bb) This report is made after inspection and test of the automatic train stop system of the General Railway Signal Co. on the Detroit division of the Pere Marquette, installed by that carrier pursuant with 91 I. C. C. 426. The installation inspected and tested was completed in December, 1925. It extends from Lansing, Mich., to Oak Station, Mich., a distance of 74.6 miles, of which 63 miles are single track and 11.6 miles double track. This portion of the Detroit division adjoins that portion of the Detroit division which is equipped with the same type of device under order of June 13, 1922. There are a total of 67 proved with modifications. Automatic locomotives equipped under both orders, which operate on or over both portions of this division. HELD: Installation ap- Train Control Devices, 115 I. C. C. 451.

(cc) This report is made after inspection and test of the automatic train control system of the Union Switch & Signal Company on the third subdivision of the Wyoming division of the Union Pacific. The installation inspected and tested was completed February 1, 1926. It extends from North Platte to Sidney, Neb., a distance of 123 miles of double track. There are 34 locomotives equipped. HELD: Installation found to meet the requirements of the specifications with recommendations. Automatic Train Control Devices, 118 I. C. C. 250.

(dd) This report is made after inspection and test of the automatic train control system of the General Railway Signal Co., on the Iowa division of the Chicago & Northwestern Ry. The device under consideration is an automatic train control system, two speed, of the continuous induction type. The installation inspected and tested was completed and placed in service in December, 1925. It extends from Council Bluffs, Ia., to Boone, Ia., a distance of 149 miles of double track. There are 110 locomotives equipped with the device including two locomotives of the C. St. P. M. & O. which operate in equipped territory between Missouri Valley and Council Bluffs. HELD: Installation found to meet requirements with certain recommendations. Automatic Train Control Devices, 118 I. C. C. 265.

(ee) This report is made after inspection and test of the automatic train stop system of the National Safety Appliance Co. on the Stockton division of the Pacific system of the Southern Pacific. It extends from Tracy, Calif., to Fresno, Calif., 125.4 miles, single track, with 75 equipped locomotives. This installation is a continuation of the system installed between Oakland, Calif., and Tracy, Calif. HELD: Installation approved with modifications. Automatic Train Control Devices, 118 I. C. C. 555.

(ff) This report is made after inspection and test of the automatic train stop system of the General Railway Signal Company on the Charlotte division of the Southern Ry. This device was first installed by the Southern in November, 1924, on a 39.5 mile section on the C. N. O. & T. P. between Ludlow and Williamstown, Ky., with eight locomotives. The installation inspected and tested was completed and placed in service in November, 1925. It extends from Spencer, N. C., to Greenville, S. C., a distance of 152.11 miles of double track, 65 equipped locomotives. HELD: With certain modifications installation approved. Automatic Train Control Devices, 118 I. C. C. 611.

(gg) This report is made after inspection and test of the automatic train stop system of the General Railway Signal Company on the Charlotte division of the Southern. The installation inspected and tested was completed in November, 1925. It extends from Greenville, S. C., to Howell, Ga., a distance of 151.91 miles of double track, 39 equipped locomotives. HELD: With certain modifications installation approved. Automatic Train Control Devices, 118 I. C. C. 622.

(hh) After inspection and test of the following train-stop or train-control systems, their installation on the following named lines found to meet requirements of commission's specifications and orders in Automatic Train Control Devices, 69 I. C. C. 258; 91 I. C. C. 426. Additional requirements with respect to certain apparatus and operations prescribed in order that greatest degree of safety may be insured: Delaware, Lackawanna & Western R. R., Buffalo division (Two-speed continuous-induction type of the Union Switch & Signal Co.) 115 I. C. C. 270. Illinois Central R. R. Co., Illinois and Iowa divisions (Continuous-induction type with forestalling feature and color-light cab signals of the Union Switch & Signal Co.) 115 I. C. C. 265, 387. Pere Marquette Ry. Co., Detroit division (Intermittent-induction type with forestalling feature of the General Railway Signal Co.), 115 I. C. C. 426, 451.

(ii) After inspection and test of the following train-stop or train-control systems, their installation on the following named lines found to meet requirements of the commission's specifications and orders in Automatic Train Control Devices, 69 I. C. C. 258; 91 I. C. C. 426. Additional requirements with respect to certain apparatus and operations prescribed in order that greatest degree of safety may be insured: Chicago & North Western Ry. Co., Iowa division (Two-speed continuous-induction type of the General Railway Signal Co.), 118 I. C. C. 265. Southern Ry. Co., Charlotte division between Greenville, S. C. and Howell (Atlanta), Ga. (Intermittent-induction type, with forestalling feature of the General Railway Signal Co.), 118 I. C. C. 622. Southern Ry. Co., Charlotte division between Spencer, N. C., and Greenville, S. C. (Intermittent-induction type, with forestalling feature of the General Railway Signal Co.), 118 I. C. C. 611. Southern Pacific Co., Stockton division of the Pacific system (Intermittent-magnetic-induction type with forestalling feature of the National Safety Appliance Co.), 118 I. C. C. 555. Union Pacific R. R. Co., third subdivision of the Wyoming division (Continuous-induction type, two-speed, of the Union Switch & Signal Co.), 118 I. C. C. 250.

(jj) This report is made after inspection and test of the automatic train stop system of the Sprague Safety Control & Signal Corporation on the second subdivision of the Minot division of the Great Northern. It extends from Minot, N. D., to New Rockford, N. D., a distance of 108.91 miles with 24 equipped locomotives. This installation is a continuation of the system installed between Minot, N. D., and Williston, N. D. HELD, with certain modifications installation approved. Automatic Train Control Devices, 120 I. C. C. 193.

(kk) This report is made after inspection and test of the automatic train stop system of the Sprague Safety Control & Signal Co. on the second subdivision of the Yellowstone division of the Northern Pacific. It extends from Dickinson, N. D., to Glendive, Mont., a dis-

tance of 106 miles, single track. HELD, with certain modifications installation approved. Automatic Train Control Devices, 120 I. C. C. 199.

(ll) This report is made after inspection and test of the automatic train stop system of the Sprague Safety Control & Signal Corporation on the Omaha division of the Burlington, extending from Pacific Jct., Ia., to M. P. crossing at Lincoln, Neb., distance 81.58 miles, of which 25.81 miles are double track and 55.77 miles single track. HELD, installation approved with minor changes. Automatic Train Control Devices, 120 I. C. C. 475.

(mm) This report is made after inspection and test of the automatic train stop system of the General Railway Signal Company on the Champlain division of the Delaware & Hudson. The installation inspected and tested was completed in June, 1926, and extends from Rouses Point, N. Y., to Whitehall, N. Y., a distance of 111.65 miles of single track and 4.6 miles of double track. There are 66 locomotives equipped. HELD, with certain modifications device approved. Automatic Train Control Devices, 120 I. C. C. 624.

(nn) This report is made after inspection and test of the automatic train stop (automanual) system of the General Railway Signal Company on the Baltimore division (west end) of the Baltimore & Ohio. It extends from Bailey, Baltimore, Md., to F tower at Washington, D. C., a distance of 36.6 miles, of which 34.4 miles are double tracked and 2.2 miles four tracked. There are 130 locomotives equipped with the device. HELD, with certain modifications device approved. Automatic Train Control Device, 120 I. C. C. 635.

(oo) After inspection and test of following train-stop or train-control systems, their installation on following-named lines found to meet requirements of commission's specifications and orders in Automatic Train-Control Devices, 69 I. C. C. 258; 91 I. C. C. 426. Additional requirements with respect to certain apparatus and operations prescribed in order that the greatest degree of safety may be insured: Baltimore & Ohio R. R. Co., Baltimore (West end) division (Intermittent-induction automanual type with forestalling feature of the General Railway Signal Co.), 120 I. C. C. 635. Chicago, Burlington & Quincy R. R. Co., Omaha division (Intermittent magnetic-induction type with forestalling feature of the Sprague Safety Control & Signal Corp.), 120 I. C. C. 475. Delaware & Hudson Co., Champlain division (Intermagnetic-induction type with forestalling feature of the Sprague Safety Control Co.), 120 I. C. C. 624. Great Northern Ry. Co., Minot division (Intermittent magnetic-induction type with forestalling feature of the Sprague Safety Control & Signal Corp.), 120 I. C. C. 193. Northern Pacific Ry. Co., second subdivision of Yellowstone division (Intermittent magnetic-induction type with forestalling feature of the Sprague Safety Control & Signal Corp.), 120 I. C. C. 199.

(pp) This report is made after inspection and test of the automatic train stop (automanual) system of the General Railway Signal Company on portions of the New Jersey & Lehigh and New York divisions of the Lehigh Valley system. This device was first installed on a section of the L. V. R. R. between Phillipsburg, N. J., and Flemington, N. J., with 10 equipped locomotives. The installation inspected and tested was completed in August 1926. It extends from Easton, Pa., to Newark, N. J., a distance of 65.5 miles of which 0.92 miles consists of single track, 32.34 miles of two tracks, 19.94 miles of three tracks and 12.40 miles of four tracks, a total of 175.02 miles. HELD, with certain modifications installation approved. Automatic Train Control Devices, 122 I. C. C. 45.

(qq) This report is made after inspection and test of the automatic train stop system of the Sprague Safety Control & Signal Corporation on the Northern division of the Chicago Indianapolis & Louisville Ry. The device was first placed in service on the C. I. & L. between Shelby and Rensselaer, Ind., a distance of 20.2 miles, with six equipped locomotives. The installation inspected and tested was completed in July 1926 and extends from South Hammond, Ind., to the north end of Monon, Ind., a distance of 63.6 miles of single track. There are 32 locomotives equipped with the device. HELD, with certain modifications installation approved. Automatic Train Control Devices, 122 I. C. C. 587.

(rr) This report is made after inspection and test of the automatic train stop system of the Union Switch & Signal Company on the Chicago division of the New York Chicago & St. Louis R. R. The device was first installed by the N. Y. C. & St. L. in July 1925 on a 20.2 mile sec-

tion consisting of 4 miles of double track and 16 miles of single track, between Fort Wayne, Ind., and Arnolds, Ind. There were six locomotives equipped with the device in Oct. 1925. The installation inspected and tested was placed in service in August 1926. It extends from West Fort Wayne, Ind., to Stony Island, Ill., a distance of 139 miles, of which 123.1 miles is single track and 15.9 miles double track. There are 53 locomotives equipped with the device. HELD, with certain modifications, device approved. Automatic Train Control Devices, 122 I. C. C. 597.

(ss) This report is made after inspection and test of the automatic train stop system of the Miller Train Control Corporation on the Terre Haute district of the Chicago division of the C. & E. I. Ry. Original report 91 I. C. C. 426. It extends from Danville, Ill., to Clinton, Ind., a distance of 35.5 miles of double track. There are 33 locomotives equipped with the device. HELD, with certain modifications suggested, system approved. Automatic Train Control Devices, 123 I. C. C. 617.

(tt) After inspection and test of the following train-stop or train-control systems, their installation on the following-named lines found to meet requirements of the commission's specifications and orders in Automatic Train Control Devices, 69 I. C. C. 258. Additional requirements with respect to certain apparatus and operations prescribed in order that the greatest degree of safety may be insured: Chicago, Indianapolis & Louisville Ry., Northern division (Intermittent magnetic-induction type with forestalling feature of the Sprague Safety Control & Signal Corp.), 122 I. C. C. 587. Lehigh Valley R. R. Co., New Jersey & Lehigh and New York division (Intermittent-induction type, automanual, with forestalling feature of the General Ry. Signal Co.), 122 I. C. C. 45. New York, Chicago & St. Louis R. R. Co., Chicago division (Intermittent-induction type, with forestalling feature of the Union Switch & Signal Co.), 122 I. C. C. 597.

(uu) After inspection and test of the automatic train-stop or train-control system of the intermittent electrical contact type with forestalling feature of the Miller Train Control Corp., its installation on the Terre Haute District of the Chicago division of the Chicago & Eastern Illinois Ry., found to meet requirements of the commission's specifications and order in 91 I. C. C. 426. Additional requirements with respect to certain apparatus and operations prescribed in order that the greatest degree of safety may be insured. Automatic Train Control Devices, 123 I. C. C. 617.

(vv) This report is made after inspection and test of the automatic train stop system of the General Railway Signal Company on the first district of the Cincinnati, New Orleans and Texas Pacific Ry. This device was first installed by the C. N. O. & T. P. in Nov. 1924 on a 35 mile section between Ludlow and Williamstown, Ky., with eight locomotives. The installation inspected and tested was completed and placed in service in Feb. 1926. It extends from Ludlow, Ky., to Somerset, Ky., a distance of 157 miles, of which 79 miles is double track and 78 miles single track. HELD, with certain modifications, device approved. Automatic Train Control Devices, 126 I. C. C. 186.

(ww) This report is made after inspection and test of the automatic train stop system of the Union Switch & Signal Company on portions of the Richmond and Clifton Forge divisions of the Chespeake & Ohio. The installation inspected and tested was placed in service in October, 1926. It extends from Orange, Va., to Staunton, Va., a distance of 70 miles of single track. There are 60 locomotives equipped with the device. HELD, with certain modifications device approved. Automatic Train Control Devices, 126 I. C. C. 217.

(xx) This report is made after inspection and test of the automatic train stop system of the Union Switch & Signal Company on a portion of the Clifton Forge division of the C. & O. It extends from Staunton, Va., to Clifton Forge, Va., distance of 55 miles of single track. This installation is a continuation of the system installed between Orange, Va., and Staunton, Va., under the order of June 13, 1922. The 60 locomotives equipped with the train stop device operate over this division. HELD, with modifications, device approved. Automatic train control devices, 126 I. C. C. 229.

(yy) This report is made after inspection and test of the automatic train stop system of the General Railway Signal Co., on portions of the Delaware and New York divisions of the Erie. This device under consideration was first installed on a section of the Erie between Lordville and Deposit, N. Y., a distance

of 21 miles with eight equipped locomotives. It extends from Port Jervis, N. Y., to Susquehanna, N. Y., a distance of 104 miles of double track. There are 94 locomotives equipped with the device. HELD, with certain modifications device approved. Automatic Train Control devices, 126 I. C. C. 231.

(zz) This report is made after inspection and test of the automatic train stop system of the General Railway Signal Company on the second district of the C. N. O. & T. P. The installation inspected and tests were completed in June 1926. It extends from Somerset, Ky., to Citico Jct, Chattanooga Tenn., a distance of 175 miles, of which 84 miles is double track and 91 miles single track. There are 75 locomotives equipped with the device. HELD, with certain modifications device approved. Automatic Train Control devices, 126 I. C. C. 290.

(3a) This report is made after inspection and test of the automatic train stop system of the Union Switch & Signal Company on the Fitchburg-Berkshire division of the Boston and Maine. The installation inspected and tested was completed and placed in service August 28, 1926. It extends from the west end of West Cambridge tower to the west end of East Deerfield Yard, Mass., a distance of 99.5 miles, of which 94.6 miles is two track and 4.9 miles is three track, with 130 equipped locomotives and two gas electric cars. HELD, with certain modifications device approved. Automatic Train Control devices, 126 I. C. C. 392.

(3b) After inspection and test of the following train-stop or train-control systems, their installation on the following named lines FOUND to meet requirements of the commission's specifications and orders in Automatic Train-Control Devices, 69 I. C. C. 258; 91 I. C. C. 426. Additional requirements with respect to certain apparatus and operations prescribed in order that the greatest degree of safety may be insured: Boston & Maine R. R., Fitchburg-Berkshire division (Continuous-induction type of the Union Switch & Signal Co.) 126 I. C. C. 392. Chesapeake & Ohio Ry., Richmond and Clifton Forge Divisions (Intermittent-induction type, with forestalling feature of Union Switch & Signal Co.), 126 I. C. C. 217, 229. Cincinnati, New Orleans & Texas Pacific Ry. Co., First and Second Districts, Intermittent-induction, automanual type, with forestalling feature, of the General Railway Signal Co.), 126 I. C. C. 186, 290. Erie R. R., Delaware and New York divisions (Intermittent-induction, auto-manual type, with forestalling feature, of the General Railway Signal Co., 126 I. C. C. 231.

(3c) Safety appliance law, in all cases involving railroads and their employes engaged in interstate commerce, supersedes Texas statute limiting defense of assumed risk as allowed at common law. Chicago R. I. & G. Ry. Co. v. Bernard, (Tex., 1925) 275 S. W. 505.

(3d) After inspection and test of the automatic train-stop of the intermittent-induction (automanual) type, with forestalling feature, of the General Railway Signal Co., its installation on portions of the Mohawk and Syracuse divisions of the New York Central R. R., found to meet requirements of the commission's specifications in 69 I. C. C. 258. Additional requirements with respect to certain apparatus and operations prescribed in order that the greatest degree of safety may be insured. Automatic Train-Control Devices, 128 I. C. C. 662.

(3e) This report is made after inspection and test of the automatic train stop systems of the General Railway Signal Company on portions of the Mohawk and Syracuse divisions of the New York Central Railroad. It extends from Albany, N. Y., to Syracuse, N. Y., a distance of 145.16 miles. There are 476 locomotives equipped with the device. HELD: Installation approved with modifications. Automatic Train-Control Devices, 128 I. C. C. 662.

(3f) This report is made after inspection and test of the automatic train stop system of the Union Switch & Signal Company on the P. & L. E. division of the P. & L. E. R. R. HELD: With certain modifications and recommendations, installation approved. Automatic Train Control Devices, 129 I. C. C. 93.

(3g) This report is made after inspection and test of the automatic train stop system of the General Railway Signal Company on portions of the Cleveland Buffalo divisions, and the Erie division of the N. Y. C. The installation inspected and tested was completed June 18, 1926. It extends from Buffalo, N. Y., to Cleveland, O., a distance of 180.76 miles. HELD: With certain modifications, installation approved. Automatic Train Control Devices, 129 I. C. C. 483.

(3h) This report is made after inspection and test of the automatic train stop system of the General Railway Signal Company on the Albany division of the Boston & Albany R. R. The installation, inspected and tested, was completed and placed in service July 5, 1926. It extends from Rensselaer, N. Y., to Springfield, Mass., a distance of 101.55 miles. HELD: With certain modifications, device approved. Automatic Train Control Devices, 129 I. C. C. 490.

(3i) This report is made after inspection and test of the automatic train stop system of the General Railway Signal Company on the Boston division of the Boston & Albany R. R. The installation inspected and tested was completed and placed in service July 5, 1926. It extends from Springfield, Mass., to Boston, Mass., a distance of 97.21 miles. HELD: With certain modifications, device approved. Automatic Train Control Devices, 129 I. C. C. 537.

(3j) This report is made after inspection and test of the automatic train stop system of the General Railway Signal Company on the Fayetteville district of the Atlantic Coast Line R. R. HELD, device with modifications approved. Automatic Train Control Devices, 129 I. C. C. 700.

(3k) This report is made after inspection and test of the automatic train control device of the Regan Safety Devices Co. on the Iowa division of the Rock Island, installed by that carrier. The installation was completed and placed in operation on July 23, 1927. HELD: With certain modifications, device approved. Automatic Train Control Devices, 132 I. C. C. 141.

(3l) This report is made after inspection of the automatic train stop system of the General Railway Signal Company on portions of the Middle and West divisions of the Michigan Central. Installation inspected and tested, was completed July 18, 1926. It extends from Jackson, Mich., to Niles, Mich., a distance of 116.82 miles. HELD: With certain modification device approved. Automatic Train Control Devices, 132 I. C. C. 155.

(3m) This report is made after inspection and test of the automatic train stop system of the General Railway Signal Company on portions of the Detroit and Middle divisions of the Michigan Central. It extends from West Detroit, Mich., to Jackson, Mich., distance 72.64 miles. HELD: With certain modifications device approved. Automatic Train Control Devices, 132 I. C. C. 176.

(3n) This report is made after inspection and test of the automatic train stop system of the General Railway Signal Company on the West division of the Michigan Central. The installation inspected and tested was completed and placed in service July 22, 1927. It extends from Niles. Mich., to Kensington, Ill., distance 78.47 miles. HELD: With certain modifications, device approved. Automatic Train Control Devices, 132 I. C. C. 244.

(3o) This report is made after inspection and test of the automatic train stop system of the National Safety Appliance Co. on a part of the Southwestern division of the St. Louis San Francisco Ry. The installation inspected and tested was completed and placed in service by sections from August to December, 1926. It extends from Monett, Mo., to Afton. Okla., distance 66.1 miles. HELD: With certain modifications, device approved. Automatic Train Control Devices, 132 I. C. C. 393.

(3p) This report is made after inspection and test of the automatic train stop system of the General Railway Signal Company on a portion of the St. Louis division of the Big Four. It extends from Mattoon, Ill., to Lenox, Ill., a distance of 109.4 miles. There are 15 locomotives and one gas electric passenger car equipped with the device. HELD: With certain modifications, device approved. Automatic Train Control Devices, 132 I. C. C. 633.

(3q) This report is made after inspection and test of the intermittent inductive automanual train stop system, manufactured by the General Railway Signal Company as installed on 4.2 miles of the Knoxville division of the L. & N. between Holton, Tenn., and Lot, Ky., to operate in connection with Southern Railway equipped locomotives which run over this portion of the L. & N. HELD: With certain modifications, device approved. Automatic Train Control Devices, 132 I. C. C. 646.

(3r) This report is made after inspection and test of the automatic train stop system of the Union Switch & Signal Company on the New Orleans & Mobile division of the L. & N., extending from Mobile, Ala., to New Orleans, La., a dis-

tance of 136.2 miles, of which 132 miles is single track and 4.2 miles double track. There are 44 locomotives equipped with the device. HELD: With certain modifications, device approved. Automatic Train Control Devices, 132 I. C. C. 649.

(3s) This report is made after inspection and test of the automatic train stop system of the General Railway Signal Company on a portion of the St. Louis division of the Big Four Ry. It extends from Mount Jackson (Indianapolis) Ind., to Mattoon, Ill., a distance of 125.7 miles. There are 74 locomotives equipped with the device. HELD: With certain modifications device approved. Automatic Train Control Devices, 132 I. C. C. 731.

(3t) After inspection and test of the following train-stop or train-control systems, their installation on the following-named lines found to meet the requirements of commission's specifications and orders in Automatic Train Control Devices, 69 I. C. C. 426. Additional requirements with respect to certain apparatus and operations prescribed in order that greatest degree of safety may be insured:

Atlantic Coast Line R. R. Co., Fayetteville district, first division (Intermittent-induction (automanual) type, wth forestalling feature of the General Railway Signal Co., 129 I. C. C. 700.

Boston & Albany R. R. (N. Y. C. R. R. Co., lessee):

Albany division (Intermittent induction (automanual) type, with forestalling feature of the General Railway Signal Co.) 129 I. C. C. 490.

Boston division (Intermittent-induction (automanual) type, with forestalling feature of the General Railway Signal Co.), 129 I. C. C. 537.

New York Central R. R., Cleveland and Buffalo divisions and the Erie division (Intermittent-induction (automanual) type, with forestalling feature of the General Railway Signal Co.), 129 I. C. C. 483. Pittsburgh & Lake Erie R. R., Pittsburgh & Lake Erie division (Intermittent-induction type, with forestalling feature of the Union Switch & Signal Co.), 129 I. C. C. 93.

SALE OF FREIGHT

See Freight Charges.

(a) That carrier notified shipper that, unless disposition orders were received, refused merchandise would be sold at public auction to highest bidder without further notice, HELD not a sufficient act of dominion, inconsistent with shipper's title or carrier's right as bailee, to constitute conversion and defeat carrier's claim for storage charges. Erie R. Co. v. E. Kieser & Son, (N. Y., 1925) 211 N. Y. S. 362.

(b) In action to recover shipping and storage charges on refused merchandise, defenses alleging that carrier unreasonably allowed charges to accumulate in excessive amount by failing to deliver merchandise to warehouseman, whose rates were less than carrier's rates, after 60 days, as authorized by Railroad Law, § 68, HELD sufficient on their face, and not objectionable, as attack on reasonableness of carrier's rates without preliminary resort to Interstate Commerce Commission. Erie R. Co. v. F. Kieser & Son, (N. Y., 1925) 211 N. Y. S. 362.

SEASON RATES

See Reasonableness of Rates §35.

SHERMAN ACT

See Anti-Trust Act; Evidence §10.

SIDE TRACKS AND SPUR TRACKS

See Switch Tracks and Switching §11; Transportation §5.

(a) Placement tracks, from standpoint of tariff description, are either public or private; there is no middle ground. A plug track used for inspection of hay and leased to a hay exchange for that purpose could not be described as a public delivery track on which any or all shippers could receive or ship any or all freight. Consequently it falls into the general category of private tracks. Brown & Co. v. E. R. R., 109 I. C. C. 109, 111.

(b) Rate on lumber from Millville Junction, Fla., to Decatur, Ga., when consigned to industries having private sidings lower than on like traffic consigned to general public, found unreasonable. Watters-Tonge Lumber Co. v. A. & St. A. B., 109 I. C. C. 598.

(c) The commission does not approve the practice of some carriers of repaying advancements made by a shipper for the construction of a switch track by making an allowance to him of a definite amount on each carload of freight shipped to or from its manufacturing

plant. Such an arrangement presents too much the appearance of a purchase of property by the carrier with transportation, which is contrary to the principles of the act. Service on K. O. & G. Ry., 118 I. C. C. 412.

(d) A spur may, at the outset, lead only to a single industry or establishment; it may be constructed to furnish an outlet for the products of a particular plant; its cost may be defrayed by those in special need of its service at the time. But none the less, by virtue of the conditions under which it was provided, the spur may constitute at all times a part of the transportation facilities of the carrier which are operated under the obligations of public service and are subject to the regulation of public authority. The uses for which the track desired are not the less public because the motive which dictated its location over this particular land was to reach a private industry, or because the proprietors of that industry contributed in any way to the cost. The branch or spur comes into existence as a public utility and as such is always available as localities change and communities grow. Service on K. O. & G. Ry., 118 I. C. C. 412, 415.

(e) The Federal Transportation Act, Feb. 28, 1920 (U. S. Comp. St. Ann. Supp. 1923, § 10071¼ et seq.), does not affect intrastate commerce only as incidental to the effective regulation of interstate and foreign commerce, and specifically reserves to the state the power to compel the construction of spurs, switching or side tracks, located or to be located wholly within one state, and nothing in said act impairs or affects the right of the state in the exercise of its police power to require just and reasonable freight and passenger service for intrastate business, except so far as such regulations are inconsistent with any lawful order of the Interstate Commerce Commission. Milhollan v. Great Northern Ry. Co., (N. D., 1925) 204 N. W. 994.

SLEEPING CAR COMPANIES

See Passenger Fares and Facilities.

(a) Upon complaint alleging a violation of section 2 of the act, and seeking damages due to unjust discrimination against colored passengers in favor of persons of the white race in furnishing of Pullman accommodations, HELD: That commission had no jurisdiction to award punitive or exemplary damages as here sought. See 112 I. C. C. 239. Undue prejudice in violation of section 3 of the act was not alleged or established by proof, and refusal to sell Pullman accommodations to colored passengers as alleged does not constitute unjust discrimination within the meaning of section 2 of the act, which prohibits charging one person more than another for a like and contemporaneous service. Harden v. Pullman Co., 120 I. C. C. 359.

(b) That Pullman Company is under contract to pay railroads for hauling Pullman cars HELD not to authorize removal of intrastate Pullman surcharge by State Corporation Commission. Atlantic Coast Line R. Co. v. Commonwealth State Corporation Commission, (Va., 1926) 133 S. E. 883.

(c) State Corporation Commission cannot reduce intrastate fares below general level of interstate rates be ordering removal of intrastate Pullman surcharge, as to do so would break down interstate rates established by Interstate Commerce Commission under Interstate Commerce Act, § 15a as added by Act Feb. 28, 1920, § 422 (U. S. Comp. St. Ann. Supp. 1923, § 8583a). Atlantic Coast Line R. Co. v. Commonwealth State Corporation Commission, (Va., 1926) 133 S. E. 883.

(d) Pullman surcharge, authorized by Interstate Commerce Commission under Interstate Commerce Act, § 15a, as added by Act Feb. 28, 1920, § 422 (U. S. Comp. St. Ann. Supp. 1923, § 8583a), HELD not invalid as additional tax exacted by Pullman Company without giving anything of value in return, being collected by it for carriers as part of transportation charge. Atlantic Coast Line R. Co. v. Commonwealth State Corporation Commission, (Va., 1926) 133 S. E. 883.

(e) Intrastate Pullman surcharge, worth $100,000 annually to carriers in state, HELD not removable on ground that loss would be de minimis. Atlantic Coast Line R. Co. v. Commonwealth State Corporation Commission, (Va., 1926) 133 S. E. 883.

(f) That two railroads in state were earning more than return fixed by Interstate Commerce Commission HELD not ground for removal of intrastate Pullman surcharge, in view of Transporta-

tion Act Feb. 28, 1920 (U. S. Comp. St. Ann. Supp. 1923, § 10071¼ et seq.), subjecting excess to prorata recapture for prorata benefit of all roads in same rate group. Atlantic Coast Line R. Co. v. Commonwealth State Corporation Commission, (Va., 1926) 133 S. E. 883.

(g) Where commonwealth offered no evidence and carriers' evidence did not support State Corporation Commission's order eliminating intrastate Pullman surcharge, worth $100,000 annually to carriers, such order is void as taking property without due process. Atlantic Coast Line R. Co. v. Commonwealth State Corporation Commission, (Va., 1926) 133 S. E. 883.

(h) Where, on suggestion of railroad, Interstate Commerce Commission, under Interstate Commerce Act, as amended by Transportation Act, at hearing participated in by railroads and Pullman Company, authorized a 50 per cent. extra charge on sleeping and parlor car passengers for benefit of carriers, and thereafter authorized Pullman Company to publish a surcharge tariff, which it did, HELD, Commission did not exceed its authority in directing schedule to be filled by Pullman Company, which was to collect the tariff, and carrier's concurrence therein, if necessary, could be inferred from the circumstances. Waters v. Pullman Co., 10 Fed. (2d.) 622.

SMELTING-IN-TRANSIT

(a) Failure and refusal of Northern Pacific to establish smelting-in-transit arrangement at East Helena, Mont., on lead ore and concentrates from Kellogg and Bradley, Idaho, on O.-W. R. & N. lines, to eastern destinations, while contemporaneously maintaining such transit arrangements o ore from other points on its own lines in same district, found not discriminatory or unduly prejudcial. Complaint is desirous of smelting all ores it can obtain at its own plant at Bradley, and it is therefore not likely that it would ship ore to East Helena smelter even if transit tariff were extended to Kellogg and Bradley. Nor is it shown that it would be benefited if preference and prejudice were removed by withdrawal of transit arrangements from other points in the district. Bunker Hill & Sullivan M. & C. Co. v. N. P., 129 I. C. C. 242.

SPECIAL CONTRACTS

I. CONTROL AND REGULATION.
§1. Constitutionality of act.
II. LEGALITY AND EFFECT SINCE PASSAGE OF ACT.
§2. In general.
§2½. Previous validity.
III. LIABILITY.
§3. Criminal liability.
§4. Damages for breach.
(1) Jurisdiction of Commission.
(2) In general.
§5. Discrimination through contract.
IV. ACTIONS TO ENFORCE.
§5½. In general.
§6. Defenses.
V. AS EVIDENCE OF REASONABLE RATES.
§7. In general.

CROSS REFERENCES

See Cars and Car Supply; Evidence §15, §27; Exclusive Contracts; Express Companies §8, §37½; Leases; Loss and Damage I, §8, §9; Passenger Fares and Facilities §12; Released Rates; Stock Yard Companies; Trackage Contracts.

II. LEGALITY AND EFFECT SINCE PASSAGE OF ACT.

See Legality of Rates.

§2. In General.

(a) It is a familiar principle of equity jurisprudence that equity courts alone have power to reform contracts, and that this power is exercisable only in the case of fraud or mutual mistake. However, this equitable principle applies only to private contracts, of concern only to parties thereto. But other considerations enter into a contract, impressed with public interest, entered into between carriers or between them and a State or municipality, provisions of which encroach upon latent or exerted authority of Congress under commerce clause of the Constitution. No such contract can be placed beyond reach of a competent exercise of such authority merely by inclusion therein or relation thereto of outside interests not themselves subject to the act, however cautiously power should be exercised in such cases. Nor does fact that franchise grants are among mutual covenants make it immune, as was settled in New York v. U. S., 257 U.

S. 591. M.-K.-T. v. K. C. T., 104 I. C. C. 203, 222.

(b) Contracts entered into by carriers for continuance of a service may not stand in the way if they conflict with enforcement of the act. However, commission should not strike such contracts down without considering whether other means of removing violations of the act may not be adopted which will preserve such contract rights. York Mfrs. Asso. v. P. R. R., 107 I. C. C. 219, 239.

(c) Complainant contracted to manufacture a commodity for a specific sum of money f. o. b. destination. Contract provided that in event of revision of freight rate prior to time materials were shipped, freight allowance was to be adjusted accordingly. Complainant subsequently filed claim for reparation and four years after date of shipment the buyer authorized complainant to act as its agent. Carrier contended that under circumstances reparation could not be awarded. HELD: Neither carrier nor commission had knowledge of sales contract and are therefore not concerned with it. Moreover, the latter must deal with freight charges as such and not as part of the price of a commodity. See 269 U. S. 217. Duluth Boiler Works v. A., T. & S. F., 118 I. C. C. 161, 164.

(d) Arrangement whereby shipper does not pay definite and stated charges to carriers for transportation services rendered, but such compensation is received by carriers under terms of contracts covering rental of track materials, found contrary to principles of the act. See also 12 I. C. C. 503. Service on K., O. & G. Ry., 118 I. C. C. 412, 415.

(e) Contracts between carriers and shippers can not be permitted to defeat requirements of the law. Service on K., O. & G. Ry., 118 I. C. C. 412, 415.

(f) Existence of option contracts on shares of stock of a carrier, issued to shippers and conditioned upon the routing of traffic over the carrier's line, can have little weight in the consideration of whether or not the line of the carrier issuing the option contracts should be eliminated as an intermediate carrier in the routing of transcontinental traffic. The proper remedy for the practice of entering into such contracts, assuming it to be illegal, would be the elimination of the practice rather than of the carrier, in the routes. Restriction in Routing over S. L. & U., 122 I. C. C. 208, 209, 210.

(g) Contracts which violate the provision of a statute are illegal. When there are a number of considerations, and one of them is illegal, the whole agreement is avoided; this doctrine being put upon the ground of the impossibility of saying how much or how little the void portion may have had as an inducement to the contract. Lehigh Valley R. Co. v. United Lead Co., (N. J., 1926) 133 Atl. 290.

(h) Special agreement between carrier and shipper to transport and deliver cattle on certain date is void, unless open to all shippers alike. Willer v. Chicago, M. & St. P. Ry. Co., (S. D., 1926) 210 N. W. 81.

(i) Express contract for carrier's services, made prior to rendition thereof, does not make carrier a private carrier. State v. Washington Tug & Barge Co., (Wash, 1926) 250 Pac. 49.

(j) Where railroad company makes contract giving defendant special freight rates, not filing the schedule with Public Service Commission, as required in Rev. St. 1919, §§ 10438, 10444, HELD, company could not recover such freight charges; the contract being void, as providing for rates different than those on file. St. Louis Southwestern Ry. Co., (Mo., 1925) 275 S. W. 55.

(k) Assuring performance to shipper of a transportation service, which otherwise might not have been promptly rendered, constitutes an undue preference, and contract therefore would be illegal and void. Chesapeake & O. Ry. Co. v. Westinghouse, Church, Kerr & Co., Inc., 46 Sup. Ct. 220. Mellon, Director General of Railroads v. Same, 46 Sup. Ct. 220.

III. LIABILITY.

§4. Damages for Breach.

(1) Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) Carriers seeking, in effect, revision or reformation of an improvident operating agreement governing joint use and operation of terminal facilities, contend that for commission's jurisdiction to attach it needs only to give effect to section 15a of the act without waiting until a carrier's bankruptcy shall ensue, and

to find as a fact that operating agreement is so burdensome as to result in inefficient and uneconomical operation, to cause misapplication of funds created for an entirely different purpose, and generally to operate to impair carrier's ability to furnish adequate railway service. FOUND: Neither expressly nor by implication does section 15a embrace a direct or indirect revision or reformation of any such contact, nor is the commission able to find the requisite power or authority in any other provision of the act. M.-K.-T. v. K. C. T., 104 I. C. C. 203, 223, 224.

(b) The commission is not bound by terms of contracts entered into between carrier and its tenants in exercising its powers under the act in respect of interchange traffic. Rates of P. & P. U. Ry., 115 I. C. C. 469, 511.

(c) A modification of the terms of a contract between shipper and carrier is clearly beyond the scope of the commission's authority. Transit Privileges on Lumber and Ties, 126 I. C. C. 433, 436.

§ 5. Discrimination Through Contract.

See Discrimination.

(a) It is well settled that contracts between carriers and shippers can not be permitted to defeat the requirements of the law. Service on the K. O. & G. Ry., 118 I. C. C. 412, 415.

IV. ACTIONS TO ENFORCE.

See Action at Law.

§5½. In General.

(a) It is a familiar principle of equity jurisprudence that equity courts alone have power to reform contracts, and that this power is exercisable only in case of fraud of mutual mistake. However, this equitable principle applies only to private contracts, of concern only to parties thereto. But other considerations enter into a contract, impressed with public interest, entered into between carriers or between them and a State or municipality, provisions of which encroach upon latent or exerted authority of Congress under commerce clause of the Constitution. No such contract can be placed beyond the reach of a competent exercise of such authority merely by inclusion therein or relation thereto of outside interest not themselves subject to the act, however cautiously the power should be exercised in such cases. Nor does fact that franchise grants are among mutual covenants make it immune, as was settled in New York v. U. S., 25 U. S. 591. M.-K.-T. v K. C. T., 104 I. C. C. 203, 222.

(b) The court will not aid either party to an illegal contract, but will leave the parties just where it finds them, unless the legal part is separable from the illegal part. Lehigh Valley R. Co. v. United Lead Co., (N. J., 1926) 133 Atl. 290.

V. AS EVIDENCE OF REASONABLE RATES.

§7. In General.

(a) Existence of option contracts on shares of stock of a carrier, issued to shippers and conditioned upon the routing of traffic over the carrier's line, can have little weight in the consideration of whether or not the line of the carrier issuing the option contracts should be eliminated as an intermediate carrier in the routing of transcontinental traffic. The proper remedy for the practice of entering into such contracts, assuming it to be illegal, would be the elimination of the practice rather than of the carrier, in the routes. Restrictions in Routing over S. L. & U., 122 I. C. C. 208, 209, 210.

(b) Agreements between carriers and shippers are of no legal effect in determining applicable rate where such agreements are not published in tariffs on file with the commission. Harlem & Morrisiana Transp. Line v. N. Y., N. H. & H., 123 I. C. C. 480, 483, 484.

SPECIAL RATES AND SERVICES

See Additional Charges and Services; Car Ferry; Cars and Car Supply §9¼, §9½, §9⅝, §9¾, §9⅞, §10, §10½, §11, §11½, §11¾, 11⅞; Expedited Service; Facilities and Privileges §9, §10, §12½; Passenger Fares and Facilities §7¾; Precooling; Protective Service; Reasonableness of Rates §31; Reconsignment: Refrigeration §3; Reparation §14; Stock Yard Companies; Stoppage-In-Transit; Switch Tracks and Switching §5; Transportation §8; Warehouses; Weights and Weighing.

(a) Resort to charges for special services is not proper means of maintaining a parity in freight rates. Refrigeration of L. C. L. Perishable Freight, 107 I. C. C. 179, 181.

(b) The commission has approved separately stated charges for special services rendered by carriers. U. S. Industrial Alcohol Co. v. C. & N. W. Ry., 118 I. C. C. 674, 676.

(c) On evidence that intrastate rates were higher than interstate rate from mines nearby, and put undue burden on complainant's finished product not borne by its competitor, in view of record showing that complainant was independent of shipping points in question for fuel supply, special rates should not be granted, in view of fact that established uniform rates had been set from experience extending over a long time and after many hearings. Atchison T. & S. F. Ry. Co. v. State, (Okla., 1925) 241 Pac. 776.

SPECIAL TRAIN

See Circus Trains; Passenger Fares and Facilities §7¾.

SPOTTING

See Allowances §9 (i).

STATE RATES AND REGULATION

See Accounting §2; Act to Regulate Commerce; Advanced Rates §5 (7¼); Attorney's Fees; Cars and Car Supply §33; Courts III, V; Demurrage §1½; Discrimination §2½, §8 (6), §11, §12½; Equalization of Rates §5, §13 (6), V; Evidence §13 (6), §25; Express Companies §1½; Interstate Commerce I, §2, §4, §5, §10; Interstate Commerce Commission §10, III; Jurisdiction of Commission; Loss and Damage §2, §3, §5; Rail and Water Rates (3d); Reasonableness of Rates §3; Routing and Misrouting §4½, §13; Tariffs §17; Through Routes and Joint Rates §16½, §19, §22; Undercharges §7½; Water Carriers §4½.

(a) Following Conference Ruling of March 13, 1922, and 74 I. C. C. 703 and other cited cases, commission is without authority to award reparation, or to consent to an award of reparation made by a State commission, on intrastate shipments which moved during guaranty period following period of Federal control. Armour & Co. v. G. N. 104 I. C. C. 34.

(b) Fact that a State commission has declared in a proceeding commenced subsequent to termination of so-called guaranty period following Federal control that certain intrastate rates collected during that period were unreasonable, and that commission is asked merely to approve that finding, does not enlarge the limited jurisdiction conferred upon it by section 208 (a) of transportation act, 1920, to review rates reduced by State commissions prior to termination of guaranty period, since commission's direct jurisdiction over reductions in intrastate rates was limited to action taken prior to such period. Under no provisions of transportation act or of interstate commerce act is commission given authority to review and approve a finding of a State commission made subsequent to said period, and to order award of reparation based thereon. Armour & Co. v. G. N., 104 I. C. C. 34, 36.

(c) The commission's authority to pass upon unreasonableness of an intrastate rate and a prayer for reparation based thereon ceased with relinquishment of Federal control. See 74 I. C. C. 703 and other cases cited. Armour & Co. v. G. N., 104 I. C. C. 34, 36.

(d) Except under certain circumstances commission has no jurisdiction to determine reasonableness of rates for transportation wholly within one State. Florence Chamber of Commerce v. C. of G., 104 I. C. C. 373, 374.

(e) Import shipment arrived at East San Pedro, Calif., where it was unloaded from vessel. Complainant, being unable to handle as rapidly as discharged from ship, moved part to San Pedro, where it was stored and subsequently forwarded to Los Angeles. No place of business was maintained by complainant at San Pedro or East San Pedro, nor was any of the shipment sold at, or distributed to consumers from those points FOUND: Shipment constituted import traffic subject to commission's jurisdiction, the foreign character of commerce not being destroyed by temporary storage at San Pedro, there being a continuing intention that transportation should not end at that point but that a further movement beyond—i. e., to Los Angeles—would follow water transportation. Woodhead Lbr. Co. v. P. E., 104 I. C. C. 751.

(f) Intrastate rates on flaxseed from Minnesota points to Minneapolis and Duluth found unduly preferential and prejudicial and unjustly discriminatory against interstate commerce. Nonpreju-

dicial basis of rates prescribed. South Dakota R. R. Commrs. v. C. & N. W., 107 I. C. C. 35.

(g) Intrastate express rates on fresh fruits and vegetables from Western Slope district of Colorado to destinations in that State found not unduly preferential of that district nor unduly prejudicial to Farmington district of New Mexico, and not unjustly discriminatory against interstate commerce. Hunter Bros. Mercantile Co. v. Am. Ry. Ex. Co., 107 I. C. C. 313.

(h) Contention that commission is without jurisdiction over an intrastate movement as part of a through rail-and-water movement from an interstate point of origin where there is no common control, management, or arrangement for continuous carriage or shipment, not sustained. Where there is an original and continuing intention to ship goods from a point in one State to a point in another State the commerce is interstate and its character, as such, is not changed by mere accidents or incidents of billing. See 260 U. S. 166, and 88 I. C. C. 447. United States Finishing Co. v. N. Y., N. H. & H., 107 I. C. C. 412, 413.

(i) To approve a rate to a given destination merely because it would bear a proper relationship to intrastate rate to a nearby destination would be to hold that intrastate rates may control interstate rates. See 38 I. C. C. 742. Coal from Southern Illinois, 107 I. C. C. 415, 419.

(j) Shipper contends that rates maintained over a short intrastate route control, and uphold to an unreasonable level rates via interstate routes, thereby imposing an unjust burden upon interstate commerce, and seeks as a remedy to have commission reduce the intrastate rate, on theory that, this being the basing rate, such action will result in establishment of reasonable and nondiscriminatory interstate rates. HELD: Since no showing made that intrastate commerce is favored or interstate commerce prejudiced by the rate adjustment, and no claim made that intrastate rate fails to produce its just share of revenue as compared with level of interstate rates, no situation is presented which would bring intrastate rates under the commission's jurisdiction. In such case, commission can merely determine whether interstate rates are unreasonable or otherwise in violation of the act. Hammond Iron Works v. P. R. R., 107 I. C. C. 473, 475.

(k) Contention that commission has no jurisdiction to require carriers to increase intrastate rates in order to remove alleged undue prejudice where complainants do not specifically allege a violation of section 13 of the act, not sustained where complaints sufficiently set forth facts putting both defendant carriers and State authorities, as required by the act, upon notice that maintenance of lower intrastate rate as compared with interstate rate is challenged, and where State authorities are also notified of hearing. Four States Grocery Co. v. K. C. S. Ry., 107 I. C. C. 485, 489.

(l) Where law of a State prohibits pooling of revenues by competing rail carriers, and only a small portion of such revenue proposed to be pooled is from intrastate traffic, commission has jurisdiction in the matter under section 5 of the act, paragraph (1) of which gives it authority to enter orders approving certain pooling arrangements, and paragraph (8) of which provides that carriers so affected shall be relieved of all restraints of prohibitions by law, State or Federal, in so far as may be necessary to enable them to do anything authorized or required by such orders. Joint Passenger Train Service, 107 I. C. C. 493, 495.

(m) Upon further hearing, rates on fertilizer from Jacksonville, Fla., to certain destinations within that State, to extent that they are on lower bases than those governing corresponding rates from Blackshear, Ga., to same destinations, found unduly preferential of Jacksonville, unduly prejudicial to Blackshear, and unjustly discriminatory against interstate commerce. Nonprejudicial bases of rates prescribed. Original report, 87 I. C. C. 654. Blackshear Mfg. Co. v. A. C. L., 107 I. C. C. 538.

(n) Cattle moving from Alfred, Tex., to Foraker, Okla., upon arrival were found tick infested, whereupon they were ordered by Federal authority to Oklahoma City for dipping. This accomplished they were reforwarded to Foraker and delivered, carriers assessing an intrastate rate for movement between Foraker and Oklahoma City upon theory that original contract of carriage was completed on first arrival at Foraker and that movement to Oklahoma City and return was an independent intrastate shipment subject to local intrastate

rates for haul each way. FOUND: Since cattle were inspected before delivery and full control denied complainant who paid no freight charges at that time, took out no new bills of lading, or made shipments to new consignees, the shipments were overcharged, being subject to lower rates for entire movement under provisions of an interstate tariff permitting stoppage in transit of cattle moving under above circumstances. Refund of overcharges directed. Borroum & Tucker v. M. V., 107 I. C. C. 668.

(o) Intrastate rates on brick and other clay products except common brick in Texas, Arkansas, Oklahoma, Kansas, and southern Missouri, which are lower than the contemporaneous interstate rates, found to result in undue prejudice and unjust discrimination against interstate commerce. Southwestern Brick Cases, 107 I. C. C. 681.

(p) Intrastate shipments of petroleum made during Federal control moved partly over short lines not under Federal control. No joint rates being in effect, combinations were assessed each factor of which was increased under General Order, No. 28 of the director general. Tariffs publishing factors applicable over the federally controlled lines contained the combination rule which provided a specific method for constructing through rates made on combination, but no similar rule, or reference thereto, was carried in tariffs of short lines. HELD: The combination rule being unrestricted in its application, the applicable rates were those constructed in conformity therewith. Shipments found overcharged and reparation awarded. Continental Oil Co. v. Director General, 109 I. C. C. 289.

(q) Joint rates on petroleum and products moving from Casper to Buffalo, Wyo., during Federal control, found unreasonable to extent they exceeded the aggregate of intermediates contemporaneously in effect. Reparation awarded. Continental Oil Co. v. Director General, 109 I. C. C. 289.

(r) Fact that shipments moved entirely intrastate during Federal control does not relieve carriers from their obligation to protect rates constructed under combination rule, which provides a specific method for constructing through rates made on combination, when such rule is carried in their tariffs. See 89 I. C. C. 645. Calif. Cotton & Factorage Co. v. Director General, 109 I. C. C. 293, 295.

(s) Shipments of tobacco moved from points in Virginia to Richmond, where delivery was accepted by consignee, who took charge thereof, paid incoming charges thereon, and without unloading, and without carrier or its agent acting for it, arranged for further transportation to Norfolk, for export. Reconsignment charges in addition to rates to and from point of reshipment were assessed in accordance with applicable tariff. rules. HELD: Movements to Richmond are not within commission's jurisdiction because intrastate in character. See 204 U. S. 403. On other hand, reconsignment charges, assessed because of movement beyond that point and incidental to it, are so subject. Taylor Co. v. S. Ry. Co., 109 I. C. C. 431, 433.

(t) Respondents proposed to restrict to intrastate traffic the application of the present rate of 11c upon rough dressed stone, in carloads, from St. Louis, Mo., to Carthage, Mo., now applicable upon both intrastate and interstate traffic. If the proposed restriction is permitted to become effective a rate equivalent to 15.2c will become applicable on interstate traffic. There are two routes of movement from St. Louis to Carthage, one over the Frisco 314 miles, and the other over the M. P., 364 miles. HELD: proposed schedules justified. Rough stone from St. Louis, 112 I. C. C. 700.

(u) The conclusion of the Commission is that ordinarily there can be no justification for a different rating on an article when transported wholly within a state than when moved into or out of the state or between states in the same general territory. City of Augusta v. A. C. L. R. R., 113 I. C. C. 303, 307.

(v) Upon contention that the regulation of train service for transportation of property is not one of the powers delegated to the commission by Congress; further, that by legislative enactment, the State has prescribed the minimum train service that may be maintained on all railroads within its borders, and that the sole jurisdiction of such service is in the State. HELD: Under section 1, paragraphs (10), (11), and (14), and section 15 of the act jurisdiction to regulate the supply of trains for transportation of property has been vested in the commission, and where there is a conflict of jurisdiction similar to that here considered the State law must give way to the Federal statute. See 225 U. S. 501 and 267 U. S. 404. Train Ser-

vice on Northern Pacific, 112 I. C. C. 191, 192, 195.

(w) Maintenance of intrastate rates in Alabama on fertilizers and fertilizer materials lower than corresponding interstate rates found reasonable by commission for future application found to result in undue prejudice to persons and localities engaged in interstate commerce, and undue preference of persons engaged in interstate commerce, and in unjust discrimination against interstate commerce. Effective intrastate rates in Georgia and South Carolina found not unlawful for future, except in individual instances. Fertilizers between Southern Points, 113 I. C. C. 389, 435.

(x) In 60 I. C. C. 337 the commission prescribed rates and charges on all freight service, except on coal for distances less than 30 miles, for intrastate application in Indiana. Proceeding was reopened for further hearing at request of Consumers Co., which, in substance, asks the commission to except from the order, the rates on sand and gravel from Ginger Hill, Ind., to Granger and Wyatt, Ind., in order that the Indiana Commission may pass upon the reasonableness of those rates. Counsel for defendants admitted that the rates charged during the periods mentioned were unreasonable to extent they exceeded 84c rate subsequently established. HELD: Rates on sand and gravel from Ginger Hill to Granger and Wyatt prior to January 28, 1921, did not cause any undue prejudice to interstate traffic. Indiana rates, fares and charges, 113 I. C. C. 531.

(y) Upon further hearing, original report, 60 I. C. C. 337, modified so as to except from its provisions intrastate rates on sand and gravel from Ginger Hill, Ind., to Granger and Wyatt, Ind., such rates not being shown to have caused any undue or unreasonable advantage, preference, or prejudice as between persons and localities in intrastate commerce, on one hand, and interstate or foreign commerce, on other hand, or any undue, unreasonable, or unjust discrimination against interstate commerce. Indiana Rates, Fares, and Charges, 113 I. C. C. 531.

(z) The commission has no jurisdiction over intrastate shipments. Luria Bros. & Co. v. B. & O., 115 I. C. C. 193.

(aa) Jurisdiction assumed by commission over an intrastate rail haul where such movement was part of a through rail-and-water movement. Kay County Gas Co. v. G., C. & S. F., 115 I. C. C. 736.

(bb) Rates on logs, except walnut, cherry, and cedar, from points on Atlantic Coast Line in South Carolina south of Charleston, to Savannah, Ga., found unreasonable as compared with lower rates under distance scales in effect in same general territory, and to extent they exceed rates prescribed by the State public service commission for intrastate application in Alabama. Reasonable maximum scale of rates prescribed for future. Southern Cotton Oil Co. v. A. C. L., 120 I. C. C. 190.

(cc) The commission has jurisdiction over intrastate rates on shipments moving from one point within a state to a port within same state, for export. Thomas Traffic Co. v. L. A. & S. L., 120 I. C. C. 671.

(dd) Complainant attacked intrastate rate on brick and articles taking brick rates, such as hollow building tile, carloads, maintained by Big Four, C. & E. I., I. C. from Kankakee, St. Anne, Beaverville and Woodland, Ill., to Chicago as unduly prejudicial; complainant attacked interstate rates on tile from Kankakee, St. Anne and Beaverville to the Indiana portion of the Chicago switching district as unreasonable and unduly prejudicial, and that rates to deliveries in that district in both Indiana and Illinois from Chicago Heights, Ill., and Hobart, Porter and other producing points in Indiana are unduly prejudicial; complainant alleged that rates from Hobart to points of unloading throughout the Chicago switching district are unreasonable and unduly prejudicial as compared with rates from Chicago Heights. Present proceedings are largely an outgrowth of 68 I. C. C. 213. Tile produced within approximately 100 miles of Chicago is manufactured from clay, whereas that produced at more distant points is made from shale and costs more than clay tile. Both kinds may be used for the same purpose, but, due to its higher cost, shale tile is not utilized where clay tile will serve. About 95% of Chicago's demand for tile is supplied by plants within a radius of about 60 miles of Chicago. No. 16116. Evidence of this complainant is directed almost entirely against the $1.15 rate on tile published on Illinois intrastate traffic from St. Anne group in compliance with Ill. C. C. orders in its dockets 13665 and 13742.

The complainant asks for the restoration of the $1.45 rate on intrastate traffic from the St. Anne group in order to remove the alleged undue prejudice against interstate commerce. No. 16392. These complainants attack the $1.45 interstate rate on tile from their plants in the St. Anne group to the Indiana portion of the Chicago switching district. No. 16563. This complainant operates the tile plant at Hobart, served by the Pennsylvania. The E. J. & E. also reaches Hobart. About 80% of their shipments go to Chicago, of which from 60 to 65% are unloaded on the Pennsylvania. Competition experienced is with Chicago Heights, Kankakee and St. Anne. Hobart and Chicago Heights are about 9 and 7.5 miles outside the outer rim of the Chicago switching district. The tile plant at Chicago Heights is on the C. H. T. T. whose switching charge of $6 is absorbed by the B. & O. C. T. The 50c rate applies. It is asserted that the transportation services from Hobart and from Chicago Heights are substantially similar. That from Hobart is over a main line with heavy traffic density. The 60c rate of the B. & O. C. T. from Chicago Heights to open deliveries on connecting lines in the Chicago switching district is clearly in issue in 16392 and 16563. By the Lowrey agreement defendants operating in the Chicago switching district receive divisions of that rate as well as of the rates from St. Anne group and Hobart. Similarly, defendant B. & O. C. T., which maintains the 50c rate from Chicago Heights to deliveries on its line receives divisions of the rates from the St. Anne group and Hobart on traffic moving to delivering points on its line in the Chicago switching district. The same carriers therefore participate in any undue prejudice or preference caused by such rates. In 68 I. C. C. 213 a scale of distance rates was prescribed for application between points in central territory. It reflects the general level of the rates in central territory, and therefore can not be deemed unduly high for rates covering interstate and intrastate hauls involving expensive deliveries in the Chicago district. No good reason appears upon this record why the scale should not be applied to the average of the rate making distances from St. Anne group, and to the respective distances from the points of origin under consideration nearer to Chicago. A differential relationship between that group and Hobart-Chicago Heights closer than that which results from the application of the scale would unduly widen either or both the spreads between the former and Danville, and between the latter and producers within the Chicago district. HELD, with respect to the carload rates attacked to the Chicago switching district, 1, that the interstate rates on tile from the St. Anne group are unreasonable to extent they exceed $1.35; 2, that interstate rates on brick list from Hobart is not unreasonable; 3, that the circumstances and conditions surrounding the transportation of intrastate shipments of tile from the St. Anne group and of interstate and intrastate shipments of articles in the uniform brick list from Chicago Heights, are substantially similar to those surrounding the interstate transportation of like traffic from Indiana producing points in the Wabash Valley group and to Hobart; 4, that the the maintenance by defendants of their present rates on intrastate shipments of tile from the St. Anne group, and on interstate and intrastate shipments of articles in the uniform brick list from Chicago Heights are unduly preferential and unduly prejudicial to the Wabash Valley group and to Hobart; 5, that the undue preference and prejudice should be removed by publishing rates which shall be on tile from the St. Anne group not lower than 55c below the rate from Terre Haute, and articles in the uniform brick list from Chicago Heights not lower than the rate from Hobart. Indiana State Chamber of Commerce v. A. T. & S. F. Ry., 122 I. C. C. 81.

(ee) No. 17517 is a proceeding instituted by the Commission upon petition filed on behalf of the A. C. L., and eight short line carriers operating in Georgia to determine whether the present carload rates on chert, clay, sand, gravel and other allied commodities required by the Georgia Public Service Commission to be maintained by petitioners for intrastate movements between points in Georgia result in any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand, and interstate or foreign commerce, on the other, or in any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and if so, what rates or what maximum or minimum, or maximum and minimum, rates shall be prescribed to be charged to cure the situation. The Commodities considered in these proceedings are used chiefly in the building of highways and

in concrete construction work. Their tonnage was exceeded only by that of products of the forest, and of bituminous coal. The commodities considered are among the lowest valued offered for transportation and will not move except at comparatively low rates. They are generally transported in open top cars, load to capacity of the car, and move with little risk or damage or loss. Crushed stone, slag and washed gravel compete in concrete construction and in the building of hard surfaced roads. The use of sand is necessary as a filler in forming the course aggregate for concrete or hard surface construction work, and as it is of comparatively low value there is apparently no practicable substitute for it. Slag is a by-product of iron and steel production and is produced chiefly in the Birmingham district. While the Commission shall not prescribe minimum rates, it shall prescribe a scale which takes fully into consideration the very low values of these commodities and all characteristics, transportation and otherwise, which entitle them to relatively low rates. It will be a scale from which the carriers ought not to depart. Departures could only have the result ultimately, of forcing an unwarranted reduction in the general rate level on these commodities which would be burdensome to other traffic. The present method of making rates on these commodities to and from the Florida peninsula is by combination of factors to and from Jacksonville. In changing from a system of rate making which has prevailed for many years to a new method, it is reasonable that consideration should be given, particularly in the case of commodities moving in volume at relatively low rates, to the effect which an abrupt and radical change in rate level might have upon carrier revenues; and there is the more reason for such consideration in this instance in view of the heavy burden which the carriers have recently assumed in the form of new railroad construction to meet Florida needs. In the fixing of rates on these commodities in the past the Commission has not recognized the existence of a difference in the transportation characteristics, or in any other factors entitled to consideration in the fixing of rates, such as to warrant a different basis of rates on some as distinguished from others. The Commission is of the opinion that there should be a uniform rate level upon the commodities in issue over standard lines within the territory involved, excepting the Florida peninsula. HELD, reasonable scale prescribed ranging from 50c to single line for 10 miles and under joint line 65c, to 800 miles single line 285c, joint line 285c. Fourth section application may be made. Proposed rates on slag from Copperhill not justified. It is felt that the Georgia Commission will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment herein approved. In 17763 it is alleged that the rates on sand and gravel from Montgomery and Chattanooga to Mississippi are unreasonable and unduly prejudicial in favor of intrastate Mississippi shippers. Aside from testimony going to show that a large part of the intrastate movement in Mississippi is over lines not made defendants it was also shown that shipments could not be made from Montgomery into Mississippi over lines that are named defendants without passing through or near Mississippi points of production. HELD, Mississippi intrastate rates not unduly prejudicial. Rates on chert, clay, sand and gravel, 122 I. C. C. 133.

(ff) Upon petition of the G. H. & S. A. and other carriers Commission instituted an investigation to determine whether the rates and charges required by the Texas Commission to be established and maintained by said petitioners for transportation of freight between Fort Bliss and other stations in Texas will cause any undue or unreasonable advantage to state traffic. The Texas order provided that rates on all shipments of freight, in carloads and in less carloads, transported between the military reservation of Fort Bliss and other points in Texas, except El Paso, should not exceed the rates on the same classes and commodities between such other points and El Paso. It further provided that on carload traffic between Fort Bliss and El Paso the charge assessed by the E. P. & N. E. or the G. H. & S. A. should not exceed $12.50 per car. The order provided that on carload traffic between Fort Bliss and El Paso the terminal or switching charges of other lines in El Paso should be added to the charges of the lines named. The effect of the Texas order would be to make Fort Bliss a part of the El Paso switching district but not at the rates generally applicable on switch movements within said district. Whereas the maximum rate for switching within the El Paso terminals is $8 the order prescribes $12.50 to Fort Bliss,

with a provision that when service is performed by other carriers the switching charges of such carriers shall be added. Petitioners cost studies are not convincing that under the rates prescribed intrastate traffic would be transported at charges so low as to produce substantial disparity which would operate as a real discrimination against and obstruction to interstate commerce. The record is not convincing that the establishment of the rates referred to would unduly prejudice shippers in interstate commerce. HELD, proceeding discontinued. Rates between points in Texas, 122 I. C. C. 373.

(gg) The jurisdiction of the Commission over intrastate rates initiated by the Director General is well settled and has never been seriously questioned. Atlas Portland Cement Co. v. Director General, 122 I. C. C. 680, 681.

(hh) Intrastate rates on cement from Cement City (Sugar Creek), Mo., and Bonner Springs and Sunflower, Kans., to destinations in the Kansas City, Mo., Kans., switching district, to extent they are lower by more than 4.5 cents than interstate rates contemporaneously maintained on like traffic from points in the Kansas gas belt, found unduly prejudicial to the Kansas gas-belt points and shippers therefrom, unduly preferential of Cement City (Sugar Creek), Bonner Springs, and Sunflower, and shippers therefrom, and unjustly discriminatory against interstate commerce. Iola Cement Mills Traffic Asso. v. A., T. & S. F., 122 I. C. C. 337.

(ii) Intrastate rates neither prescribed nor approved by the commission, but maintained under State authority, can not be regarded as controlling in determining the measure of interstate rates or the relationship of interstate and intrastate rates. Iola Cement Mills Traffic Asso. v. A., T. & S. F., 122 I. C. C. 337, 345.

(jj) Ruling of March 13, 1922, holding that section 208 (a) of the transportation act, 1920, does not authorize commission to award reparation on intrastate shipments which moved during the guaranty period adhered to, but modified to hold that commission has authority to approve after August 31, 1920, awards of reparation by State authority on intrastate traffic which moved during the guaranty period. Reparation on Intrastate Traffic, 122 I. C. C. 443.

(kk) The commission has jurisdiction to approve after August 31, 1920, an award of reparation made by State authority on intrastate traffic which moved during the guaranty period, March 1 to August 31, 1920, whether such authority was actually exercised during the guaranty period or thereafter. The phrase "prior to September 1, 1920," as used in section 208 (a) of the transportation act, 1920, is not to be construed as prescribing a time limitation within which the commission was authorized to act, but as fixing the period as to which its approval was necessary to a reduction in rates whether made during the guaranty period by naming lower rates for future, or accomplished after expiration of the period by way of reparation on shipments which moved during the period. Reparation on Intrastate Traffic, 122 I. C. C. 443.

(ll) Subject to certain exceptions, the commission's jurisdiction over intrastate rates terminated with termination of Federal control, February 29, 1920. On that date jurisdiction passed to State authorities, subject to the limitation that no rates should be reduced prior to September 1, 1920, unless approved by commission. The commission, therefore, was and is without power to require rate reductions or award reparation on intrastate shipments moving during the guaranty period and the only order it can lawfully make as to such shipments is one of a permissive character. Accordingly conference ruling of March 13, 1922, and previous decisions holding that section 208 (a) of the transportation act, 1920, does not authorize commission to award reparation on intrastate shipments which moved during the guaranty period, adhered to. Reparation on Intrastate Traffic, 122 I. C. C. 443.

(mm) An award of reparation on Intrastate traffic which moved during the guaranty period, March 1 to August 31, 1920, is, in effect, a reduction of a rate prior to September 1, 1920, within the meaning of section 208 (a) of the transportation act, 1920, regardless of the date on which decision making the award was rendered. See 271 U. S. 124. Reparation on Intrastate Traffic, 122 I. C. C. 443, 447.

(nn) The primary purpose of second clause of section 208 (a) of transportation act was to protect the United States from liability on its guaranty to the

carriers of the standard return, and this it sought to do by prohibiting any reduction of rates, fares, or charges without consent of commission. See 270 U. S. 466. When it comes to awards of reparation after expiration of the guaranty period upon interstate traffic which moved during that period, there is equal necessity for review by commission to the end that revenues of carriers may not be unduly reduced and at the same time that awards of reparation in meritorious cases may be granted. Reparation on Intrastate Traffic, 122 I. C. C. 443, 447, 448.

(oo) Mere existence of a lower intrastate rate under which a commodity does not move, has little, if any, probative value in determining the reasonableness of interstate rates under which there is a movement. Tanning Extract from Lynchburg, 122 I. C. C. 647, 650.

(pp) Jurisdiction of commission over intrastate rates initiated by Director General of Railroads is well settled and has never been seriously questioned. See 55 I. C. C. 280. Atlas Portland Cement Co. v. Director General, 122 I. C. C. 680, 681.

(qq) The commission is without authority to pass upon lawfulness of intrastate rates where the only issues raised in complaint are violations of sections 1, 2, and 3 of the act. Chicago Fire Brick Co. v. C. & N. W., 123 I. C. C. 164.

(rr) State cannot, under cover of exercising its police powers, undertake what amounts essentially to regulation of interstate commerce, or impose direct burden thereon. Wrigley Pharmaceutical Co. v. Cameron, 16 Fed. (2d) 290.

(ss) When local police regulation has real relation to suitable protection to people of state, and is reasonable in its requirements, it is not invalid because incidentally affecting interstate commerce, providing it does not conflict with federal legislation. Wrigley Pharmaceutical Co. v. Cameron, 16 Fed. (2d.) 290.

(tt) Pennsylvania Securities Act (Pa. St. Supp. 1924, §§ 19867a1-19867a36), being police measure intended to prevent fraud in sale of securities, HELD a reasonable exercise of police power, and not unlawful interference with interstate commerce. Wrigley Pharmaceutical Co. v. Cameron, 16 Fed. (2d.) 290.

(uu) For state statute to be invalid, as in conflict with act of Congress, it is not necessary that the conflict be literal or express. Staten Island Rapid Transit Ry. Co. v. Public Service Commission of State of New York, 16 Fed. (2d) 313.

(vv) Public Service Commission Law N. Y. (Consol. Laws, c. 48), § 53-a, requiring electrification of certain railroads, and giving Public Service Commission power to prescribe equipment, etc., invalid in part as conflict with federal statute, cannot be held valid as to requirement of electrification. Staten Island Rapid Transit Ry. Co. v. Public Service Commission of State of New York, 16 Fed. (2d) 313.

(ww) Public Service Commission Law N. Y. (Consol. Laws, c. 48), § 53-a, relating to the electrification of railroads in certain cities, and giving Public Service Commission power to prescribe equipment, HELD invalid, as in conflict with federal Boiler Inspection Act 1911, as amended (U. S. Comp. St. § 8630 et seq.), and federal Safety Appliance Act (U. S. Comp. St. § 8605 et seq.). Staten Island Rapid Transit Ry. Co. v. Public Service Commission of State of New York, 16 Fed. (2d) 313.

(xx) If legislation, though having for its purpose promotion of public health of state, comes in conflict with legislation enacted by Congress pursuant to its power to regulate interstate commerce, so that the two cannot stand together, then state legislation must give way to federal legislation. Chicago & N. W. Ry. Co. v. Railroad Commission of Wisconsin. Chicago, M. & St. P. Ry. Co. v. Same. Minneapolis, St. P. & S. S. M. Ry. Co. v. Same, (Wis., 1925) 205 N. W. 932.

(yy) Where original order of department of public works fixed rates on intrastate shipments of certain wood on basis of 128 cubic feet per cord, and later in supplementary order fixed basis on 192 cubic feet per cord, such orders were not retroactive, but prospective, and shipper who shipped wood between effective dates of such orders could not in reparation proceedings, under Laws 1921, p. 336, recover difference between what he was charged on 128-foot basis and what charge would have been on 192-foot

basis, inasmuch as, at time of shipment, rates on 128-foot basis were lawful and standard. Northern Pac. Ry. Co., v. Department of Public Works, (Wash., 1925) 240 Pac. 362.

(zz) In view of Const. 1902, § 156(b) and Code 1919, §§ 3910, 3920, intrastate freight rates are made by State Corporation Commission, as distinguished from carrier made interstate rates under Interstate Commerce Act, §§ 13, 16, as amended by Act Feb. 28, §§ 416, 423-429 (U. S. Comp. St. §§ 8581, 8584), and rates approved by the commission, are conclusively presumed legal and reasonable until changed by commission as to the future, but commission cannot declare rates legally established unreasonable retroactively, and commission's finding that rates between certain points were unreasonable did not entitle shippers to recover as for excess freight charges on shipments previously made. Mathieson Alkali Works, Inc. v. Norfolk & W. Ry. Co., (Va., 1927) 137 S. E. 608.

(3a) Transportation Act Feb. 28, 1920, § 208 (a), being Comp. St. Ann. Supp. 1923, § 10071¼d, prohibiting reduction of rates during six months following termination of federal control, applied to intrastate as well as interstate shipments, and, without approval of Interstate Commerce Commission, state Public Service Commission could not by a reparation order require railroad to repay part of freight collected on intrastate shipments during such period, on ground that rates were excessive, thereby effecting reduction of rates. New York Cent. R. Co. v. New York & Pennsylvania Co., 46 Sup. Ct. 447.

(3b) Carrier's failure to appeal from decision of state Public Service Commission, holding lower rate than that charged on intrastate coal shipments during six months termination of federal control reasonable, and stating that on presentation of supporting data reparation would be awarded, HELD not a waiver of its right to resist enforcement of reparation order, as in violation of Transportation Act Feb. 28, 1920, § 208(a), being Comp. St. Ann. Supp. 1923, § 10071¼d. New York Cent. R. Co. v. New York & Pennsylvania Co., 46 Sup. Ct. 447.

(3c) Explicit provisions of railroad's charter requiring it to operate particular intrastate branch must yield to paramount power of Congress to regulate interstate commerce, and to authorize abandonment of branch when its operation becomes prejudicial to interstate commerce. State of Colorado v. United States, 46 Sup. Ct. 452.

(3d) Since state's power to regulate and promote intrastate commerce may be exercised in a way to prejudice interstate commerce, Congress has power to authorize abandonment of wholly intrastate operation. State of Colorado v. United States, 46 Sup. Ct. 452.

(3e) Prejudice to interstate commerce may be effected by excessive expenditures in local interest from fund arising from both interstate and intrastate traffic. State of Colorado v. United States, 46 Sup. Ct. 452.

(3f) This proceeding was instituted upon petition of respondents to determine whether the rate required by the Ohio Commission for intrastate application on bulk salt, in carloads, from Akron, O., and points grouped therewith, to Cincinnati, O., is unlawful in its relation to interstate rates. Prior to June 7, 1925, respondents had a rate from the Akron group to Cincinnati of 14.5c, minimum 60,000 pounds on bulk salt and another of 15.5c, minimum 37,500 pounds, on package salt. Incident to Salt Cases of 1923, 92 I. C. C. 388, respondents proposed a rate of 15.5c minimum 45,000 pounds, on both bulk and package salt to become effective on that date. The Ohio Commission found the schedules not justified. The 15.5c rate on package salt went into effect, but the 14.5c rate on bulk salt remained. The interstate rate from the Akron group to Cincinnati on both bulk ond package salt is 15.5c minimum 45,000 pounds. The 15.5c rate is about 72% of the sixth class rate from Akron to Cincinnati. The average of all salt rates in central territory is said to be about 75% of the sixth class rates. The 14.5c rate is about 67.5% of the sixth class rate to Cincinnati. It does not appear to be seriously contended that the present intrastate rate is unreasonably low. The situation here under consideration represents the only instance where a lower rate is published on bulk than on package salt from and to points in central territory. HELD: Intrastate rate not been shown to subject interstate traffic to undue prejudice. Rates and minimum weights on salt, 128 I. C. C. 499.

(3g) Only in a strained sense could it be said that the removal of undue prejudice to or unjust discrimination against intrastate commerce resulting from a difference in levels of interstate and intrastate rates is necessary for the effective regulation of interstate commerce and certainly the effective protection of interstate commerce calls for no such action. The interstate commerce act should not be broadly construed to empower this Commission to take action against rate adjustments for purposes which are primarily of intrastate concern and are not essential to the proper regulation of either interstate or foreign commerce. An issue of undue prejudice to intrastate commerce and undue preference of interstate commerce, and of unjust discrimination against intrastate commerce, is not within the purview of the act the Commission administers. Mutual Creamery Co. v. American Ry. Express Co., 132 I. C. C. 207, 212.

(3h) In Reparation on intrastate traffic, 122 I. C. C. 443, the Commission found it has jurisdiction to approve after August 31, 1920, an award of reparation made by state authority on intrastate traffic which moved during the period between March 1 and August 31, 1920. The Commission adhered to previous decisions that section 208a of the transportation act, 1920, does not authorize it to award reparation on intrastate shipments which moved during the guaranty period. Armour & Co. v. G. N. Ry., 132 I. C. C. 261.

(3i) In 104 I. C. C. 34, the Commission dismissed for lack of jurisdiction a complaint seeking reparation on 35 cars of sand and gravel, 65 cars of dirt, and 20 cars of clay shipped between April 1 and August 7, 1920, from Shieleys Pit, Minn., to South St. Paul, Minn. HELD: Commission approves finding and order of the Minnesota Commission as to rates on the intrastate traffic here considered, complaint dismissed. Armour & Co. v. G. N. Ry., 132 I. C. C. 261.

STATIONS

See Passenger Fares and Facilities §13.

STATUTE OF LIMITATIONS

See Claims I; Loss and Damage §13½; Reparation §7; Undercharges §10.

STATUTES

(a) The usual and primary office of an exception or proviso in a statute is to limit generalities and exclude from scope of the statute that which otherwise would be within its limits. See 228 U. S. 459. Where the enacting clause is general in its language and objects, and a proviso is afterwards introduced, that proviso is construed strictly, and takes no case out of the enacting clause which does not fall fairly within its terms. See 140 U. S. 142; 205 U. S. 1. Exceptions to the general policy which the law embodies are to be strictly construed, and are to be so interpreted as not to destroy the remedial purpose intended. See 241 U. S. 344. Rules for testing other than Steam Power Locomotives, 122 I. C. C. 414, 421.

(b) It is a well-established rule that in case of any doubt or ambiguity, a statute is to be construed so as not only to be consistent with itself throughout, but also to harmonize with other laws relating to same or kindred matters. See 1 Black 55. Rules for testing other than Steam Power Locomotives, 122 I. C. C. 414, 428, 429.

(c) Action by Director General of Railroads, being action on behalf of United States in its governmental capacity, HELD not subject to statute of limitation. Davis, Director General of Railroads v. Ford, (N. C. 1927) 137 S. E. 328.

(d) Statute should not be given a retroactive effect, unless required by explicit language or by necessary implication. United States v. St. Louis, S. F. & T. Ry. Co., Same v. Wabash R. Co., 46 Sup. Ct. 182.

(e) A construction rendering statute of doubtful constitutionality will not be adopted, if another is open to court. Missouri Pac. R. Co. v. Boone, 46 Sup. Ct. 341, 342.

(f) Where general purpose of Legislature is manifest, and subserved by giving words their ordinary meaning, rule that criminal statutes are to be strictly construed is inapplicable. United States v. P. Koenig Coal Co., 46 Sup. Ct. 392.

(g) An order of a State Railroad Commission, requiring an interstate railroad company to furnish the use of terminal facilites and tracks to another company, HELD void for want of jurisdiction, and for the further reason that

it failed to make any provision for compensation, in violation of the constitutional provision against the taking of property without compensation. Southern Ry. Co. v. Shealy, 18 Fed. (2d.) 784.

STOCK YARD COMPANIES

See Absorption of Charges §1 (a); Live Stock Shipments; Twenty-Eight Hour Law.

(a) Yardage charge assessed by public stockyard company for use of its facilities and services from time animals are taken out of unloading pens until delivered to consignee or reloaded, found not subject to commission's jurisdiction. Complainant contends that commission's jurisdiction extends to actual delivery to consignee and that services of stockyard company are no more than carriers are by law required to furnish, but stockyard company contends that jurisdiction ends when animals are placed in unloading pens; that services are not connected with transsubject to jurisdiction of Secretary of portation but are stockyard services and Record indicates that carriers provided Agriculture under stockyards act, 1921. adequate stockyard facilities but complainants used public yards for convenience. While in 139 U. S. 128, it was held that transportation ends only after delivery to consignee, section 15 (5) provides that it ends when, as here, animals are delivered into suitable pens, and it follows that there commission's jurisdiction ends. See secton 301 (b) of stockyards act, 1921. Southwestern Horse & Mule Asso. v. A., T. & S. F., 129 I. C. C. 730.

(b) Prior to decision in 52 I. C. C. 209, carriers absorbed loading and unloading charges at public stockyards, but not elsewhere. In that case carriers refusal to absorb out of their line-haul revenues increases for loading and unloading live stock at public stockyard at Chicago was upheld on ground that it was duty of shippers rather than of carriers to load and unload livestock and other carload traffic. Since adoption of section 15 (5) of act, carriers have, been required to perform loading and unloading of ordinary livestock at public stockyards without extra charge to shippers. However, duty still rests upon shippers to load and unload such shipments at other than public stockyards. Southwestern Horse & Mule Asso. v. A., T. & S. F., 129 I. C. C. 730, 737.

(c) Stockyards act, 1921, gives Secretary of Agriculture jurisdiction over stockyard services at public stockyards as defined in section 301 (b) of that act. While section 406 (a) of same act provides that nothing therein shall affect power or jurisdiction of Interstate Commerce Commission, nor confer upon the secretary concurrent power or jurisdiction over any matter within power or jurisdiction of such commission, neither that clause nor the interstate commerce act gives commission jurisdiction over lvestock after it has been unloaded into suitable pens, as the bill when introduced proposed to give the secretary complete inquisitorial, visitorial, supervisory, and regulatory power over packers, stockyards, and all actvities connected therewith, such jurisdiction to begin where commission's jurisdiction ends. Southwestern Horse & Mule Asso. v. A., T. & S. F., 129 I. C. C. 730, 738.

(d) Under section 15 (5) of the act, transportation of livestock ends when animals are delivered into suitable pens, and it follows that there commission's jurisdiction ends. This conclusion is further strengthened by section 301 (b) of stockyards act, 1921, and decision of Supreme Court upholding constitutionality thereof. Southwestern Horse & Mule Asso. v. A. T. & S. F., 129 I. C. C. 730, 737, 738.

STOPPAGE IN TRANSIT

See Express Companies §34; Facilities and Privileges §10 (g), §15.

(a) Tariff rule published in compliance with a legislative enactment of the State of Missouri under which c. l. shipments of grain and products moving intrastate from Kansas City and St. Joseph, Mo., to other points in Missouri are permitted to be stopped in transit for part unloading found reasonable for interstate application on shipments from Kansas City, Kans., to points in Missouri, and failure of carriers to apply said tariff rule to such interstate shipments found to result in undue prejudice. Removal of undue prejudice ordered. Southwestern Milling Co. v. A., T. & S. F., 118 I. C. C. 61.

(b) Complainant alleged that the failure of defendant to provide for stoppage of carload shipments of dead freight in transit, to partly unload, at points in Ohio on its line in central territory is unreasonable. An arrangement to have cars stopped to partly unload is

desired at present in connection with feed, fertilizer, twine and tankage. All carriers in central territory except the defendant, the C. & O., and a few of the smaller carriers provide for this. HELD, failure to provide stopping in transit to partly unload is unreasonable. Ohio Farm Bureau Federation v. N. & W. Ry., 120 I. C. C. 305.

(c) Failure of Norfolk & Western Ry., to provide for stoppage in transit to partly unload c. l. shipments of feed, fertilizer, tankage, and twine at points in Ohio on its line in c. f. a. territory, found unreasonable. The difficulties, abuses and errors encountered by carriers in performance of stop-off service are not materially different from those met in connection with reconsignment and other transit services generally recognized as commercial necessities. The service here sought would accord farmers an opportunity to obtain fertilizer, feed and other necessities at c. l. rates without inconvenience of trucking great distances and without injury, undue hazard, or burden to carrier if properly limited and restricted. Ohio Farm Bureau Federation v. N. & W., 120 I. C. C. 305.

(d) Stoppage in transit to partially unload c. l. shipments should not be available to shippers where a back haul or unduly circuitous out-of-line haul is required. Ohio Farm Bureau Federation v. N. & W., 120 I. C. C. 305, 308.

(e) Respondent, Texas carriers proposed to cancel their arrangement under which interstate carload shipments of cranberries are stopped at Texas points for partial unloading. Charges on shipments stopped to partially unload are based upon the original weight of the load, subject to the minimum, and the rate from point of origin to final destination, plus $6.30 per car for each stop. The level of the rates is the same on shipments which move under the present arrangement as on shipments which move through to one destination, and the Commission is not here considering that level. HELD, suspended schedules justified. Stop over Transit Privileges, 122 I. C. C. 479.

(f) Complainant alleged refusal of defendant to accord at Oakland, Calif., the privilege of stopping in transit, for the purpose of treating with creosote or other preservatives, or of storing, or both, shipments of red cedar poles and piling which originate on lines of defendant in Oregon, or are delivered to defendant at Portland or East Portland, Oreg., and are finally destined to stations in California south of Oakland, is unreasonable, and unduly prejudicial. Complainant admits the impracticability of keeping the poles received by water separate from those received by rail, and the natural result of the transit arrangement at Almeda would be to permit complainant to ship outbound carloads of mixed sizes, some received by rail and some by water, limited only by the transit credits on inbound rail shipments. The record does not show such similarity of conditions at Oakland, on the one hand, and Springfield and East Milwaukee on the other, as would justify the Commission in finding that the refusal of defendant to permit transit at the former while permitting it at the latter is either unreasonable or unduly prejudicial or preferential. Although it is true there is a possible route to certain destinations on the lines of the defendant through Oakland, that is not the normal route for the handling of traffic, and there is no evidence that traffic could be as economically handled over it as over the routes now used. Further, the establishment of transit at Oakland would give complainant an advantage over competitor at Springfield and East Milwaukee by reason of the fact that the receipt of a large volume of poles and piling by steamer would enable complainant to use its transit credits to greater advantage than would be possible if all its shipments came in by rail. HELD, complaint dismissed. Baxter & Co. v. S. P. Co., 122 I. C. C. 498.

(g) Proposed cancellation of arrangement for stopping to partially unload interstate shipments of cranberries at points in Texas, found justified. Charges on such shipments are based upon original weight of load, subject to minimum weight and rate from point of origin to final destination, plus per-car stoppage charge. Therefore, in instances where rates from origin to stop-off point and to final destination are the same, carriers receive nothing for additional haul from stop-off point to final destination regardless of its length, except stoppage charge. Moreover, where distance from stop-off point to final destination is short and quantity which goes to final destination is small, carriers furnish two c. l. services for what are c. l. shipments to stop-off points and l. c. l. shipments beyond. Stop-over Transit Privilege, 122 I. C. C. 479.

(h) Stopping to partially unload interstate shipments of cranberries at

points in Texas is, at least so far as this commodity is concerned peculiar to Texas, applying nowhere else in the Southwest, or possibly in the United States. Stop-over Transit Privilege, 122 I. C. C. 479, 481.

(i) Upon further consideration, combination rates based on Norfolk, Va., assessed on lumber from Roach, Fla., to Harrison and Jersey City, N. J., and Great Works, Me., from Springdale, Fla., to Harrison and Jersey City, N. J., and Great Works, found unreasonable to extent they exceeded lower combinations based on Live Oak, Fla., and Savannah, Ga., plus a transit charge maintained by the Atlantic Coast Line at time of shipment for stoppage at Portsmouth. The A. C. L. sought to compute reparation on basis of a higher transit charge established subsequent to movement. While the lower charge was applicable only on shipments originating on that carrier's rails, no reason appears why it should not be used in computing the reparation due complainant under the original findings. Reparation awarded. Former report, 100 I. C. C. 405. McClave & Son v. A. C. L., 128 I. C. C. 1.

(j) Upon further consideration, elimination of arrangement for stopping to partially unload interstate shipments of cranberries at points in Texas, found not justified. While respondents urged that to haul a partially loaded car from stop-off point to final destinations was a waste of transportation and that stop-off charge was not sufficient to take care of additional service rendered, it is obvious that where part of the load has been removed, less service would be performed beyond the stop-off point to final destination than on through shipments. Moreover, stop-charge appears sufficient to cover additional services rendered and the transit service is highly beneficial to protestants in the sale and distribution of cranberries and yet is not unduly burdensome to respondents. Previous report 122 I. C. C. 479, reversed. Stop-Over in Transit Privilege, 128 I. C. C. 425.

(k) Charges collected on caterpillar tractors and parts from Stockton, Calif., to Dallas, Tex., based on rate from Stockton to Dallas, plus reconsignment charge at San Antonio and stop-over charge at Houston, where shipment was partially unloaded, found inapplicable. While governing tariff authorized reconsignment at San Antonio, it did not authorize stop-over at Houston, and movement therefrom must be treated as a reshipment. Refund of overcharges directed. Holt Co. of Texas v. S. P., 128 I. C. C. 555.

(l) Failure to provide for stopping in transit to partially unload shipment of Portland cement and wall plaster, in straight or mixed carloads, from Hanover and Trident, Mont., to western and central portions of North Dakota and South Dakota, while contemporaneously according this privilege to competitors at Steelton, Duluth, and Minneapolis, Minn., Mason City, Iowa, and Piedmont and Black Hawk, S. Dak., found unduly prejudicial. No order entered by carriers excepted to provide for transit privilege in revising rates in accordance with findings herein. Three Forks Portland Cement Co. v. C., B. & Q., 129 I. C. C. 107, 118, 119.

STORAGE

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
II. CHARGES AND REGULATIONS.
§2. Reasonableness and discrimination in general.
III. TARIFFS AND CONSTRUCTION.
§3. In general.

CROSS REFERENCES

See Car Ferry; Export Rates and Facilities §14, §16; Storage-In-Transit; Tank Car Shipments (nn).

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) Contention that commission is without jurisdiction over shipments of commodities arriving from foreign ports and stored at ports of entry to await shipment to interior points located within same State as port of entry on ground that transportation is intrastate, not sustained. Temporary storage at ports does not divest such traffic of its foreign character acquired at time it begins its journey from foreign port, and movement to port of entry is only a step in its transportation to interior destina-

tions. Alexander Grocery Co. v. B., S. L. & W., 104 I. C. C. 155, 156.

II. CHARGES AND REGULATIONS.

§ 2. Reasonableness and Discrimination in General.

See Demurrage §12 (f); Discrimination; Reasonableness of Rates.

(a) Upon reconsideration, finding in 107 I. C. C. 77, reversed and storage charges assessed on whiskey stored at El Paso, Tex., found applicable and not unreasonable. Shipment was consigned c/o collector of customs, El Paso, notify a drug store at Juarez, Mex. Upon arrival consignee was duly notified but shipment remained unclaimed and was stored by carrier to release needed equipment. Thereafter libel proceedings against shipment were filed and by direction of the court the collector of customs was notified to detain shipment in his custody. HELD: While tariff provided that no storage charges should be collected for detention due to delay by U. S. customs, after attachment the goods were under control of the court. Mere fact that customs collector had custody of shipment is not proof of "Delay by U. S. Customs." Moreover, there is no evidence that prior to attachment the collector was not at all times ready to permit exportation of shipment upon presentation of clearance papers and other evidences of ownership. Sunny Brook Distillery Co. v. A., T. & S. F., 113 I. C. C. 533.

(b) The reasonableness of storage charges assessed by a carrier may not fairly be determined by charges made by public warehouses. Sunny Brook Distillery Co. v. A., T. & S. F., 113 I. C. C. 533, 535.

(c) Complainant alleged storage charges collected on a less carload shipment of stock powders made by it on Oct. 4, 1922 from Indianapolis, Ind., to Kitchener, O., were unjust and unreasonable. Shipment was accepted under a bill of lading showing complainant as consignor and H. M. Linder, Kitchener, O., as consignee. Kitchener is a non-agency station of the Big Four about one fifth mile from the consignee. The agent of Big Four at Indianapolis failed to collect the freight charges in advance and instead of rectifying his mistake by holding the shipment and notifying complainant at Indianapolis that the charges must be prepaid before the shipment could be moved, he billed the shipment, charges collect, to Lytle, O., an open station about 4 miles from Kitchener. Shipment arrived at Lytle on Oct. 20, and written notices thereof were sent to the consignee Oct. 23, Nov. 1 and Nov. 10, 1922 without effect on delivery. It apears that on Nov. 11, 1922 the consignee went to Lytle but upon learning of the freight and storage charges which had accrued refused the shipment. On that date the agent at Lytle notified the consignor that the shipment had not been delivered and requested directions as to its disposition. No reply was received. The shipment, after remaining on hand for 60 days was forwarded from Lytle to Cincinnati, O., for storage and was finally returned to complainant at Indianapolis on Jan. 15, 1923 upon complainants request, after payment of storage and freight charges. HELD, storage charges which accrued subsequently to Nov. 11, 1922 appear proper because the consignor failed to furnish disposition instructions after receiving notification that the shipment had not been delivered and to direct disposition, storage charges prior thereto inapplicable, refund to be made, complaint dismissed. Columbian Hog & Cattle Powder Co. v. C., C., C. & St. L. Ry., 120 I. C. C. 31.

(d) Upon arrival of an l. c. l. shipment at destination written notice thereof was sent to consignee, who failed to accept delivery resulting in accrual of storage charges. Subsequently shipment was refused and consignor was duly notified and disposition orders requested. No reply was received and additional storage charged accrued, the shipment ultimately being returned to point of origin. Upon complaint seeking refund of all accrued charges for storage, HELD: Charges accruing subsequent to date of notification by carrier that shipment was refused were proper and complainant could have abated the accrual of additional charges by furnishing disposition orders requested. Charges accruing prior to such notice, however, were inapplicable and should be refunded. Columbian Hog & Cattle Powder Co. v. C., C., C. & St. L., 120 I. C. C. 31.

(e) On resale of rails by carrier after they had been refused by consignee, charging storage from 48 hours after notice of arrival at destination according to public tariff of carrier, was error, in view of evidence that storage charges would not have been made if

consignee had accepted shipment before filing suit, and storage should be allowed only from date of notification of shipper by carrier that rails would be sold, to date of sale. Morley Cypress Co. v. Hines, Director General of Railroads, (La., 1926) 107 So. 487.

(f) Where carrier, after rails shipped were refused by consignee, notified shipper that they would be resold, there should be allowed as charges storage from date of notification of intended sale to date of sale, charges for unloading rails at point of consignment and reloading, freight from point of consignment to point of sale, and cost of advertising sale. Morley Cypress Co. v. Hines, Director General of Railroads, (La., 1926) 107 So. 487.

(g) In trover for goods lost by railway's refusal to ship goods, based on demand for storage charges which plaintiff denied to be due, refusal to railway's requested instruction that storage charges are presumed to be reasonable, though correctly stating the law, was not prejudicial error, in view of issue made. Seaboard Air Line Ry. Co. v. McWhorter, (Ala., 1926) 108 So. 242.

(h) Railway storage charges, not properly allowable, may properly be alleged to be excessive. Seaboard Air Line Ry. Co. v. McWhorter, (Ala., 1926) 108 So. 242.

(i) Complainant alleged storage charges of $1.93 on one car of cypress bridge piling shipped February 6, 1922, from Cardwell, Mo., to Clarks, Neb., and there stored as unreasonable, unjustly discriminatory and unduly prejudicial. Upon arrival at Clark's complainants representative gave the agent of the U. P. a receipt therefor and paid charges at applicable rate of 45c. Because complainant's teams were engaged in other service at that time and were not available for removal of the material, the piling was unloaded within the free time on the U. P. premises, with permission of its agent, where it remained from February 18 to April 10, 1922, 51 days, and was then removed by complainant. HELD: Storage should be waived on the ground that notice in writing was not given to complainant, undercharge waived. Western Bridge & Construction Co. v. S. L. & S. F. Ry., 118 I. C. C. 607.

III. TARIFFS AND CONSTRUCTION.

See Tariffs.

§3. In General.

(a) Shipments moved in bond from points in Mexico to points in United States where they were stored in bonded warehouses and subsequently forwarded, in bond, to New Orleans and exported to foreign destinations of Porto Rico. Contention that inasmuch as shipments came to a temporary rest in bond at New Orleans, the transportation should be considered as ended there, found without merit. Fernandez & Co. v. S. P., 104 I. C. C. 193, 195.

(b) Shipment of whiskey was consigned to shipper's order c/o collector of customs, El Paso, notify a drug store at Juarez, Mex. Upon arrival at El Paso consignee was notified but shipment remained unclaimed and was subsequently stored. Thereafter, by command of United States court, customs collector was notified to detain shipment in his custody. This was done until dismissal of court proceedings when, upon payment of accrued storage charges, shipment was returned to point of origin. Tariff rule provided that no storage charges should be collected for detention due to delay by U. S. customs and that free time lost through such delay shall be allowed. FOUND: While detention here was for purposes other than those incident to customs inspection and clearance for export, terms of the rule, which clearly comprehend any delay by U. S. customs are sufficiently broad to preclude assessment of storage charges under circumstances. Refund of overcharges directed. Sunny Brook Distillery Co. v. A., T. & S. F., 107 I. C. C. 77.

(c) In 107 I. C. C. 77, complainant attacked the storage charges on a car of whiskey stored at El Paso, Tex., as unreasonable and inapplicable division 1 found charges inapplicable. The mere fact that the collector of customs had custody of the shipment which was forwarded in his care by complainant is no proof of "delay by U. S. Customs." There is no evidence that prior to the attachment by the marshal the collector was not at all times ready to permit the exportation of the shipment upon presentation to him of clearance papers and other evidences of ownership. HELD: Charges paid applicable and not unreasonable, complaint dismissed. Sunny

Brook Distillery Co. v. A., T. & S. F. Ry., 113 I. C. C. 533.

(d) Upon reconsideration, finding in 107 I. C. C. 77, reversed and storage charges assessed on whiskey stored at El Paso, Tex., found applicable and not unreasonable. Shipment was consigned c/o collector of customs, El Paso, notify a drug store at Jaurez, Mex. Upon arrival consignee was duly notified but shipment remained unclaimed and was stored by carrier to release needed equipment. Thereafter libel proceedings against shipment were filed and by direction of the court the collector of customs was notified to detain shipment in his custody. HELD: While tariff provided that no storage charges should be collected for detention due to delay by U. S. customs after attachment the goods were under control of the court. Mere fact that customs collector had custody of shipment is not proof of "Delay by U. S. Customs." Moreover, there is no evidence that prior to attachment the collector was not at all times ready to permit exportation of shipment upon presentation of clearance papers and other evidences of ownership. Sunny Brook Distillery Co. v. A., T. & S. F., 113 I. C. C. 533.

(e) Tariff rule providing that where c. l. shipments are stored by carriers to release needed equipment, storage charges would be at same rate as demurrage charges, found not unreasonable. Such rule is of general application, has been in effect for many years, and was found not unreasonable in 38 I. C. C. 349 and other cited cases. Sunny Brook Distillery Co. v. A., T. & S. F., 113 I. C. C. 533, 535.

(f) Following 95 I. C. C. 603 and 266 U. S. 92. storage charges assessed on cypress bridge piling stored on carrier's right of way, found inapplicable. Tariff specifically provided that notice in writing should be sent or given consignee by carrier or as otherwise agreed to. No such notice was sent nor agreement entered into for receipt thereof. Fact that consignee had actual notice did not constitute a "substantial compliance" with tariff and charges assessed were therefore inapplicable. Western Bridge & Construction Co. v. St. L.-S. F., 118 I. C. C. 607.

(g) Upon arrival of an l. c. l. shipment at destination, written notice thereof was sent to consignee, who failed to accept delivery, resulting in accrual of storage charges. Subsequently shipment was refused and consignor was duly notified and disposition orders requested. No reply was received and additional storage charges accrued, the shipment ultimately being returned to point of origin. Upon complaint seeking refund of all accrued charges for storage, HELD: Charges accruing subsequent to date of notification by carrier that shipment was refused were proper, and complainant could have abated the accrual of additional charges by furnishing disposition orders requested. Charges accruing prior to such notice, however, were inapplicable and should be refunded. Columbian Hog & Cattle Powder Co. v. C., C., C. & St. L., 120 I. C. C. 31.

(h) Storage charges assessed on private cars of gasoline under storage rule providing for assessment of charges on dangerous articles requiring "inflammable" placards, held on railroad premises in excess of free time found inapplicable. Under the rule the term "railroad premises" included private tracks constructed, maintained or operated under written agreement, located inside carrier's right of way, yard, and terminals, preserving to carriers right of use. Here, tracks were constructed under contract, but were used exclusively as plant facilities, and could be used by carrier only when such use did not interfere with complainant's business. Moreover, in 66 I. C. C. 58, interpretation of term "railroad premises" made the written agreement the controlling factor rather than right of use. Complainant's tracks therefore could not under any circumstances be considered as railroad premises. Refund of charge directed. Kelly Oil Co. v. M. K. T., 123 I. C. C. 517.

(i) Lumber from White Sulphur, W. Va., to Harrisburg, Pa., ordered reconsigned to Hershey, Pa., by letter addressed to agent of Norfolk & Western, who referred it to agent of Western Maryland at Hagerstown Junction, Md., was held by latter carrier at Harrisburg beyond free time and demurrage and storage charges accrued. Upon contention that detention of car and handling of request amounted to negligence on part of Western Maryland, HELD: Carrier's reconsigning tariff provided that request for reconsignment must be made or confirmed in writing to its general freight agent at Baltimore, and under

doctrine laid down in 266 U. S. 92, tariff regulations could not be waived by acceptance of reconsignment order by its agent at Hagerstown Junction. As request was not made in accordance with tariff provisions no duty was placed upon carrier to reconsign shipment and storage and demurrage charges assessed were therefore applicable. Shreiner Lbr. Co. v. Director General, 123 I. C. C. 551.

STORAGE-IN-TRANSIT

See Facilities and Privileges §15; Storage.

(a) Complainant attacked defendant's failure to provide storage in transit on iron and steel pipe and fittings shipped from points east of the Mississippi river to destinations in Kansas, Oklahoma, Texas, Louisiana and Arkansas as unjust and unreasonable and unduly prejudicial. The transit arrangement sought would not eliminate interfield or back haul movements, and, if granted at St. Louis, a similar arrangement could not well be denied at other points or on other oil well supplies. The evidence does not establish that the storage in transit or other transit arrangements which complainants show are in effect on other commodities undulv prejudice them in any manner. Most of the commodities are articles of food and the transit service a stop over to complete loading or to partly unload. None of the commodities could be used by complainants in place of those here considered. Defendants do not now provide storage in transit on these commodities at other points between the pipe producing and consuming fields and no compelling commercial necessity or demand for its establishment has been shown. HELD: Defendant's failure to provide storage in transit not unreasonable or unduly prejudicial, complaint dismissed. Western Petroleum Refiners Asso. v. St. L. S. F. Ry., 113 I. C. C. 716.

(b) Respondents proposed to cancel rules providing storage in transit arrangements on iron and steel articles at Texas gulf ports. Transit arrangements are provided at the Texas gulf ports for various commodities moving on rates which in general are no higher than on iron and steel articles. The present storage arrangement places Galveston and Houston on a parity with respect to rates to Texas. If the storage arrangement is canceled, shipments stored at the ports will move on a combination of the rates to and from the ports, and Houston, because of its geographical situation, will have a rate advantage over Galveston ranging from 1.5 to 7 cents. The proposed schedules will restore the situation in effect prior to 1922 and remove the prejudice to the interior points by placing jobbers at the ports and interior points on a parity; that is to say, each will pay charges based on the combination of rates to and from the storage point. HELD, suspended schedules justified. Storage in Transit of Iron and Steel Articles, 120 I. C. C. 147.

(c) Proposal to cancel storage-in-transit arrangements at Texas Gulf ports on iron and steel articles from Atlantic Seaboard and southeastern territories to Shreveport, La., Texarkana, Ark.-Tex., and points in Texas, found justified. Storage in transit of above commodities is not permitted in the Southwest except at Texas Gulf ports and interior points are demanding that they be granted similar arrangements. If this is done, other localities will demand like treatment, eventually, resulting in establishment of storage in transit on iron and steel articles throughout the country, thereby imposing additional burdens on carriers and depleting their revenues. Proposed schedules will restore the situation in effect prior to establishment of storage arrangements at the Texas Gulf ports and remove prejudice to interior points by placing them on a parity with the Gulf ports. Storage in Transit on Iron and Steel Articles, 120 I. C. C. 147.

(d) Refusal of Southern Pacific Co. to permit creosoting or storage in transit at Oakland, Calif., on red-cedar poles and piling, originating in Oregon and Washington, destined to points on its line in California, while maintaining such arrangements at Springfield and East Milwaukee, Oreg., found not unreasonable or unduly prejudicial. Record indicates a dissimilarity of conditions at Oakland as compared with the Oregon points. Latter are directly intermediate to destinations on carrier's line, whereas route through Oakland necessitates an additional road haul and switching movement. Moreover, establishment of transit at Oakland would give complainant an advantage over its Oregon competitors because receipt of a large volume of poles and piling by steamer would enable it to use its tran-

sit credits to greater advantage than would be possible if all shipments came in by rail. Baxter & Co. v. S. P., 122 I. C. C. 498.

(e) Failure to provide for stopping in transit to partially unload shipments of Portland cement and wall plaster, in straight or mixed carloads, from Hanover and Trident, Mont., to western and central portions of North Dakota and South Dakota, while contemporaneously according this privilege to competitors at Steelton, Duluth, and Minneapolis, Minn., Mason City, Iowa, and Piedmont and Black Hawk, S. Dak., found unduly prejudicial. No order entered but carriers expected to provide for transit privilege in revising rates in accordance with findings herein. Three Forks Portland Cement Co. v. C., B. & Q., 129 I. C. C. 107, 118, 119.

STREET RAILWAYS

See Electric Lines.

STRIKES

See Cars and Car Supply §7¼ (c), §39 (a); Courts §12 (w); Emergency Rates (a); Through Routes and Joint Rates §11 (2) (a).

SUBSTITUTION OF TONNAGE

See Facilities and Privileges §15, §20.

SUSPENDED RATES

See Advanced Rates §1 (4); Interstate Commerce Commission §11; Long and Short Hauls §15; Tariffs §1½.

SWITCH TRACKS AND SWITCHING

I. CONTROL AND REGULATION.
§ 1. In general.
§ 2. Jurisdiction of Commission.
II. ABSORPTION OF SWITCHING.
§ 3. In general.
III. DISCRIMINATION AND REASONABLENESS OF CHARGES.
§ 4. In general.
§ 4½ Construction of contracts for sidetracks.
§ 5. Incidental services.
§ 6. Reciprocal switching.
§ 6a. Obligation to switch.
§ 7. Right to connection.
§ 8. Validity of regulations.
§ 9. Reparation.
§ 9a. Section 4.
§ 10. Tariffs and construction.
§ 11. Team tracks and sidetracks.
IV. PROCEDURE AND PLEADING.
§ 12. In general.
V. SWITCHING DISTRICTS.
§ 13. In general.

CROSS REFERENCES

See Absorption of Charges; Allowances §8 (5); Cars and Car Supply §30; Common Carrier; Electric Lines VIII; Express Companies §8a; Proportional Rates; Reconsignment; Side Tracks and Spur Tracks; Spotting; Tap Lines; Terminal Facilities.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. In General.

(a) Under section 4777 and section 4779, C. L. 1913, the railroad commissioners of the state have authority to compel train connections of competing lines when they are within one-half mile of any common point, when such connection does not place a burden on interstate commerce. Milhollan v. Great Northern Ry. Co., (N. D., 1925) 204 N. W. 994.

(b) The Congress of the United States has assumed full and complete control of physical connections between railroad companies engaged in interstate commerce, and, unless the Interstate Commerce Commission authorizes such connections, the state cannot compel such connections by reason of state laws. A. & V. Railway Co. v. Jackson & Eastern Railway Co., 271 U. S. 244, 46 S. Ct. 535, 70 L. Ed. 928. Alabama & V. Ry. Co. v. Jackson & E. Ry. Co., (Miss., 1927) 110 So. 865.

§2. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) Under that portion of paragraph (3) of section 3 of the act which requires that all carriers shall, according to their respective powers, afford all reasonable,

proper, and equal facilities for interchange of traffic between their respective lines, the commission has power to deal with an issue involving, as here, establishment of switch connection between carriers. See 81 I. C. C. 333. Breckenridge Chamber of Commerce v. W. F., R. & F. W., 109 I. C. C. 81, 82.

II. ABSORPTION OF SWITCHING.

See Absorption of Charges §3.

§3. In General.

(a) Switching charges in addition to through rates assessed on shipments receiving transit at Meridian, Miss., found illegal. While transit tariff provided that such charges would be in addition to through rates, tariffs of outbound carriers provided for their absorption, no distinction being made between shipments originating at transit point and those originating beyond. If it was desire of carriers to exclude transit shipments from general absorption provisions they should have done so by plain langauge rather than by inference, and their failure to do so can not cast burden of paying charges upon shipper. Reparation awarded. Sturges Co. v. A. & V., 107 I. C. C. 136.

(b) A general provision in a tariff to effect that a carrier will absorb switching charges of "connecting lines" on traffic received by it as a certain point in transit as an incident to a through to cover all traffic, whether originating at point of absorption or handled there equivocal language to contrary, be taken most, in the absence of clear and unmovement from a point beyond. Sturges Co. v. A. &. V., 107 I. C. C. 136, 138, 139.

(c) Upon further hearing, rates on ice from interstate origin points to Chicago and South Omaha found reasonable in previous reports, 62 I. C. C. 618 and 87 I. C. C. 81, found to include absorption of switching charges of delivering terminal lines. While contemporaneous line-haul and switching tariffs were of equal weight in their respective spheres, in absence of cross reference between them, in accordance with rules 10 (a) and 10(d) of Tariff Circular 18-A, they were usable in combination to make a through rate, just as two local tariffs, of line-haul carreirs would be. One provision of switching tariff, binding upon line-haul carriers parties thereto, was that switching charges would be absorbed. Reparation awarded. Wilson & Co. v. Director General, 107 I. C. C. 580.

(d) Proposal of C. & N. W. and C., M. & St. P. to cancel absorption of switching charges on interstate shipments of ice from points in Illinois and Wisconsin to deliveries on lines of their connections in Chicago district, resulting in increased through charges, found justified in part. Net revenue accruing to respondents after absorption of connecting-line charges is insufficient to cover line-haul movement. Moreover, where originating carrier has no direct connection with delivering line respondents are entitled to some compensation for additional cost incident to trackage rights over intermediate lines. Ice from Illinois and Wisconsin, 109 I. C. C. 3.

(e) Upon reargument, nonabsorption of switching charges of Pittsburgh, Allegheny & McKees Rocks R. R., on traffic to and from points of unloading and loading at complainant's plants at McKees Rocks and Allegheny, Pa., during Federal control, found not to have resulted in unreasonable charges because in excess of Pittsburgh district rates. Finding in former report, 93 I. C. C. 224 affirmed. Pressed Steel Car Co. v. Director General, 109 I. C. C. 75.

(f) Upon contention that failure of the Wabash Ry. to absorb switching charges of the Nickel Plate on sand and gravel at LaFayette, Ind., on traffic moving to points in Illinois, while contemporaneously absorbing such charges on intrastate traffic, resulted in undue prejudice. HELD: Intrastate absorptions resulted from an order of the State commission, complainant does not allege a violation of section 13 of the act, nor is evidence such as would sustain a finding of unjust discrimination against interstate commerce under that section. Western Indiana Gravel Co. v. N. Y., C. & St. L., 109 I. C. C. 727, 731.

(g) Proposal of C. & N. W. Ry. to increase from $3 to $5 per car the maximum amount of its absorption of the Laona & Northern's switching charge to and from plant of the Connor Land & Lbr. Co., at Snyders, near Laona, Wis., found not justified. While establishment of such absorption would attract some traffic to the North Western's line, in 49 I. C. C. 75 it was held that the Laona was entitled to no greater switching allowance than $2 per car, and in 92 I. C. C. 23 the present $3 allowance was found not inadequate although the North West-

ern was willing to pay $5 and although the Laona was operating at a deficit. The commission further found that to permit a $5 absorption would be to accord the Laona a preference over other lines operating largely under similar circumstances and conditions. No showing is here made of actual cost of interchange nor is there anything of record that would warrant a conclusion different from that previously reached. Absorption of Switching Charges at Laona, Wis., 112 I. C. C. 115.

(h) In shipments destined to Atlanta, Ga., complainant with expectation of securing at Atlanta, as an intermediate point, the application of a rate published to Westwego Elevators, La., specified routing beyond East St. Louis gateway via Illinois Central R. R. Based upon fact that the Illinois Central does not reach Westwego Elevators with its own rails, complainant contended that routing instructions in tariff were incomplete and permitted any routing not specifically prohibited over lines parties thereto, provided the Illinois Central first be given a road haul. HELD: Routes to New Orleans, where Westwego Elevators are located, through East St. Louis, as described in tariff are complete, and since tariff also provided for absorption by Illinois Central of delivering line's switching charges the routing to Westwego Elevators specified in tariff were not made incomplete by failure to name in connection therewith the switching line between that point and New Orleans. Hogan Bros. v. C., B. & Q. R. R., 113 I. C. C. 223.

(i) In a proceeding to determine the propriety of switching charges absorbed by carriers the commission must consider them as though they were to be charged for by the railroad rendering the service and paid for by shippers. Switching at Lamar and Harrisonville, 115 I. C. C. 393, 395.

(j) Determination of a reasonable practice governing the application of interchange switching charges should not be controlled by the extent of a switching district or by the arrangements under which carriers absorb switching charges to reach industries on other lines. Rates of Peoria & Pekin Union Ry., 115 I. C. C. 469, 511.

(kl) Mixed vegetables from industries on the Santa Fe and Pacific Electric railways at Los Angeles, Calif., destined to Salt Lake City and Ogden, Utah, are subjected to switching charges at Los Angeles, while on shipments originating beyond Los Angeles switching charges are absorbed and the Los Angeles rate assessed. Upon complaint alleging unreasonableness, HELD: It is practice of carriers in the West to absorb switching charges only on competitive business. Traffic originating beyond Los Angeles constitutes competitive business, whereas the traffic here involved is not competitive. Frank Produce Co. v. Director General, 118 I. C. C. 88.

(m) Failure and refusal of the C., M. & St. P. Ry., to absorb switching charges of connecting lines at Elgin, Ill., and Racine, Wis., on interstate shipments of sand, gravel, and crushed stone, while absorbing such charges on various other commodities, found not unduly prejudicial. Chicago Gravel Co. v. A., T. & S. F., 118 I. C. C. 633.

(n) Fact that a carrier absorbs switching charges on various commodities but does not absorb such charges on sand and gravel does not warrant a finding of undue prejudice. See 36 I. C. C. 259; 69 I. C. C. 688. Chicago Gravel Co. v. A., T. & S. F., 118 I. C. C. 633, 651.

(o) Complainant alleged the refusal of defendant to absorb inbound and outbound switching charges at Kansas City on certain shipments of grain and grain products, in carloads, shipped between Aug. 1 and Dec. 26, 1924, from Kansas City to certain competitive points, resulted in unreasonable charges. The tariff is confined to rules and regulations governing transit on grain, etc., within the Kansas City switching district. It is limited to Kansas City. Item 200 read alone, is ambiguous. But when the scope of the tariff is considered and due weight is given to the fact, that item 190 is the only item in the tariff which refers to item 200, the conclusion seems clear that Kansas City is the point from which the "equal rates" are to apply in determining whether a certain point is a "comparative point" within the meaning of the tariff. HELD, defendants refusal to absorb the switching charges illegal, overcharges to be refunded, complaint dismissed. Davis-Noland-Merrill Grain Co. v. St. L., S. F. Ry., 120 I. C. C. 87.

(p) Transit tariff of St. L.-S. F. Ry., provided for absorption of switching charges of connecting lines at Kansas

City, Mo.-Kans., on shipments of grain and products moving via its line destined to competitive points. Another item defined competitive points as those to which "equal rates" are in effect via lines other than St. L.-S. F. Ry. Carrier construed a competitive point as one to which rates from point of origin to ultimate destination were same in connection with its line via Kansas City as over lines of other carriers, and refused to absorb switching charges. HELD: Item defining competitive points is ambiguous when read alone. However, when read in connection with item providing for absorption of switching charges, it is clear that Kansas City is the point from which the "equal rates" are to apply in determining which points are competitive within meaning of tariff. Refusal to absorb switching charges was therefore not in accord with carrier's tariff and resulted in illegal charges. Refund of overcharges directed. Davis-Noland-Merrill Grain Co. v. St. L.-S. F., 120 I. C. C. 87.

(q) Conference ruling 304 (d) authorizes carriers to absorb switching charges on competitive and not on noncompetitive traffic, even though departures from long-and-short-haul provision of the fourth section may result therefrom, but that rule does not authorize this to be done in violation of the aggregate-of-intermediates provision of section 4. Bissinger & Co. v. G. N., 120 I. C. C. 745, 748.

(r) Respondent, Frisco, proposed to cancel its absorption of switching charges of connecting lines on grain, feed and hay moving to North Kansas City, Mo. Respondent under its present rule absorbs switching charges of connecting lines of $6.30 per car on all traffic to and from North Kansas City. If the suspended schedule is permitted to become effective, the existing preference of protestant and other industries at North Kansas City and prejudice against industries at Kansas City will be removed. The desirability of such a result is obvious. If, as contended by protestant, its plant is directly intermediate to St. Joseph within the meaning of the fourth section, it is worthy of note that industries in Kansas City, where the switching charges on grain, seeds, and hay are not absorbed, are quite as directly intermediate to its plant. Without undertaking, upon this record, to which only one of the carriers entering Kansas City is party, to decide the various fourth section questions which might arise in this as in any other switching district upon such a contention as that made by protestant, and which should be dealt with in an appropriate proceeding upon an adequate record, the Commission is of the opinion that the desirability of placing protestants industry upon the same basis as all other industries similarly situated within the Kansas City switching limits outweighs the possibility that on some future record a violation of the fourth section may be found to have resulted. HELD, suspended schedules justified Switching charges at North Kansas City, 122 I. C. C. 73.

(s) Proposal of St. L.-S. F. Ry., to cancel absorption of switching charges of connecting lines on grain, feed, and hay, moving to North Kansas City, Mo., a separate municipality within Kansas City switching district, for purpose of correcting an oversight by which North Kansas City was excepted from the rule providing for nonabsorption of such charges on inbound shipments to all points within Kansas City switching district, found justified. Grain is one of the most highly competitive commodities handled by carriers reaching Kansas City, and is accorded liberal transit arrangements and other services. Purpose of carriers in publishing above exception is to hold grain to their own elevators in order to secure the outbound haul, and placing of all industries within Kansas City switching district on an equal basis will remove undue preference of North Kansas City. Switching at North Kansas City, 122 I. C. C. 73.

(t) Absorption by trunk-line carriers of switching charges of Hutchinson & Northern Ry., at Hutchinson, Kans., on salt shipments, FOUND not unjustly discriminatory or unduly prejudicial. Hutchinson & Northern is a common carrier engaged in interstate commerce, files its tariffs and reports with the Kansas Public Utilities Commission and with this commission, is recognized by connecting lines as a common carrier and as such may have its charges absorbed by line-haul connections. American Salt & Coal Co. v. C., R. I. & P., 126 I. C. C. 7.

(u) It is not necessary that a switching line whose charges are absorbed be named as a party defendant in a complaint alleging unreasonableness of rates. See 50 I. C. C. 203. Sinclair Crude Oil Co. v. A., T. & S. F., 126 I. C. C. 73, 74.

(v) Combination rate on paving brick

from Buffalo, Kans., to McCook, Nebr., subject to switching charge at Superior, Nebr., found unreasonable as compared with joint-line rates contemporaneously in effect on cement on which switching charge is absorbed; with distance rates prescribed in 77 I. C. C. 22 from Mason City, Iowa, to destinations in Nebraska and South Dakota; and to extent it exceeded joint-line distance rate prescribed in 77 I. C. C. 4, from Sioux City Iowa, to Nebraska points for comparable distances. Reparation awarded. Buffalo Brick Co. v. M. P. Ry., 126 I. C. C. 744.

(w) Complainant purchases practically all of its lumber supply consisting of white pine, from small sawmills in Idaho and Washington and ships this lumber in the form of planks of varying widths, about 2 inches thick, from the sawmills to its plant at Spokane, Wash., where it is sawed into match blocks 2.375 inches long which are then shipped to its eastern factories. This milling operation is conducted under transit arrangements which allow a period of 12 months for its consummation and which apply only when the match blocks move out of Spokane by the line which brought the planks in. Complainant is on the C. M. & St. P. and O. W. R. R. & N. When complainant's lumber is brought to Spokane by lines other than the Milwaukee and Oregon-Washington, a switching charge of $3.60 per car is assessed to and from complainant's plant on the inbound and outbound movements These switching charges are absorbed by the line haul carrier when the lumber originates at competitive points, but not when it originates at non-competitive points. No switching charges are assessed when the lumber originates on either the Milwaukee or the Oregon-Washington. Original report in 102 I. C. C. 353, Federal Match Corp. v. G. N. Ry. There is nothing of record which would warrant a finding that the refusal to absorb the switching charges under the circumstances is in violation of either section 2 or 3. Complainant admits that the charge, as such, is not unreasonable, and no evidence was offered to show that the through charges, made up of the line haul rate plus the switching charge, are unreasonable. There would seem to be little justification for the maintenance of graded charges for the transit of this lumber at Spokane. The evidence of record, however, is insufficient for the determination of a reasonable flat transit charge on the traffic involved. Under all the circumstances it would seem that 18 months would not be an unreasonably long transit period for complainant's shipments. HELD: Refusal to absorb switching charges on shipments originating at noncompetitive points not unreasonable, unjustly discriminatory or unduly prejudicial; transit period unreasonable to extent it is less than 18 months; graded transit charges dependent upon the length of the inbound haul on shipments of lumber unreasonable, and a reasonable flat transit charge should be published. Federal Match Corp. v. G. N. Ry., 128 I. C. C. 415.

(x) Upon further hearing, finding in previous report, 102 I. C. C. 353, that switching charges and assessment thereof in addition to road-haul rate on lumber from sawmills in Idaho and Washington, milled in transit at Spokane, Wash., are not unreasonable, discriminatory, or unduly prejudicial, affirmed. Nothing of record would warrant a finding that refusal to absorb switching charges under such circumstances as described is in violation of either section 2 or 3 of the act, as tariff provisions with respect to switching charges and their absorption which apply to complainant's traffic apply also to traffic of its competitors. Moreover, in 49 I. C. C. 613; 88 I. C. C. 413, it was found that carriers may lawfully absorb switching charges on competitive traffic and refuse to absorb them on traffic that is not competitive, so long as all shippers similarly situated are treated alike. Federal Match Corp. v. G. N., 128 I. C. C. 415.

(y) Tariff provided for absorption of switching charges on lumber when shipments originated at competitive points but not when they originated at non-competitive points. Upon contention that term "competitive traffic" as used in tariffs should include all shipments of lumber on ground that more or less competition is always present in purchase of that commodity. FOUND: That is not the meaning of this term as used in connection with absorption or non absorption of switching charges, competition as there used relating only to competition between carriers for the traffic. Federal Match Corp. v. G. N., 128 I. C. C. 415, 417.

(z) Failure of connecting carrier to absorb switching charges at Chicago on traffic coming into Cincinnati over one

line of L. & N., while absorbing such charges on traffic arriving over certain other lines, found not to have resulted in unreasonableness, discrimination, or undue prejudice. The L. & N. contended that absorption of such charges is wrong in principle and contrary to practices of carriers throughout the country, and cited 68 I. C. C. 283, wherein commission stated that a carrier can not be compelled to absorb switching charges of connecting line in absence of discrimination or prejudice. Here routes over which shipments could move, and rates applicable thereto were open to all shippers alike and evidence fails to support allegations of undue prejudice or preference. Sanzone-Palmisano Co. v. L. & N., 128 I. C. C. 515.

(aa) Complainant alleged that charges collected for switching two carloads of grapefruit at Chicago, Ill., were unreasonable, unjustly discriminatory and unduly prejudicial. Shipments originated at Lucerne Park and Fuller, Fla. Both moved to Cincinnati over L. & N. thence Big Four and I. C. On arrival at Chicago the cars were switched from the team tracks of the I. C. to the fruit auction house by the C. M. & St. P., and switching charges assessed of 7.5c per 100 pounds, minimum 24,000 pounds. The Big Four publishes a tariff providing for the absorption of switching charges, not to exceed 7.5c per 100 pounds, on citrus fruit, in carloads, originating south of the Ohio river and east of the Mississippi river, and received by it at Cincinnati from the C. N. O. & T. P., or the N. & W. for delivery to the Chicago Fruit Auction House. The switching charge of the Milwaukee at Chicago is not absorbed on traffic delivered to the Big Four at Cincinnati by the L. & N. No showing is made with respect to the reasonableness or unreasonableness of the rate for the line haul movement or of the charge for the switching service at Chicago. The routes over which shipments could move, and the rates applicable thereto, are open to all shippers alike and there is no evidence that any person, locality or commodity is subjected to any undue prejudice or preference. HELD: Switching charges collected not unreasonable or otherwise unlawful, complaint dismissed. Sanzone Palmisano Co. v. L. & N. R. R., 128 I. C. C. 515.

(bb) In the absence of unjust discrimination or undue prejudice a carrier can not be compelled to absorb the switching charges of a connecting line. Sanzone Palmisano Co. v. L. & N. R. R., 128 I. C. C. 515, 516.

(cc) In a proceeding to determine the propriety of switching charges it is immaterial whether such charges are absorbed by carrier or paid for by shippers as they must be considered as though they were to be charged for by carrier and paid for by shipper. True, carrier is entitled to make a charge for its service if it sees fit, but it is entitled only to a reasonable compensation for service performed. Its charge may not be so high as to restrict or deter a particular movement. See 47 I. C. C. 583, and other cited cases. Mitchell Chamber of Commerce v. C., M. & St. P., 129 I. C. C. 451, 455.

(dd) A carrier can not be compelled to absorb switching charges of a connecting line in absence of unjust discrimination or undue prejudice. See 49 I. C. C. 613. Romann & Bush Pig Iron & Coke Co. v. A., T. & S. F., 129 I C. C. 509, 510.

(ee) Refusal of defendant to absorb connecting line switching charges assessed at destination on traffic originating at points exclusively on its line and delivered to so-called off-line industries found not to result in violation of tariff prvisions. Record indicates that the traffic involved was local to defendant's rails and noncompetitive in character from a transportation standpoint, and governing tariff contains no provision for absorption by defendant of destination switching charges of other lines on that class of traffic. Southern Kansis Millers Club v. A., T. & S. F., 129 I. C. C. 632.

III. DISCRIMINATION AND REASONABLENESS OF CHARGES.

See Discrimination; Reasonableness of Rates.

§4. In General.

(a) Shipments of matches moving from Chico, Calif., to destinations in Washington were assessed a rate to Portland, Oreg., higher than proportional rate applicable over a route other than route of movement to St. Johns, situated within corporate and switching limits of Portland. Lower rate was restricted to destinations other than those here involved and carried a switching charge at Portland also restricted to

switching service performed in connection with a line haul. There was no switching in connection with a line haul via route of movement, and an out-of-line haul would have resulted had traffic moved through St. Johns. FOUND: Rates assessed were not unreasonable or otherwise unlawful. Diamond Match Co. v. Director General, 104 I. C. C. 147.

(b) Tariff governing switching charges from South Omaha to Omaha carried separate charges, lower applying when added to line-haul rates and representing a separate charge for terminal services, higher when covering entire charge from shipper to consignee. No facilities being maintained by carriers at South Omaha for acceptance of l. c. l. shipments, complainant was compelled to switch c. l. shipments to Omaha, from which point they were reforwarded in l. c. l. lots and higher charges assessed. FOUND: Higher charge, which merely covered a c. l. movement and was not a specific charge for trap or ferry cars with provisions for acceptance and distribution of commodity shipped, was legally applicable. Moreover, shipments would not have been accepted at South Omaha in l. c. l. lots; there was an essential difference between their character from that point and from Omaha; and, continuity of c. l. movement was destroyed by breaking it up into l. c. l. shipments. Armour & Co. v. Director General, 104 I. C. C. 603.

(c) Applicable rates on articles named in uniform brick list from complainant's plant at East St. Louis, to destinations within switching district of St. Louis, Mo., found not unreasonable or otherwise unlawful as compared with rates from farther distant competing points in Illinois and Missouri. Rates from complainant's plant are lower than those from more distant points in Illinois, and are as low as or lower than rates prescribed for similar distances in the Brick case, 68 I. C. C. 213. It is not shown that complainant has lost any sales in St. Louis by reason of adjustment complained of; moreover, shipments from its plant for delivery in St. Louis switching district move freely under present rates. H. & R. Mining & Mfg. Co. v. A. & S., 104 I. C. C. 671.

(d) Switching charges in addition to through rates assessed on shipments receiving transit at Meridian, Miss., found illegal. While transit tariff provided that such charges would be in addition to through rates, tariffs of outbound carriers provided for their absorption, no distinction being made between shipments originating at transit point and those originating beyond. If it was the desire of carriers to exclude transit shipments from general absorption provisions they should have done so by plain language rather than by inference and their failure to do so can not cast burden of paying charges upon shipper. Reparation awarded. Sturges Co. v. A. & V., 107 I. C. C. 136.

(e) Shipment of potatoes from Almora, Minn., to Tinley Park, Ill., was billed to complainant's order with instructions that it be held at Burr Oak yard, Blue Island, Ill. Carrier routed Soo Line to Chicago and Rock Island beyond. A lower rate applied in connection with the Soo Line to Minneapolis and the Rock Island beyond, but over such lower-rated route it would have been necessary in order to comply with billing instructions, to transport shipment through Tinley Park to Burr Oak yard and then back haul it. Such lower rate was not applicable in connection with such a back-haul movement. On other hand, Burr Oak yard is directly intermediate between Almora and Tinley Park via route of movement. Shipment found not misrouted. Thoeming & Co. v. M., St. P. & S. S. M., 107 I. C. C. 658.

(f) Rates on logs for movement from Cooper's point to Victor Talking Machine Company's siding, both points being within the switching district of Camden, N. J., the original movement having been by barge from James River landings, Va., found unreasonable as compared with charges on various commodities for similar hauls between points within the Philadelphia industrial district, and to extent they exceeded lower switching charge contemporaneously in effect for the same movement on logs but restricted in its application so as not to apply on shipments arriving at or moved from Camden by water. Reparation awarded. Rickards v. P. R. R., 109 I. C. C. 297.

(g) Complainant attacked $20 charged for switching at Boston, Mass., a carload of apples shipped March 14, 1924, from Peshastin, Wash., to Tampa, Fla., and reconsigned to Boston as inapplicable. Shipment arrived at New London, Conn., on the New Haven. Thereafter complainants Boston representative telegraphed the New Haven agent at New London to further reconsign the

shipment to Boston and on the afternoon of the following day again telegraphed the same agent to route the shipment Boston & Maine auction delivery. The shipment was then enrouted. It arrived at Boston within an hour after the second telegram was sent and was placed on the tracks of the New Haven. Delivery was not made nor attempted at that point and in compliance with the second telegram the shipment was soon afterwards switched to the auction tracks of the B. & M., where it was unloaded, charged $20. That charge was applicable if, as defendants in effect contend, the interstate character of the shipment terminated when it was placed on the tracks of the New Haven. If not, the governing tariff provided a charge of $10 in addition to the line haul rate for the movement thence to the auction tracks of the B. & M., and for the absorption of that charge by the New Haven. The facts of record are convincing that the character of the shipment under consideration was interstate from the time it left Peshastin until it came to rest on the auction tracks of the B. & M. HELD, charge attacked inapplicable, reparation awarded. Gwin White & Price v. N. Y. N. H. & H. R. R., 112 I. C. C. 707.

(h) Rate on sand from Michigan City, Ind., to points on connecting lines in Chicago, Ill., switching district, found not unreasonable or unduly prejudicial as compared with lower rates from Dune Park, Aetna, Millers, and Gary, Ind., and other near-by competing producing points. The comparisons, based merely upon differences in distance do not constitute sufficient justification for a finding either of unreasonableness or of undue prejudice, the differential between Michigan City and alleged preferred points is less than that prescribed by commission between the inner and outer zones, Michigan City having been found to be properly included in the higher 52-mile scale, whereas alleged preferred points are in the lower 35-mile scale, indicating that alleged preferred points are entitled to advantage of their location. Furthermore, certain of these points are not served by same carriers serving Michigan City. Bos Sand Co. v. A., T. & S. F., 112 I. C. C. 121.

(i) Shipment arrived at New London, Conn., and reconsignment to Boston ordered. On following day complainant by telegraph requested "Boston & Maine auction delivery," but shipment having gone forward, arrived at Boston and was placed on tracks of the New Haven, where no delivery was made or attempted. Subsequently it was switched to auction tracks. Upon contention that interstate character of shipment terminated when it was placed on the New Haven's tracks, FOUND: Since character of the shipment was interstate from time it left Peshastin, Wash., the point of origin, intrastate switching charge collected for the movement from the New Haven's tracks to the auction track was inapplicable. Applicable interstate tariff provided a lower charge and for its absorption by the New Haven. Reparation awarded. Gwin, White & Price v. N. Y., N. H. & H., 112 I. C. C. 707.

(j) Complicated switching movements are not confined to joint-line hauls of c. l. traffic. The switching and classification of cars at terminal or division points enroute is a frequent incident of single-line movements. Nor is the transfer of l. c. l. freight from car to car confined to joint-line hauls. It also happens in many single-line hauls and is frequently performed at special transfer stations designed for the purpose as an aid to economical and expeditious handling of freight. Southern Class Rate Investigation, 113 I. C. C. 200, 205.

(k) Practice whereby east-side lines require west-side lines to bear expense of transferring across the river from East St. Louis, Ill., to St. Louis, Mo., interstate westbound freight moving under combination rates which are same on St. Louis as on East St. Louis, found unreasonable. Usual practice among rail carriers throughout the country is to divide switching expenses when services of an intermediate carrier are utilized in effecting an interchange of traffic, the switching charges being absorbed by carrier that delivers traffic to its connection. Moreover, there is a generally recognized obligation on part of all carriers on through traffic to make delivery on rails of connections, either direct or by bearing charges of intermediate switching line. Reasonable practice prescribed for the future and reparation denied. C., R. I. & P. v. B. & O., 113 I. C. C. 681.

(l) M. P., respondent, proposed to increase its charges for switching interstate road haul shipments between connecting lines and industries on its own line at Lamar, Mo., from $2.25 to $6.30

per car. Lamar is reached by the M. P., and the Frisco. Harrisonville is reached by the M. P., Frisco and M. K. T. The tables show that on June 24, 1918, there were uniform switching charges of $3 at Lamar and $2 at Harrisonville, and that at the present time the charge of the Frisco and Katy is $6.30, as compared with the M. P. charge of $3.60 at Lamar and $2.25 at Harrisonville. The intrastate switching charge of the Frisco at both points was made $6.30 on July 1, 1926. Respondent's primary object in proposing the increases is to make its switching charges at Lamar and Harrisonville uniform with those of the Frisco and Katy. Each of the three lines absorbs the switching charges of the others on competitive traffic. HELD: Schedules justified. Switching at Lamar and Harrisonville, 115 I. C. C. 393.

(m) There is no evidence tending to show that respondent should be required to maintain a lower switching charge than that applied generally by other trunk lines in the same district for a like kind of service. Switching at Lamar and Harrisonville, 115 I. C. C. 393, 395.

(n) Complainant attacked commodity rates charged on brick and hollow building tile, carloads, since May 23, 1923, from Vale, Mo., to Kansas City, Mo.-Kans., as unreasonable, unjustly discriminatory and unduly prejudicial. Rate charged from May 23, 1923, to Sept. 15, 1925, was 3.5c and thereafter 4.5c. Complainant alleged these rates were unreasonable and unduly prejudicial to extent they exceeded 2.5c, the switching rate in effect on carloads of brick in the Kansas City switching district in excess of 5 miles. Vale is outside of the Kansas City switching district, 9 miles from Leeds, Mo., the nearest point within the district. HELD: Rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Kansas City Brick Co. v. C. R. I. & P. Ry., 115 I. C. C. 750.

(o) Proposal of Missouri Pacific to increase its charges for switching between connecting lines and industries on its own line at Lamar and Harrisonville, Mo., for purpose of making such charges uniform with those of the Frisco and the Katy at those points, found justified. Each line involved absorbs the switching charges of the other on competitive traffic; uniform switching charges were formerly in effect; and there is no evidence tending to show that the Missouri Pacific shoud be required to maintain a lower switching charge than that applied generally by other trunk lines in same district for like kind of service. Moreover, in 102 I. C. C. 559 a charge equal to that here proposed was found not unreasonable for switching at Arkansas City, Kans. Switching at Lamar and Harrisonville, 115 I. C. C. 393.

(p) In a proceeding to determine propriety of switching charges absorbed by carriers, the commission must consider them as though they were to be charged for by railroad rendering the service and paid for by shipper. See 61 I. C. C. 205. Switching at Lamar and Harrisonville, 115 I. C. C. 393, 395.

(q) Upon further hearing, proposed charges of Peoria & Pekin Union Ry. Co., for intermediate switching in Peoria switching district, and for intermediate switching between the Minneapolis & St. Louis R. R., and carriers in East Peoria, found unreasonable to extent any separate charge is assessed against the M. & St. L. or shippers, as well as unduly prejudicial and preferential of the C., B. & Q. and Rock Island railroads. Former reports, 68 I. C. C. 412; 77 I. C. C. 43; and 93 I. C. C. 3. Rates of P. & P. U. Ry., 115 I. C. C. 469.

(r) The value of a cost study showing average cost per unit of switching, obviously depends upon selection of a test period representative as to number of cars handled, a careful count of actual number switched, and proper assignment and apportionment of expenses to switching service involved. Rates of P. & P. U. Ry., 115 I. C. C. 469, 487.

(s) Determination of a reasonable practice governing application of interchange switching charges should not be controlled by extent of a switching district or by arrangements under which carriers absorb switching charges to reach industries on other lines. Rates of P. & P. U. Ry., 115 I. C. C. 469, 511.

(t) Upon a consideration of the character of service and cost studies submitted in evidence, a division of $3 per loaded car, which covers empty as well as loaded movement, found just, reasonable, and equitable to the Peoria & Pekin Union Ry. Co., for interchanging freight cars between all connecting lines in the Peoria switching district. Rates of P. & P. U. Ry., 115 I. C. C. 469, 481, 497, 513, 514.

(u) Failure or refusal of carrier to compensate complainant, out of line-haul rates, for interchange switching performed by latter on c. l. shipments between points within its industrial plant at Minetto, N. Y., and point of interchange at that place, found not to violate the act. Here complainant of its own volition elected to perform service which carrier formerly performed, and does not seek or desire its resumption, but seeks compensation only. The settled doctrine, however, is that carrier has right to complete service included within its rates, and when deprived of that opportunity by action of shipper it can not be required to pay compensation therefor. Moreover, allowances contemplated by section 15 (13) are optional with carriers, and commission is empowered to fix merely the maximum that may be paid. Columbia Mills v. D., L. & W., 118 I. C. C. 112.

(v) Charge of $5 per car proposed by Kanawha Central Ry. to apply at mine sidings on its line, to cover switching and set-out service where consignors designate certain cars for billing and such cars are not in consecutive order from point of interchange, found not justified. While rule is intended to cover instances in which mines bill out coal cars standing near its tipple when same kind or size of coal in same kind of equipment is held unbilled in cars standing nearer connection with its line, thus unnecessarily requiring the pulling out and setting back of such unbilled cars, such rule does not conform to intention or desire of carrier and would result in increased transportation charges which have not been shown to be reasonable. Switching Charges at K. C. Ry. Mines, 118 I. C. C. 468.

(w) Rates on sand from Lawrence, Kans., to destinations within a radius of 150 miles east of Kansas City, Mo., found unreasonable and unduly prejudicial to extent they exceed by more than 20 cents per ton rates from Turner, Muncie, Grinter, Sirridge, and Armourdale, Kans., competing points accorded Kansas City basis of rates. Reasonable and nonprejudicial rates prescribed for future. Jackman & Jackman v. A., T. & S. F., 118 I. C. C. 547.

(x) Rate on sand from Lawrence, Kans., to Kansas City, Mo.-Kans., found unreasonable and unduly prejudicial to extent it exceeds by more than 1 cent per 100 pounds the rate from points within Kansas City switching limits and Muncie and Grinter, Kans., to points in Kansas City switching district. Taking into consideration low grade of sand and keen competition in its sale, the difference in rate from Lawrence is too high as compared with those from Kansas City district points. Reasonable rate prescribed for future. Jackman & Jackman v. A., T. & S. F., 118 I. C. C. 560.

(y) Switching charge assessed for movement of lumber at Detroit, Mich., was assessed on basis of charge in effect on date when movement was made. HELD, as shipment involved was not a reshipment, applicable switching charge thereon was charge in effect on date shipment originated. Milne Lbr. Co. v. M. C. R. R., 118 I. C. C. 580, 582.

(z) Proposed increases in interstate rates on sand, gravel, and crushed stone within Chicago switching district and from the district to destinations just outside, pursuant to commission's decision in 109 I. C. C. 441, found justified in part. Chicago Gravel Co. v. A., T. & S. F., 118 I. C. C. 633.

(aa) Respondent, Wabash, proposed generally to increase its switching rates on carload freight in and about St. Louis, Mo. Present reciprocal rate for switching in the city is usually 1.5c, although there are a few rates as low as 0.5c and some as high as 2c. On industrial switching the rate quite generally applied at present is 2c, minima $8.10 and $9.50 per car. The proposed rate on most traffic, reciprocal and industrial, is 2c, although in a few instances the rates proposed are 1.5c for certain reciprocal switching and 2.5c for certain industrial switching. For various practical reasons, it is desirable that switching rates be on somewhat of a postage stamp basis. It is impracticable to reflect the same refinements of rate making in switching rates as in line haul rates. Instead of publishing rates in cents per 100 pounds, it would seem more simple and practical to follow the usual plan of publishing a few flat charges per car, to apply regardless of weight, thus reducing clerical work in billing, avoiding the expense of weighing cars, and preventing the discriminations which would arise out of weighing some cars and not others. HELD, proposed schedules not justified but without prejudice to establishing of: Where the proposed rate is not over 1.5c per 100 pounds or the equivalent thereof, a flat charge of $8

per car may be established for reciprocal and one of $10 for industrial switching. Where the proposed rate is over 1.5c and not over 2c per 100 pounds, a flat charge of $10 per car may be established for reciprocal and one of $12 per car for industrial switching. Where the proposed rate is 2.5c, a flat charge of $12.50 per car for reciprocal and $15 per car for industrial switching. Switching at St. Louis and East St. Louis, 120 I. C. C. 216.

(bb) Distance is not necessarily a controlling factor in switching costs. Switching at St. Louis and East St. Louis, 120 I. C. C. 216, 221.

(cc) Complainant attacked rates on green and green salted hides, green and green salted pelts, and tallow, in straight and mixed carloads, from Billings, Butte and Missoula, Mont., and Wenatchee, Wash., to Portland, Ore., for delivery at complainants warehouse on the N. P. T. Ry., as unreasonable and that the additional charge of 29.5c per ton, minimum $5.85 per car, for switching Wenatchee shipments to that warehouse as unreasonable and excessive in that no charge is made for switching Seattle, Wash., shipments to complainants warehouse, although the sum of the local rates, Wenatchee to Seattle and Seattle to Portland, is less than the specific rate from Wenatchee by 2.5c plus switching charge. Wenatchee is the only point which is not accorded a commodity rate on this traffic. HELD, rate attacked unreasonable to extent it exceeded 62.5c from Sept. 13, 1921 to June 30, 1922 and 56.5c thereafter reparation awarded. Bissinger & Co. v. G. N. Ry., 120 I. C. C. 745.

(dd) Charges on cement from Humbolt, Kans., to a lead track to the spur of Metropolitan water district and Metropolitan water-district station, private industries within the Omaha switching district, and two miles from Florence, Nebr., also within the district, found unreasonable to extent they exceeded lower rates, plus switching charges, contemporaneously in effect to California Junction, Iowa, and Omaha, to which the lead track is intermediate. Reparation awarded. Monarch Cement Co. v. C., St. P., M. & O., 120 I. C. C. 4.

(ee) Proposed increased switching rates in and about St. Louis, Mo., found not justified for application as a whole. In justification of proposed rates carriers introduced in evidence the results of a cost study based on the so-called Coverston-Sauer formula. Proposed rates are higher than those in effect at Kansas City, but compare favorably with those in effect at such points as Boston and Detroit. However, instead of publishing rates in cents per 100 pounds, as proposed, it would seem more simple and practical to follow the usual plan of publishing flat charges per car, thus reducing clerical work in billing, avoiding expense of weighing cars, and preventing discriminations which would arise out of weighing some cars and not others. Accordingly specific flat charges per car approved for application on all traffic generally. Switching at St. Louis and East St. Louis, 120 I. C. C. 216.

(ff) Distance is not necessarily a controlling factor in switching costs, the time consumed in rendering service being of more importance. Switching at St. Louis and East St. Louis, 120 I. C. C. 216, 222.

(gg) It is impracticable to reflect the same refinements of rate making in switching as in line-and-haul rates. For practical reasons, it is desirable that switching rates be on somewhat of a postage-stamp basis. Switching at St. Louis and East St. Louis, 120 I. C. C. 216, 222.

(hh) Sand and gravel from Beloit, Wis., to Beach and Waukegan, Ill., and Kenosha, Wis., were routed via complainant's gravel pit, Libertyville, Ill., care of Chicago, North Shore & Milwaukee. Carrier moved shipments through Libertyville to Rondout, Ill., where they were interchanged with the North Shore, line-haul rates plus interchange switching charge being assessed. Complainant alleged misrouting, contending that switching charge would have been avoided had routing instructions been followed. HELD: Originating carrier's use of the track at Libertyville was limited, that carrier having been refused its use as a common interchange point. To have allowed complainant free interchange switching at Libertyville while subjecting other shippers to switching charge at Rondout, would have given complainant an undue preference in violation of the act. Moreover, route to be legal must be available to all shippers and this requirement can not be waived by private agreement between carrier and a particular shipper. Accordingly, shipments were not misrouted. Racine Crushed Stone Co. v. C., M. & St. P., 120 I. C. C. 742.

(ii) St. L. S. F. Ry., respondent, proposed to increase its charges for switching at Joplin and Carthage, Mo., between industries on its line and interchange points with other carriers, on carload traffic handled by the latter in interstate line haul service. Joplin is served by the respondent, K. C. S., M. & N. A., M. K. T., M. P., Santa Fe and J. & P. Carthage is served by the respondent and M. P. and is 18 miles from Joplin. Present switching charges at these points are $3.60 on both interstate and intrastate movements. It proposed to increase them to $6.30. The cost study submitted by respondent sufficiently establishes that the switching charges here proposed to be increased are less than the costs of service. The fact that other lines in Joplin maintain charges for switching lower than those here proposed by respondent is no justification for requiring it to perform its services at less than cost. HELD, suspended schedules justified. Switching at Carthage and Joplin, 123 I. C. C. 141.

(jj) Interstate rates on cement from Cement City (Sugar Creek), Mo., and Bonner Springs and Sunflower, Kans., to destinations in the Kansas City, Mo. Kans., switching district, to extent they are lower by more than 4.5 cents than interstate rate contemporaneously maintained on like traffic from points in the Kansas gas belt, found unduly prejudicial to said Kansas gas-belt points and shippers therefrom and unduly preferential of Cement City (Sugar Creek), Bonner Springs, and Sunflower, and shippers therefrom. Iola Cement Mills Traffic Asso. v. A., T. & S. F., 122 I. C. C. 337.

(kk) Rates on anthracite coal from points in Pennsylvania and West Virginia to West Roxbury and Bemis (Water-town), points outside the Boston switching district, and Roxbury, Boylston Street, and Forest Hills, Mass., points within the district intermediate to Boston, found not unreasonable or unduly prejudicial to West Roxbury as compared with lower rates to Boston, but unduly prejudicial to Roxbury, Boylston Street and Forest Hills. Rates to Bemis found unduly prejudicial to extent they exceed rates contemporaneously in effect to other stations in Watertown. Lower rates to Boston are protected by fourth-section orders and are shown to be depressed by water competition, but no good reason appears for maintaining higher rates to Bemis than to other stations in Watertown. Whittemore's Sons v. N. Y., N. H. & H., 122 I. C. C. 451.

(ll) Proposal of the St. L.-S. F. Ry., to increase its charges for switching at Joplin and Carthage, Mo., between industries on its line and interchange points with other carriers on c. l. traffic handled by latter in interstate line-haul service, found justified. A cost study submitted by respondent sufficiently establishes that switching charges at both Carthage and Joplin proposed to be increased are less than cost of performing the service. Substantially higher charges were approved between points on the Kansas City Southern in Kansas City, Mo., and at Lamar and Harrisonville, Mo. It is generally recognized that switching charges in a particular territory should be approximately uniform. Fact that other lines in Joplin maintained charges for switching lower than those here proposed is no justification for requiring respondent to perform its services at less than cost. Switching at Carthage and Joplin, 123 I. C. C. 141.

(mm) Rates on sand and gravel from Janesville, Afton, and Beloit, Wis., to complainant's plants located in the Mayfair and Weber districts in Chicago, Ill., found not unreasonable or discriminatory, but unduly prejudicial to extent they exceeded rates contemporaneously applicable on like traffic from same points of origin to so-called inner zone destinations in Chicago switching district. Reparation denied. Chicago Fire Brick Co. v. C. & N. W., 123 I. C. C. 164.

(nn) Findings in previous report on reargument, 89 I. C. C. 137, that interstate rates on anthracite and bituminous coal from various producing regions to Chicago switching district, higher to some delivery points therein than to Chicago proper, were not unreasonable but were unduly prejudicial to extent that rates to higher-rated points exceeded the flat Chicago rates, modified so as to provide that rates will not be unduly prejudicial to such points except to extent they exceed nonprejudicial basis of differentials prescribed. Original report 73 I. C. C. 161. Chicago Coal Merchants Asso. v. Director General, 123 I. C. C. 169.

(oo) Joint rates on shipments of bituminous coal during Federal control from central and southern Illinois to Edgebrook, a point within Chicago switching district, and Morton Grove a point immediately outside of that dis-

trict, found not unreasonable, but combination rates based on Chicago, plus local rate beyond, found unreasonable as compared with lower rates contemporaneously in effect to near-by competing points both within and without the district. See also 73 I. C. C. 152. Reparation awarded. Chicago Coal Merchants Asso. v. Director General, 123 I. C. C. 169.

(pp) Rates on anthracite and bituminous coal from points in Illinois, Indiana, Pennsylvania and West Virginia to complainant's siding between Mayfair and Peterson Avenues in the Chicago switching district applicable to Peterson Avenue, but in excess of the flat Chicago rate applicable to Mayfair, found not unreasonable, but maintenance of rates applicable to Peterson Avenue higher than rates to destinations here in question found unduly prejudicial to extent they exceeded the flat Chicago rate. See 73 I. C. C. 161; 89 I. C. C. 137. Reparation denied, there being no satisfactory proof of damage. Chicago Coal Merchants Asso. v. C. & N. W., 128 I. C. C. 519.

(qq) Complainant alleged that defendants switching charges for the movement of carload line haul traffic between their respective interchange connections and industries on their lines at Mitchell, S. D., are unjust, unreasonable and unjustly discriminatory. Mitchell is 72 miles west of Sioux Falls, S. D., and 138 miles northwest of Sioux City, Ia. It is the terminus of the Mitchell branch of the Omaha and a main line division point on the Milwaukee. No other lines serve Mitchell. Their respective yards are about 1 mile apart, across town. The Omaha was agreeable to the publication of a flat charge at Mitchell of $3.60 per car but the Milwaukee, because of its peculiar operating conditions, and more extensive hauls, insisted on a charge of 1.5c per 10 pounds, minimum charge $5 per car, which was published. It is this charge that is here attacked. Mitchell is entitled to the same consideration accorded towns in the surrounding territory and particularly those with which it is in competition. HELD, charges assailed unreasonable and unduly prejudicial to the extent they exceed $3.60 per car. Mitchell Chamber of Commerce v. C., M. & St. P. Ry., 129 I. C. C. 451.

(rr) In a proceeding to determine the propriety of switching charges it is immaterial whether such charges are absorbed by the carrier or paid for by the shippers. The Commission must consider them as though they were to be charged for by the carrier and paid for by the shipped. True the carrier is entitled to make a charge for its service if it sees fit, but it is entitled only to a reasonable compensation for the service performed. Its charge may not be so high as to restrict or deter a particular movement. Mitchell Chamber of Commerce v. C., M. & St. P. Ry., 129 I. C. C. 451, 455.

(ss) The Commission has indicated that a flat switching charge is generally the most desirable, in that it relieves the carrier of much work and places all shippers on the same level. See 120 I. C. C. 216. Mitchell Chamber of Commerce v. C., M. & St. P. Ry., 129 I. C. C. 451, 456.

(tt) Complainant alleged combination rate charged on three interstate carload shipments of smithing coal from San Diego, Calif., to Los Angeles, Calif., on Dec. 28, 1923 were and are unreasonable and inapplicable. Shipments originating at Douglas, W. Va., and moved by rail to Baltimore and thence water to San Diego, from that point moving via the Santa Fe to Los Angeles, and there switched to the S. P., charged beyond San Diego 6.5c and switching charge of $2.70 per car. The switching charge was an incidental one for a special service performed upon completion of the line haul. The phrase "separately established class rates or class and commodity rates" can not be construed as embracing these switching charges. HELD, assailed charges were not, and are not, unreasonable or otherwise unlawful, complaint dismissed. Roman Bush& Pig Iron & Coke Co. v. A., T. & S. F. Ry., 129 I. C. C. 509.

(uu) Complainant alleged commodity rates on coal and fuel oil to Boston, Mass., and Medford, Mass., between Jan. 23, 1923 and Jan. 1, 1925 were unreasonable and unduly prejudicial. Glenwood is situated about 1 mile west of Wellington, Mass. There were 124 cars of bituminous coal which originated in West Virginia and moved by rail to Newport News, thence by water to Mystic Wharf and Everett, and 68 cars of fuel oil which originated in Texas and were transported by rail to tidewater, thence by tank steamer to Everett, thence B. & M. to destination. Charged from Mystic Wharf at 88c for the coal and 7.5c for the fuel oil. Contemporaneously the charges per car from Mystic Wharf to points in

the Boston switching district were $15 to Wellington, North Somerville, Cambridge and West Cambridge 4, 6, 6.5, and 7 miles, and $20 to Forest Hills, Boston, Boylston and Roxbury, 1.5, 6, 17, and 19 miles. Rate on coal from Pennsylvania mines was $4.73, rate to Boston $4.35, 17 industries in Medford, all but 4 have the advantage of the Boston switching rates. The fact that Glenwood is on a socalled branch line does not appear to be a matter of material consequence in so far as switching operations are concerned. Apparently the maintenance of a higher rate on bituminous coal to Glenwood than to Boston from Pennsylvania mines is without justification, but no proof of the reasonableness per se of the rate to Boston is record and in view of the fact that the other carriers concerned have not been made defendants, and have not been heard, the Commission shall make no finding with respect to those rates. HELD, defendants switching limits at Boston, applicable to traffic moving in interstate and foreign commerce, should include its Medford branch and industry tracks adjacent thereto, and the maintenance of rates to and from Glenwood, from and to other points within the Boston switching limits which exceed those to Boston switching district will be unreasonable, reparation denied. New Engl'and Brick Co. v. B. & M. R. R., 129 I. C. C. 607.

(vv) Rates on anthracite coal from anthracite region of Pennsylvania to destinations within the district of metropolitan Boston but outside Boston switching district, found not unreasonable as compared with lower rates to Boston and destinations within or just outside the switching district, but unduly prejudicial to extent they exceeded the contemporaneous rates to adjacent points in metropolitan Boston outside the switching limits but not on tidewater, where distances are not greater than those to complainant's plants. Fourth-section situation is protected by an order. Undue prejudice ordered removed and reparation denied. Chadwick Coal Yard Co., v. N. Y., N. H. & H., 129 I. C. C. 165.

(ww) Refusal of carriers to switch cars to and from complainant's track reasonably safe, upon repeated reasonable requests therefor, found unduly prejudicial and in violation of section 1 (4) of the act, causing damage to complainant, amount of which is to be determined at further hearing. Carnes v. A., T. & S. F., 129 I. C. C. 341.

(xx) Class D rates and switching charges collected on interstate shipments of smithing coal from San Diego to Los Angeles, Calif., originating at Douglas, W. Va., found not unreasonable or otherwise unlawful. Exceptions to governing tariff provided a minimum class scale applicable to the total of the combinations of separately established class rates or class and commodity rates applicable on continuous through movements. Complainant's contention that switching charge, under the tariff, should be considered a commodity rate, and that minimum class scale was applicable to combination of class rates plus switching charge, not sustained. The switching charge was an incidental one for a special service performed upon completion of the line haul. Romann & Bush Pig Iron & Coke Co. v. A., T. & S. F., 129 I. C. C. 509.

(yy) Rates on traffic to Glenwood station, Medford, Mass, from various points, found unreasonable to extent they exceed those prescribed to Boston swiching district, in 69 I .C. C. 282. Glenwood is within the 5-mile radius of South Station stated in that case to be one homogeneous industrial community with which carrier's rates should be in harmony. Distance to other points which are included within the district are shown to be much greater and carrier's switching limits should therefore be extended to include its Medford branch and industry tracks on all traffic moving in interstate and foreign commerce. Reparation denied for same reason announced in cited case. New England Brick Co.. v. B. & M., 129 I. C. C. 607.

(zz) Hypothetical illustrations, which serve to show how shippers, in certain circumstances, may avoid payment of destination switching charges upon strictly local traffic by exercising care in selection of inbound billing and outbound routing on transit shipments, have no direct bearing upon a reasonable interpretation of tariff provision upon which complaint rests. Southern Kansas Millers Club v. A., T. & S. F., 129 I. C. C. 632.

§5. Incidental Services.

See Additional Charges and Serv-

ices; Refrigeration §3; Special Rates and Services; Spotting; Tap Lines.

(a) Charge of $5 per car proposed by Kanawha Central Ry., to apply at mine sidings on its line, to cover switching and set-out service where consignors designate certain cars for billing and such cars are not in consecutive order from point of interchange, found not justified. While rule is intended to cover instances in which mines bill out coal cars standing near its tipple when same kind or size of coal in same kind of equipment is held unbilled in cars standing nearer connection with its line, thus unnecessarily requiring the pulling out and setting back of such unbilled cars, such rule does not conform to intention or desire of carrier, and would result in increased transportation charges which have not been shown to be reasonable. Switching Charges at K. C. Ry. Mines, 118 I. C. C. 468.

(b) Tariff prescribing rental to be paid shipper for use of its "facilities" in switching intrastate shipments at its plants, which railroad was required to perform, HELD, in view of Interstate Commerce Act, § 15, as amended by Act Feb. 28, 1920, § 421 (U. S. Comp. St. 8583), not violative of Wis. St. 1925, § 195.39; "facility" as used in Wis. St. 1925, § 195.39, subd. 2, embracing anything which aids the performance of duty which carrier was required to perform, and includes a switch engine and its crew. Nekoosa-Edwards Paper Co. v. Railroad Commission of Wisconsin, (Wis., 1927) 213 N. W. 633.

§6. Reciprocal Switching.

See Facilities and Privileges §1 (a); Reciprocal Switching.

(a) Interchange switching charge of the C. & N. W. on wood pulp forwarded to Menominee, Mich., in connection with the Wisconsin & Michigan, found not unreasonable, but unduly prejudicial to extent it exceeded charge contemporaneously maintained for a corresponding service on like traffic received at Menominee over rails of C., M. & St. P. Nonprejudicial basis of charges prescribed for future. Marinette & Menominee Paper Co., v. C. & N. W., 107 I. C. C. 21, 28.

(b) Practice of the Pennsylvania and Western Maryland railroads of extending use of their tracks to each other for purpose of terminal receipt and delivery of freight at industries within a specified trackage zone in York, Pa., found tantamount in practical effect to maintenance of a limited reciprocal free switching district. Continuance of practice found to be just, fair, and reasonable for the future as to industries in trackage zone, and substantial equality of treatment required as to industries outside of zone by establishment in public interest of a switching district at York, with interchange at that point. York Mfrs. Asso. v. P. R. R., 107 I. C. C. 219.

(c) Upon contention that interchange of traffic situation at York, Pa., does not constitute a "practice," and that if undue prejudice is found an alternative order is only order legally permissable, since section 15 (1) of the act is procedural and does not enlarge duties or obligations of carriers, HELD: Section 15 (1) is adjective law as distinguished from substantive law and while it casts no additional duties on carriers, it gives commission authority to deal with violations of substantive law. Considering definition of word "practice," and fact that arrangement at York is referred to as such in proceedings before commission and the courts, the situation discloses a practice "relating to or connected with receiving, storing, and delivery of property," and commission is empowered to determine and prescribe manner in which violations of the act in connection with such situation shall be removed. York Mfrs. Asso. v. P. R. R., 107 I. C. C. 219, 231, 232.

(d) Inadequacy of facilities, of itself, is no defense for failure or refusal to establish arrangements for interchange of traffic between connecting lines. York Mfrs. Asso. v. P. R. R., 107 I. C. C. 219, 239.

(e) Practice of the Pennsylvania and Western Maryland railways of interchanging traffic at Hagerstown, Md., but refusing to do so at York, Pa., under substantially similar transportation conditions found unduly prejudicial to York and shippers there located, and unduly preferential of Hagerstown and its shippers. York Mfrs. Asso v. P. R. R., 107 I. C. C. 219, 240.

(f) Reciprocal switching arrangements are advantageous to shipping public and carriers alike. See 30 I. C. C. 71; 33 I. C. C. 168. York Mfrs. Asso. v. P. R. R., 107 I. C. C. 219, 240.

(g) Practice of the Pennsylvania and

Western railways of extending the use of their tracks to each other for purpose of terminal receipt and delivery of freight at industries in York, Pa., within certain trackage zone, while contemporaneously refusing to accord to industries outside the trackage zone benefit of service, rates, and routes of both lines found unduly prejudicial to such outside industries. York Mfrs. Asso. v. P. R. R., 107 I. C. C. 219, 241.

(h) Charges of the Pennsylvania R. R. for the interchange and switching at Warren, Pa., of interstate inbound shipments of iron and steel articles destined to Struthers, Pa., found unreasonable. Reasonable maximum charge prescribed for future and reparation denied. Hammond Iron Works v. P. R. R., 107 I. C. C. 473.

(i) Where a carrier interchanges traffic at a particular point and publishes charges for that service, if it elects to perform the service, it must provide a reasonable charge therefor. Thatcher Mfg. Co., 57 I. C. C. 244, Hammond Iron Works v. P. R. R., 107 I. C. C. 473, 481.

(j) Proposal of the Gulf, Colorado & Santa Fe to cancel its reciprocal switching charge applicable on traffic to and from Fair Grounds, Beaumont, Tex., and eliminate that point as a point to and from which it will switch traffic of connecting lines, found not justified. Proposal would put shippers to expense and inconvenience of trucking their freight between that point and downtown team tracks through city of Beaumont. Such trucking would be very undesirable, particularly to owner of fancy stock, and detrimental to interests of the Fair Association, in that it might lead prospective exhibitors to avoid Beaumont. Moreover, the fair grounds in other large cities are generally served by railroads and can be reached without trucking, and on intrastate traffic in Texas the State commission requires that team tracks be kept open to all. Switching at Beaumont, 112 I. C. C. 125.

(k) In 68 I. C. C. 412, 77 I. C. C. 43 and 93 I. C. C. 3, the commission had before it switching and interchange arrangements at Peoria, Ill. HELD: Considering all the facts it seems impracticable to impose a separate charge or division on empty cars upon which the P. & P. U. performs switching interchange; and that just, reasonable and equitable divisions to that carrier for interchanging freight cars between all connecting lines in the Peoria switching district would be $3 per loaded car, which covers the empty as well as the loaded movement. The commission is not bound by the terms of the contracts between the P. & P. U. and its tenants in exercising its powers under the act in respect of this interchange traffic. Plainly the Union is now a link in the chain of carriers forming through routes via Peoria. Its rails connect directly with the west side lines in Peoria proper, and in East Peoria with those over which the eastern lines handle their traffic. As to through eastbound and westbound movements its service is performed east of Peoria, disregarding the extent of the switching district for the reasons stated. Under the existing divisional arrangements the lines east of Peoria receive proportions which are generally more favorable than the proportions accruing to the lines west thereof. Traffic conditions and rate levels on the latter and in the territory through which they operate, as compared with those encountered east of Peoria, warrant divisions no lower, distance considered, than those on the east side lines. It appears that the west side lines originate the greater portions of their eastbound traffic interchanged at Peoria. Upon this record it appears that on through traffic via Peoria unjust, unreasonable and inequitable divisions would accrue to the west side lines if they were required to absorb the interchange charges of the Union, in either direction, in effecting the transfer between them and the lines serving the Peoria district through East Peoria. Competitive reasons make impracticable varying divisions and rates to and from Peoria as between the respective east side and west side lines. A difference in treatment would create undue prejudice and preference. The Northwestern is in substantially the same situation in regard to through eastbound and westbound traffic as are the carriers herein termed the west side lines, except that it has separately contracted with the Union for the operaton of its yard in Peoria proper. There is generally no difference in their corresponding rates and divisions to and from Peoria. The Northwestern should be treated the same as the Rock Island, Burlington and M. & St. L. on such traffic. On traffic for the Northwestern delivered by the west side lines into yards 90 and 91, the ser-

vice performed by the Union appears to be practically only that necessary in making up the Northwestern's outbound trains. Under the circumstances surrounding the Northwestern station at Peoria, delivery into yards 90 and 91 is equivalent to delivery to the Northwestern. Any additional expense incurred in making up outbound trains and setting them out for the Northwestern should be borne by the latter. Rates of Peoria & Pekin Union Ry., 115 I. C. C. 469.

(l) In 115 I. C. C. 469, the commission required the establishment of joint rates by respondents, including the P. & P. U., on certain traffic interchanged by that line between the lines of other respondents at Peoria or East Peoria, Ill., and prescribed reasonable divisions to the Union and other respondents out of such joint rates. Under present arrangements the T. P. & W. delivers all traffic from its western division to the Union in the East Peoria yards, but so do certain of the other lines west of Peoria. No objection to the request of the T. P. & W. has been received. HELD: Previous findings modified so as to classify the eastern division of the T. P. & W. with the east side or East Peoria carriers and its western division with the west side or Peoria carriers. Petition of the Union urges that the order regarding divisions on traffic delivered to the Northwestern by other west side carriers, which provides that the Union shall not receive any division on such traffic deprives that carrier of its property without due compensation. HELD: Order modified so as not to prevent the Union from receiving a division of joint rates on the traffic above referred to, provided the same shall come out of the rates or proportions of joint rates now accruing to the Northwestern. Rates of Peoria & Pekin Union Ry. Co., 118 I. C. C. 127.

(la) The charges for reciprocal switching, as the term would imply, are generally established without regard to the cost of the particular service, on the theory that the services are of mutual advantage to all of the carriers concerned, and will be performed by all at correspondingly low charges. They are generally less than the actual cost of performing the service. Mitchell Chamber of Commerce v. C., M. & St. P. Ry., 129 I. C. C. 451, 456.

(m) Complainant has a private siding connecting with the Pennsylvania at Detroit, Mich., deals in coal, coke, fuel and builders supplies received in carload lots from points in Indiana, Ohio, Kentucky, West Virginia and Pennsylvania. It alleged that the refusal of the M. C. and the N. Y. C. to switch carload traffic from and to the Pennsylvania at Detroit; the refusal of the latter to switch carload traffic from and to the M. C. and N. Y. C. at that point; and the refusal of these carriers to enter into a reciprocal switching arrangement while maintaining such an arrangement with the Wabash and the P. M. at Detroit, is unjustly discriminatory and unduly prejudicial. Traffic to and from Detroit and other points in Michigan is generally interchanged at Toledo between the M. C. and N. Y. C., as well as between those carriers, on the one hand, and the Pennsylvania and other carriers, on the other. The operations there are in harmony with the policy of the M. C. of classifying traffic for Detroit at points outside the Detroit district. Trains are made up for movement to certain districts, and in some instances for direct movement to a single industry, and congestion at Detroit is accordingly obviated. These operations are said to have resulted in a saving of from two to five days in deliveries to consignees. From all the facts of record there appears to be no persuasive reason why traffic originating at or destined to points on defendants terminals at Detroit should not be interchanged at Toledo. The discrimination and prejudice which complainant and intervener seek to establish do not appear to be unjust, unreasonable or undue. The only issue remaining is in respect of cars reconsigned after reaching Detroit. Not a single car of this character is shown to have moved, nor has there even been a demand for such a movement, except where a car was misrouted. The evidence does not show sufficient grounds for such far reaching results as would necessarily follow a finding of unjust discrimination and undue prejudice. HELD, complaint dismissed. Cary Co. v. M. C. R. R., 132 I. C. C. 233.

(n) Interchange switching charges maintained at Mitchell, S. Dak., on line-haul traffic between carriers' interchange connections and industries on their lines, found unreasonable and unduly prejudicial to extent they exceed those generally assessed at towns in same general territory, with many of which complainant is in competition. Reasonable and nonprejudicial charges

prescribed for future. Mitchell Chamber of Commerce v. C., M. & St. P., 129 I. C. C. 451.

§6a. Obligation to Switch.

(a) Complainant alleged that defendants failed and refused to furnish him transportation into and out of his plant at Olathe, Kas., upon reasonable request therefor, in violation of section 1; that they assessed and collected certain charges for service not performed; that they maintained unreasonable switching charges; and that defendants refusal to furnish him transportation while according such service to his competitors at Argentine and Coffeyville, Kas., and Tulsa, Okla., subjected him to undue prejudice. Defendants are the Santa Fe, K. C. C. & S., and Frisco. From the interchange track a siding runs north to the Olathe waterworks. The track leading to complainants plant extends southwestward from the interchange track at a point east of the waterworks track. On April 3, 1923 complainant began negotiations with the president of the Clinton, looking toward construction of tracks to serve his plant. As a result of these negotiations complainant constructed a track 1.306 miles long upon his land, roughly paralleling the interchange track, and the Clinton built on its right of way a turnout and 140 feet of track with which complainant made connections from the east end of his track on or about May 15, 1923. It also appears to have been contemplated that complainant would connect the west end of his track with another turnout installed by the Clinton, and complainants failure to do so, together with a dispute over payment for certain labor performed by complainant in connection with the railroad company's portion of the construction, led to considerable controversy as to whether there had been proper fulfillment of the informal agreement as to the construction of the track. The Olathe Car Works Company was shown as an industry at Olathe on the joint track of the Clinton and the Frisco effective July 5, 1923 and continued to be shown till Oct. 31, 1925. The tariff also published a switching rate of $6.30 per car for applicaiton at Olathe between the Santa Fe and the Olathe Car Works Company. The preponderance of the evidence supports the conclusion that defendants were not justified in refusing to switch cars to and from complainant's plant upon the alleged ground that the track was not safe. It is conclusively shown that reasonably safe and adequate facilities in the form of a turnout and sidetrack for performing switching service to and from complainants plant were in existence and that the Frisco and the Clinton held themselves out in regularly published tariffs as being in a position to perform such service. Although reasonable request therefor was repeatedly made by complainant, switching service was refused through the arbitrary action of certain employees of the Frisco and the Clinton. Such action constituted a refusal to furnish transportation upon reasonable request therefor in violation of section 1 (4) of the act and caused damage to complainant for which the Frisco and the Clinton must be held jointly and severally liable. This action must also be held to have resulted in undue prejudice to complainant in violation of section 3. The record does not show the Santa Fe to have shared in any way in these violations. The record amply proves that the value of complainants plant for the purpose for which it was intended was directly impaired by defendants wrong doing. A car repair plant is peculiarly and directly dependent upon adequate transportation service, and complainant would seem to be clearly entitled to compensation covering the difference between the value which his property would have had as a car repair plant enjoying the transportation service to which it was entitled by law and such value as it had under the handicap of a total deprivation of transportation service. Further hearing will be had to determine the amount of complainants damage. Carnes v. A., T. S. F. Ry., 129 I. C. C. 341.

(b) Refusal of carrier to switch cars to and from complainant's track which was shown conclusively to be reasonably safe, upon repeated reasonable requests therefor, found unduly prejudicial and in violation of section 1 (4) of the act, causing damage to complainant, amount of which is to be determined at further hearing. Carnes v. A., T. & S. F., 129 I. C. C. 341.

§7. Right To Connection.

See Cars and Car Supply §7 (b); Electric Lines VIII.

(a) Upon further argument, findings in 96 I. C. C. 143, to effect that complainant has complied with provision of section 1 (9) of the act and is entitled to an order directing defendant to

construct and maintain switch connection between track constructed by it from its coal mine near Eldorado, Ill., and line of defendant carrier, affirmed. Dering Coal Co. v. C. C. C. & St. L., 109 I. C. C. 55.

(b) Establishment of switch connection at Breckenridge, Tex., between tracks of Wichita Falls, Ranger & Fort Worth R. R. and Cisco & Northeastern, sought for alleged purpose of eliminating inconvenience and expense to shippers, excessive drayage charges, and misrouting of freight, found not warranted Proposed arrangement would result in diversion of traffic from Ranger line and loss in revenue to an extent that if it did not force its abandonment, would seriously impair its ability to operate, thus injuring those communities depending solely upon it for transportation service. Moreover, complaining parties are at present adequately served by existing routes with respect to interstate commerce, and benefit inuring to them would not offset detriment sustained by others. Breckenridge Chamber of Commerce v. W. F. R. & F. W., 109 I. C. C. 81.

(c) Under that portion of paragraph (3) of section 3 of the act which requires that all carriers shall, according to their respective powers, afford all reasonable, proper, and equal facilities for interchange of traffic between their respective lines, the commission has power to deal with an issue involving, as here, establishment of switch connection between carriers. See 81 I. C. C. 333. Breckenridge Chamber of Commerce v. W. F., R. & F. W. 109 I. C. C. 81, 82.

(d) Interchange switching charges maintained at Mitchell, S. Dak., on line-haul traffic between carriers' interchange connections and industries on their lines, found unreasonable and unduly prejudicial to extent they exceed those generally assessed at towns in same general territory, with many of which complainant is in competition. Reasonable and nonprejudicial charges prescribed for future. Mitchell Chamber of Commerce v. C., M. & St. P., 129 I. C. C. 451.

§8. Validity of Regulations.

(a) Refusal of carriers to switch cars to and from complainant's track which was shown conclusively to be reasonably safe, upon repeated reasonable requests therefor, found unduly prejudicial and in violation of section 1 (4) of the act, causing damage to complainant, amount of which is to be determined at further hearing. Carnes v. A., T. & S. F., 129 I. C. C. 341.

§10 Tariffs and Construction.

See Tariffs.

(a) Tariff governing switching charges from South Omaha to Omaha carried separate charges, the lower applying when added to line-haul rates and representing a separate charge for terminal services, the higher when covering entire charge from shipper to consignee. No facilities being maintained by carriers at South Omaha for acceptance of l. c. l. shipments, complainant was compelled to switch c. l. shipments to Omaha, from which point they were reforwarded in l. c. l. lots and higher charges assessed. FOUND: Higher charge, which merely covered a. c. l. movement and was not a specific charge for trap or ferry cars with provisions for acceptance and distribution of commodity shipped, was legally applicable. Moreover, shipments would not have been accepted at South Omaha in l. c. l. lots; there was an essential difference between their character from that point and from Omaha; and, the continuity of c. l. movement was destroyed by breaking it up into l. c. l. shipments. Armour & Co. v. Director General, 104 I. C. C. 603.

(b) Shipments of scrap iron from Superior, Wis., to Steelton, Minn., were delivered to carrier unrouted and forwarded via a two-line route at minimum class rate. Shipper constructed lower charges by combining switching tariffs embracing a three-line route. FOUND: Since switching tariff of one carrier applied only on cars having a "road-haul," and movement over the three-line route is more in the nature of an intraterminal transfer than a road haul, lower charges were not applicable over route embracing three lines and shipments were not misrouted. Kaner v. C., St. P. M. & O., 104 I. C. C. 710.

(c) Switching charges in addition to through rates assessed on shipments receiving transit at Meridian, Miss., found illegal. While transit tariff provided that such charges would be in addition

to through rates, tariffs of outbound carriers provided for their absorption no distinction being made between shipments originating at transit point and those originating beyond. If it was desire of carriers to exclude transit shipments from general absorption provision they should have done so by plain language rather than by inference and their failure to do so can not cast burden of paying charges upon shipper. Reparation awarded. Sturges Co. v. A. & V., 107 I. C. C. 136.

(d) Upon further hearing, rates on ice from interstate origin points to Chicago and South Omaha found reasonable in previous reports, 62 I. C. C. 618 and 87 I. C. C. 81, found to include absorption of switching charges of delivering terminal lines. While contemporaneous line-haul and switching tariffs were of equal weight in their respective spheres, in absence of cross reference between them, in accordance with rules 10 (a) and 10 (d) of tariff Circular 18-A, they were usable in combination to make a through rate, just as two local tariffs of line-haul carriers would be. One provision of switching tariff, binding upon line-haul carriers parties thereto, was that switching charges would be absorbed. Reparation awarded. Wilson & Co. v. Director General, 107 I. C. C. 580.

(e) An unrestricted rate to Chicago found applicable on shipments of sand and gravel moving during Federal control from Hammond, Ill., to sidings located within Chicago district. While it was intention of carriers to apply a rate published to Division Street to all points within what the carrier considers its Division street district, that fact can not be definitely ascertained from tariffs, which are ambiguous. Tariffs are to be construed strictly, the intention of framers is not controlling, and where doubt exists as to meaning of a tariff provision its construction must be resolved in favor of shippers. American Sand and Gravel Co. v. Director General, 109 I. C. C. 557.

(f) Shipment arrived at New London, Conn., and reconsignment to Boston ordered. On following day complainant by telegraph requested "Boston & Maine auction delivery" but shipment having gone forward, arrived at Boston and was placed on tracks of the New Haven where no delivery was made or attempted. Subsequently it was switched to auction tracks. Upon contention that interstate character of shipment terminated when it was placed on the New Haven's tracks, FOUND: Since character of the shipment was interstate from time it left Peshastin, Wash., the point of origin, intrastate switching charge collected for the movement from the New Haven's tracks to the auction track was inapplicable. Applicable interstate traffic provided a lower charge and for its absorption by the New Haven. Reparation awarded. Gwin, White & Price v. N. Y., N, H. & H., 112 I. C. C. 707.

(g) The switching charge assessed for movement of lumber at Detroit, Mich., was assessed on basis of charge in effect on date when movement was made. HELD, as shipment involved was not a reshipment, applicable switching charge thereon was charge in effect on date shipment originated. Milne Lbr. Co. v. M. C. R. R., 118 I. C. C. 580, 582.

(h) Rates on anthracite coal from Lehigh, Schuylkill, and Wyoming regions in Pennsylvania, to complainant's siding within corporate limits of Providence, R. I., found inapplicable. Charges were collected based on rate to Auburn, R. I., a point intermediate to Providence. However, as tariffs did not define the switching limits of Providence or indicate that the Auburn rate applied on shipments delivered on complainant's siding, the logical interpretation of tariffs was that Providence rate applied to all points within corporate limits of that city and was therefore applicable to complainant's shipments. See 63 I. C. C. 392; 73 I. C. C. 143. Refund of overcharges directed. City Coal Co. v. N. Y., N. H. & H., 123 I. C. C. 609.

§11. Team Tracks and Sidetracks.

See Side Tracks and Spur Tracks.

(a) Carrier's obligation under an agreement to perform switching service within limits of an industrial plant over tracks primarily for plant use, found to have been canceled by assumption of this service by the plant itself. Columbia Mills v. D., L. W., 118 I. C. C. 112, 116.

IV. PROCEDURE AND PLEADING.

See Evidence; Procedure Before Commission.

§12. In General.

(a) Where switching lines charge is absorbed that carrier is not a necessary

party to the complaint. Sinclair Crude Oil Co. v. A. T. & S. F. Ry., 126 I. C. C. 73, 74.

(b) It is not necessary that a switching line whose charges are absorbed be named as a party defendant in a complaint alleging unreasonableness of rates. See 50 I. C. C. 203. Sinclair Crude Oil Co. v. A., T. & S. F., 126 I. C. C. 73, 74.

V. SWITCHING DISTRICTS.

§13. In General.

(a) Proposed restriction of switching limits of Tulsa, Okla., so as to exclude plant of Wertzberger Derrick Co., found not justified. Respondent's purpose in desired restriction is to protect its line-haul rates and revenues to and from Red Fork, Okla., a local point on its line, but no attempt was made to show that Tulsa rates are too low for application from that point. On the contrary, it expressed a willingness to go into the situation further with a view to giving protestant more favorable through rates. Switching at Tulsa, Okla., 104 I. C. C. 42.

(b) Combination rate on crushed rock from Dresser Junction, Wis., to Minnehaha Falls, Minn., outside the switching district but within the city limits of Minneapolis, Minn., found unreasonable as compared with lower rates contemporaneously in effect from point of origin to various delivery points within the Minneapolis switching limits and to extent it exceeded lower joint rate subsequently established. Reparation awarded. Board of Park Commrs. v. C., M. & St. P., 115 I. C. C. 211.

(c) A switching district is developed according to needs of an industrial center and interest of carriers serving such center. Through traffic has little influence upon it. Rates of P. & P. U. Ry., 115 I. C. C. 469, 511.

(d) Rates on brick and hollow building tile from Vale, Mo., a point outside Kansas City switching district, to Kansas City, Mo.-Kans. found not unreasonable or unduly prejudicial as compared with other rates on same and related products for comparable distances to same destination from points both within and without the district, or as compared with distance rates for similar hauls in effect on intrastate and interstate traffic in Kansas, Nebraska, Missouri, Texas, Arkansas, Illinois, and Iowa. Kansas City Brick Co. v. C., R. I. & P., 115 I. C. C. 750.

(e) Rates on sand from Sirridge and Grinter, Kans., on the Kansas City, Kaw Valley & Western Ry., an electric line, to destinations on the Kansas City, Clay County & St. Joseph Ry., within Kansas City switching limits, found not unduly prejudicial as compared with lower rates contemporaneously maintained from same origin points to other destinations in Kansas City district, and from other sand-producing points in same general territory to destinations on the Clay County. Circumstances and conditions surrounding transportation from Grinter and Sirridge are not substantially similar to those surrounding transportation at lower rates from alleged preferred points, the former embracing a four-line haul, necessitating use of two intermediate carriers, whereas from the latter, less than a four-line haul is involved in conjunction with which the use of only one intermediate carrier is necessary. Kansas City, K. V. & W. Ry. v. A., T. & S. F., 120 I. C. C. 258.

(f) Complainant alleged that the commodity rate charged on anthracite coal, prepared sizes, in carloads, two years prior to Feb. 12, 1926 from the anthracite region of Pennsylvania to its siding in Providence R. I., was and is unreasonable, unduly prejudicial and in violation of section four. Complainants siding is located within the corporate limits of Providence on Narragansett Avenue, just south of Reservoir Ave. and west of Elmwood Ave., on the west side of the main line of the New Haven. Complainants shipments are billed to Auburn, R. I., a station within the corporate limits of Cranston, R. I., 5 miles west of and intermediate to Providence on the shore line of the New Haven. The switching limits of Auburn as shown in the tariff effective Oct. 16, 1925 include complainants siding. Prior to that date defendants schedules did not define the switching limits of either Auburn or Providence. Since the filing of this complaint the rate to Auburn has been reduced to $4.16 by several of the originating carriers defendants herein. The evidence of record is sufficient to rebut the presumption of unreasonableness raised by complainants showing that the rate attacked contravened the fourth section. It is clear that the Providence rate was applicable to complainants shipments forwarded from point of origin prior to Oct. 16, 1925 and they were overcharged. HELD, rate attacked not unreasonable or unjustly discriminatory but for future will be unduly prejudicial

to extent it exceeded rate maintained to either Olney, or Providence, reparation denied. City Coal Co. v. N. Y. N. H. & H. R. R., 123 I. C. C. 609.

(g) Rates on sand and gravel from Janesville, Afton, and Beloit, Wis., to complainant's plants located in the Mayfair and Weber districts in Chicago, Ill., found not unreasonable or discriminatory, but unduly prejudicial to extent they exceeded rates contemporaneously applicable on like traffic from same points of origin to so-called inner-zone destinations in Chicago switching district. Reparation denied. Chicago Fire Brick Co. v. C. & N. W., 123 I. C. C. 164.

(h) Chicago switching district points: Findings in previous report on reargument, 89 I. C. C. 137, that interstate rates on anthracite and bituminous coal from various producing regions to Chicago switching district, higher to some delivery points therein than to Chicago proper, were not unreasonable but were unduly prejudicial to extent that rates to higher-rated points exceeded the flat Chicago rates, modified so as to provide that rates will not be unduly prejudicial to such points except to extent they exceeded nonprejudicial basis of differentials prescribed. Original report 73 I. C. C. 161. Chicago Coal Merchants Asso. v. Director General, 123 I. C. C. 169.

(i) Shipment of denatured alcohol from Philadelphia to Providence, R. I., was held at latter point and subsequently taken to complainant's private siding within corporate limits of Providence. Charges were collected on basis of rate to Providence plus rate to Auburn, a point intermediate to and adjoining Providence. Tariff publishing rate to Providence did not define switching district, but provided that the rate applied to private sidings connected with carriers at which traffic is usually delivered. Upon contention that complainant's siding was within Auburn switching limits and that rate to Providence was applicable. HELD, following 73 I. C. C. 143, in which a similar shipment was involved, rate to Providence included rate to complainant's private siding in absence of tariff provisions showing what delivery points the rate actually included. Reparation awarded. Atlantic Refining Co. v. P. R. R., 128 I. C. C. 43.

(j) Rates on lumber from southern points of origin to Reading, Ohio, a point within Cincinnati switching limits, higher than rates to Cincinnati and other points within switching limits taking same rates, found not unreasonable but unduly prejudicial to extent rates to Reading exceeded those contemporaneously maintained to Cincinnati. Switching charges are assessed on shipments to Reading, whereas to points more distant such charges even though higher are absorbed on all carload traffic. Reading is practically the only point within switching district to which Cincinnati rates on lumber do not apply, or where a distinction is made between lumber and other traffic. Moreover, in 85 I. C. C. 197, rates to Madisonville, Ohio, which bore same relationship to Cincinnati as those here assailed were found unduly prejudicial. Nonprejudicial basis of rates prescribed for future. Nivison-Weiskopf Co. v. A. & V., 128 I. C. C. 233.

(k) Complainant attacked rates on lumber, in carloads, from Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi and Tennessee to Reading, O., as unreasonable and unduly prejudicial. Reading, a local point on the Richmond, Ind., division of the Pennsylvania 15 miles north of Cincinnati, O., has been included in the Cincinnati switching limits since Oct. 25, 1920. Traffic from points in the south to Reading is handled by Pennsylvania switching crews from interchange points in Cincinnati to Undercliff, O., and by road haul crews beyond. For this service the Pennsylvania generally maintains a switching charge of 38c per net ton from its connection with the L. & N., and 50.5c from its connection with the B. & O. and Southern. Complainant contends that the rates attacked are unreasonable to extent they exceed rates on like traffic from the same points of origin to Cincinnati and points within the Cincinnati switching limits taking the same rates. HELD, rates attacked not unreasonable but for future unduly prejudicial to extent they exceed rates to Cincinnati, reparation denied. Nivison-Weiskopf Co. v. A. & V. Ry., 128 I. C. C. 233.

TANK CAR SHIPMENTS

See Advanced Rates §2½ (f); Cars and Car Supply §10, §11¾ (a), §17, §32½ (b); Class Rates §2 (5c); Demurrage §10; Distance Rates §3 (f); Evidence §12 (3p); Minimums §10; Routing and Misrouting §3 (a), §5 (w) (x); Transportation §2 (a).

(a) Proposal to define a "tank car" as a car with permanently attached tank

or tanks which can not be detached for filling, emptying, or storage of contents, found not justified. Such definition would result in charges on chlorine and other compressed gases moving in multiple-unit tank cars higher than on shipments moving in single-unit class V cars. The multiple-unit car affords every safeguard for transporting and handling chlorine gas, and it would be impracticable or impossible for some consumers to use that commodity when shipped in single-unit cars. Use of a car, tanks of which may be removed in interest of safety, is necessary for future development of chlorine-gas industry. Moreover, if full complement of tanks which form superstructure of multiple-unit car is securely attached to underframe when offered for transportation or return movement after being unloaded, no good reason appears for applying different rules and charges on the two types of equipment. Definition of Tank Cars, 104 I. C. C. 196.

(b) The existence of rates on a commodity in tank cars lower than on same commodity moving in packages and subsequent establishment of lower rates on package shipments do not alone demonstrate unreasonableness of higher rates. Texas Oil Co. v. T. & N. O., 104 I. C. C. 337, 340.

(c) Rates on gasoline in tank cars from Eldorado, Kans., and Yale and Grandfield, Okla., to Canon City, Colo., found unreasonable and unduly prejudicial to extent they exceeded rates contemporaneously in effect to Pueblo by more than differentials herein prescribed. Reparation awarded and future rates prescribed. Jewel Co. v. A., T. & S. F., 104 I. C. C. 380.

(d) Rate on glucose, in tank-car loads, from Clinton, Iowa, and Roby, extent it exceeded rate from Chicago to Meridian and Jackson, Miss. Reasonable rate prescribed for future and reparation awarded. Cairo Syrup Co. v. I. H. B.., 104 I. C. C. 487.

(e) Rates on gas oil in tank-car loads from Parco, Wyo., to Denver, Colo., found unreasonable to extent they exceeded lower contemporaneous rate on like traffic from Parco and Laramie, Wyo., to Ogden and Salt Lake City, Utah. Reasonable rate prescribed and reparation awarded. Colorado Public Service Co. v. U. P. R. R., 107 I. C. C. 97.

(f) Shipments of sulphuric acid, in tank cars, moving over an interstate route from Grasselli, Ind., to Vincennes, Ind., found overcharged, inasmuch as lower rate to Lawrenceville, Ind., applied to Vincennes under provisions of rule 77 of Tariff Circular 18-A carried in applicable tariff at time of movement. Reparation awarded. Vincennes Refining Co. v. C. & E. I., 109 I. C. C. 25.

(g) Rates on sulphuric acid, in tank-car loads, from Evansville, Ind., and Louisville, Ky., to Lawrenceville, Ill., found unreasonable and unduly prejudicial as compared with rates from East St. Louis, Danville, Hillsboro, La Salle, Peru, and Depue, Ill. Rates which will permit by-products sulphuric acid to move to markets are of great importance to producers thereof, and rates here in issue are so high as to preclude movement. Reasonable and nonprejudicial rates prescribed. Southern Agricultural Chem. Corp. v. C., C., C. & St. L., 109 I. C. C. 227.

(h) Rate on crude petroleum, in tank-car loads, from Sallyards, Kans., to St. Joseph, Mo., found unreasonable to extent it exceeded rate contemporaneously in effect to Kansas City, Mo., such lower rate having been established pursuant to commission's decision in the Midcontinent case, 36 I. C. C. 109, and reflecting a differential in rates on crude oil under refined oil of 5 cents. Reparation awarded. St. Joseph Viscosity Oil Co. v. M. P. R. R., 109 I. C. C. 286

(i) Rate on gasoline, in tank cars, from Somerset, Tex., to Phoenix, Ariz., found unduly prejudicial to Somerset and unduly preferential of competing Texas refining points from which a lower rate applied, such lower rate being Ind., to Atlanta, found unreasonable to subsequently established from Somerset. Reparation awarded. Pioneer Oil & Refining Co. v. S. A. S., 109 I. C. C. 551.

(j) Fifth class rates on fish oil and whale oil, in tank-car loads from Ivorydale, Ohio, to Port Ivory, N. Y., found not unreasonable, but similar rates on fish oil from Atlantic seaboard points to Port Ivory, N. Y., and Bayway, N. J., and from Bayway to Philadelphia and Marcus Hook, Pa., found unreasonable for

future only and reasonable rates prescribed. Lower commodity rates on fish oils instanced by complainants were in most, if not in all, instances so affected by competition that they do not afford a criterion upon which fifth-class rates assailed may be condemned as exceeding reasonable maxima in the past over routes of actual movement. Procter & Gamble Mfg. Co. v. B. & O., 112 I. C. C. 177.

(k) Rates on oil in tank carloads from Ponca City, Okla., to Joplin, Mo., found not unreasonable, but unduly prejudicial in favor of competitors located at points in Kansas accorded alternative application of distance rates, to extent that rate assailed exceeded rate applicable upon same commodity for same distance under the scale contemporaneously maintained as an alternative from points in same origin group to destinations grouped with Joplin. Nonprejudicial basis of rates prescribed and reparation denied. Wilhoit Refining Co. v. A., T. & S. F., 112 I. C. C. 225.

(l) Rates on fuel oil, in tank-car loads found unreasonable and unduly prejudicial to extent they exceeded 6.5c less than contemporaneous rates on refined oil prior to general reductions of 1922 and 6c thereafter. Reparation awarded. Shores-Mueller Co. v. A., T. & S. F., 112 I. C. C. 603.

(m) Interstate rates on sulphuric acid, in tank-car loads, from Tiltonville, Ohio, to points in the Wheeling, W. Va., Youngstown, Ohio, and Pittsburgh, Pa., districts found unreasonable and unduly prejudicial in favor of Newell, Langeloth, Natrona, Beaver Falls, and New Castle, Pa., and Moundsville, W. Va., competing points. Reasonable and nonprejudicial scale of distance rates prescribed for future. Bertha Mineral Co. v. B. & O., 112 I. C. C. 754.

(n) Complainant attacked commodity rates charged of 12.5c prior to April 12, 1925, and 11.5c subsequent thereto, on silicate of soda, in tank cars and in drums in carloads, from Grasselli, N. J., to Brooklyn, N. Y., subsequent to June 1, 1923, as unreasonable to extent they exceed 10c. Grasselli is on the Jersey Central 13.3 miles from Jersey City. The movement from Grasselli to Bayway, N. J., is a switching movement. From Bayway the movement to Jersey is through extensive terminals where the traffic is dense. At Jersey the trains are broken up, the cars sorted for the different terminals and placed on car floats by the Central for movement and delivery by the terminal companies. Silicate of soda is rated fifth class. HELD: Rates attacked not unreasonable, complaint dismissed. Interstate Corrugated Box Co. v. C. R. R. of N. J., 113 I. C. C. 539.

(o) Complainant attacked commodity rates on linseed oil, in tank cars, from Minneapolis, Minn., to Dallas, Tex., two years prior to March 9, 1925, as unreasonable. The rate of 60c on the basis of which reparation is sought is arrived at in the following manner: Complainants first use a component of 46c from Kansas City which is the rate prescribed on cottonseed oil in 98 I. C. C. 183 for 671 miles, and to this is added an arbitrary of 14c for the haul from Minneapolis to Kansas City. The rate on cottonseed oil prescribed for 1,161 miles, the average distance from Minneapolis to Texas common point territory, was 57c. HELD: Rate attacked unreasonable in past to extent it exceeded 60c and for future 57c, reparation awarded. DeForest Co. v. A. T. & S. F. Ry., 113 I. C. C. 591.

(p) Complainant attacked combination commodity rates on 2,500 tank cars of petroleum oils and gasoline shipped between November 27, 1920, and November 1, 1923, from Wood River, Ill., Neodesha, and Wichita, Kas., Sugar Creek, Mo., Cushing, Okmulgee, Sapulpa, and Tulsa, Okla., and Casper, Wyo., to destinations in Indiana, Illinois, Michigan, Missouri and Ohio as illegal in violation of section 6. No. 15877. Tulsa and Wood River are representative origins, and Hebron, Wolcott, Medora, Syracuse and Fowler, Ind., are representative destinations. The first two destinations are on the Pan Handle, the next two on the B. & O., and last on Big Four. Wood River is between Alton and East St. Louis, Ill., on the C. & A. It is also served by the Burlington, Big Four and Illinois Terminal. The other origins covered by the complainant are all located west of the Mississippi river. From points of origin other than Wood River the shipments moved, as routed by the shipper, over one or another of the defendant western lines to Alton, East St. Louis, Wood River, or Edwardsville, Ill., to all of which the same rates apply and are within a radius of 35 miles of St. Louis, Mo. They then moved over the

lines of the several eastern defendants to destinations. No joint rates were in effect. Charges were collected on the basis of combinations over the above named junctions, using from Oklahoma, far example, a specific proportional rate of 30.5c to the junctions prior to January 1, 1922, and 27.5c on and subsequent thereto. From the junctions specific point to point proportional rates prior to January 1, 1922, and local rates thereafter, based on class rates applied. The rates from the junctions are the only rates here attacked, no question having been raised as to the applicability of the rates to the junctions. During the period of movement there were in effect in individual tariffs of the Big Four and the Ill. Terminal from Alton, Wood River and Roxana to Chicago and Chicago rate points, a specific commodity rate of 21c prior to April 5, 1922, and 17.5c on and after that date. These rates were lower than the rates charged from the junctions to certain intermediate points on circuitous routes. The rules provide for rates only to or from points where rates are not specifically named in this tariff, in the Illinois Terminal tariff, or to any point of destinations not specifically provided for, in the Big Four tariff. The rates charged applied on the single group of commodities in the petroleum list; they were published in definite amounts; and prior to the raising by the complainant of the technical tariff question presented in this case, had been recognized by the carriers, the shippers, and by the commission, as the applicable rates. In the opinion of the commission they were sufficiently specified under the tariff provisions as to render the intermediate rules inoperative in connection with the traffic. HELD: Rates charged legally applicable. No. 15878. The shipments were specifically routed by the shipper, and moved as routed over the lines of the western defendants to East St. Louis or Alton, thence east thereof for short distances over one or another of the short lines to some intermediate junction, generally Edwardsville or Wood River, and in some instances back again over the same lines to East St. Louis or Alton, where they were turned over to the eastern defendants for movement to destination. They could have been delivered direct by the western lines at East St. Louis or Alton in the first instance to the destination lines without the intervention of these intermediate carriers. The routes used by complainant were not the customary routes for handling this traffic, and, excluding the periods covered by the complaint, were not used for through traffic between the points involved. The shipments were so routed solely to take advantage of the combination rules carried in tariffs of the intermediate lines. No joint rates were in effect. Charged two factor combinations, by specific tariff provision, the combination rule was made inapplicable to the combinations of proportional rates. The practices here disclosed throw grave doubt on the propriety of according shippers unlimited latitude in the designation of intermediate routing. The act contemplates that carriers shall receive reasonable and just compensation for transportation service rendered by them. It does not contemplate that they shall participate in transportation without any charge, and it certainly does not permit or require such transportation at less than no charge. Such a result is wholly repugnant to the letter and spirit of the law, and when as here, it is sought to be accomplished by the wasteful shuffling of shipments back and forth in the congested terminals of the St. Louis-East St. Louis switching district it is especially to be condemned. The commission feels its power under the law is ample to deal with cases of this kind and it would be derelict in its duty if it did not intervene to prevent such unwarranted dissipation of carrier revenue regardless of where the responsibility lies. HELD: Application of the combination rules in question to these shipments would produce a result which is unlawful per se, and the commission will therefore regard them as of no effect. Complaints dismissed. Standard Oil Co. v. A. T. & S. F. Ry., 113 I. C. C. 597.

(q) Complainant attacked commodity rate of 26.5c charged on petroleum crude oil, in tank cars, between October 13, 1924, and January 24, 1925, from Texon, Tex., to Texas City, Tex., for coastwise movement, as unjust, unreasonable and unduly prejudicial to extent it exceeded 19c subsequently established. Texon is on the Orient in what is known as Texas differential territory 88 miles southwest of San Angelo, Tex., a Texas common point. Shipments moved Orient to San Angelo, thence G. C. & S. F., to Terminal Junction, Tex., a distance of 435 miles and the Texas City Terminal to complainant's storage tanks in Texas City, €

miles, a total distance of 529 miles. HELD: Rate attached not unreasonable, complaint dismissed. Kay County Gas Co. v. G. C. & S. F. Ry., 115 I. C. C. 736.

(r) Complainant attacked commodity rates charged on petroleum oil and its products, in tank cars from Kansas and Oklahoma to St. Francis, Kas., as unreasonable and unduly prejudicial. Prior to October 10, 1924, a rate of 34c applied on refined oil from north Texas points to St. Francis, applicable through some, at least, of the refining points in Oklahoma and Kansas. On that date the rate was increased to 60c, based on the established differentials of 2.5c and 6.5c over the rates from Oklahoma and Kansas. The cancellation of the 34c rate and the establishment of a rate of 60c removed undue prejudice, and also removed departure from the fourth section. Shipments moved between December 18, 1922, and May 6, 1925, charged from Kansas prior to July 1, 1923, 54c, and subsequent to that date 53.5c from Kansas and 57.5c from Oklahoma. HELD: Rates attacked unreasonable to extent they exceeded 49c from Kansas and 52.5c from Oklahoma, reparation awarded. El Dorado Refining Co. v. A. T. & S. F. Ry., 118 I. C. C. 51.

(s) Complainant attacked commodity rates charged on petroleum oil in tank cars to Petrolia, Findlay and Toledo, O., from Beattyville, Ky., between December 14, 1920, and November 25, 1922, as not applicable and unreasonable, unjustly discriminatory and unduly prejudicial. Rates were based on Cincinnati combination. The principal question presented is whether the commodity shipped was crude oil or a blend or mixture of casing head gasoline with crude oil. The latter was not covered by either a specific or general item in the commodity tariffs or by a specific item in the classification. It was covered, if at all, only by a general item in the classification, namely petroleum oil, n. o. i. b. n. Casing head gasoline is an extremely volatile material and even when mixed with heavier oils its evaporation while somewhat retarded, is rapid. It is one of complainant's principal contentions that notwithstanding the mixing of casing head gasoline with the crude oil at the start of its journey from the field the evaporation which took place in the pipe lines, in the loosely covered tanks at the relay station, and during the average detention of 23 days in the large tank at Beattyville, was such that at the time this oil was loaded into the tank cars its casing head content had disappeared. This contention is supported by expert opinion and by tests of samples of mixtures of casing head gasoline and crude oil in which the evaporation could be accurately determined. Generally speaking the material here considered, as shipped, when subjected to the usual tests, showed characteristics well within the range of those exhibited by crude oils, produced in and shipping at the crude oil rates from these and other fields, to which no casing head gasoline had been added. While the oil here considered originally contained a substantial percentage of casing head gasoline, the commission is convinced upon this record that in view of the highly volatile character of the commodity and the opportunities that were afforded for its evaporation between the time of its production and the time it was loaded into the cars, the oil as tendered for shipment did not contain sufficient quantity of casing head gasoline to render it different in any essential respect from crude oil as covered by the tariffs. HELD: Rates legally applicable those on crude oil, reparation awarded. National Refining Co. v. L. & N. R. R., 118 I. C. C. 177.

(t) Complainant attacked joint commodity rate of 36.5c charged on 27 tank cars of refined petroleum oil shipped from Reno, Pa., to Rockford, Ill., between September 25, 1922, and February 21, 1924, as unreasonable, unjustly discriminatory and unduly prejudicial in violation of the fourth section. At time of movements there was in effect a joint commodity rate of 34.5c from Foxburg, Pa., a point on the Pennsylvania 48 miles south of Reno to Rockford, which was applicable via Reno. This rate was established January 15, 1925. HELD: Rate attacked unreasonable to extent it exceeded 34.5c, reparation awarded. Smith Oil & Refining Co. v. C. M. & St. P. Ry., 118 I. C. C. 527.

(u) Failure of intermediate line to provide for payment of mileage allowances on private tank cars moving in service over its line, the same as paid by line-haul carriers, found to constitute an unreasonable practice. Under section 1 of the act, it is carrier's duty to provide transportation, including furnishing of cars, and when a shipper furnishes his

own cars, he relieves carrier of its common-carrier obligation and is entitled to reasonable compensation for the service rendered. Reasonable allowance prescribed for future and reparation awarded. Paragon Refining Co. v. A. & S., 118 I. C. C. 166.

(v) Rate on gasoline, in tank-car loads, from Los Angeles, to Reno, Nev., found unreasonable as compared with rates between other points for comparable and greater distances, and to extent it exceeded a lower rate contemporaneously in effect from and to same points by way of a longer route and subsequently established via route of movement. Reparation awarded. Richfield Oil Co. v. A., T. & S. F., 118 I. C. C. 214.

(w) In 101 I. C. C. 177 division 4 found that the applicable rate of 44c charged on liquid asphalt, in tank cars, shipped between Sept. 1, 1921 and Dec. 1, 1921, from Port Neches, Tex., to Morrillton, Galla and Conway, Ark., was unreasonable to the extent it exceeded 27c and awarded reparation. HELD, upon reconsideration rate attacked unreasonable to extent it exceeded 35c, reparation awarded. Texas Co. v. K. C. S. Ry., 120 I. C. C. 1.

(x) Complainant attacked combination rate charged on three tank cars of gasoline shipped from San Antonio, Tex., to Westwood, Calif., as unjust and unreasonable. Shipments were delivered to the G. H. & S. A. routed "S. P." They moved G. H. & S. A. to El Paso and S. P. beyond. Applicable rate $2.275, made up $1.26 to Sacramento, Calif., and $1.015 beyond, and rate now effective is $1.815 a combination of $1.13 to Colfax, Calif., and 68c beyond. Third shipment moved in accordance with shippers instructions, over S. P. to Fort Worth, Ft. W. & D. C., C. & S. and U. P. to Ogden, Utah and S. P. beyond, applicable rate to Fort Worth 38c, to Wendel $1.20, Westwood 25.5c plus 6c combination rule. HELD, rates attacked unreasonable to extent they exceeded $1.575, reparation awarded. Petroleum Products Co. v. G. H. & S. A. Ry., 120 I. C. C. 24.

(y) Complainant attacked combination rate charged on 13 cars of fuel oil in tank cars from Oleum, Calif., to Eureka, Nev., between Feb. and Oct. 1923 as unreasonable and inapplicable. Shipments moved S. P. to Palisade, Nev., and E. N. beyond, charged 38.5c to Palisade and 45c beyond, plus 50c per ton for transferring to narrow gauge equipment at Palisade. 38.5c factor not attacked. On Aug. 5, 1924 the rate of 45c on crude oil was made applicable on fuel oil. HELD, rate unreasonable to extent factor from Palisade to Eureka of 82.5c exceeded 45c, reparation awarded. Mackintosh Mines Co. v. E. N. Ry., 120 I. C. C. 121.

(z) Complainant attacked commodity rate charged on sulphuric acid, in tank-cars, shipped since Oct. 28, 1921 from La Salle, Ill., to Washington Court House, O., as unjust, unreasonable and unduly prejudicial as compared with rates to Cincinnati, O. Shipments moved Burlington, E. K. & E., C. I. & L., C. I. & W. and B. & O., 467 miles, short line distance 367 miles, charged $6.20 prior to July 1, 1922 and $5.60 on those on and after that date. On May 23, 1923 the rate became $5 but it has not been shown that any shipments have been made since that date. Present commodity rate from La Salle to Washington Court House is the same as the sixth class rate. The sixth class rate applies from Columbus to Washington Court House. Bearing in mind that sulphuric acid moves on the sixth class basis throughout central territory, except where lower rates have resulted from circumstances which are not a factor here, it is readily apparent that there is no substantial evidence of record to demonstrate that the rate attacked is unreasonable. HELD, rates attacked not unreasonable, complaint dismissed. Hamm Co. v. B. & O. R. R., 120 I. C. C. 345.

(aa) Complainant attacked rates on gasoline, in tank cars, from Texas and Oklahoma to California and Washington between August 26 and Dec. 31, 1920 as unjust, unreasonable, inapplicable and in violation of the fourth section. In 89 I. C. C. 356, Division 3 found that the rates charged were those applicable, but unreasonable to extent they exceeded the combinations resulting after modifying and changing the intermediate rates for segments of the same movement under the combination rule, and reparation awarded. In 100 I. C. C. 219 the rates attacked were found not unreasonable or otherwise unlawful. When the shipments in question moved, there were in effect joint through rates of $1.26 from points of origin to the California destinations named. and $1.46 to Richmond Beach. At the same time there were in effect separately established intermediate

rates to and beyond junction points in Oklahoma, Kansas and Texas, which aggregated more than the joint through rates. There is not now nor has there been since 1920 a movement of gasoline from the mid-continent field to California. HELD, rates attacked were those applicable and not unreasonable, complaint dismissed. McLeod v. T. & P. Ry., 120 I. C. C. 550.

(bb) Complainant attacked class rate charged on liquid tanning extract in tank cars shipped since Oct. 4, 1923 from Brooklyn, N. Y. to Winchester, Mass., as unreasonable and also to Peabody, Mass. Winchester is on the B. & M. 7.8 miles west of Boston and Peabody is on that railroad 2 miles west of Salem. Charged fifth class 27.5c and 28c. Sixth class rates are asked. HELD, rate attacked not unreasonable, complaint dismissed. Beggs & Cobb v. B. & M. R. R., 120 I. C. C. 711.

(cc) Upon reconsideration, findings in 92 I. C. C. 256 and 100 I. C. C. 233, that rates on liquid asphalt, in tank-car loads, from Port Arthur and Port Neches, Tex., to West Monroe, La., and on liquid and solid asphalt from Port Neches and points taking same rates to Tulsa, Okla, were not unreasonable, affirmed. Finding in 101 I. C. C. 177 that rates on liquid asphalt from Port Neches to Morrillton, Conway, and Galla, Ark., were unreasonable, modified. There is nothing to indicate that routes from Port Neches to Arkansas destinations are not as favorable from a transportation standpoint as those to Tulsa and Monroe and based upon distances alone the rate found reasonable is not in harmony with contemporaneous rate found not unreasonable. Moreover, rate found reasonable is unduly low as compared with rate found not unreasonable when consideration is given to the fundamental principle that ton-mile earnings should decrease as distance increases. Texas Co. v. K. C. S., 120 I. C. C. 1.

(dd) Rates on gasoline in tank-car loads fron San Antonio, Tex., to Westwood, Calif., found unreasonable to extent they exceeded lower rates contemporaneously in effect via several other routes between same points. Reparation awarded. Petroleum Products Co. v. G., H. & S. A., 120 I. C. C. 24.

(ee) Rate on fuel oil in tank-car loads from Oleum, Calif., to Eureka, Nev., found unreasonable to extent that factor from Palisade, Nev., to Eureka over narrow-gauge line of the Eureka Nevada Ry. exceeded lower rate contemporaneously in effect on crude oil and distillate, which lower rate was subsequently made applicable on fuel oil. Reparation awarded. Mackintosh Mines Co. v. E. N. Ry., 120 I. C. C. 121.

(ff) Sixth-class rates on sulphuric acid in tank cars, from La Salle, Ill., to Washington Court House, Ohio, found not unreasonable as compared with rates on fertilizer and various other commodities. The comparisons submitted were unaccompanied by a showing of any movement or of conditions influencing their establishment; moreover, sulphuric acid moves on the sixth-class basis throughout c. f. a. territory, except where lower rates have resulted from circumstances which are not a factor in instant case. Hamm Co. v. B. & O., 120 I. C. C. 345.

(gg) Rate on petroleum crude oil, in tank-car loads; from Currie, Tex., to Minneapolis, Minn., found unreasonable and unduly prejudicial as compared with rates to Kansas City, East St. Louis, and Chicago, at which points competing refineries are located. Reparation awarded. Pure Oil Co. v. C., R. I. & P., 120 I. C. C. 422.

(hh) Complainant attacked commodity rate charged on 44 cars of petroleum refined oil shipped between July 8, 1923 and Nov. 5, 1923 from Odonnell Spur, Calif., to Wilmington, Calif., for export as unreasonable and unjustly discriminatory. Charged 8c, which was equal to the aggregate of 4c from Odonnell Spur to Los Angeles, 11 miles and 4c beyond, 27.1 miles. Rate attacked was reduced to 7c Oct. 10, 1924. HELD, rate charged not unreasonable or unjustly discriminatory, complaint dismissed. Thomas Traffic Co. v. L. A. & S. L. R. R., 120 I. C. C. 671.

(ii) Complainant attacked commodity rate of 42c charged on lubricating oil, in tank carloads, from Galena, Port Arthur and West Port Arthur, Tex., to Topeka, Kas., from Jan. 7, 1924 as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of the fourth section to extent it exceeds 32c. Galena, on the T. & N. O. 12 miles east of Houston, Tex., and Port Arthur and West Port Arthur on the T. & Ft. S. and T. & N. O., 19 and 23 miles south of Beaumont, Tex., are in the south Texas district. Topeka is on the Santa Fe, Rock Island and M. P. about 67 miles west of Kansas City,

Mo., in the Kansas district. A rate of 32c applied from these points to Topeka over practically all routes, except those in which the Santa Fe was the delivering carrier. Over such routes a rate of 42c applied and still in effect. Distance over Santa Fe range from 806 to 901 miles, over other routes 739 to 1,051 miles. From points on the Santa Fe, such as Beaumont, Houston and Galveston, which are a greater distance from Topeka than are the points involved herein, a rate of 32c has been in effect since Sept. 15, 1925. HELD, rate attacked unreasonable to extent it exceeded 32c, reparation awarded. White Eagle Oil & Refining Co. v. A. T. & S. F. Ry., 122 I. C. C. 223.

(jj) Complainant attacked commodity rates on eight tank cars of gas oil shipped from Kansas and Oklahoma to York, Neb., between June 8, 1921 and July 17, 1922 as unjust and unreasonable. Charged 55c from Fairmont and 53.5c from the other four points, the same as on refined oils. Reparation is desired on basis of 37.5c, which is the rate found reasonable on gas and fuel oils from Group B to Hastings and Grand Island, Neb., and Sioux City, Ia. in 68 I. C. C. 507. 34c is the rate found reasonable in that case reduced July 1, 1922 and published Aug. 28, 1922 to the destinations involved in that case as well as to York. York, Grand Island, and Hastings are in central Nebraska. York is 262 miles from Kansas City and 56 miles west of Lincoln over the Burlington and is directly intermediate to Grand Island, 97 miles west of Lincoln over that route. Hastings is 97 miles west of Lincoln on the Burlington to Oxford Neb. Sioux City is 288 miles northwest of Kansas City over the route of the Burlington to Council Bluffs, and C. & N. W. beyond. HELD, rates attacked unreasonable to extent they exceeded 37.5c, reparation awarded. Public Service Co. v. A. T. & S. F. Ry., 122 I. C. C. 316.

(kk) Complainant attacked commodity rates of $1.425 charged on six tank cars of inedible tallow from North Salt Lake, Utah., to Chicago, Ill., and 1.10 on seven tank cars from North Salt Lake to Kansas City, Kas., between March 22, 1923 and Dec. 2, 1924, as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of the fourth section. North Salt Lake City is about 5 miles north of Salt Lake City in Utah common point territory, and is about 1,140 and 1,509 miles from Kansas City and Chicago. Inedible tallow is rated fifth class, the class rates being $1.82 and $1.50. A rate of $1.13 was in effect on the same commodity when shipped in barrels. HELD, rate attacked unreasonable to extent it exceeded $1.13 to Chicago and $1 to Kansas City, reparation awarded. Cudahy Packing Co. v. U. P. R. R., 122 I. C. C. 459.

(ll) Complainant attacked commodity rates charged on 121 tank cars of crude oil shipped from Verla, Ark., to Shreveport, La., as unreasonable, unjustly discriminatory and unduly prejudicial. Shipments moved between July 5 and Sept. 25, 1923. Charged prior to Sept. 1, 1923 15.5c and thereafter 12.5c, distance 91 miles. Defendant admits rate of 15.5c was unreasonable to extent it exceeded 12.5c. HELD, rate of 12.5 cents not unreasonable but rate of 15.5c unreasonable to extent it exceeded 12.5c, reparation awarded. Louisiana Refining Corp. v. St. L. S. W. Ry., 122 I. C. C. C. 503.

(mm) Complainant atttacked commodity rates charged on 114 tank cars of crude oil shipped between April 9 and 22, 1925 from Dale, Tex., to Sabine Pass, Tex., for coastwise movement beyond, was unreasonable and unduly prejudicial to extent it exceeded the rate subsequently established. Dale is in southeastern Texas on the M. K. T. Shipments moved 254 miles to Sabine Pass, thence coastwise vessels to Marcus Hook, Pa. Charged domestic rate of 21c, a rate of 11c being established April 23, 1925. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Sun Oil Co. v. M. K. T. R. R., 123 I. C. C. 17.

(nn) Complainant assails the storage charges assessed between April 1, 1922 and Feb. 1, 1925 on numerous tank cars of gasoline held in private cars on the private tracks of complainant at Wynona, Okla., and Burkburnett, Tex., as unreasonable, unjustly discriminatory, unduly prejudicial and illegal. The private tracks at Wynona and Burkburnett were constructed by defendants for the use of and paid for by complainant pursuant to certain contracts. The plants including the said tracks are used exclusively as plant facilities. Each plant is inclosed by a fence with a gate across the lead-in track, thus making the plant inclosure continuous and complete. The plants and facilities are at all times maintained by complainant as private property and no persons are permitted upon said property, or within said plant inclosure, except upon permission from

complainant. Defendants concede that the tracks were not so constructed that the same could be used by defendants in the operation of their business as private carriers. Thus is appears that complainants tracks could not under any circumstances be used as railroad premises within the limitation contained in the contract of construction; therefore the tariff definition of railroad premises in effect prior to Feb. 25, 1924 had no application to complainants sidings, and any charges collected under the storage rule were illegal. HELD, storage charges to be refunded, complaint dismissed. Skelly Oil Co. v. M. K. T. R. R., 123 I. C. C. 517.

(oo) Complainant attacked combination rates charged on casing head gasoline, in tank cars, from Bartlesville, Bryant, De Noya, Shidler, Pershing and Fite, Okla., to Bayonne, Bayway, and Paulsboro, N. J., and Olean, N. Y., as unreasonable. Gasoline, including natural gasoline, is shipped on the basis of an estimated weight of 6.6 pounds per gallon. While this is about the actual weight of gasoline, natural gasoline weighs about 5.5 pounds per gallon. The basis for the rates on petroleum and its products from Group 3 to these points is the lowest combination and this makes on St. Louis, Mo., or East St. Louis, Ill. To the basing point the factor is 27.5c. While complainant assails the separate factors of the rates the complaint is particularly intended as an attack upon the use of the combination basis and to the "system of proportional rates" under which the factors from the gateways vary, dependent upon the origin of the traffic, and the factors to the gateways vary, dependent upon the destination of the traffic. It is insisted that this basis of rates results in excessive through rates and undue advantage to jobbers and dealers at the rate breaking points. HELD, reasonable maximum rates on and after July 1, 1922 would be 72c to Bayonne and Bayway, 70c to Paulsboro, and 61c to Olean, reparation awarded. Phillips Petroleum Co. v. A. T. & S. F. Ry., 123 I. C. C. 724.

(pp) Joint rate on lubricating oil, in tank-car loads, from Galena, Port Arthur, and West Port Arthur, Tex., to Topeka, Kans., with A., T. & S. F. delivery, found unreasonable and unduly prejudicial to extent it exceeded lower rate for single-line haul contemporaneously in effet from Beaumont, Houston, and Galveston, Tex., farther distant points on the Santa Fe to same destination, and to extent it exceeded rates over practically all routes from and to same points, except to destinations on the Santa Fe from points on connecting lines. Reasonable and nonprejudicial rate prescribed for future and reparation awarded. White Eagle Oil & Refining Co. v. A. T. & S. F., 122 I. C. C. 223.

(qq) Rates on gas oil in tank-car loads from midcontinent field in Oklahoma, to York, Nebr., found unreasonable to extent they exceeded lower rate found reasonable from same origin points to Hastings and Grand Island, Nebr., and Sioux City, Iowa, in the Fairmont case, 68 I. C. C. 507, the rates to all these destinations having been equalized subsequent to above-cited decision. Reparation awarded. Public Service Co. v. A., T. & S. F., 122 I. C. C. 316.

(rr) Rate on inedible tallow, in tank-car loads, found unreasonable to extent it exceeded a lower rate contemporaneously in effect on the same commodity, in barrels. Reparation awarded. Cudahy Packing Co. v. U. P., 122 I. C. C. 459.

(ss) Rates on inedible tallow, in tank-car loads, from North Salt Lake, Utah., to Chicago, Ill., and Kansas City, Kans., found unreasonable as compared with rates on same commodity from Pacific coast points to same destinations; with rates prescribed in 98 I. C. C. 183 on vegetable oils in the Southwest for comparable distances; and with rates on lard, lard substitutes, and vegetable cooking oils from St. Louis, Kansas City, and certain other points in the southwest, prescribed in 101 I. C. C. 563. Reparation awarded. Cudahy Packing Co. v. U. P., 122 I. C. C. 459.

(tt) Following 112 I. C. C. 481, rates on naphtha, in tank-car loads, from Shreveport, La., to Cincinnati, Ohio, found not unreasonable as compared with rates on refined oil from same point to Chicago, St. Louis, and various other destinations. Rates on same commodity from Tulsa, Okla., and Wichita Falls, Tex., to Cincinnati, found not unreasonable in the past but unreasonable for the future to extent they exceed rates on refined oil from and to the same points. Reasonable rates prescribed for future. Procter & Gamble Co. v. A., T. & S. F., 122 I. C. C. 473.

(uu) Rates on crude oil, in tank-car loads from Verla, Ark., to Shreveport, La., found unreasonable as compared with rates for same distance under the

so-called normal or distance scales applicable in surrounding States, and to extent it exceeded rate subsequently established. Subsequently established rate which reflects the usual basis under distance scale prescribed in 58 I. C. C. 611, 644 found not unreasonable. Reparation awarded. Louisiana Oil Refining Corp. v. St. L. S. W., 122 I. C. C. 503.

(vv) Rate on crude oil in tank-car loads from Dale to Sabine Pass, Tex., for coastwise movement, found not unreasonable or otherwise unlawful as compared with rates from various other points in same general territory to Sabine Pass, or with lower rate from Oilfield and Luling to Sabine Pass, subsequently established from Dale. Rate charged was based upon distance scale approved in 34 I. C. C. 472, and carrier showed that the subsequently established rate was depressed on account of carrier and pipeline competition, and was established without regard to its reasonableness per se. Sun Oil Co. v. M.-K.-T., 123 I. C. C. 17.

(ww) Rates on natural gasoline, in tank-car loads, from points in Ranger group in Texas to destinations in official and southern territories, found not unreasonable or unduly prejudicial as compared with those contemporaneously in effect from Burkburnett and Houston-Galveston-Beaumont groups in Texas and from Shreveport and other Louisiana points taking same rates, except that rate to Brunswick, Ga., found unreasonable as compared with other rates assailed and to extent it exceeded rate herein prescribed. Houston and Shreveport rates are depressed and disparity between Ranger and Burkburnett rates is primarily due to difference in proportional rates made on Vicksburg, Miss. Although propriety of this adjustment is doubtful, it seems impracticable to deal with it and other situations involved in view of general investigation pending. Reasonable rate prescribed to Brunswick and reparation awarded. Chestnut & Smith Corp. v. A. & R. R. R., 123 I. C. C. 707.

(xx) Rates on natural gasoline, in tank-car loads from Bartlesville, and Oklahoma points taking same rates, to Bayonne, Bayway, and Paulsboro, N. J., and Olean, N. Y., found unreasonable as compared with rates contemporaneously in effect on petroleum and products between same and various points, and with those on cottonseed and vegetable oils, and vinegar for comparable distances. Natural gasoline ordinarily moves from this territory to the East under rates applicable on petroleum and products and as compared with rates prescribed to and from the Mississippi River in 66 I. C. C. 426 and 14 I. C. C. 272, respectively, earnings under rates assailed appear too high. Reasonable rates prescribed for future and reparation awarded. Phillips Petroleum Co. v. A., T. & S. F., 123 I. C. C. 724.

(yy) Rates on natural gasoline, in tank-car loads, found unreasonable as compared with those on petroleum and products, cottonseed and vegetable oils, and vinegar. Reasonable rates prescribed for future and reparation awarded Phillips Petroleum Co. v. A., T. & S. F., 123 I. C. C. 724.

(zz) Complainant combination rates charged on 17 tank cars of gasoline forwarded over defendants lines between June 2 and Dec. 1, 1923 from Dublin, Desdemona, Breckenridge, and Eliasville, Tex., and one tank car of gasoline shipped on July 14, 1923 from Jennings, Okla., to Shelton, W. Va., as unreasonable to the extent they exceeded the rates from the same points of origin to Charleston, W. Va., or the rate from Hodge, Tex., to Blue Creek, W. Va. The Texas points are grouped and range from 90 to 174 miles southwest and west of Fort Worth, Tex., and about 765 to 835 miles southwest of East St. Louis, Ill. Jennings is on the Frisco about 465 miles southwest of East St. Louis. Shelton is on the Charleston division of the B. & O. 40 miles northeast of Charleston and 124 miles south of Clarksburg. Similar cases were decided in Transcontinental Oil Co. v. A. & V. Ry., 96 I. C. C. 136 and Transcontinental Oil Co. v. B. & O. R. R., 118 I. C. C. 518. HELD, rates assailed were, are, and for future will be unreasonable to extent they exceed 63c reparation awarded. Shelton Gasoline Corp. v. W. F. R. & F. W. R. R., 126 I. C. C. 125.

(3a) Rates on gasoline, in tank-car loads, from Dublin, Desdemona, Breckenridge, and Eliasville, Tex., and Jennings, Okla., to Shelton, W. Va., FOUND unreasonable to extent they exceeded those contemporaneously maintained to Charleston, W. Va., by more than 4.5 cents. Issues similar to those here presented were considered in 96 I. C. C. 136; 118 I. C. C. 518, in connection with rates to Blue Creek, W. Va., wherein a differential of 1.5 cents was prescribed, and using the same rate of progression the rate to Shelton would be 4.5 cents

over Charleston. Reasonable rate prescribed for future and reparation awarded. Shelton Gasoline Corp. v. W. F., R. & F. W., 126 I. C. C. 125.

(3b) Conditions and circumstances peculiar to the transportation of petroleum oil and its products are so unique as to force carriers to abandon most of the customarily employed elements or factors in establishing rates. Pipe-line competition and water competition among refiners and producers are elements chiefly responsible not only for subnormal or depressed rates, but have combined to force the forming of large origin and destination groups. This method has long been practiced in the Southwest, where competition is keen and where pipe lines are numerous. In order to share in the traffic carriers have been forced to establish depressed rates over wide blankets and this has brought about a disregard of the distance factor so commonly used in making rates under normal conditions. Humble Oil & Rfg. Co. v. B. S. L. & W. Ry., 126 I. C. C. 717, 721, 722.

(3c) Suit for rental under contract to furnish tank cars HELD not an action founded upon open account which may be proven under Rev. St. 1925, art. 3736, by submission of verified account. Warren v. North American Car Co., (Tex., 1927) 293 S. W. 301.

(3d) In suit for breach of contract to furnish tank cars, correctness of account, showing amount due under contract, HELD for jury; the account not establishing cause of action by verification alone. Warren v. North American Car Co., (Tex., 1927) 294 S. W. 301.

(3e) In suit for rental under contract to furnish tank cars, account showing amount due HELD inadmissible until items thereof had been shown to be correct by testimony other than its verification; such account not being established by affidavit alone. Warren v. North American Car Co., (Tex., 1927) 294 S. W. 301.

(3f) On reconsideration, finding in original report 122 I. C. C. 223, that rate on lubricating oil, in tank-car loads from Galena, Port Arthur, and West Port Arthur, Tex., to Topeka, Kans., was unreasonable and unduly prejudicial, modified, and rate found not unreasonable in the past but for future will be unreasonable and unduly prejudicial to extent it exceeds rate found reasonable in 120 I. C. C. 614 from Chaison, Tex., a point intermediate to Port Arthur and West Port Arthur, and Topeka. Latter rate was also prescribed in 112 I. C. C. 421 from the south Texas refining group to Kansas City, Mo., and Topeka usually takes the Kansas City rate on oil from that group, so that to establish rates prescribed in original report would be to maintain rates lower from certain points in the group than those fixed from the group as a whole. Reasonable rate prescribed for future. White Eagle Oil & Rfg. Co. v. A., T. & S. F., 128 I. C. C. 55.

(3g) Complainant attacked fifth class rate of 38.5c charged on four tank cars of linseed oil which previously had been imported, shipped from San Francisco to Los Angeles, Calif., over S. P. from Jan. 11, 1923 to August 8, 1924 as unreasonable to extent it exceeded 31.5c. Complainants contention that the movement was in foreign commerce is based solely upon the fact that this oil originated in England. There was no connection between the ocean transportation to San Francisco and the subsequent rail movement to Los Angeles. As the original destination San Francisco, this oil passed into the possession and exclusive control of complainant, and remained as a part of its general stock to be distributed as commercial conditions occasioned. Complainant does not contend that the stoppage at San Francisco was merely a transportation incident between the receipt from the water carriers and the subsequent movement by rail to final destination. HELD, shipments intrastate, complaint dismissed. Fuller & Co. v. S. P. Co., 128 I. C. C. 199.

(3h) Shipments of linseed oil, in tank-car loads, previously imported, from San Francisco to Los Angeles, found to have been intrastate and beyond the commission's jurisdiction. The oil arrived from England, was pumped directly into complainant's storage tanks near the wharf, and subsequently reloaded into tank cars and moved to destination. Complainant's contention that movement was in foreign commerce is based solely upon fact that oil originated in England. However, there was no connection between ocean transportation to the United States port and subsequent rail movement beyond. Oil passed into possession and control of complainant at San Francisco and remained part of its general stock for commercial distribution. Moreover, complainant does not contend that the stop-

page at San Francisco was merely a transportation incident between receipt from water carriers and subsequent rail movement. See 6 Fed. (2d) 911; 209 U. S. 211; 102 I. C. C. 363. Fuller & Co. v. S. P. Co., 128 I. C. C. 199.

(3i) Joint rates on naphtha and gasoline in tank-car loads from Philadelphia to Sandyville, W. Va., a branch-line point, constructed on basis of rates to Ravenswood, W. Va., plus arbitraries beyond, found unreasonable as compared with contemporaneous rates in opposite direction and with those to Spencer, W. Va., a more distant point, subsequently made applicable to Sandyville; and rates from Meraux, La., and points in Kansas, Oklahoma, and Texas to same destination, found unreasonable to extent they exceeded rates subsequently established. Reparation awarded. Virginian Gasoline & Oil Co. v. B. & O., 128 I. C. C. 621.

(3j) Complainant attacked commodity rates charged on numerous tank cars of naphtha and gasoline shipped since Jan. 1, 1924 from Philadelphia, Pa., Meraux, Sandyville, W. Va., as unreasonable. Sandyville is a local station on the branch of the B. & O., 8.5 miles southeast of Ravenswood, W. Va., a point on the main line of that carrier between Kenova and Parkersburg, W. Va. HELD, rates attacked were and are not unreasonable, except that the rates of 48.5c from Philadelphia, 57 and 56c from Meraux, 64.5c La., and Kansas, Oklahoma and Texas, to from the Kansas and Oklahoma points, and 67c from Texas points unreasonable to extent they exceeded 43.5c from Philadelphia, 53.5c from Meraux, 62c from the Kansas and Oklahoma points and 64.5c from Texas, reparation awarded. Virginian Gasoline & Oil Co. v B. & O. R. R., 128 I. C. C. 621.

(3k) Complainant alleged that class rate charged on petroleum fuel oil in tank cars shipped subsequent to Oct. 31, 1924 from Pettys Island, N. J., to Garden City, L. I. N. Y., as unreasonable. Pettys Island is within the Philadelphia rate district. Garden City is on the L. I. Railroad 19 miles east of Long Island City. Shipments moved Pennsylvania to Greenville Piers, N. J., within New York Harbor, by car ferry to Long Island float bridge at Long Island City, thence by series of switch movements over L. I. R. R. to Holban Yards, Long Island, N. Y., and by that line to destination. The entire movement, exclusive of the car ferry across New York Harbor was about 111 miles, charged fifth class rate of 22c. HELD, rates attacked unreasonable to extent they exceeded 20.5c, reparation awarded. Curtiss Aeroplane & Motor Co. v. Pennsylvania R. R., 129 I. C. C. 174.

(3l) Complainant alleged rates charged on sulphuric acid, in tank cars, from Kansas City, Mo., to Oklahoma and Texas are unreasonable, unjustly discriminatory and unduly prejudicial as compared with rates from Grasselli, Ala., and Copperhill, Tenn., to the same destinations. Complainant alleged rates charged on sulphuric acid, in tank cars, from Copperhill and points in Nashville, Tenn., territory to oil refiners in Oklahoma were and are unreasonable and unduly prejudicial. No. 16459. Kansas City's largest market is in the petroleum refineries in Oklahoma, and its keenest competition is with Copperhill. HELD, a study of the rates, distances, and ton mile revenue portrayed in the evidence does not convince the Commission that the rates from Copperhill and Grasselli are too low. No. 16719. Copperhill is a local point on the L. & N. Sulphuric acid is rated fifth class in the western classification. Throughout the southwest it generally moves on commodity rates which have apparently been made for competitive or commercial reasons and without much regard for distance. HELD, rates assailed to Oklahoma not unreasonable or otherwise unlawful, but nothing contained herein affects the conclusions reached in the Southwestern Cases upon the issues there presented and a broader record. Complaints dismissed. National Zinc Co. v. A. & V. R. R., 132 I. C. C. 249.

(3m) Complainant alleged that rates on tallows, greases and vegetable soap stocks, in tank cars, from Chicago, Ill., to destinations on defendants lines in trunk line and New England territories were and are unjustly discriminatory, unduly prejudicial and in violation of section 4. Shipments made subsequent to March 12, 1924 to East Cambridge, Mass., Philadelphia, Pa., Jersey City and Little Falls, N. J., and East Hartford, Conn. Articles are rated fifth class, although by exceptions the sixth class rates are authorized, namely, 49.5c to East Cambridge and East Hartford, 45.5c to Philadelphia and 47.5c to Jersey City and Little Falls. HELD, rates assailed not unreasonable, unjustly discriminatory or in violation of section four but for future unduly prejudicial in favor of Neville Island, to ex-

tent they are higher than the rates on like commodities maintained from Chicago to Neville Island, Pa., plus the rates on the same commodities, crude or refined, from that point to the same destinations, reparation denied. Darling & Company v. N. Y. C. R. R., 132 I. C. C. 568.

(3n) Fifth-class rates on petroleum fuel oil in tank-car loads from Pettys Island, N. J., to Garden City, Long Island, N. Y., a Group B point, found unreasonable as compared with rates established following 89 I. C. C. 738, from same point of origin to Group A points. Reasonable rates prescribed for future and reparation awarded. Curtiss Aeroplane & Motor Co. v. P. R. R., 129 I. C. C. 174.

(3o) Rates on liquid asphalt in tank-car loads from Mereaux, Destrehan, and New Orleans, La., to Mobile, Ala., found unreasonable as compared with lower contemporaneous rates on like traffic between points in same general territory for comparable distances. Reasonable rates prescribed for future and eparation awarded. Continental Roofing & Mfg. Co. v. G. & S. I., 129 I. C. C. 313.

(3p) Complainant alleged commodity rate of 18.5c charged on 50 tank cars of gas oil shipped from Eldorado, Kas., to Tulsa, Okla., during April and May, 1926 was unreasonable to extent it exceeded 16c. From practically all Kansas refining points, except Eldorado, to destinations in Oklahoma specific rates ranging from 0.5c to 2.5c lower than the Kansas Oklahoma scale for like distances were maintained on crude and fuel oils. Under that scale the rate would be 16c. This is the basis to which reparation is sought, and is the specific commodity rate on gas oil between those points voluntarily established by the Santa Fe on Sept. 25, 1926 shortly after the filing of this complaint. HELD, rate assailed unreasonable to extent it exceeded 16c, reparation awarded. Eldorado Refining Co. v. A., T. & S. F. Ry., 132 I. C. C. 612.

TARIFFS

I. CONTROL AND REGULATION.
- §1. Jurisdiction of Commission.
- §1½. Suspension.
- §2. Power of Congress.

II. PUBLICATION.
- §3. Effect in general.
  - (1) Adherence to published rate.
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  - (3) Notice to shipper.
- §4. Necessity of publication.
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III. FILING AND POSTING.
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- §7. In general.
- §8. Ambiguity.
- §8½. Amendments and supplements.
- §8½a. Basis book.
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- §10. Concurrences.
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- §13a. Intermediate rule.
- §14. Legality.
- §15. Reasonableness.
- §16. Shipments in bulk.
- §17. State rates.
- §18. What is legal rate.
- §19. As evidence.
- §20. Court proceedings.

CROSS REFERENCES

See Branch Lines IV; Claims I; Classification; Commodity Rates §2; Demurrage III; Divisions II; Export Rates and Facilities IV; Express Companies VI; Facilities and Privileges III; Import Traffic I; Pipe Lines III; Proportional Rates §6; Reconsignment IV; Reduced Rates III; Refrigeration IV; Reparation; Storage III; Switch Tracks and Switching §10; Tap Lines IV; Terminal Facilities §4; Through Routes and Joint Rates V; Transportation; Water Carriers III; Weights and Weighing VI.

I. CONTROL AND REGULATION.

See Control and Regulation.

§ 1. Jurisdiction of Commission.

See Advanced Rates §1 (4); Common Carrier; Interstate Commerce Commission I; Jurisdiction of Commission.

(a) While there is no allegation in the complaint that the charges were inapplicable, failure to allege violation of section 6 does not affect jurisdiction of the commission to determine the applicable charges. Western Bridge & Construction Co. v. St. L. S. F. Ry., 118 I. C. C. 607, 609.

II. PUBLICATION.

See Advanced Rates VIII; Allowances II, §5; Cars and Car Supply §37; Class Rates I; Classification VI; Crimes §22; Demurrage §2 (m), III; Distance Rates §2; Divisions II; Export Rates and Facilities IV; Facilities and Privileges III; Long and Short Hauls §16; Loss and Damage §18; Passenger Fares and Facilities §18; Proportional Rates VI; Reconsignment IV; Reduced Rates III; Refrigeration IV; Switch Tracks and Switching §10; Tap Lines IV; Telephone and Telegraph Companies V; Terminal Facilities §4; Track Storage.

§3. Effect in General.

(1) Adherence to Published Rate.

(a) A carrier may not arbitrarily set aside its tariff provisions without due notice in the proper form. Lexington Elevator & Mill Co. v. B. & O., 109 I. C. C. 542, 544.

(b) Since shippers as well as carriers are charged with a knowledge of the legally applicable tariff charges, the fact of undercharges is insufficient to sustain an award of damages. Clements Paper Co. v. T. C. Ry., 112 I. C. C. 411, 417.

(c) Agreements between carriers and shippers are of no legal effect in determining applicable rates where such agreements are not published in tariffs on file with the commission. Harlem & Morrisiana Transp. Line v. N. Y., N. H. & H., 123 I. C. C. 480, 483, 484.

(d) Shipper by rail must pay specified tariff charges, and carrier is forbidden to exact more or less than published rate or charge. New York & Pennsylvania Co. v. Davis, Director General of Railroads, 8 Fed. (2d) 662.

(e) Carrier's intention as to applicable rate is competent only in so far as it is fairly expressed in language of printed rates. Southern Pac. Co. v. Lothrop, 15 Fed. (2d) 486. Spokane P. & S. Ry. Co. v. Same, 15 Fed. (2d) 486. Oregon-Washington R. & Nav. Co. v. Same, 15 Fed. (2d) 486.

(f) Rulings of Interstate Commerce Commission as to routing of shipments, adopted to carry out Interstate Commerce Act, § 7 (U. S. Comp. St. § 8563), providing for collection of full tariff rates by carrier and prohibiting refunds, have effect of law in regulation of shipments in interstate commerce. Davis, Director General of Railroads v. Cayuga Operating Co., (N. Y., 1926) 216 N. Y. S. 186.

(g) A freight rate once lawfully established continues to be the legal rate until legally cancelled. Subsequent tariffs naming new rates, without canceling previous rates, cannot carry the new rate into lawful effect. McCaffrey Bros. Co. v. Chicago, B. & Q. R. Co., (Neb., 1926) 207 N. W. 503.

(h) Subject to regulation of public authority, railroad schedules must be followed. Siegel v. Chicago, R. I. & P. Ry. Co., (Ia., 1926) 208 N. W. 78.

(i) Tariff rates, filed and published as required by the Interstate Commerce Act (U. S. Comp. St. § 8563 et seq.), are binding and conclusive on both carrier and shipper until changed in the manner provided in the act. Illinois Cent. R. Co. v. Van Dusen, Harrington Co., (Minn., 1927) 212 N. W. 940.

(j) A compromise of a bill of freight charges on an interstate shipment of live stock for less than the regularly published and lawful tariff rate was void as against public policy and in breach of the inhibitions of the Interstate Commerce Act. Farrar v. Perkins, (Kan., 1926) 251 Pac. 440.

(k) On interstate shipments carrier can compel shipper to pay difference between legally established interstate rate and lower rate quoted or collected by mistake or otherwise. Missouri Pac. R. Co. v. Pfeiffer Stone Co., (Ark., 1924) 266 S. W. 82.

(l) A carrier cannot depart to any extent from its published schedule of rates for interstate transportation on file, without incurring penalties of act

of Congress. Missouri Pac. R. Co. v. Pfeiffer Stone Co., (Ark., 1924) 266 S W. 82.

(m) Section 6 (7) of the act provides so far as pertinent that no carrier subject to the act shall charge or receive a greater compensation for the transportation of property than the rates specified in the tariff filed and in effect at the time. Hyman Michaels Co. v. Director General, 128 I. C. C. 689, 691.

§3. (2). Erroneous Quotation or Publication.

See Erroneous Rates; Passenger Fares and Facilities §15.

(a) Shippers are charged with knowledge of lawful rates, and misquotation or misinformation by carriers can not alter the specific wording of tariffs. Underwriters Salvage Co. v. L. & N., 115 I. C. C. 585, 586.

§3 (3). Notice to Shipper.

See Notice; Released Rates §3½; Reparation §8.

(a) The Commission has repeatedly found that shippers are charged with notice of tariff provisions. Chattanooga Wheelbarrow Co. v. N. C. & St. L. Ry., 112 I. C. C. 549, 550.

(b) Shippers are presumed to know provisions of tariffs under which their traffic is offered for transportation. Russell Grain Co. v. A. G. S. R. R., 113 I. C. C. 701, 702.

(c) The law imposes on shippers the duty of ascertaining the rates and conditions under which they ship and noncompliance by a shipper with tariff rules affords no basis for a finding that the rate legally applicable was or is unreasonable or unjustly discriminatory. Memphis Freight Bureau v. St. L. S. W. Ry., 115 I. C. C. 409, 411.

(d) A shipper is charged with knowledge of the lawful rate, and that even misquotation or misinformation by the carriers can not alter the specific wording of the tariffs. Underwriters Salvage Co. v. L. & N. R. R., 115 I. C. C. 585.

(e) Shippers are chargeable with a knowledge of rates and conditions under which they ship. Rates lawfully in effect continue to remain so until canceled by other rates lawfully established. Murphysboro Paving Brick Co. v. M. & O., 122 I. C. C. 15, 16.

§ 4. Necessity of Publication.

See Allowances §4, II; Common Carrier §4; Demurrage §11; Divisions §2; Facilities and Privileges §17; Reconsignment §4; Refrigeration §5; Water Carriers III.

(a) Where shipments of a commodity are being accepted for transportation by carriers, appropriate tariff provisions therefor should be established. Garrett & Co. v. N. Y. C., 112 I. C. C. 519, 520.

(b) Agreements between carriers and shippers are of no legal effect in determining applicable rate where such agreements are not published in tariffs on file with the commission. Harlem & Morrisiana Transp. Line v. N. Y., N. H. & H., 123 I. C. C. 480, 483, 484.

(c) Under section 1, subd. 4, and section 6, subd. 1, Interstate Commerce Act, as amended (Comp. St. §§ 8563, 8569), it was carrier's duty, immediately on shipper's request for transportation between points on carrier's line, respecting which there was no published tariff, to publish a rate, and shipper was entitled to recover excess freight paid because of shipment over longer route. Swift & Co. v. New York Cent. R. Co., 16 Fed. (2d) 17.

(d) Circulars published by the Weighing and Inspection Bureau not published as tariffs by carriers or filed with commission are not controlling as are tariffs or other publications filed in accordance with section 6 of the act. Glarner & Co. v. S. Ry., 129 I. C. C. 75. 77.

III. FILING AND POSTING.

See Cars and Car Supply §4 (o); Crimes §10, §22; Reparation §9.

§6. In General.

(a) The commission can not too strongly condemn tariff provisions which not only fail to comply with section 6 of the act but also contravene tariff rules prohibiting inclusion of any provision in a tariff which makes amount of the charge dependent upon measure of a rate or charge published in tariffs of some other carrier. Davis-Noland-Merrill Grain Co. v. St. L.-S. F., 120 I. C. C. 87, 89.

(b) The commission has no special qualifications as an official body to determine the character of commodities from samples. However, where a violation of

section 6 is alleged, it has concurrent jurisdiction with the courts, and mode of proof does not differ in essence from that in court. Usual method of proving the character of a commodity or article is to introduce the commodity or article itself, or an agreed sample thereof, and, where the decision involves an intricate analysis, to adduce competent evidence by expert witnesses. Fraser v. A. C. L., 122 I. C. C. 520, 525.

(c) Evidence which goes to the question of reasonableness of rates can not affect interpretation of tariffs in a proceeding involving legality of rates under section 6 of the act. Fraser v. A. C. L., 122 I. C. C. 520, 526.

(d) There is no statutory burden upon carriers to prove character of a commodity where question in issue is legality of rates under section 6 of the act. Fraser v. A. C. L., 122 I. C. C. 520, 526.

(e) Proof of carrier's filing with Interstate Commerce Commission of supplemental tariff changing rates HELD to establish, prima facie, that carrier had taken all steps required by U. S. Comp. St. § 8569, to make new rates valid, in view of section 8584, subd. (12). New York, N. H. & H. R. Co. v. Salter, (Conn. 1926), 134 Atl. 220.

IV. CONSTRUCTION.

§7. In General.

See Supra II; Advanced Rates §8½a, §9½, §24; Class Rates §2 (7u); Classification §17, §20, §22, §24; Commodity Rates I, II, §3; Courts V; Differentials III; Express Companies X, §13; Facilities and Privileges §17½, §18, §19; Import Traffic §2 (c); Long and Short Hauls §16; Pipe Lines III; Reconsignment §5; Refrigeration §6; Reparation §8; Storage III; Tap Lines IV; Through Routes and Joint Rates §18, §20a (i), §21, V; Storage III; Water Carriers III; Weights and Weighing VI.

(a) Rates assessed on shipments of fuel oil moving from Tulsa, Okla., to St. Catharines, Ontario, reconsigned to Pittsburgh, and again to Woodlawn, Pa., over a circuitous route, found illegal. Contemporaneously, a lower unrestricted rate applied via a more direct route and all carriers participating in movement were parties to tariff naming such lower rate. Reparation awarded. Kyoleum Co. v. Director General, 104 I. C. C. 1.

(b) Tariffs provided that if other tariffs make a lower charge such lower rates would be applicable. They also contained special rules providing for application of c. l. rate on actual weight necessary to load where two or more consignments are made at one time by one consignor to one consignee at one destination and the minimum c. l. weight is exceeded. Lower rates were named in other tariffs which coupled with special rule made lower charges, but which in connection with applicable minimum made higher charges. Contention that lower rates, disregarding minimum weights, were applicable in connection with special rule, not sustained, since rates published in tariffs are governed by provisions contained therein, and rates are applicable only in connection with minimum weights published in tariffs naming such rates. Bailey Co. v. I. C., 104 I. C. C. 255.

(c) Following Pittsburgh Crucible Steel Co., 81 I. C. C. 659, rate on furnaces and furnace parts from Holland Mich., to Chicago higher than contemporaneous rate from Detroit, a farther distant point, found unreasonable, since tariffs naming rate from Detroit carried a rule 77 provision. Holland Furnace Co. v. A., T. & S. F., 104 I. C. C. 286, 289.

(d) Tariffs must be read in strict accordance with their terms. Lewiston Elevator Co. v. C. G. W., 104 I. C. C. 473, 474.

(e) Failure of carriers to publish their rates and charges in clear and unmistakable terms, as required by tariff rules, may not be used as a cloak to defeat claims of shippers. In construing doubtful ambiguous tariffs, commission has always resolved doubt against party responsible for having such tariffs in effect. North Packing & Provision Co. v. Director General, 104 I. C. C. 607, 614.

(f) In interpreting a tariff, terms thereof must be taken in sense in which they are generally understood and accepted commercially. Iron and Steel Articles, 104 I. C. C. 616, 621.

(g) Technical construction of one portion of the act may not be relied upon by carriers to justify a violation of other provisions. Mfrs. Asso. v. P. R. R., 107 I. C. C. 219, 236.

(h) Combination rate assessed on lumber moving from Westwood, Calif., to Pensacola, Fla., found to have been inapplicable, inasmuch as a lower combination could have been applied under rule 5-b of Tariff Circular 18-A based on New Orleans. Carrier contended that since rule 5-b was not made a part of tariff, it did not constitute basis for determining tariff rates. This rule, however, definitely determines applicable rates and its incorporation in tariffs is not necessary. Reparation awarded. Red River Lumber Co. v. Director General, 107 I. C. C. 671.

(i) A carrier may not arbitrarily set aside its tariff provisions without due notice in the proper form. Lexington Elevator & Mill Co. v. B. & O., 109 I. C. C. 542, 544.

(j) An unrestricted rate to Chicago found applicable on shipments of sand and gravel moving during Federal control from Hammond, Ill., to sidings located within Chicago district. While it was intention of carriers to apply a rate published to Division Street to all points within what the carrier considers its Division Street district, that fact can not be definitely ascertained from tariffs, which are ambiguous. Tariffs are to be construed strictly, the intention of framers is not controlling, and where doubt exists as to meaning of a tariff provision its construction must be resolved in favor of shippers. American Sand & Gravel Co. v. Director General, 109 I. C. C. 557.

(k) Shipment of carbide of calcium from Duluth, Minn., to Kingman, Ariz., was routed via short-line route through Denver over line of Union Pacific. A lower rate applied over various other routes, but tariff provision restricted its application in connection with Union Pacific by providing that " rates from or via points on the U. P. will not apply in connection with the Santa Fe via junctions in Kansas, nor in connection with Santa Fe via Denver * * *." Upon contention that phrase "in connection with the Santa Fe" was broad enough to cover transportation by that line anywhere en route, and phrase "via Denver" was broad enough to cover any interchange at Denver and did not limit first phrase to mean "in connection with the Santa Fe at Denver," HELD: Inasmuch as delivery at destination could be made only by Santa Fe, effect of such construction would be to exclude Union Pacific entirely from the haul. Tariff, being ambiguous, construed against the framer and lower rate found applicable in connection with all workable lines except Union Pacific. Reparation awarded. Central Commercial Co. v. A., T. & S. F. 109 I. C. C. 639.

(l) A failure strictly to observe the requirements of tariff circular 18-A in the publication of tariffs while a matter to be dealt with between the Commission and the carriers does not, in itself, invalidate the rate in the one tariff. Burlington Shippers Asso. v. C. B. & Q. R. R., 112 I. C. C. 533, 537.

(m) Rules for applying rates which require computations on part of users of tariffs should, in general, be avoided. Brick and Clay Products in the South, 113 I. C. C. 380, 382.

(n) The failure of defendants to publish their rates and charges in clear and unmistakable terms, as required by the tariff rules, may not be used as a cloak to defeat the claims of shippers. In construing doubtful and ambiguous tariffs, the commission has always resolved the doubt against the party responsible for having such tariffs in effect. Olsen v. A. G. S. R. R., 115 I. C. C. 195, 197.

(o) Tariffs are to be construed according to their language, and the intention of the framers is not controlling. Lautz Marble Corp. v. E. R. R., 115 I. C. C. 543, 544.

(p) Complainant attacked commodity rates charged on 21 cars of petroleum products shipped between September 19, 1921, and January 23, 1922, from Gates and Port Arthur, Tex., to Alamosa, Leadville, Monte Vista, and Salida, Colo., as inapplicable in violation of section 6. Lelands tariff I. C. C. 1308 named joint commodity rates to Alamosa of 133c, 139c to Leadville and Monte Vista, and 124c to Salida. Contemporaneously Countiss I. C. C. 1089 carried a rate of 98c from Gates and Port Arthur to Deming, N. M. Whatever may have been the intention of the defendant carriers with respect to restricting the application of the lower rate, the tariff must be construed in accordance with its language. If the carriers desired to exclude the application of the Deming rate to points on defendant's line they had it in their power to do so by plain language. HELD: Rates charged inapplic-

able, applicable rate 98c, reparation awarded. Texas Company v. B. S. L. & W. Ry., 115 I. C. C. 572.

(q) In construing doubtful or ambiguous tariffs the commission has always resolved the doubt against the carriers publishing the tariffs. Texas Co. v. B. S. L. & W. Ry., 115 I. C. C. 572, 574.

(r) Increase or reduction symbols do not affect the validity or applicability of the items to which they refer. General Motors Truck Co. v. G. T. W. Ry., 118 I. C. C. 99, 103.

(s) Although it is true, that the commission has found that the intention of the framers of a tariff is not controlling and that tariffs are to be construed according to the language used, it has also found that a fair and reasonable construction should be given in the light of all the pertinent provisions considered together. General Motor Truck Co. v. G. T. W. Ry., 118 I. C. C. 99, 104.

(t) Although doubts as to the meaning of a tariff must be resolved against the carrier and in favor of the shipper, the doubt must be a reasonable one; and in interpreting a tariff the terms used must be taken in the sense in which they are generally understood and accepted commercially, and neither carriers nor shippers can be permitted to urge for their own purposes a strained and unnatural construction. General Motor Truck Co. v. G. T. W. Ry., 118 I. C. C. 99, 104.

(u) Combination rate on furniture from Oklahoma City, Okla., to Jackson, Miss., found applicable. Complaint sought application of a lower third-class joint rate carried in a tariff which contained the restriction that "Rates between Jackson, and Natchez, Miss., will apply northbound only in connection with C. R. I. & P. no southbound rates in effect," contending that the rule was ambiguous and failed to restrict application of lower rate southbound. But shipment moved southbound to Jackson and since the restrictive clause definitely states "no southbound rates in effect," such contention not sustained. Orgill Bros. & Co. v. C., R. I. & P., 115 I. C. C. 23.

(v) The term "base point" as used in rule 5(b) of Tariff Circular 18-A was not intended to refer to stations named in tariffs as basing points, or even to well-known basing points, but was used merely to refer to any point upon which rates may base. Birmingham Tariff Bureau v. Director General, 115 I. C. C. 33, 36.

(w) In judging reasonableness and character of a tariff rule, consideration must be given to effect of rule on both railroad and shipper. Victor-American Fuel Co. v. D. & S. L., 115 I. C. C. 169, 173.

(x) Charges were collected on steel bars, round, square, and bent, and used for concrete reinforcements, under tariff description covering "bar, band, boiler, hoop, plate, and rod iron or steel * * *." Contemporaneously same tariff named lower rates in another item on " * * * sheet bars or bars of steel," a reference note thereto reading "These rates will also apply on sheet bars (for the manufacture of tin plate) * * *." HELD, note in no way restricted application of lower rates, and if it was carriers' intention, as contended, to limit them to sheet bars or sheet bars of steel, they should have done so by clear and unequivocal language. Having failed to do so, conflicting rates were therefore in effect, and shipper was entitled to the lower. See also 104 I. C. C. 607. Refund of overcharges directed. Olsen v. A. G. S. R. R., 115 I. C. C. 195.

(y) Tariff carried notation "applicable only via Seaboard Air Line as initial carrier and only on traffic originating at points south and west of Jacksonville." Upon contention that notation included points on all lines in Florida south and west of Jacksonville or on traffic turned over to the S. A. L. at that point. HELD, given a reasonable construction such notation restricted lower rate to traffic originating only on Seaboard Air Line south and west of Jacksonville. Wauchula Development Co. v. A. C. L., 115 I. C. C. 207.

(z) Tariffs are to be construed according to their language and intention of framers is not controlling. Lautz Marble Corp. v. E. R. R., 115 I. C. C. 543, 544.

(aa) Although intention of tariff framers is not controlling and tariffs are to be construed according to language used, a fair and reasonable construction should be given in the light of all pertinent provisions considered together. See 92 I. C. C. 211, 214; 101 I. C. C. 74, 76. General Motors Truck Co. v. G. T. W. Ry., 118 I. C. C. 99, 104.

(bb) The Commission can not too strongly condemn tariff provisions which not only fail to comply with section 6 but also directly contravene the tariff rules prohibiting the inclusion of any provision in the tariff which makes the amount of the charge dependent upon the measure of a rate or charge published in the tariffs of some other carrier. Davis-Noland-Merrill Grain Co. v. St. L. S. F. Ry., 120 I. C. C. 87, 89.

(cc) Tariffs must be construed strictly according to their language; the intention of the compiler is not controlling; and doubt as to the meaning of the tariff must be resolved in favor of the shipper and against the carriers. But the doubt must be a reasonable one, and neither shippers nor carriers may be permitted to urge a strained or unnatural construction. In arriving at a proper determination of this question the tariff must be considered in its entirety, and if it may be said after consideration of the pertinent provisions and limitations that a fair and reasonable construction of the tariff expresses the intention of the framers such intention should control. Gates Marble & Tile Co. v. C. P. & St. L. Ry., 120 I. C. C. 275, 277.

(ddee) The intent of a tariff is not superior to its terms, applied within reason. Delmar Co. v. G. N. Ry., 120 I. C. C. 530, 535.

(ff) Rates lawfully established remain in effect until specifically canceled. See 57 I. C. C. 547. Virginia & Rainy Lake Co. v. D., W. & P., 120 I. C. C. 131, 132.

(gg) Doubt as to meaning of a tariff must be a reasonable one and neither shippers nor carriers may be permitted to urge a strained or unnatural construction. In arriving at a proper determination of this question a tariff must be considered in its entirety, and if it may be said after consideration of pertinent provisions and limitations that a fair and reasonable construction expresses intention of framers, such intention should control. See 92 I. C. C. 211. Gates Marble & Tile Co. v. C., P. & St. L., 120 I. C. C. 275, 277.

(hh) As between two constructions of a tariff, that one should be adopted which gives effect to the whole, rather than one which creates a conflict. See 81 I. C. C. 241, 244. Gates Marble & Tile Co. v. C., P. & St. L., 120 I. C. C. 275, 277.

(ii) Character of an article shipped and not use to which it is put determines the rate applicable thereon. Menasha Wooden Ware Co. v. D., S. S. & A., 120 I. C. C. 415, 416.

(jj) The intent of a tariff is not superior to its items applied within reason. Delmar Co. v. G. N. Ry., 120 I. C. C. 530, 535.

(kk) It is well settled that shippers are chargeable with a knowledge of the rates and conditions under which they ship. Rates lawfully in effect continue to remain so until canceled by other rates lawfully established. Murphysboro Paving Brick Co. v. M. & O. R. R., 122 I. C. C. 15, 16.

(ll) The verbal agreement hereinbefore referred to under which certain named fish were accepted for transportation as fish bait, is of no legal effect in determining the applicable rate on shipments of those fish as such agreement was not published in tariffs on file with the Commission. Harlem & Morrisiana Transp. Line v. N. Y. N. H. & H. R. R., 123 I. C. C. 480, 483.

(mm) Complainant alleged charges collected on four cars of hollow building tile, shipped during Dec. 1923 from Volant, Pa., to Hamersville, O., were unreasonable. Charged $2.40 to Cincinnati plus sixth class of 11.5c beyond. Applicable rate to Cincinnati was $2.20 per ton, overcharge to be refunded. The factor of 11.5c was reduced to 6.5c Nov. 28, 1924. HELD, rate attacked unreasonable to the extent the factor south of Cincinnati exceeded 6.5c reparation awarded. Moores Coney Co. v. C. G. & P. Ry., 123 I. C. C. 559.

(nn) Publication by initial carrier of rule for computation of rate on through shipment of gasoline, is constructed from combination of separately established rates, HELD binding on it, notwithstanding tariff of connecting carrier did not cantain such rule, especially where this merely carried out Director General's intention. Empire Refining Co. v. Davis, Director General, 6 Fed. (2d) 305.

(oo) Manifest inadvertent, or clerical omissions in freight schedules, as well as statutes, will be supplied by court to avoid absurd and mischievous consequences and give effect to intent ascertainable from context. Gunnison Sugar Co. v. Public Utilities Commission of Utah, (Utah, 1927) 256 Pac. 790.

(pp) Although doubt as to meaning of a tariff must be resolved in favor of

the shipper and against the carrier which compiled it, the doubt must be a reasonable one. Di Giorgio Fruit Co. v. A. E. R. R., 128 I. C. C. 31, 33.

(qq) The Commission has repeatedly stated that, in interpreting a tariff, the terms used must be taken in the sense in which they are generally understood and accepted commercially and where the meaning so construed is clear it must govern. Di Giorgio Fruit Co. v. A. E. R. R., 128 I. C. C. 31, 33.

(rr) Where there is doubt as to meaning of a tariff, so long as it is a reasonable doubt, it must be resolved in favor of shipper and against carrier. Paraffine Companies v. S. P., 128 I. C. C. 421, 423.

(ss) Complainant contended that the minimum scale is inapplicable because in its publication the publishing agent failed to denote an advance. This contention is without merit. Lynchburg Traffic Bureau v. B. & O. R. R., 128 I. C. C. 557, 558.

(tt) The Commission can not consider only that part of the item that is favorable to complainants contention, and ignore other provisions of the item that make clear its application. Morse Dry Dock & Repair Co. v. A. C. L. R. R., 132 I. C. C. 351, 352.

(uu) Carriers tariffs must be construed strictly according to their language; the intention of the framers is not controlling; although doubt as to the meaning of a tariff must be resolved in favor of the shipper and against the carrier which compiled it the doubt must be a reasonable one. United States Can Co. v. A. & V. Ry., 132 I. C. C. 363, 368.

(vv) The Commission has frequently stated that carriers tariffs must be construed strictly according to their language, and the intention of the framers is not controlling. It has also stated that although doubt as to the meaning of a tariff must be resolved in favor of the shipper and against the carrier which compiled it, the doubt must be a reasonable one; that the terms of a tariff must be taken in the sense in which they are generally understood and accepted commercially; that neither carriers nor shippers can be permitted to urge for their own purposes a strained and unnatural construction; that all of the pertinent provisions of a tariff must be considered together; and that if those provisions may be said to express the intention of the framers under a fair and reasonable construction the intention must be given effect. As between two constructions, that one should be adopted which gives effect to the whole rather than one which creates conflicts. Prentice v. S. P. Co., 132 I. C. C. 409.

(ww) Invoices alone are not sufficient to establish character of commodity shipped or determine rates applicable. Glarner & Co. v. S. Ry., 129 I. C. C. 75, 76.

(xx) Circulars published by the Weighing and Inspection Bureau not published as tariffs by carriers or filed with commission are not cnotrolling as are traiffs or other publications filed in accordance with section 6 of the act. Glarner & Co., v. .S Ry., 129 I. C. C. 75, 77.

(yy) Coal from southern Illinois, Indiana, and Kentucky to points within Chicago switching district were assessed local rates to Chicago plus arbitraries beyond. Contemporaneously lower proportional rates were in effect to Chicago but were restricted to apply only to points beyond the switching district via Chicago and to points on certain lines within the district to which no through rates were published. While complainants contend that rates assessed were not through rates and lower proportionals were applicable, carriers urge that since both locals and arbitraries were concurred in by all participating carriers, they were through as well as joint rates. FOUND: While doubt as to meaning of tariff provisions is ordinarily construed against the maker, such doubt must be reasonable after consideration of pertinent tariff provisions. Here it is reasonably apparent that local rates plus arbitraries were through rates within meaning of restrictive tariff provisions and that rates assessed were applicable. Chicago Coal Merchants Asso. v. N. Y. C., 129 I. C. C. 203.

(zz) Hypothetical ilustrations, which serve to show how shippers, in certain circumstances, may avoid payment of destination switching charges upon strictly local traffic by exercising care in selection of inbound billing and outbound routing on transit shipments, have no direct bearing upon a reasonable interpretation of tariff provision

upon which complaint rests. Southern Kansas Millers Club v. A. T. & S. F., 129 I. C. C. 632.

(3a) Combination rates on wrought-iron pipe from Lorain, Ohio, to various Kansas points were assessed on two different bases, the lower combination being based on Jacksonville, Ill. Tariff pulishing higher combination provided, in absence of specific rates, a specific manner of constructing combination by addition of basing rates to factor from Lorain to Mississippi River crossing. Under rule 5 (c) of Tariff Circular 18-A if specific manner of constructing rates had not been prescribed, the lower combination would have been applicable, but, under the circumstances, higher combination was applicable. National Tube Co. v. A., T. & S. F., 129 I. C. C. 693.

(3b) Rates charged on cotton fabrics, l. c. l. from North Carolina points to Galveston, Tex., found inapplicable. Governing tariff stated that it was subject to western classification, "Except as otherwise provided," and provided for alternative application of rates in section 2 or 3, whichever were lower. No minimum weight was provided in connection with lower rates under section 3, and rates were there applicable to actual weight of shipment. However, since rule 15 of the western classification provided for assessment of separate loading and unloading charges on l. c. l. freight moving at c. l. rates, and rule 13 required a minimum charge of $15 per car, these rules must be considered in determining rates applicable to various shipments. Refund of overcharges directed on basis indicated Southern Traffic & Audit Asso. v. I.-G. N., 129 I. C. C. 723.

(3c) In determining rate chargeable, all parts of tariff field should be considered, and, if plain meaning can be gathered therefrom, effect should be given to it, and tariff must be construed in its entirety, considering both limitations on its title page and rules contained therein. Lothrop v. Spokane, P. & S. Ry. Co., 10 Fed. (2d.) 225. Same v. Oregon-Washington R. & Nav. Co., 10 Fed. (2d.)225. Same v. Southern Pac. Co., 10 Fed. (2d.) 225.

(3d) Traffic bureaus and organizations fixing rates for carriers act somewhat in legislative capacity to conserve their best interests, and rates, when presented to shipper and accepted, becomes a hard and fast contract, which is to be construed in case of ambiguity liberally in favor of shipper. Lothrop v. Spokane, P. & S. Ry. Co., 10 Fed. (2d.) 225. Same v. Oregon-Washington R. & Nav. Co., 10 Fed (2d.) 225. Same v. Southern Pac. Co., 10 Fed. (2d.) 225.

(3e) If amendment of carrier's tariffs creates an ambiguity only, shipper is entitled to that construction most favorable to him Lothrop v. Spokane, P. & S. Ry. Co., 10 Fed. (2d.) 225. Same v. Oregon-Washington R. & Nav. Co. 10 Fed. (2d.) 225. Same v. Southern Pac. Co. 10 Fed. (2d.) 225.

(3f) Tariff fixing rates must be strictly construed in accordance with the printed language. Lothrop v. Spokane, P. & S. Ry. Co. 10 Fed. (2d.) 225. Same v. Oregon-Washington R. & Nav. Co. 10 Fed. (2d.) 225. Same v. Southern Pac. Co., 10 Fed. (2d.) 225.

(3g) In absence of limitation in schedules filed with Interstate Commerce Commission, limiting schedules to strictly interstate shipments as distinguished from shipments in foreign commerce, Circuit Court of Appeals will assume that schedules were intended to comply with full duty imposed upon carrier, so that rates therein would apply to shipments moving in commerce with foreign countries as well as shipments in interstate commerce. Chandler v. Pennsylvania R. Co. 11 Fed. (2d.) 39.

(3h) Form of rate schedule is for Interstate Commerce Commission, which may approve or disapprove splitting of charges. J. C. Famechon Co. v. Northern Pac., 11 Fed. (2d.) 312.

§8. Ambiguity.

(a) An unrestricted rate to Chicago found applicable on shipments of sand and gravel moving during Federal control from Hammond, Ill., to sidings located within Chicago district. While it was intention of carriers to apply a rate published to Division Street to all points within what the carrier considers its Division Street district, that fact can not be definitely ascertained from tariffs which are ambiguous. Tariffs are to be construed strictly, the intention of

framers is not controlling, and where doubt exists as to meaning of a tariff provision its construction must be resolved in favor of shippers. American Sand & Gravel Co. v. Director General, 109 I. C. C. 557.

(b) Shipment of carbide of calcium from Duluth, Minn., to Kingman, Ariz., was routed via short-line route through Denver over line of Union Pacific. A lower rate applied over various other routes, but tariff provision restricted its application in connection with Union Pacific by providing that "rates from or via points on the U. P. will not apply in connection with Santa Fe via junctions in Kansas, nor in connection with the Santa Fe via Denver * * *." Upon contention that phrase "in connection with the Santa Fe" was broad enough to cover transportation by that line anywhere en route, and phrase "via Denver" was broad enough to cover any interchange at Denver and did not limit first phrase to mean "in connection with the Santa Fe at Denver," HELD: Inasmuch as delivery at destination could be made only by Santa Fe, effect of such construction would be to exclude Union Pacific entirely from the haul. Tariff, being ambiguous, construed against the framer and lower rate found applicable in connection with all workable lines, except Union Pacific. Reparation awarded. Central Commercial Co. v. A., T. & S. F., 109 I. C. C. 639.

(c) In case of ambiguity, the familiar rule of construction is that a tariff must be construed against the framer. Central Commercial Co. v. A., T. & S. F., 109 I. C. C. 639, 640.

(d) Manner in which carrier listed stations in its tariff and as to how rates should be applied, resulted in a conflict as to applicable rates. HELD: Where there is doubt as to meaning of a tariff provision, doubt should be resolved against maker and in favor of shipper. Reparation awarded. Wagner Electric Corp. v. Director General, 112 I. C. C. 57.

(e) Carriers tariffs must be construed strictly according to their language; that the intention of the framers is not controlling; that, although doubt as to the meaning of a tariff must be resolved in favor of the shipper and against the carrier which compiled it, the doubt must be a reasonable one; that the terms of a tariff must be taken in the sense in which they are generally understood and accepted commercially, and neither carriers nor shippers can be permitted to urge for their own purposes a strained and unnatural construction; and that all of the pertinent provisions of a tariff must be considered together, and, if these provisions may be said to express the intention of the framers under a fair and reasonable construction, that intention must be given effect. Forbes & Sons Piano Co. v. A. G. S. R. R., 118 I. C. C. 185, 186.

(f) On petroleum products from Gates and Port Arthur, Tex., to certain Colorado points, tariff rule provided that if rates and charges in an agency tariff applicable from same origin points to Lago, Utah, or Deming, N. Mex., respectively, made lower charges than those provided in another tariff, the lower rates to Lago or Deming, respectively, would apply. Upon contention that word "respectively" applied to routes and not to rates. HELD, while it may have been carriers' intention to restrict application of lower rate to their own lines, tariff must be construed in accordance with its language. Tariff publishing the rule contained no routing restrictions and made all destinations therein, with one exception, subject thereto; nor was there any restriction that particular destination points must be directly intermediate to points carrying lower rates and if it was desire of carriers to exclude application of the Deming rate to points on their lines they had it in their power to do so by plain language. Here the tariff was doubtful or ambiguous and must be resolved against framers. Refund of overcharges directed. Texas Co. v. B., S. L. & W., 115 I. C. C. 572.

(g) In construing doubtful or ambiguous tariffs the doubt is always resolved against carriers publishing the tariffs. Finch Bros. v. C., St. P., M. & O., 123 I. C. C. 541, 542.

(hi) The Commission has repeatedly found that where there is a reasonable doubt as to the meaning of tariff provisions the doubt should be resolved against the maker of the tariff and in favor of the shipper. Brunswick Balke Collender Co. v. B. & O. R. R., 126 I. C. C. 747, 750.

(j) Ambiguous tariffs are to be construed favorably to shippers. Southern Pac. Co. v. Lothrop, 15 Fed. (2d) 486.

(k) The Commission has stated that, although doubt as to the meaning of a tariff must be resolved in favor of the

shipper and against the carrier which compiled it, the doubt must be a reasonable one. Di Giorgio Fruit Co. v. A. E. R. R., 128 I. C. C. 31, 33.

(l) The Commission has repeatedly found that where there is doubt as to the meaning of a tariff provision the doubt should be resolved against the maker and in favor of the shipper, but the doubt must be reasonable after consideration of all the pertinent provisions of the tariff or tariffs. Chicago Coal Merchants Asso. v. N. Y. C. R. R., 129 I. C. C. 203, 207.

(m) Where there is doubt as to the meaning of a tariff provision the doubt should be resolved against the maker and in favor of the shipper. Fewell Tea Co. v. D. L. & W. R. R., 129 I. C. C. 424, 426.

§8½. Amendments and supplements.

(a) A special supplement to a tariff issued by a railroad company in form, pursuant to special permission of the Interstate Commerce Commission, and purporting to increase freight rates, is valid and effective if it fairly sets forth, when construed as an entirety, (1) the amendments made, (2) the cancellation of all original rates relating to the same service to which the amendments pertain, and (3) information as to where all changes from the original tariff that are effective on the date thereof may be found. McCaffrey Bros. Co. v. Chicago, B. & Q. R. Co., (Neb., 1926) 207 N. W. 503.

(b) Parts of a supplement to a freight tariff may be canceled and the remainder of the supplement continue in effect. McCaffrey Bros. Co. v. Chicago B. & Q. R. Co., (Neb., 1926) 207 N. W. 503.

(c) A tariff, or a supplement thereto, must be construed in its entirety, considering both the limitations on its title page and the rules contained therein. Supplements are a part of the tariff the same as though originally incorporated therein. McCaffrey Bros. Co. v. Chicago, B. & Q. R. Co., (Neb., 1926) 207 N. W. 503.

(d) The Interstate Commerce Commission authorized a carrier to issue a supplement to its tariff, on less than the statutory notice, canceling and reissuing a former supplement unchanged except to correct a specified mistake. In the new supplement a rate of 17.5 cents, which should have remained unchanged, appeared as 1.5 cents, the figure 7 having been dropped out in printing. HELD that this supplement did not establish the 1.5-cent rate as a lawful rate, as it was not authorized by the commission and the statutory notice was not given. Illinois Cent. R. Co. v. Van Dusen, Harrington Co., (Minn., 1927) 212 N. W. 940.

§ 8½a. Basis Book.

(a) Section 6 of the act deals with two classes of rates, joint through rates and, in the absence thereof, application of separately established rate factors applicable to through movement over through route. In addition to the two methods of rate making the commission has, in rule 5 (b) of Tariff Circular 18—A, outlined another plan of making through rates. FOUND: That the so-called Florida basis book containing proportional rate factors used for making through combination rates on Jacksonville and other Florida junction points does not conform to rule 5 (b), nor are carriers serving a large part of origin territory here involved named as participating carriers. The basis book, therefore, can only be considered as containing proportional rates, which may be used in combination when such combinations are lower than other lawfully established combination rates applicable over route of movement. Lumber from or to Florida Points, 112 I. C. C. 133, 138.

§9. Cancellation.

(a) Carriers having assessed rate applicable under old tariff subsequent to issuance of new tariff, rendered bill for undercharges. Upon contention that old rate was applicable since old tariff was not specifically canceled by a supplement thereto, notwithstanding fact that new tariff contained a statement cancelling the old tariff, HELD: This contention is without merit. Rule 8 (e) of Tariff Circular 18-A provides that if a tariff is canceled by issuance of a similar tariff to take its place, cancellation notice must not be given by supplement, but by notice printed in new tariff. Rate subseqently assessed was therefore applicable and outstanding undercharges should be collected. Chicago Heights Mfrs. Asso. v. B. & O. C. T., 123 I. C. C. 636, 637.

(b) HELD, under the evidence in this case, special supplement No. 7 to tariff issued by the Chicago, Burlington & Quincy Railroad Company, taking effect March 10, 1921, cancels all prior rates on the commodities therein enumerated,

and the rates therein prescribed were legally in effect during the time the services set forth in plaintiff's petition were performed. McCaffrey Bros. Co. v. Chicago, B. & Q. R. Co., (Neb., 1926) 207 N. W. 503, 504.

§9a. Combination Rule.

See Infra §13a.

(a) Tariffs provided that if other tariffs make a lower charge such lower rates would be applicable. They also contain special rules providing for application of c. l. rate on actual weight necessary to load where two or more consignments are made at one time by one consignor to one consignee at one destination and the minimum c. l. weight is exceeded. Lower rates were named in other tariffs which couple with special rule made lower charges, but which in connection with applicable minimum made higher charges. Contention that lower rates, disregarding minimum weights, are applicable in connection with special rule, not sustained, since rates published in tariffs are governed by provisions contained therein and rates are applicable only in connection with minimum weights published in tariffs naming such rates. Bailey Co. v. I. C. C., 104 I. C. C. 255.

(b) Fremont, Ind., and Montgomery and Reading, Mich., are intermediate to Angola, Ind., and Hillsdale, Mich., over different routes. On shipments moving from these origin points rates from Angola, which were higher than from Hillsdale were assessed. FOUND: That Angola rates were legally applicable since tariff provided that where rates were not specifically named from origin points located directly between two points from which rates were named, such intermediate points would take higher of named rates. Ohio Farm Bureau Federation v. N. Y. C. 104 I. C. C. 490.

(c) Rate on rough lumber from North Lewisburg, Ohio, to Chicago, found unreasonable to extent it exceeded lower contemporaneous rate from Woodlawn (Cincinnati), a farther distant point of origin. Applicable tariff carried rule 77 of Tariff Circular 18-A, which provided that upon reasonable request therefor the lower rate would be established from intermediate point. However, following 69 I. C. C. 403, 405, a request for publication of lower rate prior to movement was not essential in order that shipper might take advantage of the rule. Reparation awarded. Liberty Cooperage & Lbr. Co. v. E. R. R., 107 I. C. C. 165.

(d) Combination rate assessed on lumber moving from Westwood, Calif., to Pensacola. Fla., found to have been inapplicable, inasmuch as lower combination could have been applied under rule 5-b of Tariff Circular 18-A based on New Orleans. Carrier contended that since rule 5-b was not made a part of tariff, it did not constitute basis for determining tariff rates. This rule, however, definitely determines applicable rates and its incorporation in tariffs is not necessary. Reparation awarded. Red River Lumber Co. v. Director General, 107 I. C. C. 671.

(e) Proposal to cancel commodity rates on coal tar and pitch based on a minimum of 60,000 pounds from Birmingham, Ala., and group points, to certain points in the Carolinas, leaving applicable higher commodity rates based an a minimum of 40,000 pounds, designed to forestall requests for publication of lower rates to intermediate points under rule 77 of Tariff Circular 18-A, found not justified. Extension of these lower rates to intermediate points for private consumption seems not only proper, but they should be extended further to all intermediate points to which these commodities move for road-building and roof-making purposes. Coal Tar and Pitch from Birmingham, 109 I. C. C. 73.

(f) Shipments originated at or were destined to points on nonfederally controlled roads and moved over routes embracing carriers under Federal control. Full combinations, both factors of which were increased under General Order No. 28 of director general, were assessed. The combination rule which provided for application of but a single increase to through rates made on combination, was published in tariffs of individual lines. HELD: Applicable rates were those made bv applying combination rule in instances where one or more of the individual tariffs contained or made appropriate reference thereto, and in instances where none of the individual tariffs contain or made such reference the combinations to and from junctions were applicable. Pacific Coast

Shippers Asso. v. Director General, 109 I. C. C. 166.

(g) Rate charged under an exception to classification on prepared roofing over the Chicago and Eastern Illinois from Chicago, Illinois to Terre Haute, Ind., found illegal. Legal rate found to be a specific joint commodity rate published in a tariff to which the C.& E. I. was a party from Chicago to Midland City, Ill., applicable over its line to Terre Haute and the Pennsylvania beyond. This tariff carried the intermediate rule which provided that rates named therein would apply from or to directly intermediate points not indexed, or if indexed, but with no rate shown, such tariff not naming a specific rate to Terre Haute. Refund of overcharges directed. Elaborated Ready Roofing Co. v. C. & E. I., 109 I. C. C. 401.

(h) Shipments from Wilmington and Modesto, Calif., to Jacksonville, Fla., were routed by shipper and a joint through rate assessed. Governing tariff contained alternative rule providing for application of aggregate-of-intermediate rates when less than through rate, and a lower combination unrestricted as to routing applied via Memphis. Upon contention that under rule 5(b) of Tariff Circular 18-A such lower combination was applicable, HELD: Only application of rule 5(b) is when "no joint rate applies," or "in the absence of a specified rate," and therefore had no application in the situation here presented. Moreover, had shipments moved via Memphis an out-of-line haul of more than 1,000 miles would have resulted. Joint rate assessed found applicable. Rosser & Fitch v. Director General, 109 I. C. C. 724.

(i) Rate on bulk corn from Jefferson, S. Dak., to Fowler, Colo., found applicable, but unreasonable to extent it exceeded a lower rate contemporaneously in effect to Trinidad, a more distant point, to which Fowler is directly intermediate. Tariff carrying lower rate contained an intermediate rule under provisions of which rates apply to intermediate points only when they are not named in the tariff. Fowler was named in the tariff but not in item carrying rates on this commodity between points named, consequently the Trinidad rate was not applicable to Fowler. See 36 I. C. C. 523 and 45 I. C. C. 183. Later carriers provided by addition of a note to the rule for application of Trinidad rate to Fowler and other points; thus the situation presented clearly raises a presumption of unreasonableness, which carriers made no attempt to meet. Reparation awarded. Summitt Grain Co. v. C., M. & St. P., 109 I. C. C. 763.

(j) Carrier incorporated in its tariff a note for purpose of applying the intermediate rule under which rates to farther distant points would apply at intermediate stations. HELD: As commission's tariff rules require publication of rates in clear and specific manner, and include a rule extending rates to intermediate points which is not subject to misinterpretation, tariff should be amended by incorporating therein a rule substantially in accord with that appearing in Tariff Circular 18-A. See also 66 I. C. C. 472, 473. Summitt Grain Co. v. C., M. & St. P., 109 I. C. C. 763, 764.

(k) Tariff governing one factor of combination rate contained provision to effect that rates named therein were subject to combination rule carried in an agency tariff, which provided a specific method for constructing through rates made on combination. Tariff of carrier governing other factor contained no combination rule, or similar reference, and provided specifically that rates named therein were not subject to agency tariff. HELD: Reference to agency tariff was equivalent to publication of the rule in rate tariff of the individual line, which must protect the aggregate rate constructed by use of the rule. See 93 I. C. C. 186. The principle laid down in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, is controlling, and there was a holding out to shipper of the rate constructed in conformity with the rule, which publishing carrier must protect. Overcharges found and reparation awarded. Phosphate Products Corp. v. C. & O., 112 I. C. C. 161.

(l) Shipment of dried lima beans from Santa Monica, Calif., to Tampa, Fla., billed via a rail-and-water route was diverted at request of shipper to an all-rail route. Combination rate based on Jacksonville, Fla., assessed. FOUND: As there was no published joint all-rail rate from point of origin to destination, shipper was entitled to lowest combination, which, under rule 5 (b) of Tariff Circular 18—A, was a combination based on Memphis and Jacksonville. Reparation awarded for

overcharges. Harman & Hulsey v. Director General, 112 I. C. C. 275.

(m) Rate charged on baled cotton transported over an interstate route from Brownsville, Tenn., to Delano, Tenn., found inapplicable. Lower combination in effect referred to a tariff carrying so-called combination rule which provided a specific method for constructing through rates made on combination. While schedule carrying combination rule applied "where no published through rates are in effect from point of origin to destination," and there was a through rate from Brownsville to Delano over a route other than route of movement, conclusions reached in 95 I. C. C. 451, wherein commission held that this rule is applicable in the absence of a joint rate over the route traversed, regardless of joint rates over other routes, is controlling. Applicable rates found to be those constructed by use of combination rule and reparation awarded for overcharges. Gunther & Co. v. L. & N., 112 I. C. C. 387.

(n) Upon contention of complainants that, under an intermediate clause and open routing of the tariffs, where point of destination was intermediate to a named point designated as taking a particular group rate, a shipment could be routed over any lines parties to tariffs and that hence the rate to any point not specifically named would be that applicable to unnamed intermediate points located between two named points, HELD: Not only destinations named are indexed within meaning of intermediate rule in question, but all points falling within the descriptions of "all points," "all other points," and "unnamed intermediate points located between two of the above-named points" are likewise indexed, i. e., a point in the higher rated territory, covered by the description "all other points" is not to be regarded as located between two named points merely because there is a possible route from one named point to another through such higher rated territory. Pacific Coast Shippers' Asso. v. A., C. & Y., 112 I. C. C. 527.

(o) Rates on lumber and other forest products from points in Washington, Oregon, Idaho, Montana, and British Columbia, to destinations in Indiana, Michigan and Ohio, found illegal in some instances and legal in others due to construction of an intermediate clause. Construction given tariffs is warranted by their provisions considered as a whole, is reasonable under all circumstances, and is undoubtedly that intended by makers so far as their intention can be judged by tariffs. Construction sought by complainants would lead to absurd results. Pacific Coast Shippers' Asso. v. A., C. & Y., 112 I. C. C. 527.

(p) Rate on crushed stone from New Ulm, Minn., to Holstein, Iowa, found not unreasonable as compared with lower rates to Sac City and Lake View, Iowa, farther distant points, or with rates to other Iowa points for comparable distances. While an item in governing tariff carried the so-called intermediate rule which provided for application to unnamed points of rate to next more distant point, Holstein was itself named in the tariff, therefore rate to the next more distant point was not applicable. Everist & Co. v. C. & N. W., 113 I. C. C. 267.

(q) Complainant took advantage of unrestricted combination rules published in local tariffs of intermediate short lines by routing shipments over unusual routes. Shipments could have been billed without intervention of intermediate short lines. Tariffs of originating and delivering carriers specifically prohibited use of such rule and computation of rates by its use would require the intermediate roads to haul traffic for less than nothing. FOUND: Holding out principle laid down in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, is not controlling. In no case applying that principle was a carrier required to protect a rate less than nothing or surrender all its earnings to connections; nor does the act permit or require transportation without any charge or at less than no charge. When, as here, such a result is sought to be accomplished, it is to be condemned; and the commission may intervene to prevent unwarranted dissipation of carrier revenues regardless of where the responsibility lies. Combination rules here produce a result unlawful per se and are of no effect. Standard Oil Co. v. A., T. & S. F., 113 I. C. C. 597.

(r) Rule 77 of Tariff Circular 18-A was promulgated in order to obviate necessity of publishing commodity rates from and to intermediate points where shipments may never be made, and has no application where specific commodity rates apply from or to intermediate

points. See also 37 I. C. C. 372; 66 I. C. C. 611. Booth & Flinn v. P. R. R., 113 I. C. C. 613, 614.

(s) Complainant attacked combination rate of 48c charged on one carload of yellow pine lumber shipped on July 1, 1924, from Ragland, Miss., to Pittsburgh, Pa., as illegal, unreasonable, unjustly discriminatory and unduly prejudicial to extent it exceeded a rate of 44.5c. Shipment moved, as routed by complainants, over A. & V. to Meridian, A. G. S. to Birmingham L. & N. to Cincinnati and Pennsylvania beyond. Rate charged 29.5c to Cincinnati and 18.5c beyond. It is complainant's contention that these factors should be reduced in accordance with the combination rule to which appropriate reference was made in the tariffs carrying those factors, or 44.5c. HELD: Rate charged inapplicable and applicable rate was 44.5c, reparation awarded. Usher Bros. v. A. & V. Ry., 115 I. C. C. 89.

(t) When only one of the tariffs used in making combination rates on through shipments contains a rule that such rate will be subject to but a single increase, there is a holding out to the shipper of the rate so constructed which the carrier publishing the rule must protect. A provision in a tariff carrying rates which may be used in combination to the effect that the rates are subject to the combination rule in Jones I. C. U. S. 1 is equivalent to the publication of said rule in the rate tariff. Traffic Bureau of Knoxville v. Southern Ry., 115 I. C. C. 187, 188.

(u) Complainant attacked combination rate charged on 15 cars of sand shipped between Jan. 9 and 19, 1924 from Estill Springs to Rockwood, Tenn., as unreasonable and illegal. Shipments moved interstate over N. C. & St. L. to Chattanooga, Tenn., thence C. N. O. & T. P. 145 miles, charged $1.90, composed of 95c to Chattanooga and 95c beyond. The factor to Chattanooga was subject to the combination rule. HELD, rate of $1.60 applicable, reparation awarded. West Construction Co. v. N. C. & St. L. Ry., 115 I. C. C. 355.

(v) When one of the tariffs used in making combination rates on through shipments contains a rule that such rates will be subject to a single increase, there is a holding out to the shipper of a rate so constructed which the carrier publishing the rule must protect. West Construction Co. v. N. C. & St. L. Ry., 115 I. C. C. 355.

(w) Complainant attacked combination rate charged on gravel in carloads from Glencoe, Yeatman, and Jedburgh, Mo., to Greenville, Ill., during Oct., 1924, as unreasonable and unlawful. Shipments moved M. P., Terminal St. Louis, East St. Louis Connecting, and Pennsylvania, charged $1.44, composed of 50c to St. Louis and $1.24 beyond, subject to the combination rule. When the shipments moved there was in effect over the same route a combination rate of $1.24, 50c to St. Louis, 50c St. Louis to East St. Louis and 84c beyond, subjection to the combination rule. HELD, $1.24 applicable rate, reparation awarded. Van Fusen & Baumberger v. M. P. R. R., 115 I. C. C. 603.

(x) The publication of the socalled combination rule in one of the tariffs is a holding out of the manner of making combination rates on through shipments which the carrier publishing the rule must protect. Lehigh Portland Cement Co. v. B. S. & K. R. Ry., 118 I. C. C. 507, 508.

(y) Combination rates charged on common brick moving from Nashville, Tenn., to Morehead, Ky., found inapplicable. When shipments moved a specific commodity rate applied from Nashville to Maysville, Ky., and under an intermediate clause this rate applied from Nashville to Morehead. Shipments were therefore overcharged. Bush & Co. v. L. & N., 115 I. C. C. 45, 46.

(z) Combination rate on iron roofing from Delphos, Ohio, to Springfield, Tenn., found inapplicable. Tariff naming a lower rate to Bowling Green and Nashville, unrestricted as to routing, carried the so-called intermediate clause which provided for its application at intermediate destinations. While Springfield is not between Bowling Green and Nashville via direct route it is directly between them on a route over which lower rate applies. Reparation awarded. Cincinnati Sheet Metal & Roofing Co. v. P. R. R., 115 I. C. C. 133.

(aa) Rates on spelter by-products from Pittsburgh, Pa., to Trenton, N. J., found unreasonable to extent they exceeded lower rate contemporaneously in effect to farther distant points to which Trenton is intermediate, rates to farther distant points being published subject to

rule 77 of Tariff Circular 18-A. Reparation awarded. Lissberger & Co. v. P. R. R., 115 I. C. C. 521.

(bb) The publication of a rate under authority of rule 77 of Tariff Circular 18-A is a substantial compliance with requirements of section 4 of the act, and is equivalent to an admission by carriers that a higher rate from intermediate than from farther distant points in unreasonable. See 66 I. C. C. 611. Lissberger & Co. v. P. R. R., 115 I. C. C. 521, 525.

(cc) Shipments of refuse sand from Detroit, Mich., to Indianapolis, Ind., moved as routed by shipper. Applicable tariffs carried so-called intermediate clause, such clause via one of the routes being unrestricted in its application, whereas via the other route the clause contained phrase "on the same line." HELD, that on shipments moving via the unrestricted route the clause was applicable and lower rates provided thereunder applied. As to shipments moving over the other route the words "on the same line" in intermediate rule required that intermediate point be on line of same carrier as the more distant point to which a rate is published and since rails of delivering line did not reach the farther distant point the intermediate rule did not apply on shipments moving thereover. American Radiator Co. v. D. & T. S. L. R. R., 115 I. C. C. 529.

(dd) Shipment of lumber from Hogansville, Ga., to Norton, Va., moved under a combination rate, no joint rate being in effect. Upon contention that a lower combination through Appalachia, Va., to Norton, thence back to Appalachia and again back to Norton, was applicable under provisions of rule 5(b) of Tariff Circular 18-A. HELD, one factor of lower combination contended for was a proportional rate applicable to Norton for beyond, the word "beyond" implying movement beyond Norton. Here the shipment was consigned to and actually delivered at Norton, Appalachia being intermediate thereto, and, from a transportation standpoint, not beyond. Rule 5(b) has no application to situations of this kind. Pine & Cypress Mfg. Co. v. L. & N., 115 I. C. C. 557.

(ee) Cotton from Gieger, Ala., to Rossville, Ga., moved under combination rates, no joint rates being in effect. Tariff governing one factor made reference to the so-called combination rule which provided a specific method for constructing through rates made on combinations, tariff governing other component neither carrying the rule nor making any reference thereto. HELD, that the holding-out principle as laid down in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551 is controlling, and carrier whose tariff referred to the rule must protect the aggregate rate constructed in conformity therewith. Shipments found overcharged and reparation awarded. Peerless Woolen Mills v. A., T. & N. R. R. Corp., 115 I. C. C. 577.

(ff) On gravel moving from Glencoe, Yeatman, and Jedburg, Mo., to Greenville, Ill., no joint rates were in effect, charges being collected on basis of a two-factor combination treated by combination rule, which provided a specific method for construction of through rates. Contemporaneously a lower three-factor combination applied when treated by the rule, one factor of which carried the rule unrestricted, one restricted its application to cases where all factors referred to the rule and authorized an affirmative application thereof, third factor neither referring to nor containing the rule. HELD, the holding-out principle laid down in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, governs, and lower combination treated by the rule was applicable. Shipments found overcharged and reparation awarded. Van Dusen & Baumberger Co. v. M. P., 115 I. C. C. 603.

(gg) Shipments moved under combination rates. Tariffs governing one factor made reference to combination rule which provided a specific method for constructing through rates made on combination. Tariff governing other factor also made reference to combination rule except during a certain period when a note was published therein to effect that combination rates would be constructed without its application. Upon assumption that this restriction had effect of nullifying the rule. HELD, following 81 I. C. C. 193, the restriction was tantamount to the rule's absence and holding-out principle laid down in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, was controlling. Shipments assessed full combinations were overcharged. Refund directed. Knight & Kennett v. L. & N., 115 I. C. C. 732.

(hh) Third-class rates on drugs and medicines from Elkhart, Ind., to New York and Philadelphia, found legally

assessed. Although lower commodity rate was contemporaneously in effect from Kalamazoo, Mich., a farther distant point to which Elkhart is directly intermediate, and governing tariff carried the intermediate rule which provided for its application at stations from which a specific rate was not named, tariff published class rates from Elkhart and that point was therefore not entitled to the lower commodity rate. Moreover, Elkhart and Kalamazoo were both granted fourth-section relief which was also mentioned in the tariff. Miles Medical Co. v. B. & O., 118 I. C. C. 33.

(ii) Tariff carried intermediate clause providing for application of rates from intermediate stations. Upon contention of carrier that over customary, natural. and logical route a certain point was not intermediate to stations from which rates were published and was therefore not entitled to published rates. HELD, where tariffs are silent as to routing, the rates apply over all reasonably available routes of participating carriers, and on a haul approximating 900 miles it can not be said that an additional haul of 29 miles would constitute a route not reasonably available. Miles Medical Co. v. B. & O., 118 I. C. C. 33, 35.

(jj) Shipments from Los Angeles, Calif., destined to Salt Lake City and Ogden, Utah, originating on tracks of Santa Fe and Pacific Electric at Los Angeles, were switched to connecting line and switching charges assessed. Contemporaneously switching charges were absorbed on shipments originating at points beyond Los Angeles taking Los Angeles rate. Upon contention that shipments here involved were subject to lower rates under an intermediate clause which provided that rate from unnamed origin points would be the rate from the station beyond from which a rate was named. HELD, Los Angeles was named in the tariff and as under provision of intermediate clause rates apply only when intermediate points are not named, the charges assessed were applicable. See also 109 I. C. C. 763. Frank Produce Co. v. Director General, 118 I. C. C. 88.

(kk) On reconsideration, Ohio River combination rates on pianos from Hammond, Ind., and Steger and Oregon, Ill., to Birmingham, Ala., found not unreasonable or otherwise unlawful. Complainant contended for lower joint rate published in another tariff to Birmingham subject to an intermediate rule. Carriers, however, showed that such rule was intended to apply only to unindexed intermediate points in Mississippi Valley territory in which Birmingham is not located; also that Ohio River basis to Birmingham has been long maintained, and that lower rates are maintained to Mobile under appropriate fourth-section relief. Interpretation contended for is strained and unnatural, raises no reasonable doubt in its favor, and would break down long-standing adjustment by extending the Hammond-Mobile rate under Mississippi Valley bases to points east thereof as far south as the south Atlantic ports. Moreover, record is convincing that complainant was not misled to his damage by the intermediate rule. Original report, 101 I. C. C. 74, affirmed. Forbes & Sons Piano Co. v. A. G. S., 118 I. C. C. 185.

(ll) Shipment moved under combination rate. Tariff governing one factor made reference to combination rule, which provides a specific method for constructing through rates made on combination. Tariff governing other factor made no such reference nor contained a similar rule. Carrier contended that under such circumstances the rule was not applicable. HELD, this contention has been advanced in numerous cases wherein commission has applied holding-out principle laid down in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551. Reparation awarded. Standard Lbr. Co. v. A. C. L., 118 I. C. C. 703, 704.

(mm) Where one of the tariffs used in constructing combination rates on through shipments contains a rule that such rates will be subject to a single increase there is a holding out to the shipper of rates so constructed which the carrier publishing the rule must protect. Dann Gerow Co. v. A. C. L. R. R., 120 I. C. C. 123, 124.

(nn) Shipment moved under combination rates. Tariff governing one factor made reference to combination rule which provides a specific method for constructing through rates made on combination. Tariff governing other factor made no similar reference nor contained a similar rule. Upon contention that application of the rule would be contrary to provisions of Tariff Circular 18-A, and also in violation of section 6 of the act, HELD: Contentions have been rejected in other cases and in 81 I. C. C. 193,

it was held that restriction of the rule in connection with a particular factor was tantamount to absence of the rule. Therefore, in accordance with principle announced in 62 I. C. C. 643; 73 I. C. C. 551; applicable rate was that constructed in accordance with the rule. Reparation awarded. Dann-Gerow Co., Inc., v. A. C. L., 120 I. C. C. 123.

(oo) Shipment moved under combination rate. Tariff governing one factor made reference to combination rule which provides a specific method for constructing through rates made on combination. Tariff governing second factor made no such reference nor contained a similar rule, and tariff of third factor excepted proportional rates from application of rule. Upon contention that item authorizing use of tariff containing the rule should be construed as permitting use of that tariff only to extent authorized by it, HELD: Similar contention considered in 81 I. C. C. 193, 195, not sustained. In 62 I. C. C. 643; 73 I. C. C. 551; it was found that where one of the tariffs used in making combination rates on through shipments contained the rule, there was an undertaking by publishing carrier to protect resulting aggregate rate. Therefore, rate constructed in accordance with the rule was applicable. Reparation awarded. Dann-Gerow Co. v. A. C. L., 120 I. C. C. 163.

(pp) Combination rates on sawed stone and marble from Carthage and Phenix, Mo., to Indianapolis, Brightwood, and St. Mary of the Woods, Ind., found inapplicable. Governing tariff carrying an intermediate clause published lower rates to destinations taking Group 3 (Chicago) rates. While destinations named herein are not mentioned in tariff, they are directly intermediate to Group 3 points and under the rule are, therefore, entitled to those rates. Shipments found overcharged and reparation awarded. Gates Marble & Tile Co. v. C., P. & St. L., 120 I. C. C. 275.

(qq) Usual method of providing for intermediate application of rates is by a general rule or provision governing the entire tariff or a particular section thereof. Gates Marble & Tile Co. v. C. P. & St. L., 120 I. C. C. 275, 277.

(rr) Tariff item publishing rates from Carthage and Phenix, Mo., to various Illinois and Missouri destinations listed rates to "Chicago, Ill., Milwaukee, Wis., and intermediate points." Upon contention that phrase "and intermediate points" included all points between Carthage and Phenix as origins, and Chicago and Milwaukee as destinations, via all routes, and that rates named thereunder applied on sawed stone and marble moving from Carthage and Phenix, to Indianapolis, Brightwood, and St. Mary of the Woods, Ind., HELD: By a fair and reasonable construction of tariff as a whole, the phrase "and intermediate points" refers only to points between Chicago and Milwaukee. To sustain complainant's contention would necessitate a strained and unnatural construction of tariff and result in various conflicts. Gates Marble & Tile Co. v. C. P. & St. L., 120 I. C. C. 275, 277, 278.

(ss) Reference in a tariff to rule 77 of Tariff Circular 18-A, like all other tariff provisions, is to be constructed in the light of its terms, and does not charge its interpreter with knowledge of operating and other conditions which would eliminate one of two apparently reasonable and available routes. To charge a shipper, or the commission, with such knowledge would nullify the effect of the tariff, as well as commission's enforcement of rule 77. Lawrence Construction Co. v. L. & N., 120 I. C. C. 316, 317.

(tt) Rate on hide trimmings and fleshings from Wilmington, Del. to Ontario Street station, Philadelphia, Pa., found unreasonable to extent it exceeded a lower rate subject to rule 77 of Tariff Circular 18-A contemporaneously in effect to Camden, N. J., a farther distant point, which lower rate was established to Wilmington subsequent to movement. Reparation awarded. Tunnell & Co. v. P. R. R., 120 I. C. C. 425.

(uu) Complainant attacked rates charged on 10 cars of lumber shipped from Sulligent, Ala., to destinations in Kentucky between July 6, 1922 and Feb. 6, 1923 as unlawful in violation of section 6. Shipments, five to Wallins, one each to Evarts, Baxter, Harlan, Poor Fork and Livingston. Livingston is the main line of the L. N. between Junction City and Knoxville. The other points are on a branch line of the L. N. which connects with the main line at Corbin, Ky. Corbin is south of Livingston and is also located between Junction and Knoxville. Charged 11.5c to Birmingham and 19.5c to Middlesboro, plus factors beyond of 8.5c to Wallins, 10.5c to Evarts, Baxter and Harlan and 11.5c to

Poor Fork. To Livingston charged 26c to Richmond, Ky., and 8.5c beyond, subject to the combination rule. There was a rate of 24.5c from Sulligent to Junction City restricted so as to apply only via Birmingham and L. & N. or Memphis and L. & N. also a rate of 25c to Knoxville which was restricted to apply via Birmingham and A. G. S. It clearly appears that the intermediate rule has no application to the shipments under consideration and that they were not entitled to the rate sought. HELD, overcharged to Poor Fork, rates charged applicable to other points, overcharge to be refunded, complaint dismissed. Kentucky Lumber Co. v. L. & N. R. R., 122 I. C. C. 119.

(vv) Complainant alleged overcharge on a car of cedar posts shipped April 4, 1924 from spur 28, Minn., to Gaston, Ind., as inapplicable and unreasonable. Shipment moved M. R. L. & M. to Bemidji, Minn., G. N., C. G. W., C. & O. to destination, charged 45.5c combination composed of 9c to Bemidji and 36.5c beyond. The rate from Bemidji was subject to the combination rule but the rate to Bemidji was not. The use of the combination rule results in a rate of 43.5c. HELD, applicable rate was 43.5c, reparation awarded. Pendelton & Gilkey v. C. & O. Ry., 122 I. C. C. 287.

(ww) Complainant alleged combination rates charged on plaster, carloads between June 15, 1922 and June 11, 1924 from Southard and Eldorado, Okla., to points east of the Mississippi river and south of the Ohio river were unreasonable, unjustly discriminatory and unduly prejudicial. Shipments moved to Memphis, Tenn., via Frisco, thence that line and connections beyond. From Southard and Eldorado rates were 20.5c and 17.5c to Memphis, respectively. These rates were subject to the combination rule. Between June 15, 1922 and June 11, 1924 the tariff provided they were not subject to the combination rule. The record shows that in each instance where rates were made by combination on Memphis at least one of the rate factors applying beyond Memphis were subject to the combination rule. Charged full combination without use of combination rule. Applicable rates not unreasonable, but inapplicable. HELD, rates charged inapplicable to extent they exceeded the Memphis combination using the combination rule, reparation awarded. United States Gypsum Co. v. St. L. S. F. Ry., 123 I. C. C. 200.

(xx) The publication of the socalled combination rule in the tariff of one of the carriers participating in the movement is a holding out of one of the carriers participating in the movement of a manner of making combination rates on through shipments on which shippers are entitled to rely. United States Gypsum Co. v. St. L. S. F. Ry., 123 I. C. C. 200, 201.

(yy) Complainant attacked combination rates charged on two carloads of brick shipped from Perla, Ark., to Newman, Ga., and Quitman, Miss., on Oct. 9, 1923 and Sept. 4, 1924 as unreasonable and inapplicable. Shipment to Quitman moved M. P. to Memphis, Tenn., thence M. & O., charged 11c to Memphis and 14.5c beyond. To Newman shipment moved M. P. to Memphis, N. C. & St. L. to Chattanooga thence C. of Ga., charged 11c to Memphis and 16c beyond. Factors east of Memphis made reference to the combination rule. By use of combination rule rates to Newman and Quitman would be 24.5c and 23c. HELD, applicable rates were 23c to Quitman and 24.5c to Newman, reparation awarded. Acme Brick Co. v. C. of Ga. Ry., 123 I. C. C. 660.

(zz) Rate on hay from Illinois points to St. Louis, Mo., found unreasonable to extent it exceeded lower rate contemporaneously in effect from farther distant points, such lower rates being subject to Rule 77 of Tariff Circular 18-A. Fact that shipper failed to request publication of lower rate at the intermediate point did not deprive him of benefit thereof, the commission having in such cases uniformly found that charging of a higher rate was unreasonable. See 69 I. C. C. 403, and other cited cases. Reparation awarded. Toberman Mackey Co. v. C., B. & Q., 122 I. C. C. 299.

(3a) Fifth-class rate on quebracho tanning extract, from New York Harbor points to Ludlow, Pa., found inapplicable. Contemporaneously a lower commodity rate applied to a farther-distant point and as tariff carried the intermediate rule which provided for an application of rates to intermediate points not specifically named in the tariff, such lower rate was also applicable to Ludlow. Reparation awarded. Curtis Leather Co. v. P. R. R., 123 I. C. C. 1.

(3b) Publication of rule 77 of Tariff Circular 18-A, is a substantial compliance with provisions of section 4 of the

act. Grain and Products from North Dakota, 123 I. C. C. 49, 54.

(3c) On potatoes moving from Pablo and Whitehall, Mont., to New Orleans, La., without routing instructions, carriers assessed a combination based on St. Paul, Minn. Contemporaneously a lower combination to and from Omaha, Nebr., was in effect. HELD: As it was not necessary, under rule 5(b) of Tariff Circular 18-A, that shipments actually move through Omaha to make combination over that point applicable, they were accordingly overcharged. Reparation awarded. Kohlman Bros. & Sugarman v. L. & N., 123 I. C. C. 56.

(3d) Applicable rate on potatoes from Pablo and Whitehall, Mont., to New Orleans, La., found not unreasonable as compared with lower rate contemporaneously in effect to Houston, Tex, a farther distant point. While subsequent to movement tariff naming lower rate was made subject to rule 77 of Tariff Circular 18-A, and such lower rate was made applicable from and to points here involved, neither the subsequent reduction nor the fourth-section violation, in and of themselves, establish unreasonableness of the rate to New Orleans. Moreover, carriers showed that higher rates contemporaneously applied on this traffic between various points in same general territory for comparable distances. Kohlman Bros. & Sugarman v. L. & N., 123 I. C. C. 56.

(3e) Rates on brick, and articles taking same rates, from designated points in Ohio and West Virginia to Verona, Brackenridge, and Tarentum, Pa., found applicable. While lower rates contemporaneously applied from same points of origin to Glassmere and Butler Junction, Pa., to which Tarentum and Brackenridge are intermediate, and governing tariff carried an intermediate clause which specifically provided that it had application only to points to which specific rates were not named, here the tariff named specific rates to Tarentum and Brackenridge. Globe Brick Co. v. P. R. R., 123 I. C. C. 498.

(3f) Complaint alleged that combination rates on powdered milk, moving interstate from Andes and Shavertown, N. Y., to Pier 23, North River, New York, were unduly prejudicial and in violation of long-and-short-haul provision of section 4 of the act. Contemporaneously carrier's tariff, subject to rule 77 of Tariff Circular 18—A, published commodity rates from Delhi, N. Y., lower than factor of rates assailed from East Branch, a point directly intermediate to Delhi. HELD: While publication of a lower rate from a farther distant point under authority of rule 77, is equivalent to an admission that higher rate from intermediate point is unreasonable, here complainant did not allege unreasonableness and has failed to show damage resulting from undue prejudice or violation of section 4. Moreover, commodity rates equal to those in effect from Delhi have since been established from East Branch. Innis, Speiden & Co., v. N. Y., O. & W., 123 I. C. C. 577.

(3g) Publication of a rule in conformity with rule 77 of Tariff Circular 18—A is a substantial compliance with requirements of fourth section of the act, and publication of a lower rate from a farther distant point under authority of that rule is equivalent to an admission that publication of a higher rate from an intermediate point is unreasonable. Innis, Speiden & Co. v. N. Y., O. & W., 123 I. C. C. 577, 578.

(3h) Sixth-class rate on lumber from Burks Falls, Ontario, Canada, to Pontiac, Mich., found inapplicable. Contemporaneously tariff carrying an intermediate rule published a lower joint commodity rate from Burks Falls to Owosso, Mich. As Pontiac is intermediate to Owosso over route of movement and as rate was unrestricted in its application, it was therefore applicable to Pontiac and shipments were overcharged. Refund of overcharges directed. Strable Lbr. & Salt Co. v. C. N. Ry., 123 I. C. C. 585.

(3i) Rates on gasoline, kerosene, naphtha, lubricating oil, and fuel oil, in tankcar loads, from points in Oklahoma to Lawrenceville, Paris, and Farrington, Ill., found inapplicable to certain destinations in Ohio and Indiana on the B. & O., C., C., C. & St. L., and Pennsylvania. Tariff publishing rates attacked contained an intermediate rule, exception thereto providing that rates named therein were not applicable over any routes east of the Illinois-Indiana State line except on the N. Y. C. R. R., via junctions Danville, Ill., north thereof, or west of Schneider, Ind. However, shipments under consideration did not move via that line. Pure Oil Co. v. A., T. & S. F., 123 I. C. C. 624.

(3j) Complainant attacked combina-

tion commodity rates charged on lime, carloads, from Martinsburg, W. Va., to destinations on the W. B. & A. as inapplicable and unreasonable, and rates on lime, carloads, from Martinsburg to destinations on the H. &. F. in excess of applicable rates during the period from Jan. 1, 1922 to Nov. 24, 1925 and two years prior to the filing of the complaint, Dec. 22, 1925, unreasonable. Shipments moved over B. & O. to Frederick, Md., thence over H. & F. One of the factors was subject to the combination rule. HELD, rates attacked inapplicable to extent they exceeded the combination by use of the combination rule, reparation awarded. North American Cement Corp. v. B. & O. R. R., 126 I. C. C. 36.

(3k) Complainant attacked combination rates charged on four cars of smithing coal, shipped in April, June and October, 1920 from Douglas, W. Va., and Logan, Pa., to Chicago, Ill., and St. Louis, Mo., and reconsigned to Cardin, Okla., as inapplicable. Shipments moved to St. Louis over W. M. and B. & O. or W. M., B. & O. and C. & E. I., beyond St. Louis movement was over the Frisco and Northeast Oklahoma. No joint rates were applicable combination of $7.95 and $7.90 were collected on April 22 and June 12, 1920 shipments from Douglas. Charged from Logan $10.825 and $10.83. When the shipments moved the factors from Chicago and St. Louis to Miami were published subject to the combination rule, but the tariffs to St. Louis and Chicago did not. HELD, applicable rates were $7.20 from Douglas and $8.60 from Logan, shipments overcharged, complaint dismissed. Tuffli Bros. v. W. M. Ry., 126 I. C. C. 737.

(3l) Shipments moved under combination rates. Tariffs of trunk lines referred to the combination rule which provides a specific method for constructing through rates made on combination. No such reference was made by tariffs of delivering carriers nor did they contain a similar rule. Upon contention that combination rule may be applied only when each tariff naming a factor of through rate makes specific reference thereto and that the rule may not be applied where one of carriers is an electric line. HELD, contentions are not sound. Provision in a tariff to effect that rates are subject to the combination rule is equivalent to its publication in rate tariff. It is an undertaking by carrier publishing the rule to protect resulting through rate. See 62 I. C. C. 643 and other cited cases. Rates made in accordance with the rule were therefore applicable. Reparation awarded. Washington Building Lime Co. v. B. & O., 128 I. C. C. 9, 10, 11.

(3m) Combination rates on lime, ground limestone, and crushed stone from Woodville, Ohio, to stations in Maryland on the Washington, Baltimore & Annapolis Electric R. R. and the Hagerstown & Frederick Ry., under tariff providing that combination rule would apply only where all issues publishing the factors made reference to the combination-rule tariff, found unreasonable as compared with rates found reasonable in 112 I. C. C. 7, and in 104 I. C. C. 293, from Gibsonburg, Ohio, near Woodville, to Rivermont, Va., for comparable distances, and to extent they exceeded rates constructed in accordance with combination basis previously in effect. Reparation awarded. Washington Building Lime Co. v. B. & O. 128 I. C. C. 9, 16, 18.

(3n) Shipments moved under combination rates. Tariff governing one factor made reference to the combination rule which provided a specific method for constructing through rates made on combination. Tariff of other factor made no such reference nor carried a similar rule. Upon contention that tariff of first factor was so restricted as not to apply in connection with traffic moving in connection with second factor, and that to hold combination rule applicable would be to require carriers to participate in transportation in contravention of section 6 (7) of the act. HELD, same contentions were advanced in 62 I. C. C. 643; 73 I. C. C. 551; and 93 I. C. C. 186, in which the commission found that the combination rule applied and that the proportion of rate accruing to line publishing the tariff not subject to the combination rule was its full local. Reparation awarded. Potosi Tie & Lbr. Co. v. S. & E. R. R., 128 I. C. C. 41.

(3o) Shipments moved under combination rate. Tariff governing one factor made reference to combination rule, which provides a specific method for constructing through rates made on combination. Tariff governing other factor made no similiar reference nor contained a similar rule. Upon attempt of carriers to distinguish present case from Sligo Iron Store, 62 I. C. C. 643 and 73 I. C. C. 551. HELD, That similar contentions were considered in 93 I. C. C. 279, in which it was found that rate constructed in ac-

cordance with combination rule was applicable. Hines Yellow Pine Co. v. M. S., 128 I. C. C. 511.

(3p) Fifth-class rate was charged on angles, channels, and beams, moving interstate from Indiana Harbor, Ind., to Indianapolis, Ind. A lower commodity rate contemporaneously applied to Raven, Ill., a point beyond Indianapolis which rate complainant contended was applicable to Indianapolis by virtue of an intermediate clause in tariff. An examination of tariff, however, discloses that lower rate was contingent upon routing provided therein and as no routing was provided from Indiana Harbor in connection with one of carriers over which shipment was routed, and tariff specifically provided that rates named therein would apply only when routing instructions were provided in tariff, the rate charged was applicable. Inland Steel Co. v. C. & O., 128 I. C. C. 551.

(3q) Rates on ground poultry manure from Kenton, Ohio, to Meridian and Hattiesburg, Miss., found unreasonable as compared with lower rates contemporaneously in effect over route of movement to Mobile, Ala., via Meridian, and to New Orleans, via Hattiesburg. While carriers had no record that complainant requested, prior to movement, establishment of rates to Meridian and Hattiesburg not in excess of rates to the more distant points, in compliance with rule 77 of Tariff Circular 18-A, failure on part of a shipper to request prior to shipment a rate to which he is entitled under the rule, through ignorance of the rule or otherwise, is not a reason for saying that he is not entitled to reparation. See 81 I. C. C. 659. Reparation awarded. Fosse & Co. v. E. R. R., 128 I. C. C. 553.

(3r) Combination rates on hogs from points on A., T. & S. F. Ry. in New Mexico and Texas to Los Angeles, based on Mojave, Calif., found not unreasonable. Complainant contended that lower rate from Mojave should be extended to apply from Barstow, Calif., because distance from latter to Los Angeles is less. However, while none of shipments actually moved to Mojave and back through Barstow but moved directly through Barstow, the Mojave combination was applicable under rule 5 (b) of Tariff Circular 18-A, and over the Southern Pacific, the rate-making line, distance between Mojave and Los Angeles is much less than over the Santa Fe. Moreover, authority to depart from long-and-short-haul clause of California constitution and public-utilities act has been granted the Santa Fe and departure from section 4 of the act is protected by application. Calif. Dressed Beef Co. v. A., T. & S. F., 128 I. C. C. 607, 610, 611.

(3s) Rates on copper wire from Phillipsdale, R. I., to Wallingford, Conn., found unreasonable to extent they exceeded rates to Harlem River, N. Y., published in conformity with rule 77 of Tariff Circular 18-A, governing publication of rates to intermediate points and unrestricted as to routing. Wallingford directly intermediate point over Berlin is a route, but carrier contended that, the Berlin route being impracticable, Wallingford was not an intermediate point, and rule 77 was therefore not applicable. Routing being unrestricted, contention not sustained. Reasonable rates prescribed for future and reparation awarded. New York Insulated Wire Co. v. N. Y.,N. H. & H., 128 I. C. C. 698.

(3t) Reference in a tariff to rule 77 of Tariff Circular 18-A is to be construed in the light of its terms,and does not charge its interpreter with knowledge of operating or other conditions which would eliminate any apparently reasonable and available route. See 81 I. C. C. 662 and 120 I. C. C. 316. New York Insulated Wire Co., v. N. Y., N. H. & H., 128 I. C. C. 698, 699.

(3u) Notation on a tariff provision in accordance with rule 77 is a substantial compliance with requirements of the fourth section. New York Insulated Wire Co., v. N. Y., N. H. & H., 128 I. C. C. 698, 699.

(3v) Shipments moved under combination rates. Tariff governing two factors made reference to combination rule, which provided a specific method for constructing through rates made on combination. Tariff governing other factor made no similar reference nor contained a similar rule. FOUND, there was a holding out to shipper of rate constructed in accordance with the rule which publishing carrier must protect, and applicable rate was the through rate constructed by use of the rule. Refund of overcharges directed. See 62 I. C. C. 642; 73 I. C. C. 551; 74 I. C. C. 188. Culler Lbr. Co. v. C., B. & Q., 128 I. C. C. 723.

(3w) General commodity tariff found applicable on shipments of horses and mules from Sikeston and Oran, Mo., to Memphis, Tenn., moving prior to date of its cancellation, although tariff, by excep-

tion, referred specifically to other tariffs for rates from points on carrier's lines in Missouri to Memphis. Contention of carrier that exception prohibited application of general tariff not sustained in view of fact that tariffs referred to failed to provide rates on livestock from and to points in question. Under rule 4 (c) of Tariff Circular 18-A it is permissible for a general commodity tariff to refer to other tariffs in which certain named class or commodity rates may be found, but where, as here, the tariff referred to fails to publish any rate on commodity in question, rate in general commodity tariff remains applicable. Maxwell Sons Commission Co. v. St. L.-S. F., 128 I. C. C. 725.

(3x) Rate on brass and copper ingots from East Liberty, Pa., a point within Pittsburgh switching limits, to Detroit, Mich., found unreasonable to extent it exceeded lower rate contemporaneously in effect from Baltimore applicable through East Liberty, and published in accordance with rule 77 of Tariff Circular 18-A. Although that rule, as amended April 7, 1924, provides that it is not authority for reducing commodity rates from or to intermediate points on less than statutory notice, and was therefore not applicable in instant case, the rate from East Liberty being a commodity rate, there were departures from the fourth section, and establishment of lower rate from Baltimore subject to the rule is tantamount to an admission by carriers that higher rate from East Liberty was unreasonable. See 66 I. C. C. 611. Federated Metals Corp. v. P. R. R., 128 I. C. C. 757.

(3y) Complainant attacked commodity rate of 23.5c the same as the sixth class rate on brass and copper ingots, in carloads, from East Liberty, Pa., to Detroit, Mich., between Jan. 1 and Nov. 21, 1925 as unreasonable and unduly prejudicial. East Liberty takes Pittsburgh rates, served by the Pennsylvania. Contemporaneously there was a commodity rate of 22c, subject to rule 77, applicable over defendants line from Baltimore, Md., through East Liberty to Detroit, 633 miles. Establishment of the 22c rate from Baltimore subject to rule 77 is tantamount to an admission by defendants that the higher rate from East Liberty was unreasonable. HELD, rate attacked prior to July 1, 1926 unreasonable to extent it exceeded the rate from Baltimore, but after that date not unreasonable, reparation awarded. Federated Metals Corp. v. P. R. R., 128 I. C. C. 757.

(3z) Complainant alleged combination rate charged on two cars of lumber shipped April 19, 1923 from Louisville, Ga., to West Liberty, Pa., was inapplicable. Shipments were originally consigned to Cape Charles, Va., with instructions to deliver them to the Pennsylvania, and later were reconsigned to West Liberty. They moved L. & W. and C., of Ga., to Augusta, Ga., Southern to Charlotte, N. C., N. S. to Norfolk, Va., were barged to Cape Charles, thence moved over Pennsylvania to Clairton, Pa., and P. & W. V. beyond. Rate charged 63c composed of 10.5c to Augusta, 41c to Clairton and 11.5c beyond. At time of movement there was in effect from Louisville to West Liberty via Cape Charles and Pennsylvania, applicable over route of movement, a rate of 46c combination using the combination rule. HELD, applicable rate was 46c, reparation awarded. Underwood Lumber Corp. v. C. of Ga., 132 I. C. C. 298.

(4a) Complainant attacked combination rates charged on four cars of lumber from Lumberton, Miss., to Boone, N. C., as unreasonable and inapplicable. Shipments were made Nov. 7, 1924, Feb. 3, March 16 and June 15, 1925 and moved G. & S. I. and Southern to Johnson City, Tenn., and beyond over the E. T. & W. N. C. and L. E. Ry., charged combination rate of 45c, composed of 27c to and 17c beyond Johnson City, plus 1c charge for transfer of carload shipments from standard to narrow gauge line at that point. Tariff naming the rate to Johnson City was subject to the combination rule, but tariff naming the rate beyond did not. HELD, applicable rate was 42c, reparation awarded. Edward Hines Yellow Pine Co. v. M. S. R. R., 128 I. C. C. 511.

(4b) Shipments moved under combination rates. Tariff naming one factor made reference to the combination rule which provides a specific method for constructing through rates made on combination. Tariff naming other factor made no similar reference nor contained a similar rule. Upon contention that carrier publishing latter rate was not shown as a participating carrier and therefore the principle announced in 62 I. C. C. 643, and other cited cases, was not applicable, FOUND

Situation here is identical with that considered in 113 I. C. C. 579, in which rates treated by combination rule were found applicable. Reparation awarded. North America Cement Corp. v. W. M., 129 I. C. C. 90, 91.

(4c) Rates on scrap brass and brass ingots from Pittsburg, Pa., to Jersey City, N. J., and Baltimore, Md., found inapplicable. Lower rates were contemporaneously maintained from Zanesville, Ohio, subject to a clause which authorized their application from Pittsburgh as an intermediate point. Refund of overcharges directed. S. Hausman & Sons Co. v. P. R. R., 129 I. C. C. 233.

(4d) Rates on asphalt from North Baton Rouge, La., to Louisville and Philadelphia, Miss., higher than to more distant point to which they were intermediate, found applicable and not unreasonable. An intermediate clause provided for application of this lower rate to unnamed intermediate points, but Louisville and Philadelphia were both named in tariff and fourth-section departures were protected. Merrill Engineering Co. v. G., M. & N., 129 I. C. C. 249.

(4e) Rate on petroleum fuel oil from Granfield, Okla., originally destined to Granite City, Ill., and diverted to East Chicago, Ind., found inapplicable. A lower combination, applicable under the combination rule was contemporaneously in effect over route of movement. Reparation awarded. Barnsdall Refineries v. C., R. I. & P., 129 I. C. C. 443.

(4f) Respondents attempt to justify restriction of combination rule upon inability of protestant to show movement under rates which would be increased by such restriction. However, to assume that respondents have gone to the trouble and expense of amending the numerous tariffs involved merely to affect a "paper" restriction of a tariff provision in connection with traffic which does not move would be imputing to them a vain and useless act which would merely tend to complicate an already confusing situation by adding an exception to application of the rule. Combination Rule on Lumber, 129 I. C. C. 564, 568.

(4g) Combination rates on wrought-iron pipe from Lorain, Ohio, to various Kansas points were assessed on two different bases, the lower combination being based on Jacksonville, Ill. Tariff publishing higher combination provided, in absence of specific rates, a specific manner of constructing combination by addition of basing rates to factor from Lorain to Mississippi River crossing. Under rule 5 (c) of Tariff Circular 18-A, if specific manner of constructing rates had not been prescribed, the lower combination would have been applicable but, under the circumstances, higher combination was applicable. National Tube Co. v. A., T. & S. F., 129 I. C. C. 693.

§10. Concurrences.

See Concurrences; Through Routes and Joint Rates §20½.

(a) Concurrence sheets are not posted in the same manner as are tariffs, and no opportunity is afforded the general public to ascertain whether or not the terms of the concurrence limit the application of the tariff in so far as the participating road is concerned. National American Wholesale Lumber Asso. v. A. C. L. R. R., 120 I. C. C. 665, 667.

§11. Conflict.

See Bills of Lading §9 (2); Through Routes and Joint Rates §21, §22.

(a) Combination rate assessed on lumber moving from Westwood, Calif., to Pensacola, Fla., found to have been inapplicable, inasmuch as a lower combination should have been applied under rule 5-b of Tariff Circular 18-A based on New Orleans. Carrier contended that since rule 5-b was not made a part of tariff, it did not constitute basis for determining tariff rates. This rule, however, definitely determines applicable rates and its incorporation in tariffs is not necessary. Reparation awarded. Red River Lumber Co. v. Director General, 107 I. C. C. 671.

(b) Where conflicting rates between two points are named in different tariffs, rate first established remains in effect and is lawful rate until formally cancelled. Vincennes Refining Co. v. C. & E. I., 109 I. C. C. 25, 26.

(c) The commission's tariff rules do not authorize or permit publication of conflicting rates. Indian Refining Co. v. L. & N., 112 I. C. C. 732, 736.

(d) Where a tariff specifies more than one rate the lowest is applicable. Eshelman & Sons v. Director General, 118 I. C. C. 441, 444.

(e) Rates lawfully established re main in effect until specifically cancelled. Virginia & Rainy Lake Co. v. D. W. & P. R. R., 120 I. C. C. 131, 132.

(f) Where conflicting rates are named in separate tariffs the rate first established is the legal rate, upon the principle that lawfully established rates remain in effect until specifically canceled. Tomkins Summer Co. v. C. M. & St. P. Ry., 120 I. C. C. 677, 678.

(g) Where conflicting rates are named in separate tariffs, rate first established is legal rate, upon the principle that lawfully established rates remain in effect until specifically canceled. See Conf. Rulings 50, 70, 104; 16 I. C. C. 315 and other cited cases. Tomkins-Summer Co. v. C., M. & St. P., 120 I. C. C. 677, 678, 679.

(h) Rates were named in separate tariffs, but lower rates did not cancel or in any way refer to rates originally published. HELD: Originally published rates were legally applicable. See 57 I. C. C. 547. Reparation awarded. Blytheville Compress & Warehouse Co. v. M. & O., 123 I. C. C. 95, 96.

(i) Fifth-class rate was assessed on iron and steel articles, billed as scrap iron from Little Rock, Ark., to Kansas City, Mo. A lower commodity rate was contemporaneously in effect on scrap iron or steel. Carrier contended that an inspection of the shipments showed that they contained a number of hot-air house-heating furnaces, some in the original crates. Complainant contended that inspection was more perfunctory, that the only crated parts were a few ash pits and bases, that shipment consisted of old furnace and stove castings and a few new parts, so intermingled that the entire lot was of no value except for remelting purposes, and that shipments were bought and resold as scrap iron for remelting purposes, and that they were actually remelted. HELD: That shipments consisted of scrap iron or steel, and that lower commodity rate was applicable. Reparation awarded. Consolidated Metals Corp. v. M. P., 123 I. C. C. 139.

(j) Class rates were assessed on steam road rollers under classification item "Grading and road-making implements: Rollers, Road: Self-propelling or other than self-propelling." Contemporaneously lower class rating applied on "Machinery and machines." Upon carrier's contention that a steam road roller is not a machine; that as classification makes no distinction between self-propelling and nonself-propelling road rollers mere addition of a steam engine to provide tractive power can not transform a road roller into a machine; and that since classification lists road rollers under a specific heading, question of applicability of term "machinery and machines" is removed, HELD: Similar contentions were advanced in 115 I. C. C. 439 in which it was found that "machinery and machines" included steam rollers, and record in instant case does not warrant a different conclusion. Refund of overcharges, directed. Buffalo-Springfield Roller Co. v. D., T. & I., 126 I. C. C. 177.

(k) Tariff published two sets of rates from Peoria, one without restriction and the other a lower rate applicable on traffic "when from beyond." Upon contention that lower rates are not proportional rates because when added to rates inbound to Peoria from shipping points generally "through rates" are not thereby secured, inasmuch as joint rates on lower basis are maintained from such points through Peoria, Held: Contention is without merit. The "when from beyond" rates could be used in constructing combination rates fro mpoints from which no through rates were published. Moreover, in 81 I. C. C. 688, the commission held that the word "beyond" implies a line-haul movement "beyond" the rate-breaking point. Armour & Co. v. Director General, 126 I. C. C. 539, 540, 541.

(l) Tariff governing shipments of hogs from Peoria, Ill., to Chicago and East St. Louis, Ill., carried an unrestricted local rate and a lower rate applicable on traffic "when from beyond." Upon contention that local rates were applicable only to hogs raised in the city of Peoria and were mere paper rates, while lower rates were applicable on all hogs from that point, including those raised immediately outside the city limits and driven across the boundary line. HELD: This interpretation can not be accepted. While lower rates were not termed proportional rates in body of tariff, title-page described tariff as a local and proportional tariff, only limitations upon

use of any rates therein which could establish their proportional application being the words "when from beyond." In 81 I. C. C. 688 it was pointed out that word "beyond" implied a line-haul movement "beyond" the rate-breaking point. Therefore, in instant case, local rates assessed on shipments moving to Peoria other than by rail from beyond were applicable. Armour & Co. v. Director General, 126 I. C. C. 539.

(m) Where there are inconsistent provisions in same tariff, effect will be given to lower rate. Norfolk Southern R. Co. v. Freeman Supply Corporation, (Va., 1926) 133 S. E. 817.

(n) Fifth-class rate was charged on angles, channels, and beams, moving interstate from Indiana Harbor, Ind., to Indianapolis, Ind. A lower commodity rate contemporaneously applied to Raven, Ill., a point beyond Indianapolis, which rate complainant contended was applicable to Indianapolis by virtue of an intermediate clause in tariff. An examination of tariff, however, discloses that lower rate was contigent upon routing provided therein, and as no routing was provided from Indiana Harbor in connection with one of carriers over which shipment was routed, and tariff specifically provided that rates named therein would apply only when routing instructions were provided in tariff, the rate charged was applicable. Inland Steel Co. v. C. & O., 128 I. C. C. 551.

(o) First-class rate on passenger and freight automobiles in straight or mixed carloads moving in 36-foot cars, or longer lengths furnished for carrier's convenience on orders for 36-foot cars, under tariff item providing minimum weight of 10,000 pounds, found applicable. While lower commodity rate was listed in same tariff, shipments involved weighed less than minimum weight provided thereunder and with exception of two shipments on which lower rate applied, actual weights of shipments at first-class rates produced lower charges than minimum weight and rates provided under the commodity rate. Moreover, contention that since tariff is governed by western classification and contains nothing which relieves it from provisions thereof, minimum weight provided thereby should be used rather than minimum weight carried in item itself, is untenable. Rates assessed, except on two cars mentioned, were therefore applicable. Refund of overcharges directed. Chevrolet Motor Co. v. A., T. & S. F., 128 I. C. C. 638.

(p) Second-class l. c. l. rate was assessed on corrugated fiber boxes under tariff item 27, "Paper Articles: Boxes, corrugated or not corrugated, K. D." Contemporaneously tariff item 11 rated "Boxes or Crates: Fiber Packing Boxes, K. D.," as fourth class. Upon contention that item 11 did not apply as commodity shipped was corrugated paper or fiber box and item 27 which specifically covered corrugated paper boxes therefore took precedence, FOUND: As there was no contention that shipments were not fiber packing boxes and since item 27 was broad enough to include all knocked-down paper boxes whether fiber of otherwise and item 11 was broad enough to include all fiber packing boxes whether corrugated or otherwise and described type of box quite as well as item 27, the fourth-class rate thereunder was applicable. Refund of overcharges directed. Eggerss-O'Flyng Co. v. C. & N. W., 128 I. C. C. 644.

(q) L. c. l. rate collected on steam condenser from Philadelphia, Pa., to Santa Fe, N. Mex., found inapplicable. A lower rate was contemporaneously in effect and tariff authority for rate collected was not shown. Refund of overcharges directed. Mirabel Motor Co. v. M. C., 129 I. C. C. 411.

(r) Fifth-class rates applicable on iron or steel bars were assessed on rods known as nut flats. Contemporaneously a lower rate applied on "Rods, Bolt, Nail, Rivet, and Wire (iron or steel), unfinished * * *." Upon carrier's contention that latter applies only on articles that have not progressed beyond the billet stage and that description applies to rods only when found in cross section, FOUND: Similar contentions advanced in 102 I. C. C. 355, were not sustained, and in 104 I. C. C. 616, propostal to restrict above description to bolts, rivets, or wire rods only when round in cross section, was not justified. Rates charged were therefore inapplicable, the lower rate on rods being applicable and not unreasonable. Columbus Bolt Works Co. v. P. R. R., 129 I. C. C. 512.

§11½. Description.

(a) Commodity description "soapstone manufactured and in slabs * *

*" found to have been legally applied to shipments of soapstone furnace linings sawed on six sides to specific sizes. Although manufacturing process in case of furnace linings is not carried to as great an extent as in case of certain other soapstone products, process of sawing blocks on all six sides to specific sizes is clearly a manufacturing process. Moreover, fact that classification carried a more specific description "soapstone or Talc: Linings, Fire Box or Furnace," did not prevent commodity rate from applying. See also 89 I. C. C. 395, 396. Thilmany Pulp & Paper Co. v. N. & A. Ry., 104 I. C. C. 186.

(b) Shipment of hickory pieces or sticks billed as "hickory lumber," which were asserted but not shown to have been golf-stick material, was assessed rate applicable on "vehicle material" by analogy in absence of specific rate on golf-stick material. FOUND: Description "lumber," rather than description "vehicle material," covered shipment, and rate assessed was inapplicable. Shipment overcharged and reparation awarded. Bush Bros. & Co. v. Cumberland Transp. Co., 107 I. C. C. 571.

(c) Tariff item carried a list of perishable commodities in which was included both cantaloupes and melons. Another item showed tables of perishable commodities, one column being headed "Melons, all kinds." By supplement the first item was amended in so far as it applied to cantaloupes by a note making reference to item "Melons, all kinds," the latter being subsequently amended by listing the varieties of melons, cantaloupes being named separately. HELD: There being no evidence that prior to filing of this complaint any question was raised as to application of charges on basis of those provided for "Melons, all kinds," the classification of cantaloupes as melons was not in error and refrigeration charges assessed accordingly on shipments moving from Heber, Calif., to interstate destinations and to Canadian points were not unlawful. Brown v. C., R. I. & P., 112 I. C. C. 545.

(d) In 101 I. C. C. 687, division 3 directed the refunding of overcharges on four shipments of bed sacks which moved in May, 1922, from Atlanta, Ga., to New York, N. Y., found that the applicable first class rate and rating under the southern classifications were not unreasonable or otherwise unlawful, and dismissed the complaint. The carriers have not attempted to classify separately, and it is difficult to see how they could, the almost innumerable variety of articles commonly known as dry goods. Bed sacks belong to this class. With a few outstanding exceptions, such as blankets and clothing, all these textile articles are covered in the classification by the generic term "dry goods, n. o. i. b. n." at a rating of first class. Bed sacks, unlike bags, are not a commonly known or used textile article. Separate classification descriptions and ratings for all or any considerable number of textile articles would complicate the billing and packing of dry goods for shipment, and would create many policing difficulties. The existing grouping has been in effect without substantial modification for many years and during that time has occasioned practically no complaints before the Commission. HELD: former findings affirmed. Triad Corp. v. C. of Ga. Ry., 113 I. C. C. 663.

(e) Proposed commodity descriptions and specifications for petroleum products applicable from points in California to destinations in Western and Southwestern States, dependent largely upon gravities and flash points, found not justified. Uniform results can not be obtained in flash-point tests, even where prescribed apparatus is used, unless a standard procedure is followed, and the mere prescription of a particular type of tester is not sufficient. Nor do the proposed gravity specifications indicate that they are to be determined at any particular temperature, and inasmuch as petroleum oils have different gravities at different temperatures, any tariff specifications as to gravity should make it clear that gravity is to be determined at a certain temperature. Commodity Specifications on Petroleum Products, 113 I. C. C. 707.

(f) Rates on brick assessed in accordance with rates included in uniform brick list, found applicable. Complainants sought lower rates, contending that its brick fell within tariff description of common brick. Brick in question, however, differs from common brick in that it is very hard and tough, may be exposed without noticeable deterioration, and may be and is used as face brick, whereas common brick is soft, can be readily broken and is used primarily for back-up purposes, foundations, and cross walls. While use to which brick is put

does not alone determine its essential character or charges which may be legally exacted for its transportation, it does tend to show that it has qualities which distinguish it from ordinary common brick. McEwing & Thomas Co. v. C. & E. I., 118 I. C. C. 211.

(g) Tariff description "other malt liquors" found sufficiently broad to comprehend "cereal beverages." Latter are made in same manner as beer, but are then subjected to a process for reducing alcoholic content. Bradley & Woertz v. I. C., 118 I. C. C. 233, 236.

(h) Proposed change in commodity description governing application of rates on stone from Champaign, Ill., to points in Ohio and other States, found justified. While protestant contended that if suspended schedule becomes effective it will render inapplicable a factor of a combination rate on granite, real purpose of change in description is to clarify the item, does not effect a change in rates on granite, and discussion of evidence pertaining to propriety of rates is therefore unnecessary. Stone from Champaign, Ill., 128 I. C. C. 21.

(i) Refrigeration charges assessed on cantaloupes under tariff item "Melons, all kinds," found unlawful. Complainant contended that cantaloupes are not melons but are a kind of vegetable and applicable on "Vegetables (except Melons) n. o. i. b. n." However, tariff provided that "Where term fruit * * * vegetables, or melons is used in tariff, should, therefore, be assessed charges it will include commodities classified under their respective headings," and under heading "Melons," cantaloupes were listed. Latter are generally understood and commercially classified as melons, and dictionaries define watermelons and muskmelons as two separate species of melons, and cantaloupes are defined as a variety of muskmelon. Moreover, in 112 I. C. C. 545, refrigeration charges on melons were found applicable on cantaloupes and instant case does not warrant a different conclusion. Di Giorgio Fruit Co. v. A. E. R. R., 128 I. C. C. 31.

(j) Upon contention that as certain freight tariffs show cantaloupes and melons separately, cantaloupes can not therefore be classed as melons, HELD: Fact that these commodities are sometimes or frequently shown separately does not establish that cantaloupes are not melons. Di Giorgio Fruit Co. v. A. E. R. R., 128 I. C. C. 31, 33.

(k) One and one-half times first-class rate collected on l. c. l. shipment of portable laundry tubs under heading "Sheet Iron or Sheet Steel Ware: Wash Tubs," found inapplicable. Carriers contended that by analogy rule, applicable rating was double first class under item "Wash Sinks, n. o. i. b. n.: Plate or Sheet Iron or Steel: on legs: * * * In Boxes or crates," l. c. l., while complainant sought third-class rating on laundry tubs under head of "Plumbers' Goods" by use of analogy rule. At time of shipment, however, a commodity rate applicable on wash tubs appeared under caption "Sheet Iron or Sheet Steel Ware," l. c. l., and since Century Dictionary and Cyclopedia define a wash tub as "a tub for washing, especially one in which clothes are washed," articles shipped clearly fall within that description and lower commodity rate was therefore applicable. Reparation awarded. West Texas Utilities Co. v. M. C., 128 I. C. C. 57.

(l) The analogy rule has no application where commodity shipped is clearly and definitely covered by a description set forth in an item of the classification and referred to in the tariff item naming a commodity rate. West Texas Utilities Co. v. M. C., 128 I. C. C. 57, 58.

(m) Broom handles were assessed commodity rate applicable on finished handles. Contemporaneously a lower rate applied on "handles, in the rough, sawed or turned to shape, not further finished" which complainant contended was applicable. Carrier, however, urged that after the handles are turned to shape they are not in marketable condition until they are either tumbled or sanded which they contend is a "further finishing" process preventing application of rate sought. HELD: Since evidence adduced does not clearly show condition of handles when shipped it is insufficient to warrant a finding that rate charged was inapplicable. Nt'l. Broom Co. v. A., T. & S. F., 128 I. C. C. 98, 99.

(n) The Commission has consistently found that commodity rates must be applied strictly, from which it follows that only the article or articles clearly comprehended within the descriptive terms of the commodity rate can be considered as having been removed from the classification. Paraffine Companies v. S. P. Co., 128 I. C. C. 421, 423.

(o) Shipments billed as cottonseed-hull shavings were inspected in transit and description changed to "cotton linters," rates being assessed accordingly. Complainant, in support of its contention that commodity shipped was entitled to lower rate on shavings introduced samples purporting to be taken from cars at time of inspection. While in 122 I. C. C. 520, it was stated that commission has no special qualifications to determine from samples whether a shipment consisted of linters or shavings, complainant's price quotations together with other evidence sustained its burden of proof. Rates assessed found inapplicable and refund of overcharges directed. Sneir & Co. v. A. & W. P., 128 I. C. C. 559.

(p) Second-class l. c. l. rate was assessed on corrugated fiber boxes under tariff item 27, "Paper Articles: Boxes, corrugated or not corrugated, K. D." Contemporaneously tariff item 11 rated "Boxes or Crates: Fiber Packing Boxes, K. D.," as fourth class. Upon contention that item 11 did not apply as commodity shipped was a corrugated paper or fiber box and item 27 which specifically covered corrugated paper boxes therefore took precedence, FOUND: As there was no contention that shipments were not fiber packing boxes and since item 27 was broad enough to include all knocked-down paper boxes whether fiber or otherwise and item 11 was broad enough to include all fiber packing boxes, whether corrugated or otherwise, and described type of box quite as well as item 27, the fourth-class rate thereunder was applicable. Refund of overcharges directed. Eggerss-O'Flyng Co. v. C. & N. W., 128 I. C. C. 644.

(q) To come within the tariff description of scrap iron, "scrap or pieces of iron or steel having value for remelting purposes only," the material must be reduced to fragments or pieces so as to be useless for any purpose other than remelting. Cohen & Son v. C. R. R. of N. J., 129 I. C. C. 1, 2.

(r) Where an article is clearly embraced within a generic commodity description, and neither the tariff nor governing classification discloses a contrary intention, the Commission has found the commodity rate applicable, even though the classification description was more specific. Sunbury Converting Works v. Pennsylvania R. R., 132 I. C. C. 230, 232.

(s) Turned last blocks found not to be entitled to lumber rates nor to fall within tariff description "Billets, blocks or strips, sawed or split, rough unpainted." Jackson v. M. C., 129 I. C. C. 235, 236.

(t) The incorrect description of a rate as a proportional rate when as a matter of fact it was an arbitrary did not chnge the character of the rate. National Pole Co. v. G. N., 129 I. C. C. 697, 699.

§12. Cross-references.

(a) Complainant attacked second class rates charged on various carloads of furniture shipped from Jasper, Ind., to St. Louis, Mo., from Sept. 11, 1920 to March 3, 1925 as inapplicable. Jasper is on a branch line of the Southern a few miles north of Huntingburg, Ind., a point on its main line 74 miles west of Louisville, Ky. When a tariff refers to another tariff for rules or application, the tariff referred to in effect becomes a part of the tariff making such reference, and any restrictions, which are a part of the tariff referred to, are thereby included in the tariff making the reference, unless the latter tariff clearly and specifically provides otherwise. Jones tariff I. C. C. 1592 provides that Jasper takes Louisville rates only with respect to shipments destined to Cairo, Gale, and Thebes, Ill., and points taking same rates. Its application is not broadened by the reference thereto in the exceptions to the classification. HELD, rates charged applicable, complaint dismissed. Lammert Furniture Co. v. Southern Ry., 126 I. C. C. 197.

§12¼. Exceptions.

(a) Governing classification provided fifth-class rate on red oil. By exceptions thereto "soap stock" was rated sixth-class. HELD: Red oil is a "soap stock" and is so described in a definition from the Condensed Chemical Dictionary. While it may not have been carrier's intention that classification exception should embrace red oil, the familiar rule of construction is that ambiguities in a tariff must be resolved against the maker. Shipments found overcharged and refund directed. Williams Co. v. C. N. E., 112 I. C. C. 158.

(b) Furniture from Jasper, Ind., to St. Louis, Mo., was assessed second-class rate. Exceptions to governing tariff referred to a second tariff naming a lower rate from Louisville, Ky., to

St. Louis. Station index in governing tariff showed Jasper as taking Louisville rates, subject to notation, "Rates named from these stations will apply only to Cairo, Gale, and Thebes, Ill. * * * . " Upon contention that restriction did not affect application of Louisville rates from Jasper because tariff is used merely as a basing book in which list of origin or destination points may be found; HELD: While one tariff which refers to another for rules or application becomes a part thereof, here the governing tariff specifically provided that Jasper takes Louisville rates only with respect to shipments destined to Cairo, Gale, and Thebes, and its application is not broadened by reference to lower rate named in the exceptions. Lammert Furniture Co. v. S. Ry. 126 I. C. C. 197.

§13. Index.

(a) When tariff index shows points as located in a particular State, no county being shown, the rate provided thereto is applicable to any destination of that name in that State upon lines of carriers participating in tariff. Pacific Coast Shippers' Asso. v. A., C. & Y., 112 I. C. C. 527, 532.

(b) On reconsideration, Ohio River combination rates on pianos from Hammond, Ind., and Steger and Oregon, Ill., to Birmingham, Ala., found not unreasonable or otherwise unlawful. Complainant contended for lower joint rate published in another tariff to Birmingham subect to an intermediate rule. Carriers, however, showed that such rule was intended to apply only to indexed intermediate points in Mississippi Valley territory in which Birmingham is not located; also that Ohio River basis to Birmingham has been long maintained, and that lower rates are maintained to Mobile under appropriate fourth-section relief. Interpretation contended for is strained and unnatural, raises no reasonable doubt in its favor, and would break down long-standing adjustment by extending the Hammond-Mobile rate under Mississippi Valley bases to points east thereof as far south as the south Atlantic ports. Moreover record is convincing that complainant was not misled to his damage by the intermediate rule. Original report, 101 I. C. C. 74, affirmed. Forbes & Sons Piano Co. v. A. G. S., 118 I. C. C. 185.

(c) Shipment of piling from Minong, Wis., to Dakota, Minn., a point on the C., M. & St. P. Ry., found overcharged. Contemporaneously tariff published a lower rate from Group 4 to Dakota and listed Minong as a Group 4 point, rate being subject to restriction "will not apply to or from stations in Minnesota in this group located on C., M. & St. P. Ry.," However, as tariff did not list Dakota as a Group 4 point and Minong is in Wisconsin, lower rate was applicable. Refund of overcharges directed. Finch Bros. v. C., St. P. M. & O., 123 I. C. C. 541.

(d) Description of a tariff on its title-page does not modify such application as may be provided therein, but may be considered as an indication of intent of its application. Pure Oil Co. v. A., T. & S. F., 123 I. C. C. 624, 626.

(e) Furniture from Jasper, Ind., to St. Louis, Mo., was assessed second-class rate. Exceptions to governing tariff referred to a second tariff naming a lower rate from Louisville, Ky., to St. Louis. Station index in governing tariff showed Jasper as taking Louisville rates, subject to notation, "Rates named from these stations will apply only to Cairo, Gale, and Thebes, Ill., * * *. " Upon contention that restriction did not affect application of Louisville rates from Jasper because tariff is used merely as a basing book in which list of origin or destination points may be found, HELD: While one tariff which refers to another for rules or application becomes a part thereof, here the governing tariff specifically provided that Jasper takes Louisville rates only with respect to shipments destined to Cairo, Gale, and Thebes, and its application is not broadened by reference to lower rate named in the exceptions. Lammert Furniture Co. v. S. Ry., 126 I. C. C. 197.

§13a. Intermediate Rule.

See Supra §9a.

(a) Shipments moved under combination rates. Tariff governing one factor made reference to combination rule which provided a method for constructing through rates made on combination. Tariff of second factor made no such reference nor carried a similar rule. Upon contention that tariff of first factor was so restricted as not to apply in connection with second factor HELD: Similar contention was considered in 93 I. C. C. 186, in which commission said that such provisions are general in na-

ture and should not be given a narrow construction, which would defeat provisions as to application of tariff provided in body of the issue. Under the Sligo principle laid down in 62 I. C. C. 643; 73 I. C. C. 551, and similar cases, rates were subject to combination rule and applicable rates were those constructed in accordance therewith. Reparation awarded. North American Cement Corp. v. B. & O. 126 I. C. C. 36.

(b) Upon reconsideration finding in original report 118 I. C. C. 33, modified to extent that third-class rates on drugs and medicine from Elkhart, Ind., to New York and Philadelphia were unreasonable to extent they exceeded commodity rate contemporaneously in effect from Kalamazoo, Mich., to same destinations. Tariff specifying the lower commodity rate published a rule in conformity to Rule 77 of Tariff Circular 18-A, and commission has consistently found that publication of such a rule is tantamount to an admission by carriers that higher rate from intermediate point from which no specific commodity rate is published is unreasonable. Reparation awarded. Miles Medical Co. v. B. & O. 126 I. C. C. 159.

(c) Finding in original report, 113 I. C. C. 699, that combination rates on grain and products from Colorado, Kansas and Nebraska to destinations in Tennessee, Georgia, and Alabama, were applicable, affirmed. Complainant sought lower joint rates to intermediate points constructed in accordance with an intermediate rule, contending that while routing as published was incomplete to certain stations, it could be properly completed by shipper by adding lines of any carriers parties to tariff carrying rule. However, Rule 4, (j) of Tariff Cicular 18-A provides that when a tariff specifies routing, rates may not be applied via routes not specified, and since routes sought were not specified, lower joint rates did not apply. Moreover, even though destinations involved were intermediate over routes constructed by complainant, they were not directly intermediate as the routes were unreasonably circuitous. Russell Grain Co. v. A. G. S., 126 I. C. C. 405.

(d) Shipments moved under combination rate. Tariff governing one factor made reference to combination rule, which provided a specific method for constructing through rates made on combination. Tariff governing other factor made no similar reference nor contained a similar rule. HELD: There was a holding out to shipper of rate constructed in accordance with the rule which publishing carrier must protect, and applicable rate was the through rate constructed by use of the rule. See 113 I. C. C. 734. Refund of overcharges directed. Tuffli Bros. Pig Iron & Coke Co. v. W. M. Ry., 126 I. C. C. 737.

§18. **What is Legal Rate.**

See Classification §17, §24; Commodity Rates §2, II; Crimes; Demurrage §12; Evidence §47; Legal Rates; Overcharges; Reconsignment §5, §6½a; Tariffs IV; Through Routes and Joint Rates §15. §15½, §18,§20, §20½, §21, §22.

(a) Rate on alcoholic liquors, n. o. i. b. n., assessed on shipments of whiskey, found to have been legally assessed. While whiskey is listed in United States Pharmacopoeia, tariff items naming lower rates on drugs, medicines, and chemicals, contended for, did not specifically include whiskey or alcoholic liquors. Under circumstances latter commodities can not be deemed to fall within general description. Green v. A., T. & S. F., 104 I. C. C. 24.

(b) Shipments of salvaged miscellaneous iron and steel machinery parts billed as "salvaged government material" were assessed fifth-class rate on second hand iron and steel machinery and parts. Complainant contends for lower scrap-iron rate, but offered no evidence to identify alleged sales of scrap iron with material involved other than copies of invoices dated five months and more than a year after delivery of shipments, upon which tonnage shown does not correspond with that shipped. FOUND: In absence of positive evidence that description of goods upon face of bills of lading and freight bills was erroneous, charges assessed not shown to have been illegal. Washington Salvage Co. v. P. R. R., 104 I. C. C. 291.

(c) Rates charged on shipments originally billed as cottonseed hull fiber or shavings but changed by carrier to cotton linters, found illegal. In absence of tariff provision defining linters and fiber or shavings, the question of what the material shipped consisted of is one of fact to be determined upon evidence submitted. Shipments found to have

been cottonseed hull fiber or shavings, evidence showing that it was manufactured, represented, and sold as such, and that price received therefor was lower than that on linters. Reparation awarded. Speir & Co. v. A. G. S., 107 I. C. C. 161.

(d) Rates on "scraps or pieces of iron or steel having value for remelting purposes only" found not applicable to shipments of obsolete lathe parts. In instant case the lathe parts were in no case broken up, and, therefore, did not come within the term "scraps or pieces" as used in tariff description. McCabe Lathe & Machinery Corp. v. N. Y., N. H. & H. 107 I. C. C. 311.

(e) Rates on "flavoring syrup" assessed on shipments of Chero Cola found applicable and not unreasonable. While tariff provided lower rates on "molasses and syrup (except fountain and coloring)," carrier introduced correspondence from complainant tending to indicate that Chero Cola is a fountain or flavoring syrup and cited a tariff put into effect responsive to that correspondence. While Chero Cola in a narrow sense is not dispensed over fountains, nevertheless it is similar to other fountain beverages and comes under general classification of fountain syrups. Carrier applied tariff in the generally understood and commercially accepted manner and any other construction would be strained. Chero Cola Bottling Co. v. C. of G., 107 I. C. C. 355.

(f) Bicycles were classified under heading "hand vehicles" upon which first-class rates applied. Contemporaneously a lower commodity rate was maintained on "light and heavy non-self-propelling freight and passenger vehicles." FOUND: Following 101 I. C. C. 334, a bicycle comes within definition of a "light, non-self-propelling passenger vehicle," and lower commodity rate was applicable. Shipments overcharged and reparation awarded. Original report, 93 I. C. C. 697, reversed Jones v. P. R. R., 107 I. C. C. 483

(g) Applying the doctrine of fair and reasonable construction of tariffs as laid down in 96 I. C. C. 595, and 92 I. C. C. 211, rates charged on automobiles from Omaha, Nebr., to Roswell, N. Mex. found applicable and not unreasonable. Roswell Auto Co. v. A., T. & S. F., 107 I. C. C. 555.

(h) Shipment of hickory pieces or sticks billed as "hickory lumber," which were asserted but not shown to have been golf-stick material, was assessed rate applicable on "vehicle material" by analogy in absence of specific rate on golf-stick material. FOUND: Description "lumber," rather than description "vehicle material," covers shipment, and rate assessed was inapplicable. Shipment overcharged and reparation awarded. Bush Bros. & Co. v. Cumberland Transp. Co., 107 I. C. C. 571.

(i) Shipments of lumber from Hillsboro, Ga., originally billed by complainant to itself at Potomac Yard, Va., were diverted or reconsigned to West End, Pittsburgh, Pa. Rates were assessed presumably on Potomac Yard combination. HELD: There being no joint rate in effect between these points when shipments moved, a lower through combination based on Athens, Ga., was legally applicable. Refund of overcharges directed. Lynchburg Chamber of Commerce v. B. & O., 107 I. C. C. 573.

(j) Shipments of ambulance axles purchased from the Government after manufacture of Army ambulances was virtually discontinued were billed as "scrap iron." Carrier's inspector at point of origin classified shipments as "vehicle axles," and after further inspection at destination charges were collected at rates on "billets," into which the axles were manufactured. Tariff carrying the scrap-iron rate provided for its application on "scraps or pieces of iron or steel having value for remelting purposes only." HELD: Following Alaska Junk Co., 98 I. C. C. 551 rates on "vehicle axles" were legally applicable, since the words "value for remelting purposes only" define nature of the articles and do not make the rate to be applied dependent upon use to which the commodity is put, and iron or steel articles having a recognized commercial value other than that of the elementary metal from which manufactured do not properly come within description of scrap. Southern Steel & Rolling Mill v. L. & N., 109 I. C. C. 539.

(k) An unrestricted rate to Chicago found applicable on shipments of sand and gravel moving during Federal Control from Hammond, Ill., to sidings located within Chicago district. While it was intention of carriers to apply a rate published to Division Street to all points within what the carrier considers its

Division Street district, that fact can not be definitely ascertained from tariffs, which are ambiguous. Tariffs are to be construed strictly, the intention of framers is not controlling, and where doubt exists as to meaning of a tariff provision its construction must be resolved in favor of shippers. American Sand & Gravel Co. v. Director General, 109 I. C. C. 557.

(l) Governing classification accorded rating of class A to bridge builders', contractors', or graders' outfits, n. o. i. b. n. Commodity item carried a lower rate on Graders', bridge builders', and contractors' outfits," qualified by further description "Graders' outfits." Upon contention that general heading in commodity item stands alone and establishes specific commodity rates applicable on shipments of contractors' outfits, HELD: Terms in general heading are merely descriptive of what follows and may only be read in connection therewith. They are not to be read alone, but must be considered as qualified by further descriptions appearing in the item. Commission can not consider only that part of the rule that is favorable to shipper's contention and ignore other provisions of tariff that make clear its application. The tariff must be construed in its entirety, considering both the limitations in the particular item and in the general index to commodities. Dolese Bros. Co. v. C., R. I. & P., 109 I. C. C. 561, 562.

(m) Shipments from Wilmington and Modesto, Calif., to Jacksonville, Fla., were routed by shipper and joint through rate assessed. Governing tariff contained alternative rule providing for application of aggregate-of-intermediate rates when less than the through rate, and a lower combination, unrestricted as to routing, applied via Memphis. Upon contention that under rule 5 (b) of Tariff Circular 18-A such lower combination was applicable, HELD: Only application of rule 5 (b) is when "no joint rate applies," or "in the absence of a specified rate," and therefore had no application in the situation here presented. Moreover, had shipments moved via Memphis an out-of-line haul of more than 1,000 miles would have resulted. Joint rate assessed found applicable. Rosser & Fitch v. Director General, 109 I. C. C. 724.

(n) Complainant attacked combination rates charged on cotton from Philadelphia, Miss., to Columbus, Aragon and Social Circle Ga., between Nov. 1, 1922 and Feb. 16, 1924 as unjust, unreasonable and in violation of the fourth section. Cotton was delivered at Philadelphia compressed, and carrier paid compress company's charges. Shipments moved as routed by shipper over G. M. & N., to Meridian and Southern and connections beyond, charged rates to and from Newton, Miss., of $1.05 to Columbus and Aragon and $1.255 to Social Circle. Complainant asks basis of combinations of the rates to and from Meridian of 97c to Aragon, $1.025 to Columbus and $1.175 to Social Circle. HELD, applicable rates were those claimed, reparation awarded. Threefoot Bros. & Co. v. G. M. & N. Ry., 112 I. C. C. 657.

(o) Complainant attacked combination rates charged on 3 cars of lumber from East End, Mo., to Toledo, O., on 18 cars of oak lumber from East End to Indianapolis, Ind., and on 6 cars of wooden paving blocks from Buick, Mo., to Indianapolis as unreasonable and inapplicable. No joint rates were in effect but there were commodity rates of 9c to Sligo, 14c Sligo to St. Louis, 21.5c from St. Louis to Toledo and 16.5c from St. Louis to Indianapolis. The Eastern was not a party to the tariff publishing the combination rule but the other carriers were. HELD: aggregate rates were 41c to Toledo and 36.5c to Indianapolis. HELD, shipments overcharged reparation awarded. Irvin v. Pennsylvania R. R., 112 I. C. C. 746.

(p) Complainant attacked combination of 52c charged on one car of lumber shipped Sept. 19, 1924, from Nashville, Tenn., to Montreal, Que., as inapplicable. Shipment moved as routed over L. & N., to Louisville, Ky., C. I. & L. Wabash, Canadian Pacific and C. N. Ry. beyond, charged 13c and 39c to and beyond Louisville. L. & N., tariff carrying the rate to Louisville made reference to combination rule but the tariff carrying the 39c rate did not. Through rate was 49.5c. HELD, applicable rate was 49.5c reparation awarded. Ransom & Co. v. L. & N. R. R., 113 I. C. C. 177.

(q) Complainant attacked combination rates charged on five cars of heavy machinery August 21, 1923 and later dates from Duluth, Minn., to Scanlon, Fla., as in violation of section 6 and unreasonable. Lawful tariff rates in August

1923 were 38.5c to Ohio river points, 65c from Ohio river to Jacksonville, Fla., and $52 per car beyond. Defendants claim proper rate beyond Jacksonville was sixth class of 26c per 100 pounds. It is obvious that when the shipment moved the rate was published strictly on a per car basis. HELD: rate attacked illegal to extent rate beyond Jacksonville exceeded $52 per car, reparation awarded. Brooks Scanlon Corp. v. A. C. L. R. R., 113 I. C. C. 237.

(r) Contention that commodity rate provided for machinery, or oil-well supplies was not applicable to electric starters and electric transformers, not sustained. List of commodities named in tariff contains "electric machinery, consisting of dynamos and motors, and parts thereof." Electric starters and electric transformers are not specifically named, but transformers are. The latter item includes electric transformers and an electric starter is an electric motor. Wagner Electric Corp. v. Director General, 112 I. C. C. 57, 58.

(s) Refined-oil rate assessed on petroleum refined-oil distillate having a specific gravity in excess of 36° found to have been legally assessed. While the oil here shipped is much lower in value than that of various commodities on which refined-oil rates apply, such as kerosene and gasoline, the tariffs did not define the various kinds of oil; an oil trade publication presented in evidence shows specific gravity of gas oil in various sections of the country to be not over 36° in practically every instance; and a ruling of the western classification committee provided that petroleum oil with a specific gravity in excess of 36° should be rated as refined oil. Sioux City Gas & Elec. Co. v. C., B. & Q., 112 I. C. C. 344.

(t) Combination rates to and from Newton, Miss., collected on shipments of cotton delivered to initial carrier for transportation in compressed bales at Philadelphia, Miss., for movement to Columbus, Aragon, and Social Circle, Ga., found inapplicable. Lower combination applied over routes of movement based on Meridian, Miss., tariff carrying the local Philadelphia-Meridan rate providing for its application on "cotton in bales" whether delivered to carrier compressed, uncompressed, or with carrier's privilege of compression. Factors beyond Meridian applied on cotton, carrier's privilege of compression, and as this was the original character of the shipments this rate was applicable beyond Meridian via routes of movement. Reparation awarded. Threefoot Bros. & Co. v. G., M. & N., 112 I. C. C. 657.

(u) Shipments of machinery from Duluth, Minn., to Scanlon, Fla., found overcharged. Carriers claimed a class rate beyond Jacksonville which provided a minimum carload weight made on a 100-pound basis. At time of movement, however, the commodity description applying for movement beyond Jacksonville read: "Machinery and machines, carload minimum weight 20,000 pounds, class N," the class "N" rate being a per car rate. Subsequent to movement a phrase "excess in proportion" was inserted in the tariff but did not apply on shipments in question, which moved under rate published strictly on the per-car basis. Reparation awarded. Brooks-Scanlon Corp. v. A. C. L., 113 I. C. C. 237.

(v) Question as to whether marine engines are comprehended in the term "engines" as used in a tariff item in view of the limiting words in the heading, viz, "Electrical, Iron Working (Power), Mining and Smelting," HELD: In common acceptation the term "engine" does not include motors and generators or dynamos, which the item specifically names. However, it can not be said that engines used for operating iron-working, mining or smelting machinery are essentially different from other engines used to operate power machinery; in fact, same kind and style of engines as are used for purposes named are put to many other uses, marine-type engines being sometimes used on land for power purposes. The parenthetical expression in the heading, therefore, clearly does not so restrict the term "engines" as to prevent its application to marine engines. See 68 I. C. C. 195, construing the term "turbines" in the same item. Duthie & Co. v. Director General, 113 I. C. C. 255, 257.

(w) Complainant attacked commodity rates charged on numerous cars of grain and grain products shipped in 1924 from Colorado, Kansas, and Nebraska, to points in Tennessee, Georgia, and Alabama as illegal. Rates charged were combinations on Ohio river crossings. There were contemporaneously in effect from the points of origin in ques-

tion to Greenwood, Miss., and New Orleans, La., joint through rates which were much lower, and the tariff in which they were named provided that they would also apply to directly intermediate points. The rates contended for to Atlanta, Ga., Attalia, Ala., and Winchester, Tenn., are the Greenwood rates, while those contended for to Bessemer, Birmingham and Tuscaloosa, Ala., are the New Orleans rates. The rate situation involved is the same in principle with respect to all the shipments, and the Commission will take, as an example, the shipments which moved to Atlanta. Complainant selects route 2, south of East St. Louis, which it will be noted from the extract, means I. C. Complainant contended that Atlanta is intermediate to Greenwood over the route formed by that road and its connections and that the Greenwood rates applied. It will be observed that the tariff specifically provided that the Greenville rates applied to Greenwood over route 2. However, the I. C. does not reach Greenwood. Complainant says that the route was incompletely stated, only the initial line out of East St. Louis being shown, and that, therefore, under the commission's well known rule any route made up of lines of carriers that are shown as parties to the tariff might properly have been used beyond the I. C. To secure the desired rate, complainant builds a route from East St. Louis to Greenwood, using the I. C., for 206 miles southwardly to Martin, Tenn., thence N. C. & St. L., 429 miles southeastwardly to Atlanta, thence Southern 287 miles westwardly to Columbus, Miss., thence C. & G., 113 miles westwardly to Greenwood. The total distance over this route is about 1,035 miles, as compared with the short line distance over I. C., and Y. & M. V., of about 455 miles. Regardless of the complete specific routings shown in the tariff the complainant ignored such routes and attempted to construct unauthorized routes via which the destination points of the shipments would be intermediate to Greenwood and New Orleans. It is further to be observed that in connection with the various routes in the tariff to either Greenwood or New Orleans no junction point is named which is located outside of the Mississippi valley territory. This indicates very clearly that the authorization of an unusual or an unduly circuitous route is not contemplated. Furthermore a reasonable interpretation of the I. C., routing shown in connection with Greenwood requires the Commission to hold that it means the longest possible haul to that carrier and that delivery to a connection, in this case its subsidiary the Y. & M. V., which reaches Greenwood reasonably direct. HELD, rates charged applicable, complaint dismissed. Russell Grain Co. v. A. G. S. R. R., 113 I. C. C. 699.

(x) Complainant attacked rate charged on a car of furniture shipped on Oct. 27, 1923, from Oklahoma City, Okla., to Jackson, Miss., as inapplicable. Shipment moved C. R. I. & P. to Memphis and I. C., beyond charged $1.02 to Memphis and 59c beyond. The tariff naming the rate of $1.49 contains the following restriction under the exceptions of the C. R. I. & P. to the general application of rates: Rates between Jackson and Natchez, Miss., will apply northbound only in connection with C. R. I. & P., no southbound rates in effect. The shipment here considered moved southbound to Jackson and the restrictive clause definitely states no southbound rates in effect. HELD, rate charged applicable, complaint dismissed. Orgill Bros. Co. v. C. R. I. & P. Ry., 115 I. C. C. 23.

(y) Complainant alleges charges collected on one car of potatoes shipped Oct 9, 1923, from Sidney, Mich., to Niagara Falls, N. Y., reconsigned to Old Forge, Pa., and again reconsigned to Philadelphia, Pa., as unreasonable. Shipment was delivered to the P. M. consigned to shippers order notify Frank T. Miller, Niagara Falls, and routed Suspension Bridge and N. Y. C. On October 15, 1923, complainant, having paid the draft covering the shipment, obtained the bill of lading, which he tendered to the agent of the Erie to Buffalo with instructions to reconsign the shipment to the Empire Stores Co., Old Forge, Pa. The shipment moved P. M. apparently to Suspension Bridge and thence over Erie to Old Forge where it arrived Oct. 30, 1923, and was apparently placed for unloading. It was refused by consignee at Old Forge and on Nov. 2, 1923, the complainant instructed the agent at Buffalo to reconsign the shipment to Guy P. Ford, Philadelphia, routing P. & R. Shipment moved from Old Forge to Philadelphia over Erie to Sparta Jct., N. Y., L. & H. to Easton, Pa., C. R. R. of N. J. to Bethlehem, Pa., and Reading

to destination. Charged 50c to Old Forge and 32c beyond, plus reconsignment charges of $2.70 at Suspension Bridge and $6.30 to Old Forge and demurrage of $58 at Old Forge and $33 at Philadelphia. Rate charged Old Forge to Philadelphia was inapplicable to extent it exceeded 28.5c. At time of movement a fifth class rate of 50c was in effect from Sidney to Philadelphia via another route. HELD, applicable rate no unreasonable and shipment subject to demurrage charges prior to Nov. 26, 1923, but not thereafter, reparation awarded. Miller v. P. M. R. R., 115 I. C. C. 461.

(z) Complainant attacked commodity rates charged on sand and gravel, carloads, shipped from Montgomery, Ala., to Fort Benning, Ga., between May 28 and Oct. 21, 1924, as illegal and unreasonable. Shipments moved C. of Ga. from Montgomery to Fort Benning Junction, 99 miles, thence over a military railroad to Fort Benning 6 miles. Prior to June 15, 1924, the military line was operated by the War Department and not as a common carrier. On and after that date it was operated by defendant. In applying distance rates defendant used 99 miles, the distance to the junction, prior to June 15, 1924, and 105 miles to the fort on and after that date. Prior to May 28, 1924, there was in effect to Junction a rate of 2050c per car of 40,000 pounds excess in proportion. On nine shipments made between June 15 and July 21, 1924, charges were collected on 2150c per car of 40,000 pounds excess in proportion. Just before these 20 cars moved, and effective on May 28, 1924, the commodity tariff was changed in that the "unit of rate" was omitted. The rates were stated at 2050c and 2150c for distances of 99 and 105 miles, but the tariff failed to state that these amounts were intended to apply "per car" or "per car of 40,000 pounds excess in proportion." The tariff merely provided "C. L. minimum weight 90% of marked capacity of car, except when cars are loaded to their visible capacity actual weight will govern." HELD, rates applicable were 2050c per car from May 28 to June 14, 1924, and 2150c per car from June 15 to July 24, 1924, defendant to refund overcharges, complaint dismissed. Baehl & Co. v. C. of Ga. Ry., 115 I. C. C. 679.

(aa) Complainant attacked second class rates charged on automobile trucks shipped between Feb. 28, 1920, and May 15, 1924, from Detroit, North Flint, Lansing, and Pontiac, Mich., Lima and Cleveland, O., and Evansville and Marion, Ind., to Sioux City, Ia., Bayard, Lincoln and Norfolk, Neb., as unjust and unreasonable and illegal. Shipments consisted of automobile trucks, variously described in the bills of lading as "auto trucks", "auto trucks, self propelled", "freight panel body business cars", "autos, freight screen body" and "freight business cars". Rates charged second class rates to East St. Louis, Ill., or other east bank Mississippi river crossings, and second class beyond. Rates west of the Mississippi are not attacked. Complainants contend that the description "vehicles, spring, freight or delivery" shown in the exception was applicable. On May 15, 1924, the description was changed by including therein the words "(non self propelling)" following the words "vehicles (spring)". On Sept. 1, 1925, the description was again changed by substituting the words "horse drawn" for the words "non self propelling". There is no question in this case of ambiguity as between the description in the classification, on the one hand, and the description in the exception, on the other. The only question is whether the exception under the description "vehicles (spring), freight or delivery" included "vehicles, motor, automobiles, freight". The official classification does not make any distinction in, or separately classify, freight motor vehicles upon the basis of their being equipped with springs. The description in the exception standing by itself, is practically meaningless. The exception does not specify what is meant by spring vehicles. If complainant's contention is correct, any freight vehicle of any kind whatsoever, whether self propelling or not, would come under the description, if it had springs. It would include, therefore, all kinds and sorts of freight or delivery vehicles equipped with springs from the smallest up to and including a railroad freight car. The distinction made in the classification proper between self-propelling and non-self-propelling, or horse drawn, vehicles would be completely nullified. Such a construction of the exception item is a strained and unnatural one. The official classification clearly provides for a second class rating upon freight motor vehicles. The description used is gen-

erally known and understood by producers, shippers and users of such vehicles. The classification also includes another description for horse drawn vehicles. Under that description it includes "trucks, wagons, delivery, with springs." The classification itself leaves no room for doubt. The particular description in the exceptions must be read in connection with the classification item, and not wholly by itself. It appears that the exception item read in connection with the classification is intended to include only non self propelling, or horse drawn, freight vehicles, as the latter are described in the official classification. This is a reasonable construction not inconsistent with the classification or the item of the exceptions. None of the complainants have been misled or relied upon the alleged applicable rates to his damage. HELD, second class rates applicable, complaint dismissed. General Motors Truck Co. v. G. T. W. Ry., 118 I. C. C. 99.

(bb) In 112 I. C. C. 325 complainant attacked as unlawful under section 6 and unreasonable under section 1, interstate rates on cotton shipped to Montgomery, Ala., from points south thereof, for concentration and compression, and reshipped to Mobile, Ala., Pensacola, Fla., and New Orleans, La. During that portion of the period covered by the complaint prior to August 25, 1924, from all the points of origin, and between that date and Oct. 20, 1924, from all points except stations north of and including Searcy, Ala., 37 miles south of Montgomery, charges were based on local rates to Montgomery, plus reshipping rates to the ports which were materially less than the local rates. On August 25, 1924, specific rates were provided from stations Searcy and north, which, in all but one instance, were higher than the combinations of local rates to Montgomery and the reshipping rates from that point previously available. Coincidently with the establishment of these specific rates, however, the reshipping rates from Montgomery on traffic originating at these points were withdrawn so that the specific rates were at no time in excess of any combinations available over the routes of movement. Prior to October 20, 1924, the applicable interstate locals to Montgomery were published subject to the combination rule. On the date mentioned reference to the combination rule in the Jones tariff in connection with the local rates to Montgomery, was eliminated. At no time during the period covered by the complaint were the reshipping rates from Montgomery subject to the combination rule. HELD, under the tariff provisions, the shipments from all points of origin. prior to August 25, 1924, and from all points except those north of and including Searcy, between that date and Oct. 20, 1924, were overcharged, and that the applicable rates were the interstate locals to Montgomery, plus the reshipping rates from that point, subject to the combination rule, rates attacked not unreasonable. Montgomery Cotton Exchange v. L. & N. R. R., 118 I. C. C. 157.

(cc) In 101 I. C. C. 74, the Commission, by division 4, found that the rates charged on several carload and less than carload shipments of pianos made during 1922 and 1923 from Hammond, Ind., and Steger and Oregon, Ill., to Birmingham, Ala., were not unreasonable or unlawful, and dismissed the complaint. Reconsideration was had. Birmingham is east of Mississippi valley territory, and the Commission can not overlook the fact, apparently well known to complainant, that rates from the origin territory considered to Birmingham and other similarly situated points have been maintained for many years on the basis charged of lowest combination on the Ohio river crossings, and have been higher than the rates to Mobile and other gulf ports under fourth section authority. The interpretation contended for would break down this long standing adjustment by extending the Hammond-Mobile rate under the Mississippi valley bases to points, for example, on the Southern Ry. east thereof as far as the south Atlantic ports of Savannah, Ga., and Jacksonville, Fla. Clearly, such an interpretation would be strained and unnatural and raises no reasonable doubt in its favor. The record is convincing that complainant was not misled to his damage by the intermediate rule. HELD, complaint dismissed. Forbes & Sons Piano Co. v. A. G. S. R. R., 118 I. C. C. 185.

(dd) Shipments of staves from Blytheville, Ark., to Gulfport, Miss., were routed "J. L. C. & E.-Frisco-Ill. Cent. at Memphis." A rate lower than that assessed applied from Blytheville on the Frisco to Gulfport, but tariffs provided that in order to be entitled thereto shipments tendered to the J. L. C. & E.

must be turned over by that line to the Frisco at Blytheville. In other words, under routing governing lower rate the J. L. C. & E. was entitled to a switch movement only. Upon contention that under routing instructions given it was initial carrier's duty to turn these shipments over to the Frisco at Blytheville. HELD, notation "J. L. C. & E." in routing instructions indicated clearly that a line haul by that road was desired and that carrier was under no obligation to deliver shipment to the Frisco to Blytheville. If shipper desired shipments handled in manner contended for it should have so specified in routing instructions. See also 51 I. C. C. 183. Hollingshead Co. v. J., L. C. & E., 115 I. C. C. 19, 20.

(ee) On cottonseed meal from Greenwood, Miss., to Angola, La., a combination rate based on Baton Rouge, La., was assessed. A lower joint rate was contemporaneously in effect from Memphis to Angola via Baton Rouge, tariff publishing that rate containing an intermediate rule restricted to apply via direct available routes only. HELD, application of the lower rate not being confined to a single direct route, but being applicable over all "direct available routes," and record not establishing that route through Greenwood was not an available direct route from Memphis to Angola, such lower joint rate was applicable from Greenwood and shipments were overcharged. Reparation awarded. Planters Oil Mill v. Y. & M. V., 115 I. C. C. 21.

(ff) Tariff provided a fifth-class rate on animal hoofs and horns, in packages or in bulk, whereas under certain classification exceptions a lower sixth-class rating was provided in "fertilizer material, consisting of the following articles having value only as a fertilizing ingredient, viz: * * * hoofs or horns." Upon contention that restriction "having value only as a fertilizer ingredient" brings in a monetary consideration, and since commission did not authorize the restriction as to value, sixth-class rates were applicable, and shipments were therefore overcharged. HELD, the restriction of sixth-class rates to hoofs and horns having value only as a fertilizing ingredient manifestly does not make provision of section 20(11) of the act applicable and fifth-class rates were legally assessed. Tomkins-Summer Co. v. B. & O., 115 I. C. C. 24.

(gg) Two-factor combination rate assessed on automobiles from Detroit, Flint, and North Flint, Mich., and on plumbers' supplies from Noblesville, Ind., to Birmingham, Ala., based on Jeffersonville, Ind., found inapplicable. Legal rate found to be a lower three-factor combination based on Louisville and Water Works, Ky., and applicable under rule 5 (b) of Tariff Circular 18-A. Refund of overcharges directed. Birmingham Traffic Bureau v. Director General, 115 I. C. C. 33.

(hh) Western classification fourth-class rates on "Spring Assemblies, Cushion or Seat, * * *," charged on a mixed shipment of cushion seat springs and coiled-wire springs, not shown in excess of those applicable or otherwise unlawful. Complainant contended for a commodity rate on "Springs, wire, n. o. s., in bundles," or a still lower commodity rate subsequently established on articles shipped. Commodities here in issue did not come within description contended for, were specifically covered by various classification items on "Springs" and "Spring Assemblies," and charges should have been assessed on whichever of the several classification bases resulted in lowest total charges. Moreover, absence, among other things, of weights of the several articles renders it impossible to ascertain aggregate legal charges, and record fails to show that total charges collected exceeded those which should have been assessed. D'Arcy Spring Co., v. G. T. W., 115 I. C. C. 91.

(ii) Charges collected on newsprint paper moving from Sault Ste. Marie, Ontario, Canada, to Dallas, Tex., based on actual-value rates plus switching charge at point of origin, found applicable. Complainant contended for lower released rates via route of movement, or lower combination also based on released rates via a different route, insisting that rates based on released value not having been authorized by commission were void under section 20 of the act. However, in 100 I. C. C. 471, commission held that actual-value rates may fairly be distinguished from released rates, and as value in instant case was not declared and authority for publication of released rates had been duly granted, the applicable rate was the rate assessed. Western Newspaper Union v. Director General, 115 I. C. C. 105.

(jj) Charges were collected on steel

bars, round, square, and bent, and used for concrete reinforcements, under tariff description covering "bar, band, boiler, hoop, plate, and rod iron or steel * * *." Contemporaneously same tariff named lower rates in another item on "* * * sheet bars or bars of steel," a reference note thereto reading "These rates will also apply on sheet bars (for the manufacture of tin plate) * * *." HELD, note in no way restricted application of lower rates and if it was carriers' intention, as contended, to limit them to sheet bars of steel they should have done so by clear and unequivocal language. Having failed to do so conflicting rates were therefore in effect and shipper was entitled to the lower. See also 104 I. C. C. 607. Refund of overcharges directed. Olsen v. G. S. R. R., 115 I. C. C. 195.

(kk) Tariff carried notation "applicable only via Seaboard Air Line as initial carrier and only on traffic originating at points south and west of Jacksonville." Upon contention that notation included points on all lines in Florida south and west of Jacksonville or on traffic turned over to the S. A. L. at that point. HELD, given a reasonable construction such notation restricted lower rate to traffic originating only on Seaboard Air Line south and west of Jacksonville. Wauchula Development Co. v. A. C. L., 115 I. C. C. 207.

(ll) Following 104 I. C. C. 48, domestic rate assessed on a shipment of coiled-steel wire rods moving on a domestic bill of lading from Acme, Ill., to San Francisco, intended for export, and actually exported to China, found applicable. While a lower export rate was contemporaneously in effect, complainant failed to comply with all regulations and tariff requirements governing reservation of steamer space and prepayment or guaranteeing of transportation charges. American Trading Co. v. Director General, 115 I. C. C. 223.

(mm) Shipments of wrought iron pipe from Chester, Pa., were originally billed to Billings, Mont. While en route diversion was requested but this carriers failed to accomplish and shipments moved through to Billings, whence they were reconsigned to Beggs, Okla. Charges were collected at a combination rate to and from Billings. At time of movement a lower joint rate applied from Chester to both Billings and Beggs. HELD, the lower rate, being restricted to apply via a route other than route of movement, was not applicable to shipments here involved and combination assessed was legally applied. Tidal Osage Oil Co. v. Director General, 115 I. C. C. 237.

(nn) Mixed shipment of veneer moved under a joint commodity rate applicable to veneer less than one-eighth inch in thickness. A portion of shipment was of greater thickness but no separate weights of differing thicknesses were shown in billing. Upon contention that as tariff made no provision for such mixed shipments a lower commodity rate on lumber or veneer, n. o. i. b. n., without restriction as to thickness, should have been assessed on entire shipment. HELD, rate sought was restricted to apply only in absence of other specific commodity rates. Commodity rate charged was applicable on that portion less than one-eighth inch thick, and rate contended for applied on the balance of greater thickness. Adjustment of charges authorized, computed to these bases, if weights of differing thicknesses can be determined or agreed upon. Standard Furniture Co. v. A. G. S., 115 I. C. C. 243.

(oo) Class A rate on "Machinery and Machines: Ice Making or Refrigeration" subject to graduated minima for cars of different sizes, assessed on refrigerating and ice-making machinery, found not illegal or otherwise unlawful. Complainant contended for application of an item on "Machinery and Machines," under which was listed various articles, including refrigerating machinery, comprising creamery and cheese factory apparatus, and subject to a 20,000-pound minimum. Creamery apparatus loads considerably lighter than ice-making machinery, and fact that separate items permit of generous mixtures does not lead to conclusion that they are analogous. There is no provision in the creamery-apparatus list for ice-making machinery, and numerous articles embraced in one list have no counterpart in other. Moreover, to follow interpretation contended for would result in drastic curtailment of the generous mixtures which the two items now provide and necessitate elimination of numerous unlike articles of general use from both lists. Arctic Ice Machine Co. v. A., T. & S. F., 115 I. C. C. 346.

(pp) Rates on l. c. l. shipment of household goods and secondhand trailer from Bozeman, Mont., to Alameda, Calif., found applicable and not unreasonable.

Commodity rate assessed on household goods was listed under item "Household goods, taking 1st-class rating under heading 'Household goods or emigrant movables,'" complainant contending that it was also applicable on trailers which were included under general description "Emigrant movables." There was no single description covering "Household goods or emigrant movables," but each item was listed separately, household goods being included under both items. Trailers, however, were covered only by item "Emigrant movables," but rate thereunder was not applicable to l. c. l. shipments. The commodity rate was therefore applicable on household goods but not on the trailer, a first-class rate being properly applied on latter. Desch v. N. P., 115 I. C. C. 401.

(qq) Shipments of barley from South Dakota and Minnesota, during Federal control, moved to Minneapolis, and were reforwarded to Milwaukee, combination rates being assessed. Concurrently, joint rates, restricted to apply only via Winona, Minn., and Wyeville, Wis., via the shortest available route, were in effect from original shipping points to Milwaukee. HELD, as shipments did not move through points through which lower joint rates applied, and no joint rates were applicable over route of movement, the combination of locals assessed was legally applied. Zimmerman v. Director General, 115 I. C. C. 407.

(rr) Charges are assessed on a steam roller under a tariff description "Grading and Road Making Implements: Rollers, road: Self-propelling and other than self-propelling." Contemporaneously by exceptions to classification a lower rating was provided on "Machinery and Machines, rated sixth class in southern classification." FOUND, a self-propelling road roller is a machine in an entirely proper and normal sense of the word and for obvious reasons most machines are generally referred to by their individual names. That fact, however, does not make them any the less machines. Moreover, the item carried in the exception sheet was not limited either in the lower rate provided thereunder was terms or by reasonable implication and therefore applicable here. Refund of overcharges directed. Lawrence Construction Co. v. L. & N., 115 I. C. C. 439.

(ss) Shipments of condensing machinery, condensers, pumps, and parts thereof from North Philadelphia, Pa., to Florida points moved under combinations, the factor beyond Jacksonville being based on rates per carload, minimum 20,000 pounds, excess in proportion. Tariff naming rates was governed by exceptions to the classification which omitted the words "excess in proportion." Upon contention of shipper, that, due to such omission, the rates stated in the tariff were the applicable total charges for each carload, regardless of weight of contents. HELD, while omission of phrase made application of rates confusing, the tariff naming them stated that they applied "Per Carload. As prescribed in classification, excess in proportion," thereby supplying the measure of the carload unit while the minimum weight was supplied by the classfication exception. Rates assailed were, therefore, applicable. Wheeler Mfg. Co. v. A. C. L., 115 I. C. C. 527.

(tt) On shipments of rough marble, originally imported, and used for interior decorations, sixth-class rates were assessed under governing classification on "Stone, Natural, * * * Marble * * *." Contemporaneously commodity tariff provided lower rates on "Stone (building)." HELD, the lower commodity item not being restricted to domestic traffic, or otherwise, rates thereunder were applicable on traffic here involved. Refund of overcharges directed. Lautz Marble Corp. v. E. R. R., 115 I. C. C. 543.

(uu) On petroleum products, from Gates and Port Arthur, Tex., to certain Colorado points, tariff rule provided that if rates and charges in an agency tariff applicable from same origin points to Lago, Utah, or Deming, N. Mex., respectively, made lower charges than those provided in another tariff, the lower rates to Lago or Deming respectively would apply. Upon contention that word "respectively" applied to routes and not to rates. HELD, while it may have been carriers' intention to restrict application of lower rates to their own lines, tariff must be construed in accordance with its language. Tariff publishing the rule contained no routing restrictions and made all destinations therein, with one exception, subject thereto: nor was there any restriction that particular destination points must be directly intermediate to points carrying lower rates and if it was desire of carriers to exclude application of the Deming rate to points on their lines they had it in their power to do so by plain language. Here the tariff

is doubtful or ambiguous and must be resolved against framers. Refund of overcharges directed. Texas Co. v. B., S. L. & W., 115 I. C. C. 572.

(vv) First-class rate on l. c. l. shipments of "tinsel" found applicable and reasonable for transportation of threads or strands of metal, the German name for which is "lahn," used in manufacture of tinsel articles. Allegation that second-class rate provided for wire n. o. i. b. n. in official classification should have been collected, not sustained, lahn being a form of tinsel and not wire. Nat'l Tinsel Mfg. Co. v. C. & N. W., 115 I. C. C. 631.

(ww) Caption of tariff naming rates on furniture stated that rates were applicable to "Carloads except as otherwise specified." The furniture items carried under this caption separated different kinds of furniture into groups according to classification ratings applicable thereon, each item carrying the words "any quantity." HELD, as such tariff did not indicate whether l. c. l. or c. l. rating was to be used in determining to which commodity-rate group any particular article belonged, the words "any quantity" constituted an exception and made the rates applicable to either c. l. or l. c. l. shipments, and since the tariff item was specifically made applicable to shipments in "any quantity" the carload classification rating could and should have been used in determining commodity rates applicable to l. c. l. shipments. Refund of overcharges directed. Amber Furniture Co. v. C. & N. W., 115 I. C. C. 640.

(xx) On sand and gravel from Montgomery, Ala., to Fort Benning, Ga., tariff originally named rates in "cents per car of 40,000 pounds, excess in proportion." Prior to movement tariff was changed by omitting unit of rate, such tariff failing to state that amounts stated therein were intended to apply "per car" or "per car of 40,000 pounds, excess in proportion." Subsequently unit of rate was restored in tariff. HELD, assessment of rates on shipments moving during the interim on basis of unit per car of 40,000 pounds, excess in proportion, found to result in overcharges. Applicable rate was unit in cents per car regardless of amount of sand or gravel which each car actually contained. Refund directed. Baehl & Co. v. C. of G. Ry., 115 I. C. C. 679.

(yy) Shipments of defective or damaged radiators, bath tubs, sinks, and lavatories were transported in their original form and described in bills of lading under names of individual pieces, charges being collected at rates applicable to articles as described. Upon contention that shipments came properly within tariff description of scrap iron and should be accorded rate applicable thereto. HELD, in order to come within tariff description of scrap iron, articles must not be shipped in original form but must be reduced to fragments, scraps or pieces so as to be useless for any other purpose except remelting, for it is nature of the article shipped and not price at which it is sold or use to which it is put that determines whether scrap iron rate shall apply. See 102 I. C. C. 325, 326. As shipments did not conform to these requirements, rates assailed were applicable and not unreasonable. Richmond Radiator Co. v. C. & N. W., 115 I. C. C. 743.

(zz) Marine-engine parts from Hamilton, Ohio, to Oakland, Calif., were assessed class A rates. Governing tariff provided for alternative application of any lower aggregate of intermediates. A lower aggregate of intermediates was in effect but one factor thereof was limited to specific kinds of machinery, marine-engine parts not being specifically named. Upon contention that marine-engine parts are embraced in description "Motors," or "Stationary Engines," or both, on which the lower commodity rate factor applied. HELD, while shipments as a whole constituted marine engines they were not shipped in complete units, each shipment consisting of marine-engine parts only. It follows, therefore, that the class A rates assessed were applicable. Moore Shipbuilding Co. v. C., I. & W., 118 I. C. C. 3.

(3a) Third-class rate on cabinets charged on servidor doors, a patented article with double panels enclosing a narrow compartment to permit delivery or removal of clothes and other articles from hotel rooms without an employee having to enter the room, found illegal, and lower commodity rate on ordinary doors, found applicable. Servidor doors compete with ordinary doors and while they constitute a combination article having characteristics of both doors and cabinets and might reasonably take higher rates than common doors, their primary purpose and use continues to be

that of a door. Here commodity rate on doors was not restricted to certain types or qualities of doors and it therefore applied on servidor doors which are of higher value, possess features not common to ordinary doors, and presumably not contemplated when commodity rate on doors, was published. Reparation awarded. Servidor Co. v. C., M. & St. P., 118 I. C. C. 49.

(3b) Tariff rule published in compliance with a legislative enactment of the State of Missouri under which c. l. shipments of grain and products moving intrastate from Kansas City and St. Joseph, Mo., to other points in Missouri are permitted to be stopped in transit for part unloading found reasonable for interstate application on shipments from Kansas City, Kans., to points in Missouri, and failure of carriers to apply said tariff rule to such interstate shipments found to result in undue prejudice. Removal of undue prejudice ordered. Southwestern Milling Co. v. A., T. & S. F., 118 I. C. C. 61.

(3c) Charges on l. c. l. shipments of cheese from Burnett, Random Lake, Mayville and Hartford, Wis., to Cincinnati, Ohio, during Federal control, were collected on various bases. Complainant contended that in absence of a joint through rate the lowest available combination applied. HELD, through rates take precedence over lower combinations contemporaneously in effect and here applicable tariffs provided through rates. Rohan Co. v. Director General, 118 I. C. C. 83.

(3d) Automobile trucks were assessed second-class rate applicable under classification description, "Vehicles, motor: Automobiles * * * Freight." Upon contention that lower fourth-class rate was applicable under exception sheet item, 'Vehicles (Spring), Freight or Delivery." HELD, exception to classification must be read in connection with the classification and not wholly by itself, and applying the rule of fair and reasonable construction coupled up with a history and development of tariff items, the classification clearly provides for separate ratings on both freight motor vehicles and horse-drawn vehicles. The exception appears meaningless unless construed to mean horse-drawn vehicles and the construction of the exception item contended for by complainant is a strained and unnatural one. Second-class rates as charged were legally applicable. General Motors Truck Co. v. G. T. W. Ry., 118 I. C. C. 99.

(3e) Although intention of tariff framers is not controlling and tariffs are to be construed according to language used, a fair and reasonable construction should be given in the light of all pertinent provisions considered together. See 92 I. C. C. 211, 214; 101 I. C. C. 74, 76. General Motors Truck Co. v. G. T. W., 118 I. C. C. 99, 104.

(3f) Shipments of crude oil blended with a small quantity of casing-head gasoline and assessed gasoline rates found overcharged. Such shipments found to consist of crude oil it being shown that the material here considered, as shipped, when subjected to usual tests, showed characteristics well within the range of those exhibited by crude oils to which no casing-head gasoline had been added. Moreover, while oil originally contained a substantial percentage of casing-head gasoline, in view of highly volatile character of the commodity and opportunities that were afforded for its evaporation between time of its production and time it was loaded into the cars, the oil as tendered for shipment did not contain a sufficient quantity of casing-head gasoline to render it different in any essential respect from crude oil as covered by tariffs. Reparation awarded. National Refining Co. v. L. & N., 118 I. C. C. 177.

(3g) Combination rates on watermelons shipped from Oliver, Ga., to Kansas City, Mo., and forwarded back to Rock Island, Ill., found legally assessed. Complainant contended for application sence of routing restrictions in tariff. of a through rate to Rock Island in ab- While reconsignment rules authorized application of through rate with graduated charges for back hauls, carriers deny any knowledge of reconsignment and shipper adduced no proof that tariff provisions requiring that "request for reconsignment must be in writing" had been compiled with. Nor was testimony offered with respect to date of arrival or departure from Kansas City, or that request for reconsignment was made. Moreover, complainant's attorney signed statement of facts of which he had no knowledge, freight bills and bills of lading were not introduced in evidence, and there is no proof that complainant paid

charges or is the real party in interest. Ward Bros. v. C. of G. Ry., 118 I. C. C. 183.

(3h) Rates on "Furniture and Furniture Parts" were assessed on chairs, in the white, partially assembled. In the same tariff, carrier published lower rate on "Chair Stuff or Stock, K. D., in the white." Classification provided separate ratings on wooden chairs, knocked down, in the white, and when knocked down flat. Upon contention that commodity here shipped was chair stock, k. d., since it conformed to a rule of the tariff which provided that k. d. ratings involved the taking apart of the commodity in such a manner as to materially reduce the space occupied, HELD: The mere separation of the chairs into two or more parts did not destroy their identity as chairs and to sustain contention raised would nullify the distinction between the ratings on chairs, knocked down and chairs knocked down flat. Rates charged were therefore legally assessed. Memphis Furniture & Mfg. Co. v. L. & N., 120 I. C. C. 267.

(3i) Tariff item publishing rates from Carthage and Phenix, Mo., to various Illinois and Missouri destinations listed rates to "Chicago, Ill., Milwaukee, Wis., and intermediate points." Upon contention that phrase "and intermediate points" included all points between Carthage and Phenix as origins, and Chicago and Milwaukee as destinations, via all routes, and that rates named thereunder applied on sawed stone and marble moving from Carthage and Phenix, to Indianapolis, Brightwood, and St. Mary of the Woods, Ind., HELD: By a fair and reasonable construction of tariff as a whole, the phrase "and intermediate points" refers only to points betweeen Chicago and Milwaukee. To sustain complainant's contention would necessitate a strained and unnatural construction of tariff and result in various conflicts. Gates Marble & Tile Co. v. C., P. & St. L., 120 I. C. C. 275, 277, 278.

(3j) Charges on wheat from points west of Kansas City, Mo., milled in transit at Marshall, Mo., and the product, flour, forwarded to Oklahoma City, Okla., found inapplicable. Here, the movement involved a back haul through Kansas City, and charges assessed were based upon those published for out-of-direct-line routes. Tariff provision, however, related solely to charges where out-of-line haul exceeded 150 miles, such charges not to be based on the round trip but only for distance from point of origin to transit point. Distances from origin points to Marshall being less than 150 miles, charges assessed were therefore inapplicable. Applicable charges found to be those in effect via an unrestricted route through St. Louis. Victor Milling Co. v. M. P., 120 I. C. C. 335.

(3k) Facts of record showed that logs were originally cut as saw logs, but on account of market conditions were sold to a paper company which converted them into pulp. These logs were of large size, and were shipped in the condition in which originally cut. HELD: From facts of record no other conclusion is possible than that shipments consisted of saw logs, and were subject to saw-log rate. Charges thereon, based upon rates on pulpwood, found to have been illegally assessed. Refund of overcharges directed. Menasha Wooden Ware Co. v. D., S. S. & A., 120 I. C. C. 415.

(3l) On grain moving from points in Montana, the Dakotas, and Minnesota, to Duluth, Minn., and Superior, Wis., via Minneapolis, Minn., charges were assessed on basis of through rates to Minneapolis, plus proportionals beyond. Lower local rates applied between origins and destinations by way of direct routes. HELD: That such lower rates, because unrestricted as to routing, were applicable also by way of the indirect route through Minneapolis, except where tariffs provided for an additional charge on shipments moving beyond that point. Reparation awarded. Delmar Co. v. G. N., 120 I. C. C. 530.

(3m) Sixth-class rate applicable on "Cranes or Derricks * * *" and charged on girders constituting part of an electric crane, loaded on two cars because of their length, and billed as "girders for overhead electric crane," or "overhead electric crane girders," found illegal. Governing classification provided for application of the "Special Iron" rate on "Iron or Steel Girders, n. o. i. b. n." The competent facts of record establishing that these shipments were stripped of all attachments or fixtures, for purposes of transportation, they were steel girders entitled to special iron rating. Reparation awarded. Knight-Luttrell Iron Co. v. S. A. L., 120 I. C. C. 580.

(3n) Street-car bodies generally used by street-railway companies in construction and repair work were assessed class A rate applicable on "Car Bodies:

Bodies for Cinder, Dump, Furnace * * * Push or Slag cars." Contemporaneously a lower commodity rate applied on "Cars and Car Bodies, Street, with or without motor attachments." Upon contention that term "street car" means a passenger street car, whereas type of car body here in issue was used for carrying sand, gravel, etc., and therefore class rate was properly assessed, HELD: Tariff did not restrict application of the commodity rate to passenger cars. Wording "Cars and Car Bodies, Street," is general and must be construed to apply to other types of street-railway cars and car bodies such as freight or work car, as well as to passenger type. Reparation awarded. Market Street Ry. Co. v. S. P., 120 I. C. C. 654.

(3o) Rate on "handles, wooden, n. o. i. b. n., in the rough, loose or in packages," found to have been legally assessed on shipments of rough, lathe-turned wooden handles, shipped loose, in bundles, without covering. Complainant contended for application of lumber rate under a commodity description "wooden billets, blocks, bolts or strips, sawed or split, rough, unpainted," contending that commodity shipped was "billets, green, in the rough, sawed or hewn, but not to shape of finished article." It also showed that the material must be subjected to further processing before constituting a finished article. Commodity in question, however, is not a billet, as defined in a bulletin of the U. S. Department of Agriculture, or by the commission in its report in 62 I. C. C. 701. Cronk & Carrier Mfg Co. v. G., M. & N., 120 I. C. C. 663.

(3p) Fifth-class rates were assessed on shipments of calcium carbide. Upon contention of complainant that as a lower commodity rate carried under the heading of "lime (calcium)," in the classification was not specifically confined by tariff to a particular kind of lime, it is applicable to all classes of lime or lime products, including calcium carbide. HELD: The term "lime" has a well understood meaning in commercial transactions, and that commodity is usually classified commercially as chemical, building, and agricultural lime, dependent upon the calcium content. Calcium carbide is not known commercially as lime, and only by a strained interpretation of the tariff could commodity rate on lime be applied thereto. Charges assessed found applicable. Kansas City Oxygen Gas Co. v. C., B. & Q., 120 I. C. C. 715.

(3q) Complainant alleged that overcharges were collected on a car of secondhand or old wire rope, in reels or in a coil, shipped May 29, 1918 from Globe, Ariz., to Portland, Ore. It is rated fifth class, shipment moving A. E. to Bowie, Ariz., and S. P. beyond, charged fifth class of 40c to Bowie and $1.18 to San Francisco and 20c beyond. Complainant contends for combination of 80.5c, composed of 60c applicable on junk, consisting of OLD ROPE from Globe to San Francisco and 20.5c beyond on rope, scrap wire. HELD, applicable rate was 80c, overcharges to be refunded. Zimmerman Wells Brown Co. v. Director General, 122 I. C. C. 199.

(3r) Complainant attacked rates charged on black plate iron, carloads, subsequent to Jan. 31, 1922 from Alabama, Indiana, Illinois, Kentucky, Missouri, Pennsylvania, Virginia, West Virginia and other interstate points to Houston, Tex., as inapplicable. The question presented for determination is whether complainants commodity falls within the commodity description "iron or steel plate" as claimed by complainant or the description "sheet iron or steel" under which charges were assessed. When carriers desire to distinguish between plate and sheet iron according to gauge they do so by tariff, but there appears to be no uniform or recognized distinction. Much confusion appears to exist in this respect not only to the commercial world but also as between shippers and carriers. It is apparent that no hard and fast rule has been set or used in distinguishing sheet iron from plate iron. It appears that while there is no uniform distinction made between the two articles, nevertheless by custom of the trade there is a distinction dependent upon the gauge, or thickness of the article. Tariffs of various carriers make the distinction anywhere from 7 to 20 gauge. The tariffs in the instant case do not make a distinction either by gauge or otherwise, and are defective in this respect. While it is difficult to determine where the exact line is drawn between the two products by custom of the trade, the highest gauge shown of record for plate iron or steel is 20, and it is clear that iron or steel of a gauge 26 and lighter falls within the designation sheet iron or steel. Charges assessed were applicable. The record contains little of probative value bearing upon the reasonableness of the rates attacked. HELD, rates attacked applicable and not unreasonable,

complaint dismissed. Davis George Mfg. Co. v. A. G. S. R. R., 123 I. C. C. 10.

(3s) Complainant attacked rate charged on three cars of potatoes shipped in Oct. 1921 from Whitehall and Pablo, Mont., to New Orleans, La., as unreasonable, unduly prejudicial and in violation of the fourth section. Shipments delivered to N. P. unrouted, the Pablo and one from Whitehall moved N. P. to St. Paul, Minn. M. & St. L. to Albia, Ia., Wabash to St. Louis, Mo., and L. & N. beyond. The other Whitehall shipment moving N. P. to St. Paul, C. G. W. to Des Moines, Ia., Wabash to St. Louis and L. & N. beyond. Applicable rates were $1.215 composed of 58.5 and 63c, to and beyond Omaha, Neb., under authority of rule 5b. Effective Oct. 6, 1922 the $1.10 rate was established on this traffic. HELD, shipment overcharged, reparation awarded, rate attacked not unreasonable or unduly prejudicial. Kohlman Bros. v. L. & N. R. R., 123 I. C. C. 56.

(3t) Complainant attacked combination charged on two cars of bulk sawdust shipped on Dec. 30, 1919 and Jan. 2, 1920 from Danbury, Wis., to Omaha, Neb., as unreasonable and inapplicable. Shipments moved Soo Line, C. St. P. M. & O. and C. & N. W., charged 5.5c to Minnesota Transfer Minn., and 13c beyond. The fact remains that although the base rate of 13c from St. Paul to Omaha is shown in section 2 of the tariff Danbury is not shown in the alphabetical list of stations therein, and it would appear that the rate of 18c from Danbury to Omaha was not applicable. HELD, applicable rate was 18.5c overcharge on one shipment to be refunded, complaint dismissed. American Smelting & Refining Co. v. Director General, 123 I. C. C. 136.

(3u) Complainant alleged that rates charged on nine cars of various iron and steel articles, billed as scrap iron, shipped from Little Rock, Ark., to Kansas City, Mo., in Sept. and Oct. 1922 were unreasonable and inapplicable. Charged fifth class rate of 83c, there being contemporaneously a rate of 37.5c on scrap iron or steel. Upon the facts as developed of record, the shipments consisted of scrap iron or steel and applicable rate was 37.5c. HELD, applicable rate was 37.5c. reparation awarded. Consolidated Metals Corp. v. M. P. R. R., 123 I. C. C. 139.

(3v) While rates predicated upon the use to be made of a commodity are unlawful because of the resulting discrimination, nevertheless such rates, while in effect, are the legally applicable rates on the particular commodity when the conditions of the tariffs publishing such rates have been fully complied with. Harlem & Morrisiana Transp. Line v. N. H. & H. H. R. R., 123 I. C. C. 480, 484.

(3w) Complainant attacked sixth class rate charged on lumber carloads shipped Jan. 11 and 12, 1924 from Burks Falls, Ont., to Pontiac, Mich., as inapplicable and unreasonable. Charged sixth class 41.5c. Contemporaneously there was a joint commodity rate of 33c applicable from Burks Falls to Owosso, Mich. Pontiac is intermediate to Owosso over the route of movement. HELD, applicable rate was 33c, overcharge to be refunded, applicable rate not unreasonable. Strable Lumber & Salt Co. v. C. N. Ry., 123 I. C. C. 585.

(3x) Complainant attacked commodity rate of 24.5c charged on carloads of lumber in pieces not exceeding 102 inches in length, shipped from Angora, Minn., to Chicago Heights, Ill., between June and November 1923 as inapplicable and unreasonable and unduly prejudical. Angora is on the D. W. & P., 588 miles from Chicago Heights. The rate of 23c was published in C. N. I. C. C. W. 116. Effective Feb. 1, 1923 a rate of 24.5c from Angora to Chicago Heights was established in Boyds I. C. C. A-1360. That tariff specifically stated that the C. N. tariff was canceled, but no supplement to the latter tariff was issued. Rule 8 E of Tariff circular 18 A provides that if a tariff is canceled by the issuance of a similar tariff to take its place, cancellation notice must not be given by supplement, but by notice printed in new tariff. The rate from Tower, Minn., 583 miles was and is 22c. This latter rate has since been published from Angora. HELD, 24.5c rate applicable between June and Nov. 1923, not unreasonable or unduly prejudical, and present rate of 22c, not unreasonable or unduly prejudicial, complaint dismissed. Chicago Heights Mfrs. Assn. v B. & O. C. T. R. R., 123 I. C. C. 636.

(3y) Complainant alleged that commodity rates charged on gravel, in carloads, from Gravel Siding, Miss., to Arkansas since Sept. 8, 1924 have been inapplicable and unreasonable. Gravel Siding is a local station on the Southern 118 miles east of Memphis, Tenn. Rates charged were combination on Memphis, the tariff to Memphis referring to the

combination rule, the tariff from Memphis not referring to it. HELD, rates charged inapplicable and rates are the combination on Memphis subject to the combination rule, reparation awarded. Allen Gravel Co. v. C. R. I. & P. Ry., 123 I. C. C. 650.

(3z) Fifth-class rate assessed on granite monuments and parts thereof under classification description "Granite * * * carved, lettered, polished or traced," found applicable. Governing classification carried no rating on monuments and while a lower commodity rate contemporaneously applied on polished granite, tariff item naming this rate specifically excluded monuments or parts. Accordingly, such lower commodity rate could not be applied on monuments, but under analogy rule carried in the classification, articles here shipped may be regarded from a classification standpoint as polished granite. Kassebaum & Son v. N. Y., N. H. & H., 122 I. C. C. 59.

(4a) First-class rating on "Dry goods: braid, n. o. i. b. n., cotton or other than cotton" applied on round braided twine, found to have been legally assessed. Contemporaneously lower third-class rating applied on "Twine, n. o. i. b. n.," While this particular article may not have been used for braid, it is made of cotton on a braiding machine, could be used as a cheap braid, and clearly falls within the generic group of woven or braided trimmings. It does not fall within the correct description of twine described in Standard Dictionary as "A string of some fibre, composed of two or more threads or strands twisted together." Fall River Chamber of Commerce v. B. & O., 122 I. C. C. 100.

(4b) Fifth-class rate was assessed on secondhand wire rope. Contemporaneously a lower rate applied on "junk, consisting of * * * Old Rope." Upon contention that rope shipped was of more value than ordinary junk, was intended to be used further, and that rate assessed was therefore applicable, HELD: Item covered old rope without restriction. It apparently was not contemplated that articles included in the item could not be put to further use as such articles as old tierces and barrels are listed. If carriers intended to limit application of rates, they should have done so by proper tariff provision. Moreover, in 88 I. C. C. 217, it was held that old rails were entitled to rate under heading "Scrap Iron and Scrap Steel," although they were to be further used. Reparation awarded. Zimmerman-Wells-Brown Co. v. Director General, 122 I. C. C. 199.

(4c) Class rates were assessed on pneumatic rubber tires. Tariff carried a lower commodity rate item under caption "Agricultural Implements and Parts Thereof," which referred to articles shown in a separate item under head of "Vehicles (except Automobiles, * * *) and parts thereof: Tires, Rubber, pneumatic." Upon contention that commodity rate was applicable because pneumatic tires are specifically named in tariff item and that item is made a part of commodity rate item by reference, HELD: Contention overlooks fact that vehicles and parts are restricted by caption of the rate item to agricultural implements and parts thereof. The commodity shipped not being shown to have been part of an agricultural implement or of any vehicle not excepted; and the tariff under consideration clearly excluding application of commodity rate on automobile parts, such as pneumatic rubber tires, the class rates charged were legally applicable. Federal Rubber Co. v. C. & N. W., 122 I. C. C. 331.

(4d) Fourth-class rate was assessed on fresh berries preserved in sugar, in barrels, under tariff item: "Fruit, Fresh: Berries, n. o. i. b. n.," with foot note "Rating applies on Fresh berries in water or in their own juice or sugared for preservation during transit." Contemporaneously a lower commodity rate applied on "fruit, fresh." Upon contention that placing of rating applicable on sugared berries in the classification under main heading of fresh fruits indicated that carriers regarded sugared berries as fresh fruits, and commodity rates should, therefore, have been assessed, HELD: Contention is without merit. Sugared berries are not fresh fruits as they can be kept in ice storage for a year, and often remain in a solid frozen mass for several days after barrels in which they are shipped are removed. Applicable rates were therefore assessed. North Ontario Packing Co. v. O. W. R. R. & Nav. Co., 122 I. C. C. 360, 361, 362.

(4e) Combination rates assessed on shipments of structural iron and steel, from St. Louis, Mo., Chicago, Ill., and Bethlehem, Pa., routed by shipper for fabrication in transit at Muskogee, Okla., and reforwarded to Casper, Illco, and Salt Creek, Wyo., found applicable. While contemporaneously lower joint rates were

in effect to Great Falls, Mont., and Spokane, Wash., they were restricted so as not to apply to destinations named, and lower joint rates in effect to the Wyoming points were not applicable via Muskogee. Complainants routed shipments over extremely circuitous routes involving an out-of-line haul of at least 800 miles. Had they been forwarded over direct routes, lower rates could have been secured and wasteful transportation avoided. Tulsa Rig, Reel & Mfg. Co. v. M.-K.-T., 122 I. C. C. 405.

(4f) Combination rates assessed on structural iron and steel from Indiana Harbor, Ind., to Casper, Wyo., fabricated in transit at Muskogee, Okla., found overcharged. Contemporaneously a lower joint rate was in effect from Chicago to same destination. Rates from Indiana Harbor are same as rates from Chicago and transit tariff provided for application of joint rates from points of origin to destinations wherever applicable via the transit point. Refund of overcharges directed. Tulsa Rig, Reel & Mfg. Co. v. M.-K.-T., 122 I. C. C. 405, 406.

(4g) Shipments billed as "cottonseed-hull fiber shavings" were upon inspection found to consist of "cotton linters," and charges on latter commodity were collected. Neither published tariffs nor classification defined "hull fiber or shavings" or "linters." Upon complainant's contention that shipments consisted of hull fiber or shavings, HELD: Where tariffs merely provide rates on linters and hull fiber or shavings without defining either, determination of applicable rate is a question of fact. See 77 I. C. C. 727. Here, samples of commodity shipped were entirely free from particles of the hull, which is one of the chief characteristics of cottonseed-hull fiber or shavings, and were somewhat light in color, whereas hull fiber or shavings are usually dark. Therefore, shipments consisted of linters and applicable rates were assessed. Fraser v. A. C. L., 122 I. C. C. 520.

(4h) Circulars issued by inspection bureaus to inspectors for purpose of assisting them in determining proper ratings to be applied, not being incorporated in tariffs or on file with commission, found to have no legal status or effect in so far as they might be used in any manner to change rates applicable on a particular commodity or commodities. Fraser v. A. C. L., 122 I. C. C. 520, 523.

(4i) Invoices alone do not satisfactorily establish the character of a commodity shipped, when that is in issue, or determine the rate applicable, as the inherent character of an article is not changed or affected by manner in which it is invoiced. Concrete evidence, however, such as samples of the shipments are helpful. Fraser v. A. C. L., 122 I. C. C. 520, 522, 524.

(4j) The commission has no special qualifications as an official body to determine the character of commodities from samples. However, where a violation of section 6 is alleged, it has concurrent jurisdiction with the courts and mode of proof does not differ in essence from that in court. Usual method of proving the character of a commodity or article is to introduce the commodity or article itself, or an agreed sample thereof, and, where the decision involves an intricate analysis, to adduce competent evidence by expert witnesses. Fraser v. A. C. L., 122 I. C. C. 520, 525.

(4k) Evidence which goes to the question of unreasonableness of rates can not affect interpretation of tariffs in a proceeding involving legality of rates under section 6 of the act. Fraser v. A. C. L., 122 I. C. C. 520, 526.

(4l) Rates applicable on septic tanks assessed on shipments described as clay sewer pipe and sewer-pipe fittings, found applicable and not unreasonable. Carrier showed that commodities involved were in fact material for construction of individual septic tanks; that complainant's catalogue describes them as such and also shows tank to be patented; and that application of various shippers for establishment of specific classification entries for septic tanks, both clay and concrete, is evidence that term "septic tank" is an appropriate description. Moreover, in 4 I. C. C. 41, the commission stated that manufacturer's description of an article for selling purposes described it for transportation, and carriers may accept such description for classification and rate purposes and are not required to analyze the freight to ascertain whether it is in fact inferior to description or public representation in order to give it a lower rate corresponding to actual value. Southern Sewer Pipe Works v. L. & N., 122 I. C. C. 721.

(4m) Charges were assessed on commodities variously described as tin-mill black plate, or black sheet iron or sheet iron, under tariff item "Paving and Roof-

ing Material: Roofing and Sheet Iron or Steel." Complainant contended for lower rate applicable on "Iron and Steel Articles of: Iron or steel plate." HELD: While governing tariff does not make a distinction either by gauge or otherwise, in 77 I. C. C. 473, separate commodity descriptions were provided for plate and sheet iron, and in 77 I. C. C. 311, it was pointed out that mills at Pittsburg commercially recognize plates as 16 gauge or lower, and sheets as 17 gauge or higher. The highest gauge shown of record for plate iron or steel is 20. As commodity involved ran from 28 to 32 gauge, it is clear that it falls within designation sheet iron or steel and charges assessed were therefore applicable. Davis George Mfg. Co. v. A. G. S., 123 I. C. C. 10.

(4n) Rate on fresh and frozen fish, charged on shipments of "bait fish" found not unreasonable or otherwise unlawful. Applicable tariffs did not name species of fish entitled to fish-bait rates but under a verbal agreement between carriers and shipper certain varieties when offered as such were transported at fish-bait rates. Such an agreement, however, is of no effect in determining applicable rates since not published in tariffs on file with the commission. While rates predicated upon use are unlawful, nevertheless such rates, while in effect, are legally applicable when tariff conditions are fully complied with. Here the fish shipped as bait were intended and sold for human consumption, whereas fish-bait rates were legally applicable only on fish shown to a reasonable degree of certainty to have been or to be used for that purpose. Harlem & Morrisiana Transp. Line v. N. Y., N. H. & H., 123 I. C. C. 480.

(4o) Rates on anthracite coal from Lehigh, Schuylkill, and Wyoming regions in Pennsylvania, to complainant's siding within corporate limits of Providence, R. I., found inapplicable. Charges were collected based on rate to Auburn, R. I., a point intermediate to Providence. However, as tariffs did not define the switching limits of Providence or indicate that the Auburn rate applied on shipments delivered on complainant's siding, the logical interpretation of tariffs was that Providence rate applied to all points within corporate limits of that city and was therefore applicable to complainant's shipments. See 63 I. C. C. 392; 73 I. C. C. 143. Refund of overcharges directed. City Coal Co. v. N. Y., N. H. & H., 123 I. C. C. 609.

(4p) Complainant alleged that the charges collected on a car of hay, shipped Nov. 6, 1922 from Manhattan, Kas., to Birmingham, Ala., and reconsigned thence to Jasper, Ala., were unjustly discriminatory. Shipment moved UP to Kansas City, and reconsigned to Birmingham, and moved Burlington to East St. Louis, Ill., thence IC through Jasper to Birmingham. Consignee, after inspection, refused the shipment and complainants reconsigned it to Jasper. From Birmingham the car moved over the Southern to Parrish, Ala., and NA beyond. Charged combination rate of 83.5c, composed of a rate of 36.5c to East St. Louis, 33c to Birmingham and 14c to Jasper. Defendants admit that the factor of 37.5c to Memphis should have been employed, but state that the class D rate of 24c from Memphis to Birmingham plus the local rate of 14c to Jasper made the applicable combination 75.5c. HELD, shipment overcharged based on legal rate of 75.5c reparation awarded. Arnold Co. v. S. Ry., 126 I. C. C. 141.

(4q) In Russell Grain Co. v. A. G. S. R. R., 113 I. C. C. 699, division 4 found that the combinations of rates to and from the Ohio river crossings charged on numerous carloads of grain and grain products shipped in 1924 from Colorado, Kansas and Nebraska on the Burlington to destinations in Tennessee, Georgia and Alabama were applicable and dismissed the complaint. If complainants contention as to the application of the intermediate rule is also correct, the Greenwood rates would apply to any point on lines parties to tariff. It will be noted that all of the destinations to which specific domestic rates are provided are Ohio river crossings or in Mississippi valley territory, and that where available routes specify junction points none of the junction points are east of the Mississippi valley territory. It will also be noted that where it was intended to leave the routing open beyond certain junctions it was done by adding "and lines beyond". HELD, construction contended for unreasonable and not warranted by the provisions of the tariff, complaint dismissed. Russell Grain Co. v. A. G. S. R. R., 126 I. C. C. 405.

(4r) Shipment of hay from Manhattan, Kans., to Birmingham, Ala., was upon refusal at that point reconsigned to Jasper, Ala., a point intermediate to Birmingham. Combination rate to Birmingham plus local rate back to Jasper was assessed. Contemporaneously a lower combination rate unrestricted as to

routing applied via Memphis to Jasper. HELD: Contention that Memphis rate was applicable through Jasper to Birmingham and back to Jasper is founded upon an unreasonable construction of the tariff. Manifestly a rate from one point to another does not contemplate movement beyond destination and back again. Combination rate based on Birmingham was, therefore, applicable. Arnold & Co. v. S. Ry., 126 I. C. C. 141.

(4s) Class rates were assessed on steam road rollers under classification item "Grading and road-making implements: Rollers, Road: Self-propelling or other than self-propelling." Contemporaneously lower class ratings applied on "Machinery and machines." Upon carrier's contention that a steam road roller is not a machine; that as classification makes no distinction between self-propelling and non-self propelling road rollers, mere addition of a steam engine to provide tractive power cannot transform a road roller into a machine; and that since classification lists road rollers under a specific heading, question of applicability of term "machinery and machines" is removed, HELD: Similar contentions were advanced in 115 I. C. C. 439 in which it was found that "machinery and machines" included steam rollers, and record in instant case does not warrant a different conclusion. Refund of overcharges directed. Buffalo-Springfield Roller Co., v. D., T. & I. 126 I. C. C. 177.

(4t) Complainant sought rates on shipments of iron and steel articles, applicable on "scraps and pieces of iron and steel which have value solely for remelting purposes" upon contention that articles have no commercial value, there was no demand for them in their original form, and they were actually remelted. HELD: To come within description contended for articles must be reduced to fragments, scraps, or pieces so as to render them useless for any purpose other than remelting, for it is the nature of articles shipped, not price at which it is sold, use to which it is put, or commercial demand, that determines whether rate on scrap iron and steel applies. See 98 I. C. C. 551 and other cited cases. Here evidence indicated that articles were transported in their original form, and were described individually in bills of lading. Charges collected on that basis were therefore applicable, not unreasonable or otherwise unlawful. Hymen-Michaels Co. v. N. & W. 126 I. C. C. 195.

(4u) Shipments of nitrate of soda from New Orleans, were billed to Edwards, Ill., and moved by carrier to complainant's plant at Olin, Ill., a point 6 miles farther distant without further orders. At time shipments moved no import class or commodity rates were maintained to Olin and import commodity rates applicable to Edwards were assessed. HELD: As Olin is located in the Peoria, Ill., group to which lower rates on domestic shipments were contemporaneously maintained, and as such rates apply in absence of specific import rates, shipments were overcharged. Refund of overcharges directed. Egyptian Powder Co. v. I. C., 126 I. C. C. 293, 301, 302.

(4v) Grain from west-bank Mississippi River points and from Illinois, mixed into feed at Chicago, and product forwarded to c. f. a. destinations was assessed grain rates to Chicago and proportional or reshipping grain-products rates beyond. Tariff provided that when shipment originated at point from which no joint rate to final destination applied via the transit point, rates would be the reshipping or proportional rates, except when commodity consisted of grain, in which event rate on out-bound shipment would be that applicable to grain products. Here, through grain-products rates but no through by-products rates were published. HELD: Words "no joint through rate" refer to grain products. If carriers intended that the rule refer to through grain rates, tariff should have been so worded. Accordingly through one-factor rates on grain products from origins to final destinations, in effect when the grain originated, were applicable. Refund of overcharges directed. Arcady Farms Milling Co. v. A., C. & Y., 126 I. C. C. 449.

(4w) First-class rate provided for paper goods, n. o. i. b. n., any quantity, was assessed on cardboard trouser presses. Upon contention that lower sixth-class rate applicable on fiber-board boxes, k. d., flat, printed, is by analogy applicable on trouser presses since material, appearance, process of manufacture, value, and other characteristics of the two articles are the same, only difference being in uses to which each is put. HELD: Fact that two articles may resemble each other in these respects is not sufficient to make them the same. Rating on boxes applies definitely on that

article, and as there was no specific rating for trouser presses, it follows that rate applicable was rate on paper goods, n. o. i. b. n. Chicago Carton Co. v. N. Y. C., 126 I. C. C. 457.

(4x) Charges on grapes from Reedley, Calif., to Croxton., N. J., reconsigned to Scranton, Pa., assessed on basis of through rate to Croxton plus second-class rate to Scranton, FOUND inapplicable. The through rate applied both to Scranton and Croxton and governing tariff provided that to points on direct route reconsignment would be made at through rate plus reconsignment charge, except on shipments involving a back haul, in which event charges would be computed on a mileage basis, plus reconsignment charge, for back hauls not exceeding 300 miles. Here, movement involved a back haul exceeding 300 miles and class rate was assessed. However, as the through rate was unrestricted as to routing and shipments could have moved via a route involving a back haul less than 300 miles, charges based on mileage over the shorter route should have been assessed. Reparation awarded. California Table Fruit Co. v. A., T. & S. F., 126 I. C. C. 700.

(4y) "Prepared and anthracite briquettes and boulets" in carriers' tariff schedule HELD to include anthracite coal in native form in sizes above pea and briquettes and boulets made from anthracite coal, since "prepared coal" in anthracite coal trade means sizes of coal above pea. New York, N. H. & H. R. Co., v. Salter, (Conn., 1926) 134 Atl. 220.

(4z) Freight tariff HELD to quote rates on sugar in cents per hundred pounds, as shown in sheets devoted wholly to sugar schedule, not in cents per ton of 2,000 pounds, as indicated in rate column at top of sheet containing last of stone schedule and first of sugar schedule, in view of absurdly unreasonable rates if quoted in cents per ton. Gunnison Sugar Co. v. Public Utilities Commission of Utah, (Utah 1927) 256 Pac. 790.

(5a) Shipment of denatured alcohol from Philadelphia to Providence, R. I., was held at latter point and subsequently taken to complainant's private siding within corporate limits of Providence. Charges were collected on basis of rate to Providence plus rate to Auburn, a point intermediate to and adjoining Providence. Tariff publishing rate to Providence did not define switching districts, but provided that the rate applied to private sidings connected with carriers at which traffic is usually delivered. Upon contention that complainant's siding was within Auburn switching limits and that rate to Providence was applicable, HELD: Following 73 I. C. C. 143, in which a similar shipment was involved, rate to Providence included rate to complainant's private siding in absence of tariff provisions showing what delivery points the rate actually included. Reparation awarded. Atlantic Refining Co. v. P. R. R., 128 I. C. C. 43.

(5b) On shipments of "cold-pack" berries and cherries, second-class rate applicable on "Fresh fruit n. o. i. b. n." was assessed on cherries, and third-class rate applicable on "Fresh fruit: Berries, n. o. i. b. n." was assessed on berries. Complainant contended that, as the fruit was preserved by freezing, fifth-class rate on "Fruits, other than dried, evaporated or fresh: Canned or Preserved in juice or syrup, or in liquid, other than brine or alcoholic liquor * * *," was applicable. HELD: The term "preserved" as applied to fruit contemplates only fruit that has been treated in such a manner that it will keep for an indefinite but substantial length of time at ordinary temperatures, while cold-pack fruit is simply fresh fruit, the deterioration of which has been arrested by freezing and refrigeration, and rates charged were applicable. Lutz & Schramm Co. v. P. & L. E., 128 I. C. C. 521.

(5c) Complainant attacked fifth class rates charged on eight carloads of angles, channels, and beams between Jan. 16 and Feb. 15, 1924 from Indiana Harbor, Ind., to Indianapolis, Ind., as unreasonable, illegal and in violation of section four. Shipments moved as routed over I. H. B., C. & O. to Cottage Grove, Ind., 76 miles east of Indianapolis and C. I. & W. beyond, 275 miles, rate charged 25c. Contemporaneously there was in effect a rate to Raven, Ill., a point on the C. I. & W. about 80 miles west of Indianapolis, commodity rates of 15.5c on angles and 17.5c on beams and channels, which, complainant contended were applicable under an intermediate clause. No routing was provided from Indiana Harbor in connection with the C. & O. as Raven is not located on the line of this carrier, and the tariff specifically provided that the rates named therein would apply only when routing

instructions were provided in the tariff. HELD, rate charged applicable and not unreasonable or otherwise unlawful, complaint dismissed. Inland Steel Co. v. B. & O., 128 I. C. C. 551.

(5d) Complainant attacked charges collected on one car of caterpillar tractors and parts shipped on May 10, 1923 from Stockton, Calif., and delivered on May 30, 1923 at Dallas, Tex., were in violation of section 1, 4 and 6. The issue of unreasonableness is barred by limitation and there is no evidence with respect to the alleged fourth section violation. The sole question to be determined is whether the charges assessed were applicable. Shipment moved S. P. to San Antonio, Tex., where it was reconsigned to Dallas over the G. H. & S. A. and H. & T. C., with directions to stop and partly unload at Houston, Tex., Charged $2.935 to Dallas plus $2.25 reconsignment and $6.30 stop over at Houston. The tariff authorized reconsignment at San Antonio but there was no authority for stop over at Houston and the movement therefrom must be treated as a reshipment. Applicable charges were based upon rates of $2.145 from Stockton to Houston for the original loading and 69c beyond plus $2.25 reconsignment, overcharge to be refunded, complaint dismissed. Holt Co. of Texas v. S. P. Co., 128 I. C. C. 555.

(5e) Upon contention that minimum class-rate scale is inapplicable because in its publication the publishing agent failed to denote an advance, FOUND: Contention is without merit. See 74 I. C. C. 179, 181. Lynchburg Chamber of Commerce v. B. & O., 128 I. C. C. 557, 558.

(5f) Shipment of wrought-iron scrap from Etowah, Tenn., to Cleves, Ohio, purchased under contract f. o. b. Cincinnati, from L. & N. R. R., then under Federal control, and sold by complainant, f. o. b. Cleves, was assessed the rate Etowah to Cleves. FOUND: As material was purchased from railroad administration on price basis delivered at Cincinnati, charges collected in excess of that named in effective tariff for transportation from Cincinnati to Cleves were assessed in violation of section 6 (7) of the act. Reparation awarded. Hyman-Michaels Co. v. Director General, 128 I. C. C. 689.

(5g) General commodity tariff found applicable on shipments of horses and mules from Sikeston and Oran, Mo., to Memphis, Tenn., moving prior to date of its cancellation, although tariff, by exception, referred specifically to other tariffs for rates from points on carriers' lines in Missouri to Memphis. Contention of carrier that exception prohibited application of general tariff not sustained in view of fact that tariffs referred to failed to provide rates on livestock from and to points in question. Under rule 4 (c) of Tariff Circular 18-A it is permissible for a general commodity tariff to refer to other tariffs in which certain named class or commodity rates may be found, but where, as here, the tariff referred to fails to publish any rate on commodity in question, rate in general commodity tariff remains applicable. Maxwell Sons Commission Co. v. St. L.-S. F., 128 I. C. C. 725.

(5h) Shipments of anthracite coal from Pennsylvania points to Fort Snelling, Minn., moved via St. Paul to Minneapolis, thence to Fort Snelling. Charges were collected on basis of rate to Minneapolis. However, Fort Snelling was not named as a point to which that rate applied, and carriers sought to collect undercharges for local rates from Minneapolis to Fort Snelling. FOUND: While customary route between St. Paul and Minneapolis is via Minnesota Transfer, and shipments moved over that route, they could have moved via Mendota, Minn., over which route Fort Snelling is intermediate to Minneapolis. Since Fort Snelling generally takes Minneapolis rate on coal from various other points, and that rate was subsequently established over route of movement, applicable rate was unreasonable to the extent it exceeded rate to Minneapolis. Waiver of undercharges authorized. Hostler Coal & Lbr. Co. v. P. M., 128 I. C. C. 731.

(5i) Rate on clay cotton bagging from Chickamauga, Ga., to St. Joseph, Mo., found inapplicable. Authority for rate collected was not shown and governing tariff contemporaneously published a lower joint rate between same points. Refund of overcharges directed. Cleveland-Akron Bag Co. v. C. of G., 128 I. C. C. 733.

(5j) Rate on sand from Pacific, Mo., to Fort Smith, Ark., found inapplicable on shipments moving over St. Louis-San Francisco, but applicable on those moving over Missouri Pacific. Tariff carried a c. l. rate applicable over either route and also published a single-line

distance rate applicable between points in Missouri B territory, use of either rate, whichever made lower, being authorized. During a certain period Pacific on the Frisco was included within Missouri B territory, and as distance rate over that line made the lower rate shipments assessed c. l. rate were overcharged. However, as haul over Missouri Pacific was considerably greater than over the Frisco and rate under distance scale exceeded the c. l. rate, it is immaterial whether or not Pacific over that route was in Missouri B territory inasmuch as the c. l. rate being lower was applicable in either event. Reparation awarded. Harding Glass Co. v. M. P., 128 I. C .C. 754.

(5k) Complainant attacked rate charged on scrap iron, carloads, from Jersey City, N. J., to Luzerne, Pa., Oct 26, 1925 as unreasonable, and in violation of section four. Charged $4.50 per long ton. Since the material shipped was not scrap iron, complainants comparisons of scrap iron rates have little value. HELD, applicable rate $4.50 per short ton, undercharges to be collected, applicable rate not unreasonable or otherwise unlawful, complaint dismissed. Cohen & Son v. C. R. R. of N. J., 129 I. C. C. 1.

(5l) The applicability of a rate to a given shipment depends upon whether or not such shipment moved over lines of carriers parties to the tariff naming the rates. In the absence of information as to the route of movement the Commission is unable to determine the question. Milne Lumber Co. v. N. Y. C. R. R., 129 I. C. C. 457, 458.

(5m) Complainant alleged that sixth class rate charged on cottonseed hull fiber or shavings from Jackson, Tenn., to Brooklyn, N. Y., and Jersey City, N. J., were unreasonable and inapplicable. The shippers duplicate bills of lading, presented in evidence, describe the consignments as "cottonseed hull fiber shavings" and in other similar terms of the same descriptive sense and meaning; but an inspection and examination of the carriers caused the inspector to change the billed description to read "cotton linters." At time of shipment a commodity rate of 44.5c applied on cottonseed hull fiber or shavings. and sixth class rate of 94c on cotton linters. In such a case as this the selling price, if properly verified, would be persuasive evidence of the true nature of the property transported. But the proof offered as to selling price should not leave room for doubt. These consignments were all billed to the shippers order, and therefore could not be procured from the delivering carrier until the original bills of lading had been surrendered. These original bills of lading in turn could not be procured by the complainant-consignee until the shippers drafts, supported by the original bills of lading and selling invoices, had been paid and taken up at the bank. The canceled drafts would clearly be the best evidence of payment, and of the amount of the selling price. The record, however, lacks such evidence. Moreover, the selling contract and bills of sale, presented in evidence by complainant are not satisfactorily verified. The Commission has no special qualification as an official body to determine from samples whether a certain shipment consists of linters or shavings. All that it undertakes to say here is that the proof is insufficient to justify application of the cottonseed hull fiber or shavings classification and the lower commodity rate of 44.5c. HELD, sixth class rates charged applicable, complaint dismissed. Eblin & Co. v. N. C. & St. L. Ry., 129 I. C. C. 629.

(5n) Complainant alleged fifth class rates charged on numerous carloads of liquid bleach or peroxide of hydrogen shipped on and after April 1, 1922 from Wallabout Pier No. 2 (Brooklyn), N. Y., to Sunbury, Pa., as unreasonable and inapplicable. Charged fifth class rates of 31.5 and 28.5c in effect prior and subsequent to July 1, 1922. Complainant contended it should have taken the commodity rates of 21c and 19c, minimum 36,000 pounds, on "bleach and bleaching" in effect prior and subsequent to July 1, 1922. The tariff publishing the rates on "bleach and bleaching" neither names the commodities intended to be included within that designation nor except any commodity therefrom. The governing official classification has no item designated "bleach and bleaching" as such. Under the headings "bleaching liquid, n. o. i. b. n.," and "Hydrogen, dioxide of," or "Peroxide of," carload ratings of fifth class are provided. Classification also lists "bleaching powder, n. o. i. b. n." and chloride of lime "bleach or bleaching powder" as taking sixth class. Commodities falling within either of these two descriptions could also be described

as "bleach and bleaching" for which the commodity rates are provided. HELD, shipments consisted of bleach or bleaching and commodity rates of 21c and 19c were applicable, overcharge to be refunded, complaint dismissed. Sunbury Converting Works v. Pennsylvania R. R., 132 I. C. C. 230.

(5o) Complainant alleged rate charged on a carload of yellow pine lumber, shipped August 23, 1923 from Jackson, Ala., to Orangeville, Ill., was inapplicable. Shipment was originally consigned to Cincinnati. It moved Southern to Birmingham, A. G. S. to Chattanooga, thence C. N. O. & T. P. to Cincinnati. There it was reconsigned to Orangeville and was forwarded over the Big Four to Kankakee, Ill., thence I. C., charged 48.5c plus reconsignment charge of $6.30. Contemporaneously there was in effect from Jackson to Orangeville a combination of proportional rates to and beyond Cairo, both of which were subject to the rule for constructing combination rates, which would produce a through rate of 40.5c. Since no joint through rate applied over the route of movement, the applicable rate from Jackson to Orangeville was the lowest combination of intermediate rates via Cincinnati, which, under rule 5b, was combination of proportional rates to and beyond Cairo. There was nothing in the tariffs naming these rates which would have precluded their application on a shipment billed direct from Jackson to Orangeville via Cincinnati over the lines of defendants comprising the route of movement. HELD, rate charged inapplicable, applicable rate was 40.5c, overcharge to be refunded. Brabston v. S. Ry., 132 I. C. C. 705.

(5p) Rate on structural steel from Jersey City, N. J., to, Luzerne, Pa. found not unreasonable or otherwise unlawful. While complainants alleged that material shipped was scrap iron and that as compared with rates on that commodity in same general territory rates assailed were unreasonable and otherwise unlawful, carriers showed that it was originally shipped as structural steel and stored at Jersey City; that material shipped therefrom was of same character, shape, and form as when received at that point; and that it was later used as I beams for mine support. Since to come within tariff description of scrap iron, material must be reduced to fragments or pieces so as to be useless for any purpose other than remelting, material shipped was not scrap iron and comparisons instanced have little value. See 102 I. C. C. 325. Cohen & Son v. C. R. R. Co. of N. J., 129 I. C. C. 1.

(5q) One factor of combination rate on a mixed carload of sawmill machinery and a power boiler, shipped in a car 41 feet 4 inches in length, was published as "$61 per car as per classification." Governing classification rated both sawmill machinery and power boilers sixth class, minimum 24,000 pounds, subject to rule 34. Exceptions to classification, however, provided class N rating to apply on "Boilers, steam power * * * in straight or mixed carloads, with machinery, per car 20,000, excess in proportion," for cars 36 feet 6 inches, or under, larger cars being subject to rule 34. Complainant's contention that the chinery, and machines per car 20,000, excess in proportion," for cars 36 feet 6 inches, or under, larger cars being subject to rule 34. Complainant's contention that the rate of $61 is applicable to 20,000-pound units of freight with any fractional excess in proportion, substained, and charges collected found inapplicable to extent they exceeded charges computed by multiplying the rate per car by the weight of shipment and dividing by 20,000 units. Reparation awarded. West Florida Lbr. Co. v. G. F. & A., 129 I. C. C. 62.

(5r) One factor of combination rate on a carload of sawmill machinery, shipped in a car 41 feet 4 inches in length, was published as "$61 per car as per classification." Governing classification rated sawmill machinery sixth class, minimum 24,000 pounds, subject to rule 34, and exceptions thereto provided class N rating on "Machines and Machinery, c. l., * * * minimum weight 20,000 pounds," for cars 36 feet 6 inches, or under, larger cas being subject to rule 34. Upon contention by carriers that under ule 34 the rate of $61 should be regarded as applicable to a unit of 23,400, the minimum weight for a car of size used, and that excess above such weight should be computed proportionately, HELD: The portion of rule 34 on which carriers rely fits ordinary situation where rates are applicable to specified units of weight, but has no reasonable application where, as here, the rate stated as a flat charge per car-

load and charges collected were inapplicable. Reparation awarded. West Florida Lbr. Co. v. G., F. & A., 129 I. C. C. 62.

(5s) Shipments billed on cottonseed-hull fiber or shavings, or descriptions of similar import, were inspected in transit, desciption changed to "cotton linters," and rates collected accordingly. Upon contention that rates assessed were inapplicable and unduly prejudicial to extent they exceeded rate on shavings, FOUND: While various methods for determining difference between commodities were presented they were not published as tariffs nor on file with commission and are not controlling. Neither were commodities defined in governing tariffs or classification. In 107 I. C. C. 161, shipments claimed by carriers to be linters were found to be entitled to rates on shavings by a showing that they were sold at prices lower than market price of average linters. However, a like showing has not been made here, and since no burden rests upon carrier for determination of question involved and complainant has not sustained its burden of proof, rates charged were applicable and not unduly prejudicial. Glarner & Co. v. S. Ry., 129 I. C. C. 75.

(5t) Coal from southern Illinois Indiana, and Kentucky to points within Chicago switching district were assessed local rates to Chicago plus arbitraries beyond. Contemporaneously lower proportional rates were in effect to Chicago but were restricted to apply only to points beyond the switching district via Chicago and to points on certain lines within the district to which no through rates were published. While sessed were not through rates and lower complainants contend that rates asurge that since both locals and arbiproportionals were applicable, carriers traries were concurred in by all participating carriers, they were through as well as joint rates. FOUND. While doubt as to meaning of tariff provisions is ordinarily construed against the maker, such doubt must be reasonable after consderation of pertinent tariff provisions. Here, it is reasonably apparent that local rates plus arbitraries were through rates within meaning of restrictive tariff provisions and that rates assessed were applicable. Chicago Coal Merchants Asso. v. N. Y. C., 129 I. C. C. 203.

(5u) Rates on scrap brass and brass ingots from Pittsburgh, Pa., to Jersey City, N. J., and Baltimore, Md., found inapplicable. Lower rates were contemporaneously maintained from Zanesville, Ohio, subject to a clause which authorized their application from Pittsburgh as an intermediate point. Refund of overcharges directed. S. Hausman & Sons Co. v. P. R. R., 129 I. C. C. 233.

(5v) Turned last blocks found not to be entitled to lumber rates nor to fall within tariff description "Billets, blocks or strips, sawed or split, rough, unpainted." Jackson v. M. C., 129 I. C. C. 235, 236.

(5w) Combination rate on copper wire from Black Eagle, Mont., to Northport and Lexington, Nebr., and Topeka, Kans., found applicable. Lower joint rates sought were specifically restricted to routes via "Western Gateways" 9 and 10 "except as otherwise specifically provided" and shipper's routing instructions precluded use of these routes over which joint rate applied. Sinclair Pipe Line Co. v. G. N. 129 I. C. C. 251.

(5x) Shipment of oil-well machinery, tendered unrouted, moved from Mobile, Ala., to Tulsa, Okla., over Mobile & Ohio, Midland Valley delivery. Contemporaneously a lower rate applied over M. & O., M.-K.-T. delivery, to Chetopa and Coffeyville, Kans., points midway on the right and left sides of a triangle formed by the M.-K.-T., with Parsons, Kans., at the apex and Tulsa lying intermediate to Osage and Muskogee, Okla., on base line. Tariff carried an intermediate clause providing for rates to unnamed directly intermediate points. Upon contention that as Tulsa is unnamed in tariff and is intermediate to Coffeyville via Parsons and Chetopa, shipment was misrouted and charges collected inapplicable, FOUND: Tariff is not described as applying from or to Oklahoma points and since only points directly between Coffeyville and Chetopa are those between Coffeyville and Parsons, and Parsons and Chetopa, shipment was not misrouted nor rates collected inapplicable. Sinclair Oil & Gas Co. v. M. & O., 129 I. C. C. 281.

(5y) Shipments billed as cottonseed-hull fiber or shavings were inspected in transit and description changed to "cot-

ton linters," rates being assessed accordingly. In support of its contention that commodity shipped was entitled to lower rate on shavings, complainant introduced samples purporting to have been taken from cars at time of inspection. FOUND: Classification and tariffs provided certain ratings and rates on both linters and fiber or shavings but did not describe either commodity. However, as samples taken from cars appear on the whole to be of higher grade than those introduced as cottonseed-hull fiber or shavings and average price received for shipments was considerably above that quoted for lowest grade fiber or shavings, record does not support finding that shipments were of so low grade as to be classed as shavings and rates collected were applicable. Virginia Cellulose Co. v. N. & W., 129 I. C. C. 297.

(5z) L. c. l. rate collected on steam condenser from Philadelphia, Pa., to Santa Fe, N. Mex., found inapplicable. A lower rate was contemporaneously in effect and tariff authority for rate collected was not shown. Refund of overcharges directed. Mirabel Motor Co. v. M. C., 129 I. C. C. 411.

(6a) Combination rates on l. c. l. shipments from Hoboken, N. J., on Hoboken Manufacturers' R. R., to Norfolk and Richmond, Va., found inapplicable. Contemporaneously Lackawanna published lower joint class rates from New York Lighterage Station, a point within the free-lighterage limits of New York Harbor, subject to a terminal tariff which provided that rates from points in free-lighterage limits would apply on shipments from Hoboken via Hboken Manufacturers' except where where specific rates from Hoboken were in effect. No specific rates covering traffic were published from Hoboken and where there is doubt as to meaning resolved against maker and in favor of of tariff provisions the doubt shuld be shipper. Refund directed. Jewel Tea C. v. D., L. & W., 129 I. C. C. 424.

(6b) On shipments of lumber originating at Woodbury, Ga., consigned to St. Louis, Mo., and reconsigned to Buffalo, N. Y., complainant contended that reconsignment instructions directed that a lower unrestricted rate in effect from origin point to Buffalo be protected. Complainant failed, however, to show route over which shipment moved. FOUND: Applicability of a rate to a given shipment depends upon whether or not such shipment moved over lines of carriers parties to tariff naming the rate, and in absence of such information the commission is unable to determine applicable rates. Milne Lbr. Co. v. N. Y. C., 129 I. C. C. 457.

(6c) Fifth-class rates applicable on iron or steel bars were assessed on rods known as nut flats. Contemporaneously a lower rate applied on "Rods, Bolt, Nail, Rivet, and Wire (iron or steel), unfinished* * *" Upon carrier's contention that latter applies only on articles that have not progressed beyond the billet stage and that description applies to rods only when round in cross section. FOUND: Similar contentions advanced in 102 I. C. C. 355, were not sustained, and in 104 I. C. C. 616, proposal to restrict above description to bolts, rivets, or wire rods only when round in cross section, was not justified. Rates charged were therefore inapplicable, the lower rate on rods being applicable and not unreasonable. Columbus Bolt Works Co. v. P. R. R., 129 I. C. C. 512.

(6d) Shipments of scrap iron from various points, originally consigned to Bethlehem, Pa., but there refused and in a few instances partially unloaded, were subsequently reconsigned to Allentown, Pa. Rates were assessed under tariff rule providing that cars placed for unloading at original billed destination but reforwarded therefrom without being unloaded, to a point outside switching limits, would be subject to published rates to and from reconsignment point plus reconsignment charge. FOUND: In 89 I. C. C. 236, so-called reconsignment charge was found inapplicable on shipments the lading of which was changed in whole or in part at original destination, and in 91 I. C. C. 615, and other cited cases, reconsignment charge provided under a similar rule were found unreasonable. Principles announced in those cases are applicable here. Reparation awarded. Sofranscy Co. v. R. Co., 129 I. C. C. 617.

(6e) Shipments billed as cottonseed-hull fiber shavings or descriptions of similar import were inspected in transit and description changed to "cotton linters," sixth-class rates thereon being col-

lected. In support of its claim for lower commodity rate on shavings, complainant presented in evidence original contract of purchase and sale, original invoices, and duplicate copies of bills of lading, together with paid freight bills, which, with exception of paid freight bills, describe shipments as shavings. Although selling price would be persuasive evidence of true nature of property transported, here evidence in support thereof is no sufficiently verified. While commission is not qualified to determine from samples whether shipment consisted of linters or shavings, genuine samples of the shipments introduced by carriers as evidence, identified by inspector's affidavits and declared by him to be linters, present strong reasons for believing that shipments consisted of linters and that sixth-class rates were not inapplicable. Eblin & Co. v. Co. v. N., C. & St. Ll., 129 I. C. C. 629.

(6f) Combination rates on wrought-iron from Lorain, Ohio, to various Kansas points were assessed on two different bases, the lower combination being based on Jacksonville, Ill. Tariff publishing higher combination provided, in absence of specific rates, a specific manner of constructing combination by addition of basing rates to factor from Lorain to Mississippi River crossing. Under rule 5 (c) of Tariff Circular 18-A, if specific manner of constructing rates ad not been prescribed, the lower combination would have been applicable, but under the circumstances, higher combination was applicable. National Tube Co. v. A., T. & S. F., 129 I. C. C. 693.

(6g) Seattle-Portland factor of combination rates on wooden poles from Washington points to California was described in the governing tariff as a proportional rate but was, nevertheless, an arbitrary. Tariff authorized the application of the combination rule "except as otherwise indicated" and restricted use to "separately established commodity (or class) rate factofs," thus precluding the use of rule in connection with the Seattle-Portland arbitrary. Rates assessed found applicable except that overcharge, not due to inapplicable rate, was assessed on one shipment. Complaint dismissed. National Pole Co. v. G. N., 129 I. C. C. 697.

(6h) Combination rates were collected on automobiles and parts from points in Illinois, Indiana, Michigan, Pennsylvania, Ohio, Missouri, Wisconsin, and Iowa to Klamath Falls, Oreg. Upon contention that lower joint commodity rate contemporaneously published to Reed, Calif., and Modoc Point, Oreg., to which Klamath Falls, is directly intermediate, was applicable because of intermediate clause published in the tariff naming lower rates. FOUND: Intermediate rule applied only when rates were not specifically provided for points directly intermediate to stations to which rates were published. As joint through class rates were published to Klamath Falls, rule has no application and rates collected were applicable. Baldwin Hardware Co. v. Director General, 129 I. C. C. 708.

(6i) Shipments of stock cattle, c. l., moved from New Castle, Tex., to Grand Summit, Kans., under specific commodity rates. Upon contention that a lower joint-line distance rate contemporaneously in effect over another route was applicable. HELD: Lower rate is a joint-line distance rate applicable in the absence of specific commodity rates, and is restricted in its application in Kansas to certain named points. Nor is route claimed shown to be a reasonable, available one for the transportation of livestock. Rate assessed found to be applicable and not unreasonable. Live stock Freight Bureau v. A., T. & S. F., 129 I. C. C. 721.

(6j) Rates charged on cotton fabrics, l. c. l., from North Carolina points to Galveston, Tex., found inapplicable. Governing tariff stated that it was subject to western classification, "Except as otherwise provided," and provided for alternative application of rates in section 2 or 3, whichever were lower. No minimum weight was provided in connection with lower rates under section 3, and rates were there applicable to actual weight of shipments. However, since rule 15 of the western classification provided for assessment of separate loading and unloading charges on l. c. l. freight moving at c. l. rates, and rule 13 required a minimum charge of $15 per car, these rules must be considered in determining rates applicable to various shipments. Refund of overcharges directed on basis indicated. Southern Traffic & Audit Asso. v. I. G. N., 129 I. C. C. 723.

(6k) Carload of peaches from North Mountain, W. Va., originally consigned to Cincinnati, Ohio, but diverted, without routing instructions, to Pittsburgh, was routed by carrier over lowest rates route, via Everson, Pa. Subsequently shipment was reconsigned to Toledo, Ohio, and combination rates to and from Pittsburgh, plus reconsignment charge, were assessed. Lower joint rate from crigin to final destination sought by complainant was restricted, precluding its use via Everson, over which route shipment moved, but defendant had no knowledge that Pittsburgh was not final destination of shipment and can not be charged with misrouting. Rates assessed found applicable and not unreasonable, but reconsignment charge found unreasonable and its discontinuance required. Purse Bros. v. B. & O., 129 I. C. C. 727.

(6l) Alfalfa meal from Colorado to Dyersburg, Tenn., moved onder combination rates via Memphis. Via East St. Louis, factor from that point to Dyersburg accorded transit on alfalfa meal mixed into feed at Dyersburg except where outbound shipment consisted of more than 30 per cent nontransit materials when local rates would apply to entire shipment. No transit was accorded via Memphis. Upon contention that as tariff specified alfalfa meal as a ""transit ingredient," that regardless of how it reached Dyersburg it should not be considered in computing the 30 per cent of nontransit material in ascertaining whether remainder of outbound shipment is entitled to transit privileges. FOUND: Term "Transit ingredient" comprehends only such shipments as may be transited under tariff provisions, and since nontransit material exceeded 30 per cent, meal moving via Memphis was nontransit material. Dyersburg Milling Co. v. Director General, 129 I. C. C. 739.

§19. As Evidence.

(a) An expert familiar with the construction of professional or expert terms employed in a tariff may decipher such terms. W. L. Shepherd Lumber Co. v. Atlantic Coast Line R. Co., (Ala., 1927) 112 So. 323.

TAXES

See Evidence §57½a.

(a) In suit to enjoin collection of tax assessed under Act La. No. 109 of 1921, § 5, on rolling stock of nonresident corporations, evidence including report covering taxes for parishes, but not showing whether taxes assessed by cities, towns and villages under Const. La., 1921, art, 14, §§ 7, 8, 12, were included, HELD not to show that tax exceeded average of local taxes on domiciled corporations. General American Tank Car Corporation v. Day, Sheriff, etc., 46 Sup. Ct. 234.

(b) Tax on rolling stock of nonresident corporations, imposed by Act. La. No. 109 of 121, § 5, under authority of Const. La., 1921, art. 10, § 16, held not violative of article 10, § 1, requiring uniform taxation, and not to impose burden on inetrstate commerce, or deny equal protection of laws, in violation of federal Constitution, where the amount of tax, together with that imposed under Act No. 109 of 1921, § 1, was substantially equivalent to local taxes on corporations domiciled in state. General American Tank Car Corporation v. Day, Sheriff, etc., 46 Sup. Ct. 234.

(c) Right of state to tax articles does not depend on same considerations applicable to federal regulation of transportation rates. Atlantic Coast Line R. Co. v. Standard Oil Co. of Kentucky, 16 Fed. (2d.) 441, 442.

(d) Courts may not revise the system of taxation of states to secure a more just distribution of the burdens. Interstate Busses Corporation v. Blodgett, State Tax Comm'r of Connecticut, 19 Fed. (2d) 256.

(e) That the United States government, under the federal highway aid legislation, has aided in construction of highways within a state, does not deprive the state of power to impose an excise tax for use of such highways in interstate commerce. Interstate Busses Corporation v. Blodgett, State Tax Comn'r of Connecticut, 19 Fed. (2d) 256.

TEAM TRACKS

See Switch Tracks and Switching §11.

TELEPHONE AND TELEGRAPH COMPANIES

I. DISCRIMINATION IN SERVICE.
§1. In general.
II. CHARGES AND REGULATIONS.
§2. In general.
§2½. Private wire service.

III. CONTROL AND REGULATION.
§3. In general.
§3½. Jurisdiction of Commission.
IV. LIABILITY FOR DAMAGES.
§4. In general.
V. PUBLICATION AND TARIFFS.
§5. In general.
VI. ACCOUNTING RULES.
§6. In general.

CROSS REFERENCES

See Accounting §1 (e), §5 (gg) (jj); Cable Rates.

I. DISCRIMINATION IN SERVICE.

See Discrimination; Facilities and Privileges §21.

§1. In General.

(a) Telephone business is impressed with public use, and property used therefore is dedicated to public use. Bess v. Citizens' Telephone Co., Same v. Southwestern Bell Telephone Co., (Mo., 1926) 287 S. W. 466.

(b) Telephone companies, contracting to send messages in nature of telegrams, are under same obligations, and subject to same liabilities, as telegraph companies. Bess v. Citizens' Telephone Co., Same v. Southwestern Bell Telephone Co., (Mo., 1926) 287 S. W. 466.

II. CHARGES AND REGULATIONS.

§2. In General.

(a) Rules and regulations of a telephone company under which a cash deposit is required of subscribers who arbitrarily or otherwise fail to pay their bills promptly, which specify no definite amount that may be required, nor any definite means for determining what it shall be, found defective for want of definiteness. Rule requiring a deposit equal to, but not in excess of, the sum of accrued charges for any two successive months during the 12-month period next preceding the date on which services are withdrawn on account of nonpayment or failure to pay promptly, found reasonable. Huntington Engineering Co. v. C. & P. Teleph. Co., 112 I. C. C. 377.

(b) Telephone companies may make reasonable rules and regulations in conduct of their business, not in conflict with any duty or liability imposed by law. Bess v. Citizens' Telephone Co., Same v. Southwestern Bell Telephone Co., (Mo., 1926) 287 S. W. 466.

III. CONTROL AND REGULATION.

See Control and Regulation.

§3. In General.

(a) Where a local telephone company undertakes to originate or deliver toll messages, practically all of its property is open for use in interstate commerce and at any time may so be used. Under such circumstances Congress has power to regulate accounting practices of such companies with respect to their property, including accounting for depreciation. Stated otherwise, telephone property, although used largely for local business, is subject to Federal regulation when it is subject to interstate use. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 332.

(b) Act Cong. June 18, 1910 (36 Stat. 539 [U. S. Comp. St. §8563 et seq.]), placing telegraph companies, so far as interstate commerce is concerned, under supervision of Interstate Commerce Commission, and permitting companies to make rules and regulations for conduct of their business, which shall be deemed reasonable until changed by Commission, does not change common-law rule of liability, nor prevent an aggrieved party from instituting common-law action in state courts. Krivitsky & Cohen, Inc., v. Western Union Telegraph Co., Inc., 221 N. Y. S. 525.

(c) Railroad Commission cannot, under Public Utilities Act (St. 1915, p. 148), § 50, subds. (a) and (b), as amended by St. 1917, p. 168, order telegraph company, operating under federal franchise through acceptance of Act Cong. July 24, 1866, §§ 1, 2, (14 Stat. 221), under provisions of section 4, which act was authorized by Const. U. S. art. 1, § 8, to cease operation of line constructed along "post roads," which, under Act. Cong. March 1, 1886 (U. S. Comp. St. § 7457), include all public roads and highways maintained as such, for intrastate business until it secures certificate of public convenience and necessity, though it may regulate conduct of company's business under police power. Postal Telegraph-Cable Co., v. Railroad Commission of California, (Calif., 1927) 254 Pac. 258.

(d) Telegraph company obtaining federal franchise by accepting Act. Cong.

July 24, 1866, §§ 1, 2, 4 (14 Stat. 221), under provisions of section 4 thereby became agency of federal government for transaction of postal business, and an agent of interstate and foreign commerce. Postal Telegraph-Cable Co., v. Railroad Commission of California, (Calif., 1927) 254 Pac. 258.

§3½. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) Rules and regulations of a telephone company under which a cash deposit is required of subscribers who arbitrarily or otherwise fail to pay their bills promptly, which specify no definite amount that may be required, nor any definite means for determining what it shall be, found defective for want of definiteness. Rule requiring a deposit equal to, but not in excess of, the sum accrued charges for any two successive months during the 12-month period next preceding the date on which services are withdrawn on account of nonpayment or failure to pay promptly, found reasonable. Huntington Engineering Co. v. C. & P. Teleph. Co., 112 I. C. C. 377.

(b) Motion of defendant to dismiss for want of jurisdiction a complaint that a cash deposit to secure payment of bills for telephone services, in part interstate, is unjust, unreasonable, and unduly prejudicial, denied. By the amendatory act of June 18, 1910, telephone and telegraph companies were declared to be common carriers and the commission was given jurisdiction and control over their interstate rates and practices, as well as the rules, regulations, conditions, and restrictions affecting their interstate rates. That telephone companies whose lines extend from one State to another, either of themselves or in connection with the lines of other companies, are engaged in interstate commerce, and that messages passing over their lines from one State to another constitute such commerce, is indisputable. See 220 U. S. 364. Any rule or regulation affecting or obstructing such commerce is within the commission's jurisdiction. Huntington Engineering Co. v. C. & P. Teleph. Co., 112 I. C. C. 377, 379.

IV. LIABILITY FOR DAMAGES.

§4. In General.

(a) Even though telephone company negligently delayed connecting plaintiff with fire department to enable plaintiff to report fire, company HELD not liable for loss; it being highly speculative whether damages would have been less if connection had been promptly made. Cody v. New York Telephone Co., (N. J., 1925) 131 Atl. 221.

(b) Where record showed no rule or custom by telephone company to receive, transmit, and deliver written messages, sender, tendering written message to telephone company for long distance transmission, cannot recover penalty provided for in Rev. St. 1919, § 10136, for refusal of company to send message. Bess v. Citizen's Telephone Co., Same v. Southwestern Bell Telephone Co., (Mo., 1926) 287 S. W. 466.

V. PUBLICATION AND TARIFFS.

See Tariffs II.

§5. In General.

(a) Telephone companies are not required to file their tariffs with the Interstate Commerce Commission. Huntington Engineering Co. v. C. & P. Teleph. Co., 112 I. C. C. 377, 378.

VI. ACCOUNTING RULES.

See Accounting.

§6. In General.

(a) Proceeding instituted by commission on its own motion pursuant to section 20(8) of the act under which it is required to prescribe classes of property for which depreciation charges may properly be included under operating expenses and percentages of depreciation which shall be charged to each class of property, classifying carriers as it may deem proper for the purpose. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295.

(b) Contention that retirements of most units of a large composite railroad or telephone property tend to equalize, i. e., become same in amount from year to year, found not adequately supported by data of record, the evidence indicating rather that opposition to depreciation accounting is based partly on a desire to adjust retirement charges from year to year in accordance with financial needs. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 303, 305.

(c) With exception of land and grading, most property units which make up

the plant of a telephone company are gradually worn out in operation or are abandoned from time to time in favor of better substitutes. Cost of property thus consumed or abandoned is, therefore, plainly a part of cost of rendering service and carrier accounts should conform to and adequately record this fact. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 303, 306.

(d) Upon contention that if depreciation accounting is extended to cover all depreciable property it will add so materially to operating expenses that further increases in rates will be necessary. HELD, if depreciation accounting is a method by which facts with respect to cost of operating telephone companies are recorded with approximate accuracy, then that method should be adopted regardless of its effect on rates, since nothing is gained by a refusal to face facts or by deferring to some future date burdens which ought to be borne now. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 317, 318.

(e) The need for depreciation accounting is emphasized by provisions of section 15a of the act relative to recapture by the Government of excess income and by existing situation with respect to public regulation of telephone companies. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 318, 319.

(f) Depreciation accounting is supported by prior decisions of commission in valuation proceedings. by decisions of United States Supreme Court, and by decisions of other courts and Federal and State commissions. It is also in general accord with provisions which at present time are embodied in accounting classifications of steam railroads and telephone companies and which were included in those classifications when section 20 of the act was amended. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 320, 323.

(g) Where a local telephone company undertakes to originate or deliver toll messages, practically all of its property is open for use in interstate commerce and at any time may be so used. Under such circumstances Congress has power to regulate accounting practices of such companies with respect to their property, including the accounting for depreciation. Stated otherwise, telephone property, although used largely for local business, is subject to Federal regulation when it is subject to interstate use. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 332.

(h) Depreciation accounting for telephone companies, classes A, B, and C, is practicable, but determination of depreciation percentages for various classes of telephone property is a task as to which commission may well avail itself of the cooperation, services, records, and facilities of State commissions, under the provisions of section 13 (3) of the act. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 332.

(i) Depreciation expense is based upon original cost of property to accounting company, and depreciation accounting requires an analysis of investment and apportionment of appropriate amounts to primary accounts covering depreciable property, under fixed capital for telephone companies. Investment accounts of telephone companies are, in general, sufficiently adapted to such accounting; but if it should develop that they are not, the matter can then be dealt with. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 343, 347.

(j) Annual depreciation charges of telephone companies required to be computed at such percentage rate of ledger value of the unit of property in question that service value may be distributed under the straight-line method in equal annual charges to operating expenses during estimated service life of the unit; annual charges so computed to be reduced to a monthly basis by dividing by twelve. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 356.

(k) The unit and group plans of accounting for depreciation compared and latter approved for telephone and railroad companies. Operating companies required to account for depreciation charges on leased property, the groups of property and reserves applicable thereto to include improvements thereon. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 367, 372.

(l) The unit and group plans of accounting for depreciation compared and latter approved. Groups of property and reserves applicable thereto should correspond with fixed capital of telephone companies, including improvements on leased property. Operating companies must also account for depreciation charges on property leased. Telephone

and Railroad Depreciation Charges, 118 I. C. C. 295, 367, 372.

(m) It is impossible to prescribe uniform depreciation percentages for various classes of depreciable property, applicable to all companies alike. However, method of determining percentages of depreciation which shall be charged by telephone companies with respect to each primary account prescribed, and cooperation of State commissions as provided for under provisions of section 13 of the act availed of in supervision of the matter. Such companies also required to keep adequate property records and maintain in convenient and accessible form engineering data bearing upon prospective service lives. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 372, 376.

TERMINAL FACILITIES

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
§1½. Jurisdiction of courts.
II. DUTY TO PERFORM TERMINAL SERVICE.
§2. In general.
§3. Duty to allow use.
§3½. Employment of agents.
§4. Publication of terminal charges.
§5. Reasonableness of charges.
§6. What are public terminals and facilities.
III. STATUS OF TERMINAL ROADS.
§7. In general.
§8. Definition of "Terminal charges."
§9. Allowances.
§10 Discrimination.
§11. Through routes and joint rates.

CROSS REFERENCES

See Accounting §5 (a); Allowances §8 (4); Divisions; Evidence §57¾; Facilities and Privileges §16, §16½; Import Traffic §2 (3o); Reasonableness of Rates §34; Switch Tracks and Switching §6; Transportation §10.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) Carriers seeking, in effect, revision or reformation of an improvident operating agreement governing joint use and operation of terminal facilities, contend that for commission's jurisdiction to attach it need only to give effect to section 15a of the act without waiting until a carrier's bankruptcy shall ensue, and to find as a fact that operating agreement is so burdensome as to result in inefficient and uneconomical operation, to cause misapplication of funds created for an entirely different purpose, and generally to operate to impair carrier's ability to furnish adequate railway service. FOUND: Neither expressly nor by implication does section 15a embrace a direct or indirect revision or reformation of any such contract, nor is commission able to find requisite power or authority in any other provision of the act. M. K. T. v. K. C. T., 104 I. C. C. 203, 223, 224.

(b) The conditions which commission must determine antecedent to exercise of power to require the joint use of terminals and terminal facilities as conferred by section 3 (4) of the act are (1) public interest, and (2) practicability, without substantially impairing the ability of owning carrier to handle its business. Hastings Commercial Club v. C. M. & St. P., 107 I. C. C. 208, 209.

(c) When Congress provided that in public interest the commission could require a carrier to give up a use of its terminal facilities to another carrier, it was faced with necessity of not only satisfying constitutional prohibition that private property shall not be taken for public use without just compensation, but in addition had to provide for a judicial review of the question of compensation at option of owning carrier. However, Congress did impose on commission the duty, in first instance, to fix just and reasonable terms and compensation, for any use that the commission may require, "on the principle controlling compensation in condemnation proceedings." In giving this direction, it is clear that Congress did nothing more than recognize the constitutional right of a carrier to just compensation in the event that its property, or any portion of it, was taken for public use. Hastings Commercial Club v. C. M. & St. P., 107 I. C. C. 208, 212.

(d) Congress has fully occupied the field of regulation by placing control of terminal facilities of interstate railroads in the Interstate Commerce Commission. See 211 Pac. 460, 464; 135 N. E. 195. Hastings Commercial Club v. C. M. & St. P., 107 I. C. C. 208, 215.

(e) In original report commission made its determination as to public interest requiring joint use of terminal facilities but no order was entered. The case was set for further hearing to determine just and reasonable compensation for use of terminal facilities required. Upon contention that as record stands, upon further hearing, the commission is foreclosed from considering again question of "public interest," HELD: Use of terminal facilities of one carrier by another carrier or carriers is jurisdictional, and question of public interest may be reexamined or reconsidered at any point in proceeding. Hastings Commercial Club v. C., M. & St. P., 107 I. C. C. 208, 217.

(f) By Interstate Commerce Act, § 3 (4), as amended by Transportation Act, § 405, construed in connection with section 1 (3), power to regulate the use of terminal facilities of an interstate railroad, including all sidings and switch and spur tracks, is vested in the Interstate Commerce Commission, to the exclusion of the states. Southern Ry. Co. v. Shealy, 18 Fed. (2d) 784.

(g) Where interstate and intrastate transactions both are involved in the use of terminal facilities, the regulation of the latter is so incidental to, and inseparable from, the regulation of the former, as to be deemed included in the authority to regulate such use conferred by statute on the Interstate Commerce Commission. Southern Ry. Co. v. Shealy, 18 Fed. (2d) 784.

II. DUTY TO PERFORM TERMINAL SERVICE.

§3. Duty to Allow Use.

(a) Upon petition by M.-K.-T. R. R., seeking entry of an order, pursuant to section 3 (4) of the act, according it right to use, upon compensation determinable wholly upon a user basis designated portions of union passenger and freight terminals at Kansas City, owned and operated by Kansas City Terminal Ry. Co., FOUND: Petitioner's future use of such facilities, in furtherance of its transportation service, would be in public interest and practicable, without substantially impairing terminal company's ability to handle its own business. However, in view of a cause now pending in the courts as to whether or not petitioner is bound by an operating agreement entered into by its predecessor company, relief can not be granted, but in event of its being adjudged not so bound, further proceedings may be had looking to entry of an order according a right of user, and thereupon, failing agreement, a determination of terms and compensation to be paid or secured therefor, in accordance with provisions of act M.-K.-T. v. K. C. T., 104 I. C. C. 203.

(b) Upon petition of carriers parties to an operating agreement governing use and operation of union terminals at Kansas City, seeking entry of an order, pursuant to section 3 (4) of the act, under which they will be accorded right to use such facilities upon compensation determinable wholly upon a user basis, HELD: Power and authority invoked are not conferred by section 3 (4), requirement of which lays upon a carrier "owning or entitled to enjoyment" of such facilities to accord their enjoyment or use to "another carrier or carriers." Here carriers under operating agreement and as coproprietors, already use and enjoy such terminals, and to grant relief sought would involve a revision or reformation of operating agreement. M.-K.-T. v. K. C. T., 104 I. C. C. 203, 222, 223.

(c) Carrier seeking, in effect, revision or reformation of an improvident operating agreement governing joint use and operation of terminal facilities, contend that for commission's jurisdiction to attach it need only to give effect to section 15a of the act without waiting until a carrier's bankruptcy shall ensue, and to find as a fact that operating agreement is so burdensome as to result in inefficient and uneconomical operation, to cause misapplication of funds created for an entirely different purpose, and generally to operate to impair carrier's ability to furnish adequate railway service. FOUND: Neither expressly nor by implication does section 15a embrace a direct or indirect revision or reformation of any such contract, nor is commission able to find requisite power or authority in any other provi-

sion of the act. M.-K.-T. v. K. C. T., 104 I. C. C. 203, 223, 224.

(d) Contention that paragraphs (1) and (3) of section 3 of the act vitiate an operating agreement providing for joint use of terminal facilities in so far as it provides for an equal division of interest and taxes, not sustained. Those charges are distinctly capital charges, based upon terminal property itself, not upon its use, and are divided among lines in proportions of their equitable titles to or interests in property. For their respective uses of property the lines also severally assume proportionate maintenance and operating expenses. This is not undue prejudice, preference, or discrimination within meaning of paragraph (1). Also, as essentially capital charges, they have no direct or indirect relation to interchange of traffic between several lines within contemplation of paragraph (3). M.-K.-T. v. K. C. T., 104 I. C. C. 203, 224.

(e) Upon contention that terminal facilities at Kansas City constitute a unified and integral whole, not divisible or separable, the use of no part of which can be separately condemned, and that section 3 (4) of the act does not authorize acquisition of a right to use portions of facilities separately and apart from unified whole, FOUND: To this view as a matter of law commission is unable to accede. Section 3 (4) does not contemplate and should not receive such a restricted interpretation as would virtually defeat its practical aim and purpose where extensive terminals are concerned, but its provisions should have a practicable and workable application to practical situations. M.-K.-T. v. K. C. T., 104 I. C. C. 203, 229.

(f) Where a tenant line seeks a right of user by condemnation of joint terminal facilities for purposes of a practicable physical use, it should not, as a condition to any relief, be required to acquire and pay for a right to make use of portions of terminal which it would not desire or need and upon which it would impose no additional burden. M.-K.-T. v. K. C. T., 104 I. C. C. 203, 229.

(g) Commission's service order prescribed joint use by M.-K.-T., of terminal facilities in Kansas City, owned and operated by the Kansas City Terminal Ry. Co. in accordance with terms and provisions of an operating agreement entered into by the Katy's predecessor company. Objections to such order set up in a plea and motion on ground that there was no emergency within meaning of section 1 (15) of the act, found not well taken. In commission's opinion an emergency requiring immediate action existed, petitioner being faced with alternative of submission to a franchise ordinance and operating agreement, notwithstanding section 3 (4) of the act, or of exclusion from terminals and consequent interference with its transportation service. M.-K.-T. v. K. C. T., 104 I. C. C. 203, 230.

(h) Upon further hearing, joint use use of terminal facilities of C., M. & St. P. at Hastings, Minn., by that carrier and the C. B. & Q., found not to be in public interest within meaning of section 3 (4) of the act. Original report, 69 I. C. C. 489, reversed. Hastings Commercial Club v. C., M. & St. P., 107 I. C. C. 208.

(i) The conditions which commission must determine antecedent to exercise of power to require the joint use of terminals and terminal facilities as conferred by section 3 (4) of the act are (1) public interest, and (2) practicability, without substantially impairing ability of owning carrier to handle its business. Hastings Commercial Club v. C., M. & St. P. 107 I. C. C. 208, 209.

(j) In cases involving joint use of terminals or terminal facilities traffic gained by one carrier at expense of corresponding loss to another should be given consideration in arriving at conclusions as to public interest. Cost to be met by user carrier, as compared with traffic served, is also an important element. The commission must also consider financial consequences to carriers involved and inconveniences that may result to shipping and traveling public in general. Hastings Commercial Club v. C., M. & St. P., 107 I. C. C. 208, 216.

(k) In original report commission made its determination as to public interest requiring joint use of terminal facilities but no order was entered. The case set for further hearing to determine just and reasonable compensation for use of terminal facilities required. Upon contention that as record stands, upon further hearing, the commission is foreclosed from considering again question of "public interest," HELD: Use of terminal facilities of one carrier by an-

other carrier or carriers is jurisdictional, and question of public interest may be reexamined or reconsidered at any point in proceedings. Hastings Commercial Club v. C., M. & St. P., 107 I. C. C. 208, 217.

(l) Practice of the Pennsylvania and Western Maryland railways of extending the use of their tracks to each other for purpose of terminal receipt and delivery of freight at industries in York, Pa., within a certain trackage zone, while contemporaneously refusing to accord to industries outside the trackage zone benefit of service, rates and routes of both lines found unduly prejudicial to such outside industries. York Mfrs. Asso. v. P. R. R., 107 I. C. C. 219, 241.

(m) A carrier has no absolute legal right to deny connecting lines use of its terminal facilities. Where public convenience makes it desirable such facilities must be kept open. However, proprietary carrier is entitled to proper compensation, and is not without means of protecting itself against competition. See 28 I. C. C. 621. Switching at Beaumont, 112 I. C. C. 125, 127.

(n) Upon complaint seeking extension of the principle laid down in York Mfrs. Asso., 73 I. C. C. 40; 107 I. C. C. 219, wherein the commission required certain carriers to extend the use of their tracks to each other for purpose of terminal receipt and delivery in the city of York, to a situation where local mines are endeavoring to obtain a joint-mine status by trackage agreements, not sustained. The two situations are not parallel, the cited case embracing a defined zone in a city, whereas the mining district here involved is many miles in extent. Winding Gulf Colliery Co. v. C. &. O., 115 I. C. C. 113, 119, 120. Ragland Coal Co. v. V. Ry., 115 I. C. C. 147, 151.

§5. Reasonableness of Charges.

See Bridges and Tolls; Evidence §57½; Reasonableness of Rates.

(a) When Congress provided that in public interest the commission could require a carrier to give up a use of its terminal facilities to another carrier, it was faced with necessity of not only satisfying constitutional prohibition that private property shall not be taken for public use without just compensation, but in addition had to provide for a judicial review of the question of compensation at option of owning carrier. However, Congress did impose on commission the duty, in first instance, to fix just and reasonable terms and compensation, for any use that the commission may require, "on the principle controlling compensation in condemnation proceedings." In giving this direction, it is clear that Congress did nothing more than recognize constitutional right of a carrier to just compensation in the event that its property, or any portion of it, was taken for public use. Hastings Commercial Club v. C., M. & St. P. 107 I. C. C. 208, 212.

(b) It is desirable to confine line-haul rates to the ports strictly to service ending with spotting of cars, and requiring all further terminal service to be covered by a special charge or charges. Such a plan would preserve to each port such advantages as inhere in facilities for convenient and economical loading of vessels and would also facilitate such comparison of special terminal services and charges therefor as may be deemed advisable in future. Maritime Asso., Boston Chamber of Commerce v. A. A. R. R., 126 I. C. C. 199, 213.

§6. What are Public Terminals and Facilities.

(a) In original report commission made its determination as to public interest requiring joint use of terminal facilities but no order was entered. The case was set for further hearing to determine just and reasonable compensation for use of terminal facilities required. Upon contention that as record stands, upon further hearing, the commission is foreclosed from considering again question of "public interest," HELD: Use of terminal facilities of one carrier by another carrier or carriers is jurisdictional, and question of public interest may be reexamined or reconsidered at any point in proceedings. Hastings Commercial Club v. C., M. & St. P., 107. I. C. C. 208, 217.

III. STATUS OF TERMINAL ROADS.

§7. In general.

(a) The Terminal Railroad Asso. of St. Louis though a common carrier, may not legally operate in all respects as a railroad transportation company, having been perpetually enjoined from operat-

ing otherwise than as a terminal and interchange facility for railroads. See 224 U. S. 383, 236 U. S. 194. C., R. I. & P. v. B. & O., 113 I. C. C. 681, 685.

THROUGH ROUTES AND JOINT RATES

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
§2. What is through route or "common arrangement."
§3. What is joint rate.
§3½. Participation in through traffic.

II. ESTABLISHMENT BY CARRIER.
§4. In general.
§5. Dispute over divisions.
§6. Circuitous routes.
§7. Obligation to carry.
§7½. State courts and laws.
§8. Relation to similar points.
§9. Right to favor own line.
§10. Status of intermediate carrier.
§11. What is satisfactory through route.
(1) In general.
(2) When through route ordered or denied.

III. BILLS OF LADING.
§12. Issuance in general.

IV. REASONABLENESS AND DISCRIMINATION.
§13. In general.
§13a. Burden of proof.
§13½. Factor of the rate.
§13½a. Differentials.
§14. Divisions.
§15. Exceeding combination of intermediates.
§15½. Rate via other routes.
§16. Reparation.
§16½. State rates.

V. TARIFFS AND CONSTRUCTION.
§17. In general.
§18. Application of proportional rate.
§19. Breaking transit.
§20. Change in rate while shipment at transit point.
§20a. Combination rule.
§20½. Concurrences.
§20¾. Different classifications applicable.
§21. Intermediate clause.
§22. What is legal rate.

VI. RIGHT TO WITHDRAW OR MODIFY.
§24. In general.

VII. DUTY TO FURNISH FACILITIES.
§25. In general.
§26. Restriction of routes and rates.

VIII. EVIDENCE AND PROCEDURE.
§27. In general.
§28 Orders of Commission.

CROSS REFERENCES

See Adjacent Foreign Country; Advanced Rates §7 (6); Basing Points and Lines; Blanket Rates; Branch Lines VI; Canada; Differentials §4; Electric Lines II; Equalization of Rates; Express Companies XI; Facilities and Privileges §18; Foreign Commerce; Import Traffic; Lighterage IX; Local Rates and Combinations; Long and Short Hauls; Mexico; Minimums; Overcharges; Panama Canal Act; Passenger Fares and Facilities §14; Porto Rico; Proportional Rates; Rail-and-Water Rates; Reconsignment; Reduced Rates; Restricted Rates; Routing and Misrouting §4, §5½; Tap Lines III; Terminal Facilities §11; Water Carriers IV.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Adjacent Foreign Country; Interstate Commerce Commission; Jurisdiction of Commission.

(a) While ordinarily, in undue prejudice or discrimination cases, commission enters an alternative order leaving carriers an option as to how such discrimination shall be removed, section 15 (1) of the act authorizes and empowers commission to prescribe the rate, charge, regulation, or practice to be thereafter followed. This provision of the act applies with respect to control of practices of carriers that result in undue prejudice or other violations of the act, in that the commission is empowered thereunder to determine "what * * * regulation

or practice is or will be just, fair, and reasonable, to be thereafter followed" York Mfrs. Asso. v. P. R. R., 107 I. C. C. 219, 231.

(b) In their present form provisions of section 15 of the act governing establishment of through routes and joint rates were enacted as part of transportation act, 1920, and they lay upon the commission the mandatory duty of establishing such routes and rates as may be found to be necessary or desirable in the public interest, whereas corresponding statutory provisions in effect prior thereto did not. Ft. S., S. & R. I. R. R. Co. v. A. & V., 107 I. C. C. 523, 524.

(c) Upon contention that commission can not lawfully require establishment of through routes and joint rates in connection with an intermediate carrier solely on ground of intermediate line's financial necessity, and that public interest referred to in section 15 of the act is that of the shipping public in reasonable, expeditious routes, HELD: Commission is unable to adopt such a narrow conception of public interest. Ft. S., S. & R. I. R. R. Co. v. A. & V., 107 I. C. C. 523, 524.

(d) The limitation imposed by section 15 (4) of the act on authority of commission to require establishment of a through route has no application where inclusion in such route of all or substantially all of the lines of a carrier invoking this section would make through route unreasonably long as compared with another practicable through route which could otherwise be established. See 85 I. C. C. 5, 11; 92 I. C. C. 304. Rising Paper Co. v. N. Y., N. H. & H., 115 I. C. C. 699, 701.

(e) Upon contention that commission can go no further than to require American lines to withdraw from any joint rate to or from an adjacent foreign country deemed excessive or otherwise objectionable, and may deal only with rates of those lines to or from international boundary, HELD: Commission does not undertake to prescribe joint rates as between American and foreign lines but merely determines what in its judgment will be maximum joint rates in which American lines can participate. The proportion of rates to accrue to each line is left to negotiation between participants, and if foreign lines decline to join in such rates the American lines are forced to withdraw from joint rates which exceed the maxima, in which case commission can then determine and prescribe specific rates to be applied to or from boundary. If complainants are then dissatisfied their remedy lies in the hands of the foreign regulatory body. Spanish River Pulp & Paper Mills v. A. & W., 120 I. C. C. 251.

(f) Ruling of the Interstate Commerce Commission, made on application of carriers for general increase of freight rates, and authorizing a flat increase, did not have the effect of establishing any specific joint through rate, as to which there was no hearing, as required by Interstate Commerce Act, § 15(3), as amended by Transportation Act 1920, § 418 (Comp. St. Ann. Supp. 1923, § 8583), so as to give the commission authority to make a subsequent order, changing division of joint rates in a particular case, retroactive under section 15(6), as amended, in view of section 1(4) as amended by Transportation Act 1920, § 400 (Comp. St. Ann Supp. 1923, § 8563). Brimstone R. & Canal Co., v. United States, 13 Fed. (2d) 914.

(g) Under Interstate Commerce Act. § 1, subds. 18-20, 22, as amended by Transportation Act 1920, §§ 400-403, (Comp. St. Ann. Supp. 1923, § 8563), section 3, subd. 4, as amended by Transportation Act 1920 §405 (Comp. St. Ann. Supp. 1923 § 8565), and in view of section 3, subd. 3, and section 1, subd. 9, each as amended by Transportation Act 1920, and section 6, as amended by Act Aug. 24, 1912, § 11 (now Comp. St. Ann. Supp. 1923, §8569), Interstate Commerce Commission has exclusive jurisdiction over establishment of junctions or physical connections between railroads engaged in interstate commerce notwithstanding Const. Miss. 1890, §§ 184, 190, and Hemingway's Code Miss. §§ 6722, 6725, 6728. Alabama & V. Ry. Co. v. Jackson & E. Ry. Co., 46 Sup. Ct. 535.

(h) Under Act to Regulate Commerce, § 15 (3) being Comp. St. § 8583, a finding of public necessity is essential to validity of order for establishment of through routes and joint rates. Virginian Ry. Co., v. United States. United States v. Virginian Ry. Co., 47 Sup. Ct. 222.

(i) Under section 15, paragraph (3) of the act the Commission has the power to establish through routes and joint rates "whenever deemed by it necessary or desirable in the public interest," subject to the limitation in paragraph (4) that a carrier may not be required to

short haul itself unless its route is unreasonably long as compared with another practicable route. Smith Wilson Co. v. A., T. & S. F. Ry., 129 I. C. C. 65, 68.

(j) It is true that the act, in giving to this Commission authority to publish through routes and joint rates, was not intended to require it to establish such through routes and joint rates whenever requested to do so, without regard to the peculiar circumstances of each case. In view of the fact that the act was designed to promote the free movement of interstate commerce, and bearing in mind that a large river is a natural artery of commerce, it would seem that any responsible common carrier operating on the river in question would be prima facie warranted in requesting this Commission to allow that carrier to participate to the fullest possible extent in the interstate traffic originating on that river. Inland Waterways Corp. v. C. G. W. R. R., 129 I. C. C. 521, 528.

(k) Prior to 1910 the power of the Commission to establish through routes was limited to instances in which no satisfactory through route existed. The elimination of this limitation placed within the discretion of this Commission the establishment of additional through routes. In the exercise of this discretion the existence of through routes capable of adequately and expeditiously handling all traffic offered is entitled to much consideration, but no longer constitutes a barrier to another through route. Inland Waterways Corp. v. C. G. W. R. R., 129 I. C. C. 521, 528.

(l) Under paragraph (3) of section 15 of the act the Commission is empowered, upon proper showing, to prescribe through routes such as are desired and the maximum rates to be applied thereover. The question is as to how these maximum rates are to be determined. If the Commission is limited in all cases to the prescription of maximum reasonable rates, there is here no showing that the joint rates desired by the barge line are maximum reasonable rates, nor is there any evidence which would enable the Commission to determine what maximum reasonable rates would be. Power of the Commission under section 15 (3) of the act is to establish through routes and joint rates "or the maxima or minima, or maximum and minima, to be charged or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares and charges applicable thereto." The quoted provision is an alternative to the preceding provision, which empowers the Commission to establish through routes and joint rates without specifying that the latter must be on either a maximum or minimum level. Doubtless the rates prescribed must be reasonable, but it does not follow that they must reach the pinnacle of reasonableness. Inland Waterways Corp. v. C. G. W. R. R., 129 I. C. C. 521, 530.

(m) The Commission may, whenever deemed by it to be necessary or desirable in the public interest, establish through routes and joint rates and the conditions under which such through routes shall be operated. In establishing any such through route it shall not, except as provided in paragraph 3, require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad, which lies between the termini of such proposed through route, unless such inclusion of lines would make the through route unreasonably long as compared with another practicable route which could otherwise be established. Indianapolis Board of Trade v. B. & O. R. R., 129 I. C. C. 675, 679.

(n) Contention that commission is without power to order establishment of additional through routes where existing routes are capable of handling traffic, and that such routes can only be ordered on a showing of public convenience and necessity such as is required in case of new-line construction, not sustained. Section 6 (13—b) of act empowers the commission to establish through routes and maximum joint rates between rail and water lines and to determine terms and conditions of operation, and section 15 (3) provides that it "may" establish through routes and joint rates over rail and water lines and "shall" do so whenever deemed "to be necessary or desirable in the public interest." See also 24 I. C. C. 179, 185; 31 I. C. C. 281, 288; 77 I C. C. 317, 353. Inland Waterways Corp. v. C. G. W., 129 I. C. C. 521, 528, 529.

(o) Contention that commission has power to prescribe maximum reasonable joint rates only, and that inasmuch as all-rail rates are depressed they can not properly be used as a yardstick for measuring maximum reasonable rail-

barge rates, not sustained. Obviously if another through route is sought between certain points in competition with existing through routes, joint rates prescribed over the new through route must be comparable with those over existing through routes or they will be of no avail. Under section 15 (3) of act, commission is empowered to establish through routes and joint rates "or the maxima or minima, or maxima and minima, to be charged (or, in case of a through route where one carrier is a water line the maximum rates, fares, and charges applicable thereto)," which is an alternative to preceding provision empowering commission to establish through routes and joint rates without specifying that latter must be on either maximum or minimum level. Doubtless rates must be reasonable but must not necessarily reach pinnacle of reasonableness. See 92 I. C. C. 528, 546, and other cited cases. Inland Waterways Corp. v. C. G. W., 129 I. C. C. 521, 529, 531.

(p) While under section 15 (3) of the act, commission may, whenever deemed necessary or desirable in the public interest, establish through routes and joint rates and conditions under which such through routes shall be operated, paragraph 4 of that section provides that in establishing any such through route it shall not, except as provided in paragraph 3, require any carrier by railroad, without its consent, to embrace in such route substantially less than entire length of its railroad, which lies between termini o f such proposed through route, unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established. Indianapolis Board of Trade v. B. & O., 129 I. C. C. 675, 678, 679.

§2. What is Through Route or "Common Arrangement."

See Crimes; Tariffs §10.

(a) Evidence of ownership by one carrier of shares of capital stock of another carrier, or of a majority of such shares, does not in and of itself warrant a finding that both carriers are under common management and control. See 87 I. C. C. 654. Bragg & Millsaps Co. v. A. & W. P., 128 I. C. C. 238, 239.

(b) It should be understood that where the term "carriers under the same management and control" is used, it refers to carriers generally controlled through ownership, lease, or otherwise to the extent of controlling traffic policy, even though separate corporate entity may be maintained. Bragg & Millsaps v. A. & W. P. Ry., 128 I. C. C. 238, 239.

(c) A through route is an arrangement, express or implied, between connecting railroads for continuous carriage from a point on the line of one to a destination on the line of another. A joint rate is not essential. The through rate may as well be a combination of locals or proportionals. Grain and Grain Products, 129 I. C. C. 261, 264.

(d) In determining whether hauls are single line or joint line, carriers under same common control or management shall be considered as one line. Colbert Limerock Asphalt Co. v. A. C., 129 I. C. C. 177, 185.

§3½. Participation in Through Traffic.

See Discrimination §7; Interstate Commerce Commission §2 §3.

(a) Points of origin and destination are located on lines of carriers not named in the complaint, but rates found unlawful were joint through rates in which carriers not named participated. Upon objection to introduction of evidence tending to prove damage on shipments moving over lines of carriers not named as defendants in original complaint, HELD: Following 295 Fed. 53, the participation by initial carriers in violation of the act by exacting unreasonable rates is enough to make such carriers liable for full amount of damages sustained in consequence of such violation, liability against such carrier resulting from its unlawful action in charging unreasonable rates, that liability being enforceable against defendants though other parties to such joint rates were also liable but were not proceeded against. South Carolina Mfrs. Asso. v. C., C. & O., 112 I. C. C. 683, 685.

(b) No carrier participating in a through route, except by special agreement with its connection or connections, can be charged with responsibility for transporting any shipment over such through route until that shipment has been offered to it at a recognized inter-

change point on its line. Until it has been so offered the responsibility rests with connecting line. C. R. I. & P. v. B. & O., 113 I. C. C. 681, 689.

(c) The financial status of a carrier is but one element in determining whether or not a railroad should be eliminated as an intermediate line in routing of traffic and is not necessarily controlling. Restrictions in Routing over S. L. & U., 115 I. C. C. 357, 369.

(d) Fact that a carrier hauls cars with its own engines over tracks of an intermediate line does not constitute the latter line an intermediate carrier. Kansas City, K. V. & W. Ry., v. A., T. & S. F., 120 I. C. C. 258, 261.

(e) Local rates to Chicago plus arbitrary to points within Chicago switching district beyond, found to constitute through rates where participating carriers concurred in tariffs publishing both local raes and arbitrary. Chicago Coal Merchants Asso. v. N. Y. C., 129 I. C. C. 203, 207.

II. ESTABLISHMENT BY CARRIER.

See Common Carrier; Electric Lines IV; Tap Lines §4.

§4. In General.

(a) It is the total through rate that vitally interests the shipper. Combination rule on brick, 115 I. C. C. 293, 300.

§5. Dispute over Divisions.

See Advanced Rates §7 (6); Divisions §4; Terminal Facilities §9.

(a) Failure of New York, New Haven & Hartford and Central New England railroads to accord to the C. R. R. of N. J., joint rates via New York Harbor on traffic from and to points on the Central and its connections west of Allentown, Reading, and Harrisburg, Pa., and west of and including Hagerstown, Md., while contemporaneously according joint rates via New York Harbor on such traffic to the Lehigh Valley and Pennsylvania railroads, found to result in discrimination in violation of section 3 (3) of the act. C. R. R. Co. of N. J. v. N. Y., N. H. & H., 122 I. C. C. 661.

§9. Right To Favor Own Line.

See Discrimination §7, §10; Routing and Misrouting §1.

(a) While desire of a carrier to retain to itself the long haul on all traffic tributary to its line is a right ordinarily safeguarded by provisions of section 15 (4) of the act, the technical construction of one portion of the act may not be relied upon by carriers to justify violation of other provisions. York Mfrs. Asso. v. P. R. R., 107 I. C. C. 219, 236.

(b) Under section 15 (4) of the act, the right of originating or intermediate carrier to its long haul on traffic in its possession is superior to that of delivering line. Ft. S., S. & R. I. R. R. Co. v. A. & V., 107 I. C. C. 523, 524.

(c) Upon contention of carrier that it can not be required to establish transit arrangements at a point on its line applicable in connection with traffic originating on its rails on the ground that to do so would deprive it of the long haul in violation of section 15 (4) of the act, HELD: That section merely prohibits commission from requiring establishment of joint through routes and rates which will have the effect of short hauling carriers under circumstances there set forth. But, where as here, the situation is simply whether or not transit shall be permitted at a point on its rails in connection with through rates and routes already in effect, this is clearly a situation not covered by section 15 (4). Montgomery Cotton Exchange v. S. A. L., 109 I. C. C. 579, 584.

(d) The limitation imposed by paragraph 4 of section 15 of the Act on authority of the Commission to require the establishment of a through route has no application where the inclusion in such route of all or substantially all of the lines of a carrier involving this section would make the through route unreasonably long as compared with another practicable through route which could otherwise be established. Rising Paper Co. v. N. Y. N. H. & H. R. R., 115 I. C. C. 699, 701.

(e) Carriers contended that there is a well-recognized exception to general condemnation by commission of restrictive rates in cases where combinations are supported by a general policy of carriers concerned in refusing to join in establishment of joint rates on coal to their local markets from points on other coal-carrying roads, citing in support thereof numerous cases in which commission found combination rates on that commodity not unreasonable or unduly prejudicial when maintained in accordance with such a policy. HELD: To merit

commission's approval any such policy must be followed without discrimination between shippers similarly situated. Old Ben Coal Corp. v. C., C., C. & St. L., 115 I. C. C. 84, 87, 88.

(f) Combination rates on staves and headings from Winnsboro, La., to Jackson, Miss., found unreasonable. No reason was shown why through rates should not be somewhat less than combination of locals, and mere fact that carrier desired to keep traffic on its own lines in order to secure a longer haul is no valid reason why it should refrain from becoming a party to joint rates. Reasonable joint rates prescribed for future and reparation awarded. Jackson Traffic Bureau v. A. & V. Ry., 115 I. C. C. 570.

(g) The provisions of the act protecting the right of a carrier to the long haul on traffic originating by it relate to the establishment of through routes. Ex Lake Iron Ore from Chicago to Granite City, 120 I. C. C. 75, 77.

(hi) Carriers published rates on their own line for single-line haul, lower than rate for similar joint-line hauls from points on other carriers to destinations on their own lines, contending that the rate for single-line haul was established for competitive reasons and that while earnings thereunder were low they were more satisfactory than would have been the case if the same rate were applied for joint-line hauls where it would receive but a part of the haul and a division of the rate. HELD: Similar situation was considered in 98 I. C. C. 488, in which commission stated that such rates resulted in a denial to shippers of ability to choose their market, and concluded that prejudice against such shippers was undue within meaning of the act. See also 58 I. C. C. 261. White Eagle Oil & Refining Co. v. A.T. & S. F., 122 I. C. C. 223, 225.

(j) Upon contention of carrier that it is entitled as a matter of right to its long haul on traffic under provisions of section 15 (4) of the act, HELD: That this provision of the act places a limitation only on commission's power to require establishment of such through routes and does not affect right of carriers to join in their establishment. C. R. R. Co. of N. J. v. N. Y., N. H. & H., 122 I. C. C. 661, 666.

(k) A carrier originating traffic or receiving it from its connection should be allowed to carry it as far as it can before delivering it to a connecting line if the public interest does not suffer thereby. Routing on cotton, 129 I. C .C. 387.

(l) If a carrier has traffic in its possession it should be allowed to handle it by its own line as far as it can in the absence of injury thereby to the public. Routing on cotton, 129 I. C. C. 387, 391.

(m) A carrier has no right, under the guise of reserving to itself the long haul, to restrict the markets in which its shippers may dispose of their products. Indianapolis Board of Trade v. B. & O. R. R., 129 I. C. C. 675, 679.

(n) Paragraph 4 of section 15 provides that in establishing through routes the Commission may not, without the consent of a carrier, embrace in such route substantially less than the entire length of its railroad unless the inclusion of its railroad would make the through route unreasonably long as compared with another practicable through route which could otherwise be established. Colorado Portland Cement Co. v. A., T. & S. F. Ry., 132 I. C. C. 671, 676.

(o) Establishment of joint rates on cotton, shipped uncompressed from points in Pecos Valley of New Mexico on the Santa Fe to Texas Gulf ports via Pecos, Tex., with concentration at that point at carrier's expense, which would short haul the Santa Fe system route via Clovis, N. Mex., and Sweetwater, Tex., with option of concentration at either Roswell, N. Mex., or Pecos, found not "necessary or desirable in the public interest," under section 15 (3) of the act. Establishment of joint rates would deprive the Santa Fe of the longest possible haul to which it is shown to be entitled and would tend to disturb transportation service now afforded Pecos Valley shippers by that line, which shippers are for most part opposed to establishment of such rates. Moreover, such rates would not, as contended, enlarge complainants' sales area, as in 109 I. C. C. 579. Smith-Wilson & Co. v. A., T. & S. F., 129 I. C. C. 65.

§10. Status of Intermediate Carrier.

(a) The financial status of a carrier is but one element in determining whether or not a railroad should be eliminated as an intermediate line in routing of traffic and is not necessarily controlling. Restrictions in Routing over S. L. & U., 115 I. C. C. 357, 369.

(b) The limitation imposed by section 15 (4) of the act on authority of commission to require establishment of a through route has no application where inclusion in such route of all or substantially all of the lines of a carrier invoking this section would make through route unreasonably long as compared with another practicable through route which could otherwise be established. See 85 I. C. C. 5, 11; 92 I. C. C. 304. Rising Paper Co. v. N. Y., N. H. & H., 115 I. C. C. 699, 701.

§11. What is Satisfactory Thru Route. (2) When Through Route Ordered Or Denied.

(a) Because of a strike in the anthracite fields which has brought about a shortage of fuel for household use, an emergency, such as is contemplated by section 15 (4) of the act, found to exist requiring prompt establishment of additional joint rates and through routes on bituminous coal in prepared sizes from certain mining districts in the Virginias and eastern Kentucky, and on semianthracite coal from certain Virginia mines, to points in New England and middle Atlantic States. Additional through routes, and temporary joint rates in connection therewith, prescribed without prejudice to subsequent consideration of requests for their being made permanent. Transportation of Anthracite Coal, 104 I. C. C. 341.

(b) Upon further consideration, and based primarily upon financial needs of intermediate line, through routes and joint rates between points on lines of certain carriers applicable via the Ft. Smith, Subiaco & Rock Island R. R. Co., as an intermediate carrier, found desirable in public interest and ordered established. Original report, 102 I. C. C. 708. Ft. S., S. & R. I. R. R. Co. v. A. & V., 107 I. C. C. 523.

(c) Upon contention that commission can not lawfully require establishment of through routes and joint rates in connection with an intermediate carrier solely on ground of intermediate line's financial necessity, and that public interest referred to in section 15 of the act is that of the shipping public in reasonable, expeditious routes, HELD: Commission is unable to adopt such a narrow conception of public interest. Ft. S., S. & R. I. R. R. Co. v. A. & V., 107 I. C. C. 523, 524.

(d) Rates on pulp wood from Minnesota points to Wisconsin Dam and Kings, Wis., points served exclusively by Marinette, Tomahawk & Western Ry., when routed from Duluth or Missabe Junction over the Soo Line via Bradley, Wis., thence over the Marinette, found unreasonable because of factor from Duluth or Missabe Junction to destinations. Reparation awarded and a reasonable proportional rate, which takes into consideration the financial condition of the Marinette and fact that movement requires a haul over two lines, prescribed for future. Tomahawk Kraft Paper Co. v. C. & N. W., 109 I. C. C. 517.

(e) Refusal of rail carriers to establish through routes and joint or proportional rates with the Nelson S. S. Co. on same basis and to same extent as contemporaneously maintained with the Pacific S. S. Co. and McCormick S. S. Co., competing water lines, found to result in undue prejudice. The Nelson company transports same classes of freight at same time between same ports at same rates under substantially similar circumstance and conditions as its competitors, its service is satisfactory, and it is financially responsible. While service rendered by the competing lines is also satisfactory, this fact alone is insufficient under the law to warrant undue prejudice found in view of the express language of section 3 of the act. The through routes and rates prayed for found desirable in the public interest and ordered established. Nelson S. S. Co. v. B., A. & P., 109 I. C. C. 529.

(f) Public interest found not to require establishment of through routes and joint class rates via Phoenix, Ariz., on traffic moving between points in Arizona and certain other States over circuitous routes. Carriers, however, should give consideration to establishment of such routes and rates between points where there is a substantial movement of traffic and the use of the Phoenix gateway would effect a considerable saving in transportation service. Arizona Corp. Commission v. A. E., 113 I. C. C. 52, 62, 63.

(g) Complainant operates bituminous coal mines near Pemberton, W. Va., in the New River district, two are on what is known as Collins Spur of the Virginian, the other two on a short spur of the C. & O., and alleged that defendant's refusal to accord complainant's mines the same treatment in facilities, service, and rates on coal to interstate

destinations as is accorded other mines in the same district on defendant's lines and the Glen Jean, and to open to each other their respective lines and facilities to the extent that they are open to competing mines in the district resulted in undue prejudice. There is an underground connection between complainant's mine on the C. & O. and that on the Virginian through which coal can be and is transferred. There was transferred by this means 3,082 tons, 78.8% of which was from the mine on the C. & O. to that on the Virginian. It is not shown that rates from the mines on the C. & O. or Virginian to eastern destinations on or via the other line are necessary, nor is it shown that it would be in the public interest to open the markets served by either the C. & O. or Virginian in the east to the shippers on the other line. HELD, defendant's failure to arrange for the extension of the same service and facilities to complainant's mines as are accorded by them under trackage arrangements, or otherwise, not unduly prejudicial, complaint dismissed. Winding Gulf Colliery Co. v. C. & O. Ry., 115 I. C. C. 113.

(h) Combination rates on coal from certain mines in New River district of West Virginia, on the C. & O. to interstate destinations on or via the Virginian Ry., and from mines on the Virginian to eastern interstate destinations on or via the C. & O., found not unreasonable, discriminatory, or unduly prejudicial as compared with rates accorded other mines similarly situated, which by trackage agreements or otherwise have the benefit of district rate on or via either line. Rates sought are not shown to be necessary or that it would be in the public interest to open the markets served by either the Chesapeake or the Virginian to shippers on the other line. Ragland Coal Co. v. V. Ry., 115 I. C. C. 147.

(i) Only in those instances where some advantages will accrue to parties other than a petitioning weak line does commission believe that it should exercise its powers in prescribing through routes and joint rates under section 15 (3) of the act. Commission also takes this view of the continuance of through routes already in effect. Restrictions in Routing over S. L. & U., 115 I. C. C. 357, 369.

(j) Upon further hearing, FOUND: That it is desirable in public interest that joint rates be established by carriers in connection with the Peoria & Pekin Union Ry. Co., on traffic to, from, and via Peoria or East Peoria, Ill. Former reports, 68 I. C. C. 412; 77 I. C. C. 43; and 93 I. C. C. 3. Rates of P. & P. U. Ry., 115 I. C. C. 469, 512, 513.

(k) Former report 115 I. C. C. 469, requiring establishment of joint rates on traffic interchanged by the Peoria & Pekin Union at Peoria or East Peoria, Ill., and classifying division of the Toledo, Peoria & Western west of Peoria as an east-side carrier thereby requiring that line to bear division of the Pekin Union on all traffic brought into Peoria over its western division, modified so as to classify eastern division of the Toledo's line with east side or East-Peoria carriers and its western division with west-side carriers. Rates of Peoria & Pekin Union Ry., 118 I. C. C. 127, 128.

(l) Complainant alleged among other things that the failure of defendants to establish through routes and joint rates on wool and mohair, carloads, from all points west of the 100 degree meridian to Boston, Mass., and other North Atlantic ports, when routed rail and water via the Pacific ports and Panama canal, was unjust and unreasonable. In 91 I. C. C. 235, the commission found this failure not to be unjust or unreasonable. Case was reopened for reconsideration. The request, in addition to the desire for lower through rates, is predicated largely on the ground of public interest. But the public interest must be considered broadly. The interests of the producers, the consumers, and the carriers must all be taken into consideration. There are no joint rail and water rates in effect on any commodity when shipped via the Pacific ports and the Panama canal. Not all of the intercoastal lines which are actually handling wool shipments and which sail on regular schedules, and none of the tramp steamers, are parties to this proceeding. The time may not be far distant when joint rail and water rates via the Pacific ports and the Panama canal to Atlantic seaboard destinations on many commodities will become a reality, but this record is not convincing that as yet the public interest, considered broadly, requires that such joint rate should be prescribed on wool. HELD, former findings affirmed, complaint dismissed. Wool

Rates Investigation, 1923, 120 I. C. C. 493.

(m) Establishment of through routes and joint rail-and-water rates on wool and mohair from interior points on shipments moving via Pacific ports and Panama Canal to Boston and other north Atlantic ports found not necessary or desirable in public interest, and failure of carriers to establish same and issue through bills of lading found not unreasonable or otherwise unlawful. The commission has never required establishment of joint rail-and-water rates when, as here, both the rail and water carriers are opposed thereto and no such rates are in effect on any commodity over routes here involved. While the time may not be far distant when their establishment on many commodities will become a reality, the record is not convincing that as yet the public interest, considered broadly, requires that such joint rates be prescribed on wood. Wool Rates Investigation, 1923, 120 I. C. C. 493.

(n) The commission has power to establish through routes and prescribe maximum joint rail-and-water rates on wool and mohair from interior points on shipments moving via Pacific coast ports and Panama Canal to Boston, Mass., and other Atlantic ports. See 87 I. C. C. 392 and other cited cases. Wool Rates Investigation, 1923, 120 I. C. C. 493, 495, 497.

(o) Where establishments of through routes and joint rates are sought, the public interest must be considered broadly, i. e., the interests of producers, consumers, and carriers must all be taken into consideration. Wool Rates Investigation, 1923, 120 I. C. C. 493, 507.

(p) Complainant, Jersey Central, seeks in this proceeding the reestablishment of joint rates by way of New York harbor on traffic between points on its line west of Allentown, Pa., and on connecting lines west of that point, and points on the New Haven and Central New England alleging that the refusal of defendants to join with it in establishing such rates is unduly prejudicial and unduly preferential of the L. V. and Pennsylvania, and that divisions on anthracite coal via Maybrook, N. Y., are unduly prejudicial. ROUTES AND RATES. Through routes and joint rates are in effect via New York harbor between all points generally on the Jersey Central and its connections and points on the New York division of the New Haven, Bridgeport, Conn., and west and between points on the Jersey Central, with some minor exceptions not here involved, and connecting carriers east of a line drawn west of Allentown, Reading, Harrisburg, Pa., and east of Hagerstown, Md., including points reached through Potomac Yard, Va., on the one hand and points on the New Haven and C. N. E. on the other. Joint rates between points on the Jersey Central west of Allentown and its connection west of the above described line and points on the lines of defendants, other than stations Bridgeport and west, and on cement from Vulvanite, N. J., and all points on defendants lines apply by way of Maybrook, and to some extent Campbell Hall. The greater part of the traffic between points on or reached over the Jersey Central and points on defendants now moves over the Maybrook route, the bulk of the movement being eastbound. With joint rates via New York harbor on such of this traffic as was not routed by the shippers through Maybrook the Jersey Central would have received additional hauls over its line of 73 miles from Easton and 84 miles from Bethlehem to Jersey City. The gravamen of the complaint is that the Jersey Central is being deprived of the additional revenues which it would receive under joint rates via New York harbor between these points. It is conceded that there is no breach by defendants of the duty of establishing through routes in that a through route, together with facilities for its operation, now exists via New York harbor between all points on or reached over the Jersey Central west of the above described line and points served by defendants. The choice of more than one route between the same points at equal rates is generally of advantage to shippers, particularly during periods of congestion, but the record indicates that these two routes would afford little, if any, benefit to shippers in this respect. The history of embargoes placed for account of defendants against traffic from points on or via their lines since 1916 shows that they were generally in effect via both gateways concurrently. The evidence shows that operating conditions generally are less favorable via New York harbor than via Maybrook between these points. The use for the movement of freight of reasonably direct routes which avoid congested centers is generally regarded as a sound operating practice, and a number of instances are cited where ad-

ditional lines and other facilities, generally known as cutoffs, have been constructed by carriers for the handling of through traffic around certain other large cities. HELD, establishment of joint rates between the points here considered via New York harbor under conditions which would add substantially to the volume of traffic interchanged by the New Haven with its connections at that point is not necessary or desirable in the public interest. The prejudice arises not from the existence of joint rates through New York harbor over the L. V. and Pennsylvania, or the absence of such rates over the Jersey Central, but from conditions local to these carriers over which defendants have no control. HELD, failure of defendants to establish the joint rates sought by complainant is not unduly prejudicial. In limiting joint rates with the Jersey Central via New York harbor for the purpose of restricting the amount of traffic moving through that gateway and at the same time making no similar limitation in the case of the L. V. and Pennsylvania, defendants have acted arbitrarily. HELD, failure of defendants to accord to complainant like treatment with the L. V. and Pennsylvania in the matter of joint rates via New York harbor is discriminatory and unlawful. ANTHRACITE DIVISIONS. In 1908, when traffic between the points here considered was diverted from the New York harbor to the Maybrook route, the Jersey Central and its connections west of Maybrook received as their division of joint rates on prepared sizes of anthracite coal from and to these points $1.25 per long ton. The record lacks definite and convincing proof of any agreement otherwise between the parties whereby the divisions west of Maybrook were to be determined by the use of a fixed differential of 30c under the divisions west of Jersey City. Contention of the Jersey Central must be rejected. Central R. R. Co. of N. J. v. N. Y. N. H. & H. R. R., 122 I. C. C. 661.

(q) Complainant alleged the failure and refusal of defendants to establish through routes and joint rates on coal, in carloads, from mines on the Virginian Ry., and the K. G. J. & E. by way of Matoaka, W. Va., and Roanoke, Va., over the N. & W. by way of Elkton, Va., to destinations on complainants line, resulted in violation of sections 1, 3 and 15 of the act. Complainant is Chesapeake Western Ry., operating a line of railroad, entirely within the state of Virginia, from Elkton, a point on the N. & W. to Stockesville, 40 miles. Consumers along the line of complainant receive their coal from coal fields in southern West Virginia and Virginia on the C. & O., and on the Virginia, Glen Jean and N. & W. The only joint rates on coal to destinations on complainants line other than Harrisonburg are from mines on the N. & W., applicable by way of Roanoke and Elkton, but as no receiver of coal at any of these destinations appeared at the hearing there seems to be no such public interest in this regard as would warrant the exercise of the powers under section 15. In the absence of any showing that coal from mines on the Virginian or Glen Jean has moved or will move to Harrisonburg or to the other destinations on complainants line, the Commission is not justified in making such an order as might tend to open up the local territory of the N. & W. to coal originating on other lines. HELD, complaint dismissed. Chesapeake Western Ry. v. N. & W. Ry., 123 I. C. C. 159.

(r) Contention of the Salt Lake & Utah R. R., that the practice of transcontinental lines in permitting certain carriers to short haul them on transcontinental traffic, while refusing it the same privilege, subjects it to discrimination under section 3 (3) of the act, not sustained. No showing was made that the circumstances under which these other carriers short haul the transcontinental lines are similar to those existing in connection with the Salt Lake & Utah, or that the latter named carrier is adversely affected by the transcontinental lines' arrangements with those other lines. Moreover, if these arrangements were discontinued protestant would be in no better position than that in which it now finds itself. See 35 I. C. C. 131. Restrictions in Routing over S. L. & U., 122 I. C. C. 208, 210.

(s) Reestablishment of joint rates on traffic from and to points on the C. R. R. Co. of N. J., and its connections west of Allentown, Reading, and Harrisburg, Pa., and west of and including Hagerstown, Md., via New York Harbor to and from points on the N. Y., N. H. & H. and Central New England railroads, found not necessary or desirable in the public interest, and failure of defendant carriers to establish such rates found not unduly prejudicial. C. R. R. Co. of N. J. v. N. Y., N. H. & H., 122 I. C. C. 661.

(t) Failure of New York, New Haven

& Hartford and Central New England railroads to accord to the C. R. R. of N. J., joint rates via New York Harbor on traffic from and to points on the Central and its connections west of Allentown, Reading, and Harrisburg, Pa., and west of and including Hagerstown, Md., while contemporaneously according joint rates via New York Harbor on such traffic to the Lehigh Valley and Pennsylvania railroads, found to result in discrimination in violation of section 3 (3) of the act. C. R. R. Co. of N. J. v. N. Y., N. H. & H., 122 I. C. C. 661.

(u) While there may be reasons in some instances to justify the construction of grain rates so that through rates are equal to combinations of rate factors to and from important grain markets, there is a limit to the extent to which such a policy can be followed with propriety in view of requirements of the act that all rates must be just and reasonable Ogden Grain Exchange v. A. & S., 122 I. C. C. 691, 702.

(v) Rates on grain and products from points in Utah, Idaho, Oregon, Montana, and Wyoming to points on the Denver & Rio Grande Western R. R. in Utah and Colorado (west of Colorado common points) found not unreasonable and prayer for establishment of joint rates from and to these points found not warranted by record. Ogden Grain Exchange v. A. & S., 122 I. C. C. 691, 718.

(w) Failure and refusal of carriers to establish through routes and joint rates on coal from mines on the Virginia Ry. and Kanawha, Glen Jean & Eastern R. R., by way of Matoaka, W. Va., and Roanoke, Va., over the Norfolk & Western Ry., to destinations on the Chespeake Western Ry., found not unreasonable or otherwise unlawful. Joint rates now apply to Harrisonburg, Va., a point on the Chesapeake Western, but as no receiver of coal at any other destinations on its line appeared at the hearing there is no such public interest in this regard as would warrant the exercise of the commission's powers under section 15. Moreover, in absence of any showing that coal from mines on the Virginian or the Glen Jean has moved or will move to these Chesapeake Western destinations, the commission is not justified in making such an order as might tend to open up local territory of the N. & W. to coal originating on other lines. See 39 I. C. C. 153. Chesapeake Western Ry. v. N. & W., 123 I. C. C. 159.

(x) To compel the application of short line rates over indirect or longer routes merely as a means of providing a channel of doubtful benefit to comparatively few shippers, would lay an unnecessary expense upon the railroads against the interest of the public as a whole. When joint rates that are neither unreasonable nor unduly prejudicial are maintained over direct routes adequate response is made to the reasonable requirements of the public, and carriers should not be required to perform wasteful transportation by maintaining the same rates over indirect and more circuitous routes. Restriction in routing lumber, 129 I. C. C. 561, 563.

(y) The public interest is not conserved by shutting out, by denial of joint rates, a miller from markets which he can reach by routes not necessitating the performance of a greater total service for him than the service over present routes over which joint rates apply, unless some substantial right of the carriers is thereby invaded. Indianapolis Board of Trade v. B. & O. R. R., 129 I. C. C. 675, 678.

(z) The commission is required to establish through routes and joint rates whenever deemed by it to be necessary or desirable in the public interest. That joint rates via Superior are desirable in the public interest is evident from the facts that traffic can be and is interchanged at that point; that the hauls via Kansas City or St. Joseph are in general excessively circuitous; and that lower rates would obtain via Superior because of the much shorter distances via that junction. The denial to complainants of reasonable rates via Superior can only be said to be in the interest of the carriers. White Eagle Oil & Refining Co. v. B. & Q., 129 I. C. C. 467, 469.

(aa) Through routes and joint rail-barge and rail-barge-rail rates between St. Paul and Minneapolis, Minn., and Fargo, N. Dak., and points in Illinois, Indiana, Iowa, and Missouri, in connection with barge line between Dubuque, Iowa, and St. Paul and Minneapolis, found desirable in the public interest. Such joint rates to be constructed by subtracting from contemporaneous all-rail rates between same points differentials equivalent to 15 per cent of contemporaneous all-rail rates between Dubuque and Twin Cities, and divisions

thereof to be arrived at by rate prorata basis, using as factors contemporaneous first-class rail rate between Dubuque or Twin Cities and the interior point and contemporaneous first-class barge rate between Dubuque and Twin Cities. Inland Waterways Corp. v. C. G. W., 129 I. C. C. 521.

(bb) Refusal of carriers to maintain through routes for transportation of grain and products to and via Indianapolis, Ind., from points on Wabash Railway in Illinois and Indiana to western termini of eastern trunk lines and points east thereof, found not unreasonable nor unduly prejudicial as compared with lower commodity rates to and via Indianapolis from cross-country and other competitive points on other lines nor with commodity rates applicable from points on the Wabash to the east via Chicago and other junctions with eastern lines. While in 83 I. C. C. 451, it was stated that a carrier has no right, under guise of reserving to itself the long haul, to restrict markets in which its shippers may dispose of their products, it is not shown that absence of joint rates via Indianapolis restricts shippers on the Wabash since both complainants and preferred parties can now reach all markets, except Indianapolis, at rates sought. Indianapolis Board of Trade v. B. & O., 129 I. C. C. 675.

(cc) While under section 15 (3) of the act, commission may, whenever deemed necessary or desirable in the public interest, establish through routes and joint rates and conditions under which such through routes shall be operated, paragraph 4 of that section provides that in establishing any such through route it shall not, except as provided in paragraph 3, require any carrier by railroad, without its consent, to embrace in such route substantially less than entire length of its railroad, which lies between termini of such proposed through route, unless such inclusion of lines would make the through route unreasonably long as compared with anther practicable through route which could otherwise be established. Indianapolis Board of Trade v. B. & O., 129 I. C. C. 675, 678, 679.

IV. REASONABLENESS AND DISCRIMINATION.

See Blanket Rates §10; Commodity Rates II; Discrimination §7; Equalization of Rates; Evidence §66; Local Rates and Combinations; Proportional Rates; Reasonablness of Rates §27½; Restricted Rates (i); Water Carriers V.

§13. In General.

(a) Through rates on fresh meats from points west of Mississippi River to destinations in trunk-line and New England territories found unreasonable for future to extent they exceed lowest combination of contemporaneous factors west of Mississippi River or Chicago plus rates herein found reasonable east thereof. Reasonable rates prescribed. Morrell & Co. v. N. Y. C., 104 I. C. C. 104, 136.

(b) Through rates on cured meats and hides from points west of Mississippi River to destinations in trunk-line and New England territories found not unreasonable or unduly prejudicial, except rates from Cedar Rapids, Iowa, and certain Missouri River packing points, which are herein found unreasonable for future, and reasonable rates prescribed. Morrell & Co. v. N. Y. C., 104 I. C. C. 104, 135, 136.

(c) Under ordinary conditions practice of making through rates by adding to a rate for a long distance the local rate from basing point to destination, a relatively short distance beyond, can not be approved. Jewel Co. v. A., T. & S. F., 104 I. C. C. 380, 384.

(d) Rates on coke from Chickamauga and Durham, Ga., and Chattanooga and Alton Park, Tenn., to Pacific coast terminals, found not unreasonable or discriminatory but unduly prejudicial to extent they exceed rates from Birmingham, Ala., district to same destinations. Following 34 I. C. C. 10, rates from these origin points were placed on a rate parity and so remained until disrupted by a reduction in rate from Birmingham. While southeastern carriers are willing to reduce rates involved to same as that applicable from Birmingham, the transcontinental lines are unwilling to concur therein because of low divisions which they would receive thereunder. Durham Coal & Iron Co. v. C. of G., 104 I. C. C. 483.

(e) In original report, 101 I. C. C. 363, 374, commission provided for reduction of higher rates on anthracite coal from Pennsylvania mines to destinations

in upper New York State over longer joint line routes to level of those applicable over single-line routes between same points. Upon showing by carriers that single-line rates were prescribed in 35 I. C. C. 220 for single-line hauls only, that those rates would not be reasonable maxima for joint-line hauls, and that a reduction of the joint-line rates to one-line basis would result in a serious and unwarranted loss in revenue, a difference of 13 cents between single and joint-line routes approved. Such difference found not unreasonable or great enough to place retail coal dealer served by joint routes under any serious handicap in competing with dealer served by single line at same point. Moreover, where not unduly circuitous, it is desirable that all routes be maintained. Anthracite Coal Investigation, 104 I. C. C. 514.

(f) Rates applicable on crushed stone, assessed on agricultural limestone from Buffalo, Iowa, to Illinois destinations, in absence of specific rates on latter commodity, found unreasonable to extent they exceeded subsequently-established specific joint commodity rates on agricultural limestone having value for purposes of soil treatment only. Reparation awarded. Dolese Bros. Co. v. C., R. I. & P., 107 I. C. C. 127.

(g) Rates on crushed stone from Columbia, S. C., to Wilford, Edwards, and Dean Siding, N. C., destinations on Washington & Vandemere, a short-line carrier under the same management and control as Atlantic Coast Line, found not unreasonable as compared with single-line distance rates from same point of origin to same and other destinations, or with rates between numerous other points for application over two or more lines for approximately equal distances. Raleigh Freight Traffic Bureau v. A. C. L., 107 I. C. C. 156.

(h) Rate on bituminous coal from South Providence and Harbor Junction Wharf, R. I., to Sterling, Conn., as part of a through interstate movement from Virginia mines by rail and water, found unreasonable to extent it exceeded lower contemporaneous rate on like traffic from New Haven and Stratford to other destinations in Connecticut for comparable distances found reasonable in 83 I. C. C. 563. Reasonable rate prescribed and reparation awarded. United States Finishing Co. v. N. Y., N. H. & H., 107 I. C. C. 412.

(i) Rate on bituminous coal from Allyn's Point to Sterling, Conn., as part of a through interstate movement from Virginia mines by rail and water, found not unreasonable as compared with contemporaneous rates on like traffic between points in same general territory for comparable distances and with rates found reasonable in 83 I. C. C. 563. United States Finishing Co. v. N. Y., N. H. & H., 107 I. C. C. 412.

(j) Considering, among other things, the earnings under through rates, and the measure of, and earnings under, separate factors, through combinations on anthracite coal from Pennsylvania mines to points in Iowa found unreasonable as compared with rates to Chicago and Peoria, Ill., St. Louis, Mo., and St. Paul, Minn. Reasonable rates for future prescribed. Iowa R. R. Commrs. v. C. R. R. Co. of N. J., 109 I. C. C. 273.

(k) Factors of through rates on traffic destined beyond should be lower than local rates, except where the latter are shown to be depressed by special conditions to an extent which makes them reasonable for application as proportional rates. Wichita Chamber of Commerce v. A. & V., 109 I. C. C. 368, 376.

(l) Combination rate assessed on lumber from Millville Junction, Fla., to Decatur, Ga., reconsigned to Scottdale, Ga., found unreasonable to extent that factor Millville Junction to Decatur exceeded rate from same origin point to Atlanta. Carrier offered no justification for an unusual situation whereunder industries at Decatur having private sidings were accorded the Atlanta rate whereas higher rates were assessed on lumber consigned to the general public. Reasonable rates prescribed for future and reparation awarded. Watters-Tonge Lumber Co. v. A. & St. A. B., 109 I. C. C. 598.

(m) Complainant attacked through rates on tinware from Chicago, Waukegan and Rockford, Ill., Milwaukee, Wis., and points taking same rates, to Burlington and Keokuk, Ia., as unreasonable and unduly prejudicial as compared with rates from same points to Quincy, Ill., and St. Louis, Mo. Burlington, Keokuk, Quincy and St. Louis are Mississippi River crossings north to south in the order named. Burlington serves all these points. One route of the Burlington to St. Louis is down the west bank through Burlington and Keokuk. This route also

passes through West Quincy on the Iowa side of the river opposite Quincy. The rates to Burlington and Keokuk are higher than to Quincy and St. Louis. Complainants refer to fourth class rates as principally applicable on their shipments in straight carloads or in mixed carloads under rule 10. Rates to Quincy and St. Louis are commodity rates. The record does not establish that the class rates are unreasonable for this traffic. The commodity rates to Quincy and St. Louis are exceptions to the class basis. The class basis to Burlington and Keokuk seems to be in harmony with the adjustment east of the Mississippi River, except to Quincy and St. Louis. But the maintenance of rates to Quincy and St. Louis lower than to Burlington is not warranted upon the facts here presented, and such an adjustment would subject Burlington to undue prejudice and give to Quincy and St. Louis an undue preference. Commodity rate to St. Louis from Chicago is 28.5 c. and from Milwaukee 33.5 c., that rate being applicable to McIntosh, Mo. In the absence of instructions for routing over the direct route this tariff authorizes the application of the McIntosh and St. Louis basis to Burlington and Keokuk as intermediate points over the permissible route through those points. HELD: defendants are to maintain rates on tinware to Burlington and Keokuk no higher than to St. Louis and Quincy. Burlington Shippers' Asso. v. C. B. & Q. R. R., 112 I. C. C. 533.

(n) Complainant attacked commodity rates charged on 37 cars of lubricating oil and gasoline between Oct. 5, 1921 and Jan. 4 1922 from Burkburnett, West Port Authur, Wichita Falls, Fort Worth, North Fort Worth and Houston, Tex., to Dayton, O., as unreasonable. Previous report in 102 I. C. C. 249. Prior to Sept. 29, 1921 no joint through rates were maintained from the points of origin to Dayton. On that date a commodity rate of 42c was published from Vicksburg, Miss., to Dayton. That tariff already named a proportional commodity rate of 19c from the origin points to Vicksburg. The record indicates that they were routed, presumably by shippers, through East St. Louis, Memphis and New Orleans. If the joint rates over those routes had been cancelled, joint through rates would nevertheless have remained in effect over other routes to Dayton. HELD: rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Refiners Oil Co. v. Pennsylvania R. R., 112 I. C. C. 680.

(o) Complainant attacked commodity rate of $7.92 charged on coke, carloads, subsequent to Nov. 1, 1922 from the Birmingham district to Collinsville, Okla., as unreasonable. On April 2, 1925 prior to the hearing, defendants established the rate of $6.12 per ton sought by complainant. Collinsville is 19 miles north of Tulsa on the Santa Fe. Over short route distance is 770 miles. HELD: rate attacked unreasonable to extent it exceeded $6.12, reparation awarded. Oil Well Improvement Co. v. A. T. & S. F. Ry., 112 I. C. C. 705.

(p) Complainant attacked commodity rates charged on wire fencing, carloads, to Americus, Ga., from Fairfield, Ala., as unreasonable and unduly prejudicial. Fairfield is on the Birmingham Southern about 13 miles from Birmingham and takes the same rate on this traffic. 15 moved over B. S., to Ensley, Ala., L. & N., to Montgomery and S. A. L., beyond. One moved B. S., to Birmingham and C. of Ga., beyond. Distances from Birmingham over these routes are 237 and 221 miles, respectively. Prior to Dec. 15, 1922 the rates on this commodity from Birmingham to Americus were sixth class, reduced on that date to the special iron basis. HELD, rates attacked unreasonable to extent they exceeded 36.5c prior to July 1, 1922 and 33c thereafter, reparation awarded. Sheffield Co. v. B. S. R. R., 112 I. C. C. 729.

(q) Complainant attacked commodity rates on green or green salted hides and tallow, in straight carloads, and on hides, pelts, skins, grease and tallow, in mixed carloads, shipped since July 1, 1922 from Norfolk, Neb., to Chicago, Ill., as unjust and unreasonable and unduly prejudicial. Generally speaking, the points of origin here under consideration may be divided into three groups, namely, (1) Missouri river points (2) Nebraska differential territory. (3) territory west of Nebraska differential territory. Joint rates apply from the Missouri river cities and points taking the same rates to Chicago. From Nebraska differential territory, which includes such points as Lincoln, Beatrice and Fremont, the rates to Chicago are made by adding certain arbitraries, usually less than the local rates, to the rates from Omaha, a Missouri river city. From the territory west of the Nebraska differential terri-

tory, the rates to Chicago are made on the full combination based on the Missouri river cities. Norfolk, served by the lines of three railroads, is within the territory west of the Nebraska differential territory, 122 miles northwest of Omaha. On Oct. 1, 1924 the rate was voluntarily reduced to 53c. There is no transportation condition to justify the charging of a relatively higher basis of rates from points in Nebraska, such as Norfolk, west of Nebraska differential territory, than from points within that territory, and the fact that the carriers apply the differential basis from other points explains or accounts for the difference in the rates but affords no justification therefor. HELD, rates attacked unreasonable to extent they exceeded 48.5c, reparation awarded. Robinson v. A. T. & S. F. Ry., 113 I. C. C. 280.

(r) Complainant attacked commodity rates on grain and grain products, carloads, between points in Wisconsin on the I. C., and points in Illinois on both the I. C., and Burlington, on and north of the line of the Burlington, from Chicago through Aurora, Galva, and Alpha, Ill., to New Boston, Ill., on the one hand and Chicago on the other hand, are unjust and unreasonable and as compared with the rates to St. Louis and Ohio river crossings unduly prejudicial. GRAIN RATES TO CHICAGO DISTRICT. The rates brought in issue are applicable in combination with rates from Chicago in constructing through rates to and east and south, but they are named in the tariffs as local rates and are here attacked only as such. They grade upward as the distance to the Chicago district increases, and from Illinois points are the same on both wheat and coarse grain. FEED RATES FROM CHICAGO DISTRICT. Generally speaking, the local rates on grain, including grain products, such as animal, poultry, and mixed livestock feed, apply to and from the Chicago district from and to points in northern Illinois and southern Wisconsin on those portions of the I. C., and Burlington herein considered. Complainants disadvantage is primarily one of location, for it is readily apparent that they seek to market feed against the flow of the ingredients, in competition with manufacturers shipping with it. The rates attacked are for the most part local rates, and under the circumstances of this case their reasonableness may not tested by comparisons with proportional rates. The fact that local rates on feed lower than on grain are maintained to a few points is not convincing that the same basis should be extended to all points. HELD, rates attacked not unreasonable or unduly prejudicial, complaint dismissed. Chicago Board of Trade v. C. B. & Q. R. R. 113 I. C. C. 295.

(s) Failure of carriers to establish joint rail-and-water commodity rates on plain iron wire, c. l. and l. c. l., from Fostoria, Ohio, to Savannah, Ga., and Jacksonville, Fla., while contemporaneously maintaining such joint rate from Pittsburgh, Pa., and from Youngstown, Cleveland, and Greenwich, Ohio, to same destinations, found unduly prejudicial. Nonprejudicial relationship prescribed. Seneca Wire & Mfg. Co. v. B. & O., 112 I. C. C. 95.

(t) Through combination rate on unshelled peanuts from Suffolk, Va., to Hutchinson, Kans., found unreasonable to extent it exceeded rate prescribed in 83 I. C. C. 14 and 100 I. C. C. 307, from Suffolk and other Virginia points to Oklahoma and Texas destinations for comparable distances. Reparation denied. Western Brokerage Co. v. A. C. L., 112 I. C. C. 103.

(u) Combination rate assessed on batting dross from Mangrum, Miss., to Pensacola, Fla., found not unreasonable as compared with lower joint rate subsequently established. Combination compares favorably with rates in force at time of movement from shipping points in territory contiguous to Mangrum. Moreover, where adjustments of rates have been initiated by carriers, the exercise of their judgment in good faith and within reasonable limits should not be at peril of liability of reparation; and awarding of reparation by no means necessarily follows reducing of a rate by their voluntary action. See also 58 I. C. C. 46. Western Paper Makers Chemical Co. v. G. & S. I., 112 I. C. C. 221.

(v) Combination rates on coal from Colorado and northern New Mexico producing districts to local points in State of Kansas on the Frisco, Katy, and Midland Valley railroads found unreasonable and unduly prejudicial as compared with joint rates maintained to destinations on other lines in same general Kansas territory. Reasonable rates prescribed for

future. Kansas Public Utilities Comm. v. A., T. & S. F., 112 I. C. C. 235.

(w) Where issue is one of reasonableness and propriety of through charges from point of origin to final destination, mere fact that such through charges include a factor which may have been too high is not controlling if total charges were not unreasonably high. Wright Lumber Co. v. A. A., 112 I. C. C. 337, 339.

(x) Rates on crude mine-run fire clay from St. Louis and Clayton, Mo., to South Fort Smith and Van Buren, Ark., found unreasonable as compared with rates prescribed for similar distances in Memphis Southwestern Investigation, 77 I. C. C. 473, and to extent they exceeded 16 cents on shipments moving over the Ft. Smith & Western and on other shipments 14 cents for single-line and 14.5 cents for joint-line hauls. The Ft. Smith & Western, designated as a weak line in cited case is shown to be in poor financial condition with an annual operation loss and participates in traffic under a rate of 12 cents in order to compete for this traffic despite the low earnings thereunder. Reparation awarded. Athletic Mining & Smelting Co. v. F. S. & W., 112 I. C. C. 497.

(y) Rates on canned meats from Atlanta, Ga., to Chicago, Ill., found unreasonable due to factors from Atlanta to Ohio River crossings. The omission of canned meats from the canned-goods list clearly was and is an exception to general basis of commodity rates on canned goods in the Southeast, numerous comparisons of rates from and to other points indicate that assailed factor and through rate resulting from its use were and are inherently unreasonable, and fact that canned meats are classified with other canned goods and that proportional c. l. rate on canned meats exceeded both the local and proportional l. c. l. rate on other canned goods is prima facie evidence of unreasonableness of rates assailed. Reparation awarded, and original report, 93 I. C. C. 360, reversed. Armour & Co. v. L. & N. 112 I. C. C. 695.

(z) Complainant attacked commodity rates on sugar, carloads from New Orleans, California, Colorado, Utah, Idaho, Nebraska and New Jersey to Nebraska and South Dakota destinations as unreasonable and unduly prejudicial. Regardless of the point of origin, sugar is sold to the jobbers throughout the destination territory in these cases at the prevailing New York price plus the freight rate from New Orleans to the jobbing points. Comparatively little sugar moves to this territory either from New Orleans or the Atlantic seaboard. About 85% of the consumption is of beet sugar received from refineries in the western states. The cane sugar consumed originates in California. Nevertheless by reason of the manner in which prices are fixed by the refiners a reduction in the freight rates from points other than from New Orleans would not benefit complainants unless attended by a reduction in the rates from New Orleans. The record indicates the ability of the Missouri river cities to distribute sugar in less carload quantities at points naturally tributary to the complaining points at lower rates than the jobbers located there can distribute. The average short line distance from New Orleans to the complaining cities is about the same as the average short line distance to the river cities in Iowa and Nebraska. Under commodity scale 11 in 77 I. C. C. 473, 595 for application to sugar in the generally higher rated territory in that case, extended beyond 800 miles at the constant rate of progression employed therein beyond 500 miles, namely 1c for each additional 25 miles, the rates to the complaining points would be, using the short line distances, as follows for single line or joint line hauls; to Superior and Fairbury 74c, to Hastings 76c, to Grand Island 78c, to Columbus and Kearney 79c, to Norfolk 81c, to North Platte 83c to Scotts Bluff 89c, to Crawford 93c. So far as traffic and transportation conditions differ as between Nebraska and the Southwest the advantage is with the former territory, apart from such consideration, if any, as should be accorded the materially longer hauls to the Nebraska points. HELD, rates attacked unreasonable to extent they exceed rates based on the scale mentioned, plus arbitraries not exceeding 2c for the bridge crossing at Memphis or 2.5c for the ferry crossing at Mississippi river points south thereof minimum 60,000 pounds. HELD, further, rates unduly prejudicial to extent they exceed present rates from New Orleans to the river cities by more than 8c to Superior or Fairbury, 10c to Hastings, 12c to Grand Island, 13c to Columbus or Kearney, 15c to Norfolk, 17c

to North Platte, 23c to Scottsbluff or 27c to Crawford. Rapid City, S. D., is on branch lines of the Northwestern and Milwaukee and R. C. B. H. & W., Lead and Deadwood, S. D., on the Burlington and Northwestern. The same rates apply generally to these points. Practically the entire receipts are from Nebraska. From San Francisco to Chicago rates are 91c for 60,000 pounds and 84c, 80,000. To the river cities the rates at those minima are 88.5c and 84c which rates are blanketed back throughout Kansas and Nebraska. To Rapid City the applicable rate is $1.035 on 60,000 pounds, or 15c higher than to Crawford, 162 miles less distant. HELD, rates attacked unduly prejudicial to extent they exceed the rates to Omaha or Sioux City or 88.5c minimum 60,000 pounds or 84c minimum 80,000 pounds. The rates from Utah, Idaho territory to Rapid City are $1.58. HELD, rates attacked unduly prejudicial to extent they exceed the rates from California. The rate from New Orleans to Rapid City distance 1,610 miles is $1.35, to Deadwood 45 miles beyond is $1.41. HELD, rates attacked unduly prejudicial to extent they exceed the rates from New Orleans to Omaha by more than 31c to Rapid City or 33c to Deadwood or Lead. Nebraska State Ry. Commission v. A. & W. Ry., 113 I. C. C. 467.

(aa) Complainant attacked commodity rates on flaxseed, carloads, from Montana and North Dakota to Portland, Ore., as unreasonable. N. P., party to the rates from the Canadian points to Portland, stated that these rates would be reduced simultaneously with rates from the same points to Seattle. The reduction in rates to Seattle is necessary to meet a lower combination of local rates via Sumas, Wash. This will result in rates from Regina and Moose Jaw to Portland 9 and 9.5c lower than the rates complained of, and will satisfy the complaint in this respect. The record in this case does not warrant a finding of unreasonableness. HELD, rates attacked not unreasonable, complaint dismissed. Portland Linseed Oil Works v. G. N. Ry., 113 I. C. C. 528.

(bb) Joint class rates for movement of interstate traffic from Erie station at Paterson, N. J., to Broadway station on the New York, Susquehanna & Western, in the same city, found not unreasonable. Complainant instanced lower rates for comparable switching movements in same general territory but carriers showed that movement here involved embraced two switching and two road-haul operations. Wilgus v. P. R. R., 113 I. C. C. 617.

(cc) Rates on coke from Appalachia, Stonega, and other producing points in Virginia and from Birmingham, Ala., to destinations in California found not unreasonable or unduly prejudicial as compared with rates from Chattanooga. Similar rates from Chattanooga found not unreasonable or discriminatory, but following 104 I. C. C. 483, were unduly prejudicial to extent they exceeded the rates from the Birmingham district to the same destinations. Romann & Bush Pig Iron & Coke Co. v. I. R. R., 113 I. C. C. 622.

(dd) Complainant attacked fifth class rates charged on carloads of evaporated milk in tin cans, in boxes, from Pecatonica, Ill., to trunk line territory as unreasonable and unduly prejudicial. The gravamen of complainant's case is that its competitors at the Wisconsin producing points were accorded commodity rates in most instances lower than the fifth class rates and also lower than complainant's rates for equal or comparable distances. Subsequent to the hearing the carriers proposed a revision of rates on canned goods and vegetables and condensed and evaporated milk from various Wisconsin and Minnesota points to trunk lines. In 101 I. C. C. 502, the Commission permitted numerous increases in the rates, but not to the extent proposed. The points which still enjoy rates lower than Pecatonica are located near Lake Michigan and their rates are influenced by the car ferry routes. HELD, rates attacked not unreasonable or unjustly discriminatory and that any undue prejudice which may have existed has been removed, complaint dismissed. Milk Producers Co-operative Co. v. B. & O. R. R., 113 I. C. C. 721.

(ee) Accidents by which shipments move via either of two intermediate points, because like specific class rates are applicable over both routes, should not alone determine the measure of reasonable rates over two lines of same carrier between same points, where no differences in transportation conditions are shown, where difference in distance is slight, and where a lower combination is

sometimes figured over the shorter route and sometimes over the longer route. Firestone Tire & Rubber Co. v. Director General, 113 I. C. C. 751, 755.

(ff) Complainant attacked commodity rates charged on corrugated strawboard boxes, knocked down, in carloads, shipped since Sept. 1, 1924, from Baltimore, Md., to Durham, Winston Salem, and Reidsville, N. C., as unduly prejudicial as compared with rates from Louisville, Ky., to the same destinations. Baltimore is on the T. & O. C., 25 miles southeast of Columbus, O. The short line distance to Durham is 544 miles, to Winston Salem 511 miles, and to Reidsville 513 miles. Charged 49c. Louisville has a 41c rate for distances of 651 miles to Durham, 619 miles to Winston Salem and 622 miles to Reidsville. The general basis of making rates from points in central territory to Carolina destinations is by combination either on Ohio river crossings or on the Virginia cities. Figured on the latter the Baltimore rate would be 58c. But Baltimore takes the Columbus rate. This is not made by the usual method but is a differential of 8c over the Ohio river of 41c, which applies from Cincinnati and Louisville. The N. & W. has a through line from Columbus to North Carolina and originally put Columbus on the differential basis in order to secure traffic in competition with Cincinnati. The T. & O. C. meets the rate of the N. & W. at Columbus and applies it from intermediate points, thereby giving complainant the benefit of the lower basis. These lines do not serve Louisville. HELD: rates attacked not unduly prejudicial, complaint dismissed. Fairfield Paper Co. v. A. C. L. Ry., 115 I. C. C. 43.

(gg) Complainant attacked as unreasonable the rates on fresh meats and packing house products from Chicago, Milwaukee and South St. Paul to Marquette, Ishpeming, Munising, Nestoria, Houghton, Hancock and Calumet, Mich., and to points intermediate thereto in northern Wisconsin and the northern peninsula of Michigan. The points of destination are in the upper peninsula of Michigan, and with the exception of Ishpeming, which is served by Northwestern, are reached only by socalled short line carriers which operate solely within the peninsula or in the peninsula and northern Wisconsin. Fresh meats and packing house products, in carloads, are rated third and fifth class, in western classification territory. Prior to July 5, 1924, commodity rates the same as the third class rates were maintained on fresh meats, carloads, from Chicago and Milwaukee to Houghton, Hancock and Calumet and from South St. Paul to Houghton and Hancock; and from South St Paul to Calumet the rates on this traffic were combination third class rates. On that date the commodity rates were reduced 4c, and a combination rate made up of the commodity rate to Houghton and the local third class rate beyond, also 4c less than the sum of the third class rates to and from Houghton, became effective from South St. Paul to Calumet. The rates attacked on packing house products from Chicago and Milwaukee to Ishpeming were 3c lower than the fifth class rates from and to these points prior to July 5, 1924, when they were increased to the classification basis. The shipments from Chicago to Houghton moved over C. M. & St. P. and Copper Range, 431 miles. The attacked rates on fresh meats range from about 77 to 95% of the third class rates, whereas the rates on like traffic to the other destinations named range from 50 to 70% of class rates. HELD: Rates attacked to Marquette, Ishpeming, Munising and Nestoria not unreasonable, but to Houghton, Hancock and Calumet unreasonable to extent they exceed 57.5c on fresh meats and 34.5c on packing house products to Houghton and Hancock and 59.5c on fresh meats and 35.5c on packing house products to Calumet, reparation awarded. Armour & Co. v. C. M. & St. P. Ry., 115 I. C. C. 68.

(hh) Complainant attacked rates on bituminous coal, carloads, from southern Illinois field to points in Indiana on the Big Four as unreasonable and unduly prejudicial. All of the mines are served by the I. C., two of them those at West Frankfort and Johnston City are also served by the C. & E. I. The Indiana destinations, 173 in number, are points on the Big Four on and north of the line of that road extending from Sandford via Freensburg and Shirley to Crete, including those points on the Martinsville and Columbus branches. The average short line distances from the Old Ben mines over the I. C., or C. & E. I. in connection with the Big Four, range from 185 miles to Sandford, Ind., to 431 miles to Granger, Ind. The rates are based on the full combinations of

the locals to and from the various junction points. The lowest rates applicable from the Old Ben mines to the destinations in question via any route in connection with the Big Four range from $2.40 to $3.62. To destinations in Michigan, Wisconsin, Minnesota, North Dakota, South Dakota, Iowa, Nebraska, and Missouri, the rates from the Old Ben mines and from the Harrisburg group mines are, with few exceptions, the same. To many destinations in Indiana the same rates are accorded to both groups. To stations on the Big Four in Michigan the other defendants and the Burlington maintain joint rates from their southern Illinois mines. To its Indiana destinations the Big Four joins in rates from mines on other lines in the Brazil and Evansville, Ind., groups on the same basis as the local rates from its own mines in those groups to the same destinations. HELD, rates attacked unreasonable and unduly prejudicial to extent they exceed the rates from Harrisburg, Ill. Old Ben Corp. v. C. C. C. & St. L. Ry., 115 I. C. C. 84.

(ii) Complainant attacked commodity rate of 7c, minimum 50,000 pounds, on ice, carloads, from Wymore, Neb., to St. Joseph, Mo. as unreasonable to extent it exceeded 5c minimum 60,000 pounds. Distance is 122 miles. Loss and damage claims are negligible. HELD: rates attacked not unreasonable, complaint dismissed. Rawlings v. C. B. & Q. R. R., 115 I. C. C. 103.

(jj) Complainant attacked rate charged on staves, carloads, from Strasburg Jct., Va., to Engle, W. Va., as unreasonable. The evidence submitted shows that the shipments actually moved from Strasburg, Va., on the Southern to its siding at Bakerton, W. Va. A reciprocal switching charge of $2.70 per car is absorbed by defendant for the movement. Rate charged $2.02. Bakerton is the terminus of a branch line of the B. & O. 2.3 miles from Engle and it has been customary in the past to bill shipments to Engle and make delivery at Bakerton. Bakerton while only a siding to complainant's plant, is listed in tariff as a nonagency station. Legal rate was distance commodity rate of 13c. Staves move in ordinary box cars and complainant has had no claims for damage, they are rated sixth class and in the absence of a commodity rate or mileage scale the rate would be 17.5c. HELD: rate attacked of $2.02 not unreasonable, undercharges waived. Washington Building Lime Co. v. B. & O. R. R., 115 I. C. C. 128.

(kk) Complainant attacked rate on lime, carloads, from Woodville, O., to Fulton, Md. as unreasonable unjustly discriminatory and unduly prejudicial. Woodville is a local point on the Pennsylvania, 16 miles southeast of Toledo, O., and Fulton is served by the Western Maryland within the corporate limits of Baltimore. Combination was 27.4c. A commodity rate of 25.5c was in effect from Woodville to deliveries in Baltimore on the Pennsylvania. HELD: rate attacked unreasonable to extent it exceeded 25.5c, reparation awarded. Woodville Lime Products Co. v. Pennsylvania R. R., 115 I. C. C. 131.

(ll) Complainant attacked rate charged on three cars of peaches shipped from Timberville and Markham, Va., to Jacksonville, Fla., as unreasonable unjustly discriminatory unduly prejudicial and in violation of the fourth section. One shipment was made on Aug. 27, 1924, from Timberville and moved Southern. The other two were made from Markham on Sept. 3 and 8, 1924, and were originally consigned to Richmond, Va., but were diverted to Jacksonville and moved Southern, R. F. & P., and A. C. L., applicable second class rate of $1.425 charged, complainant seeking rate of 70c. From Timberville to Palatka, Fla., 60 miles beyond Jacksonville the rate at the time the shipments moved was $1.36 made of $1.075 to Jacksonville and 28.5c beyond. To Jacksonville from Cincinnati, O., 840 miles, the present rate is 70c, and from St. Louis, Mo., 1,090 miles the rate is $1.04. Transportation characteristics relating to the compared rates are not shown. The rates attacked compare favorably with those from comparable distances from Timberville to approximately 40 important destinations in Georgia, Alabama and Tennessee. HELD: rate attacked not reasonable, unjustly discriminatory or unduly prejudicial, complaint dismissed. Toney Bros. v. Southern Ry., 115 I. C. C. 203.

(mm) Complainant attacked commodity rate of $1.50 charged on two cars of paper boxes, knocked down, in bundles, from Chicago Ill. to Salt Lake City, Utah, on Sept. 1 and Oct. 14, 1922, as unreasonable, unduly prejudicial to extent it exceeded $1.35 on Sept. 1 ship-

ment and $1.13 on Oct. 14 shipment. Shipments moved Burlington to Council Bluffs, Ia., U. P., beyond. On Oct. 10, 1922, the rate was reduced to $1.13 in an effort to secure some of the roofing felt, building paper and wall board traffic that was then moving in large volume by water. HELD: Rate attacked unreasonable to extent it exceeded $1.32, or 10% over the rate on newsprint paper, reparation awarded. Chicago Carton Co. v. C. B. & Q. R. R., 115 I. C. C. 215.

(nn) Complainant attacked joint commodity rate of 36.5c charged on 20 cars of phosphate rock from Milldale, Fla., in Nov., 1920, to Shreveport, La., as unreasonable. Milldale is within the switching limits of Jacksonville, Fla., and about 74 miles from Alachua, Fla., the nearest point in the Florida phosphate strata. No phosphate has ever been mined at Milldale. There is no evidence of any movement previous or subsequent to these 20 cars to Shreveport or to any other destination. There is no indication of record that any future movement is in prospect. The movement was distinctly sporadic. Shipments moved A. C. L. to Montgomery, M. & O. to Meridian, A. & V., to Vicksburg and V. S. & P. beyond, distance 836 miles. HELD: Rate attacked not unreasonable, complaint dismissed. Meridian Fertilizer Factory v. A. C. L. R. R., 115 I. C. C. 226.

(oo) Complainant attacked joint commodity rate of 25c charged on a carload of mixed veneering shipped Aug. 4, 1923, from Tuscaloosa, Ala., to Nashville, Tenn., as illegal. Shipment was unrouted and moved A. G. S. to Chattanooga, Tenn., C. N. O. M. T. P. to Harriman, Tenn., and T. C. beyond, rate being applicable on veneering less than one-eighth inch in thickness. The rate charged was applicable on that portion of the shipment less than one-eighth inch in thickness and was subject to minimum of 30,000 pounds. The charges on the balance of the shipment can not be determined without knowledge of the actual weight of that portion. Complaint dismissed. Standard Furniture Co. v. A. G. S. R. R., 115 I. C. C. 243.

(pp) Complainant attacked joint rate of 29c charged on carload shipments of wet wood pulp from Port Arthur, Ont., to Wisconsin Rapids and Biron, Wis., as unreasonable. HELD: Rate attacked not unreasonable, complaint dismissed. Consolidated Water Power & Paper Co. v. C. N. Ry., 115 I. C. C. 310.

(qq) Complainant attacked commodity rate charged on sand, carloads, from Ottawa, Wedron and Utica, Ill., to Sandusky, O., as unjust and unreasonable. Judged by the percentage relationships between the silica sand rates and the sixth class rates the rate on silica sand to Sandusky compares favorably with the rates on the same commodity to other points in Ohio, Indiana, and Michigan to which there is substantial movement. HELD: Rates attacked not unjust or unreasonable, complaint dismissed. Frohman Chemical Co. v. B. & O. R. R., 115 I. C. C. 322.

(rr) Complainant attacked rates charged on box shooks and sawdust, carloads from Albuquerque, N. M., and El Paso, Tex., to Curtiss and Kennard, Ariz., as unreasonable, unjustly discriminatory and unduly prejudicial in their relation to the rates between various points in Arizona, California, Oregon, Washington, Nevada, New Mexico, Texas, Colorado and other states. Curtiss and Kennard are stations on branch lines of the E. P. & S. W. and S. P. respectively, about 7 miles south of Benson, Ariz., and rates to both have been and are the same. The distance from El Paso over the E. P. & S. W. to Curtiss is 289 miles. Over the S. P. to Kennard or Benson and thence E. P. & S. W. to Curtiss is about 270 miles. From Albuquerque the distance over the Santa Fe to Deming, N. M., and E. P. & S. W. to Curtiss is 459 miles; and over S. P. beyond Deming to Kennard or Benson, thence E. P. & S. W. to Curtiss is about 413 miles. There is no joint rate from Albuquerque to Curtiss or Kennard and the combination of the lumber rates to and from Deming is applicable upon shipments via that point or El Paso. Prior to Sept. 1, 1923, this combination was 60.5c to both Curtiss and Kennard under the combination rule. On that date the elimination of the combination rule on shipments moving over the E. P. & S. W. increased the through rate to Curtiss to 65.5c. Prior to Dec. 10, 1923, a specific rate of 40.5c on box shooks was applicable from El Paso to Curtiss. The lumber rate was 39.5c. On that date the specific rate was canceled and the lumber rate became applicable. The evidence shows

that the rate charged on box shooks from Albuquerque were and are excessive. A rate of 33c on box shooks from El Paso would reflect a proper relationship to a rate of 42.5c from Albuquerque and it would be in line with the rates prescribed for comparable distances from northern Arizona and San Pedro. HELD: Rates attacked not unjustly discriminatory or unduly prejudicial but rates on box shooks unreasonable to extent they exceed 42.5c from Albuquerque and 33c from El Paso and rates on sawdust unreasonable to extent they exceed 30c and 23c, reparation awarded. Apache Powder Co. v. A. T. & S. F. Ry., 115 I. C. C. 339.

(ss) Complainant attacked combination rates on rough heading and staves from Winnsboro, La., to Jackson, Miss., as unjust, unreasonable and unduly prejudicial. Shipments moved M. P. to Rayville, La., 23 miles, V. S. & P. to Vicksburg, Miss., and A. & V. beyond 99 miles, total 122 miles, charged 25c, composed of 11c to Rayville and 14c beyond. There was and is a rate of 9c on lumber from Winnsboro to Rayville. The M. P. tariffs from points in Louisiana to Arkansas accord the rates on lumber to staves and heading. The mere fact that the M. P. desires to keep lumber and cooperage stock on its own lines west of the river in order that it may secure a longer haul is no valid reason why it should refrain from becoming a party to joint rates to Jackson in Mississippi valley territory, and no reason is shown why the through rates from Winnsboro to Jackson should not be somewhat less than the combination. HELD: Rates attacked unreasonable to extent it exceeded 19c, reparation awarded. Jackson Traffic Bureau v. A. & V. Ry., 115 I. C. C. 570.

(tt) Complainant attacked through rate on lime, carloads, from Woodville, O., to stations in Baltimore on the W. M. east of Walbrook station as unreasonable, unjustly discriminatory and unduly prejudicial to extent they exceeded 25.5c applicable to Walbrook. Woodville is on the Pennsylvania about 16 miles southeast of Toledo, O. A rate of 25.5c is applicable on lime, in carloads, from that point to Baltimore rate base points, but specific restrictions are placed against its application to shipments to stations in Baltimore on the W. M. In order to effect delivery at those stations complainant must pay a switching charge of 50c per ton, minimum 25 tons, over the Baltimore rate, or it may bill its shipments to Walbrook and reconsign them at a charge of $6.30 per car. In the sale of its product in Baltimore complainant competes with shippers at Luckey, O., a station on the New York Central about 6 miles cross country from Woodville. The Baltimore rate is applicable from Luckey to all W. M. Stations in Baltimore. HELD: 25.5c rate plus switching or reconsigning charges to points on the W. M. east of Walbrook in Baltimore unreasonable and unduly prejudicial to extent they exceeded the rates to Baltimore, reparation awarded. Washington Building Lime Co. v. Pennsylvania R. R., 115 I. C. C. 618.

(uu) Complainant attacked commodity rate of $1.51 charged on 94 cars of sand and gravel, from Portsmouth, O., to Williamson, W. Va., as unreasonable to extent it exceeded $1.39. Portsmouth is on N. & W. 39 miles west of Kenova, W. Va. Williamson is 15 miles east of Naugatuck, W. Va. Between Kenova and Naugatuck defendant has two routes, one, the socalled 12 pole line, 83 miles, and the other the Big Sandy line, 59 miles. Rate attacked applies for the published distance of 137 miles. The rate for the distance of 113 miles over the Big Sandy route would be $1.39, to the basis of which reparation is sought. There appears to be no good reason why the distance scale of rates here considered should not have been applied for the actual distance over this line on traffic between these points. HELD: rate attacked unreasonable to extent it exceeded $1.39, reparation awarded. Good Construction Co. v. N. & W. Ry., 115 I. C. C. 629.

(vv) Complainant attacked commodity rate charged on a car of creosote oil, in barrels, shipped Sept. 17, 1924, from Fort Worth, Tex., to Woodward, Ala., as unreasonable. The car was originally shipped by complainant from Woodward to Fort Worth. The shipment was refused by the consignee and was returned to complainant at Woodward in the same car. Both movements were over Frisco, Rock Island, C. R. I. & G., through Memphis, Tenn., and Terral, Okla. For movement to Fort Worth commodity rate of 62c was charged. For the return movement a combination rate of $1.345 was charged, composed of fifth class rate of $1.06 to Memphis and commodity rate of 28.5c beyond. HELD: Rate attacked

unreasonable to extent it exceeded 62c, reparation awarded. American Tar Products Co. v. C. R. I. & P. Ry., 115 I. C. C. 677.

(ww) Complainant attacked commodity rate of 17.5c charged on carloads of grain shipped in 1923 from Tab, Ind., to Indianapolis, Ind., thence reconsigned to Louisville, Ky., and Cincinnati, O., as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of section four. Tab is a local station on the Danville branch of the N. Y. C., about 5 miles south of Handy, Ind., and 23 miles north of Danville, Ill. Presumably the shipments moved N. Y. C. to Danville and Big Four to Indianapolis, where they were reconsigned and moved thence either to Louisville or Cincinnati over the latter carrier. Charged to Louisville 17.5c to Cincinnati 16c, applicable rate 17.5c. For a number of years prior to May 9, 1918, the rates on grain from Tab were 9c to Cincinnati and Louisville by way of Danville and Big Four and 11c to Cincinnati and 12c to Louisville over other routes. If the 9c rate had been subjected to the general increases and reductions it would be equivalent to 16c. HELD: Rate attacked unreasonable to extent it exceeded 16c, reparation awarded. Indianapolis Board of Trade v. C. C. C. & St. L. Ry., 115 I. C. C. 681.

(xx) Complainant attacked combination rate charged on 44 cars of wood pulp between April, 1923, and Jan., 1925, 5 from Ticonderoga, N. Y., and 39 from Great Works, Me., to Housatonic, Mass., as unreasonable. There was and is no joint rate and charges were collected at combination rate made of an arbitrary of 13c per long ton from Ticonderoga to Delano Jct., to Pittsfield and New Haven local sixth class rate of 11.5c beyond. From Great Works shipments moved as routed Me. Cent., B. & M., B. & A., and New Haven, charged joint sixth class rate of 29.5c. Defendant D. & H., admits that the rate attacked from Delano Junction is out of line with the rates on wood pulp from that point to other destinations generally for similar distances, but insists it should not be expected or required to establish a joint rate over route of movement of the shipments when it has established joint rates over what it describes as its usual routes from and to these points. HELD: Rates attacked and for future unreasonable to extent they exceed 21c from Delano Junction and 27c from Great Works, reparation awarded. Rising Paper Co. v. N. Y., N. H. & H. R. R., 115 I. C. C. 699.

(yy) Complainant attacked rates on strawberries, in 32 qt. crates, in refrigerator cars, from North Carolina to Providence, R. I., in 1922, 1923 and 1924 as unreasonable, and as compared with the rates from the same points of origin to New York, N. Y., unduly prejudicial. The applicable tariff provided that on shipments in refrigerator cars not less than 236 crates would be charged for. Excepting one shipment from Wallace, consisting of 238 crates, all of the shipments were of less than the minimum. Contemporaneously the southern classification, which governed the class rates from these points to Providence rated strawberries in carloads, first class, subject to 17,000 pound minimum. Complainants contend that the charges collected were unreasonable to the extent they exceeded those that would have been assessed in the absence of the commodity rates. HELD: Rates attacked not unduly prejudicial but unreasonable to extent they exceeded first class rates, minimum 17,000 pounds, reparation awarded. Providence Fruit & Produce Exchange v. N. Y. N. H. & H. R. R., 118 I. C. C. 190.

(zz) Complainant attacked commodity rates on two cars of anthracite coal, one shipped May 15, 1923, from Rahn No. 11 Colliery, Pa., and other shipped June 13, 1923, from Lansford Colliery, Pa., originally consigned to Elkhart, Ind., reconsigned to Edwardsburg, Mich., as unreasonable. Shipments moved L. & N. E., to Goshen, Ind., Erie via Salamanca, N. Y., to Bolivar, Ind., Big Four to Elkhart, thence Big Four to Granger, Ind., and G. T. W., to Edwardsburg, 992 miles. Applicable rates were $2.96 per long ton to Salamanca; $2.71 per long ton thence to Granger via Elkhart; and $1.13 per net ton thence to Edwardsburg. Contemporaneously a rate of $2.96 per long ton applied over the L. & N. E. to Goshen, Erie to Black Rock, N. Y., and rate of $2.71 beyond over the G. T. W., distance 902 miles, rate sought. The rate of $5.67 applied from these points of origin to Chicago, Ill., and numerous destinations in a large territory in northwestern Indiana and southern Michigan, but not via all junction points. The rate sought applied over an available route. Complainant used a route

90 miles longer and comprised of the lines of two more carriers and secured the benefit of a reconsigning service. HELD: Rate attacked not unreasonable, complaint dismissed. Russell v. G. T. W. Ry., 118 I. C. C. 209.

(3a) Complainant attacked rates on fertilizer and fertilizer materials, in carloads, shipped within the statutory period from Jackson, Miss., to southern Arkansas as unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the fourth section. Complainant is satisfied with the present rates. Rates from the Mississippi valley to the southeast are generally on a lower level than rates to the southwest. HELD: Rates attacked not unreasonable or otherwise unlawful, complaints dismissed. Jackson Traffic Bureau v. A. & V. Ry., 118 I. C. C. 217.

(3b) Complainant attacked commodity rate charged on nine cars of bulk corn shipped between Sept. 13 and Oct. 6, 1920, from Blue Island and Chicago, Ill., and Hammond, Ind., to Maine was unreasonable, unjustly discriminatory and unduly prejudicial. Prior to Aug. 26, 1920, the rate on bulk corn from these origin points to New York was 24.5c. The destinations in question take the Rockland, Me., basis on this traffic and that rate was 2c higher or 26.5c. Effective on the date referred to rates in the eastern district were increased 40% and those to New York and Rockland became 34.5c and 37c. In exceptions to the tariffs publishing the increased rates, Portland, Me., and apparently other points in this territory, were named as taking a basis of 2c over New York, in lieu of a 40% increase. Subsequent to the movement the Rockland rate was reduced to 36.5c. HELD: Rate attacked not unreasonable, complaint dismissed. Paris Flouring Co. v. N. Y. C. & St. L. Ry., 118 I. C. C. 291.

(3c) Complainant attacked commodity rates on sulphuric acid, carloads, since April 1, 1923, from El Segundo and Nadeau, Calif., to Curtiss, Ariz., and rate on sawdust, carloads, since April 7, 1923, from Los Angeles, Calif., to Curtis, as unreasonable and unduly prejudicial. No. 16935. The distance from El Segundo to Curtiss is 577 miles. From Los Angeles 558 miles. On May 11, 1922, a rate of 62.5c was published on sulphuric acid, carloads, from these points to Curtiss and remained in effect until May 30, 1925, and reduced on that date to 56.5c. No. 16966. Rate applicable on sawdust from Los Angeles to Curtiss, 558 miles, is 48.5c, and is the same as the rate on lumber. Sawdust is a very low grade commodity and its value is much less than the value of lumber, although it does not load as heavily as lumber, and moves in much smaller volume. HELD: Rates attacked on sulphuric acid since April 1, 1923, unreasonable to extent they exceed 41c, on sawdust since April 7, 1923, unreasonable to extent it exceeded 32c, reparation awarded. Apache Powder Co. v. A. T. & S. F. Ry., 118 I. C. C. 457.

(3d) Complainant attacked commodity rate of $2.84 charged on five cars of bituminous coal shipped on Oct. 10 and Dec. 5, 1922, from West Virginia to Connersville and New Castle, Ind., as unreasonable to extent it exceeded rate of $2.52 applicable over routes other than that over which shipments moved. Shipments were routed by the shippers L. E. & W. without specifying the rate or junction point. They moved over the K. & M. and N. Y. C. to St. Marys O., thence L. E. & W. HELD: Rate attacked not unreasonable, complaint dismissed. Connersville Lumber Co. v. L. E. & W. Ry., 118 I. C. C. 499.

(3e) Complainant attacked sixth class rate of 13c charged on two cars of logs shipped from Arcola, Ind., to Montpelier, O., on June 29, and Aug. 6, 1923, as unjust, unreasonable and unjustly discriminatory to extent it exceeded 65% of sixth class rate. Shipments moved Pennsylvania to Fort Wayne and Wabash beyond. The lumber rate was sixth class. HELD: Rate attacked unreasonable to extent it exceeded 10c, reparation awarded. Liberty Cooperage & Lumber Co. v. Pennsylvania R. R., 118 I. C. C. 505.

(3f) Complainant attacked sixth class rates charged on four cars of logs shipped between Dec. 29, 1922, and April 21, 1923, from Adrian, Grosvenor and Pittsford, Mich., to Hicksville, O., as unjust, unreasonable and unduly prejudicial. Reparation is sought to basis of 9.5c from Grosvenor and 9c from Adrian and Pittsford which rates were established subsequent to the movement and are still in effect. HELD: Rates attacked unreasonable to extent they exceeded 10c from Pittsford, 11c from Adrian and 11.5c from Grosvenor, re-

paration awarded. Crook Son & Co. v. N. Y. C. R. R., 118 I. C. C. 512.

(3g) Complainant attacked rates charged on three cars of automobiles shipped July 17, August 11 and August 17, 1923, from Lansing, Mich., and Springfield, O., to Santa Fe, N. M., as unreasonable, unduly prejudicial and inapplicable. Shipments moved according to shipping instructions over various routes from the origins named to Streator, or Joliet, Ill., or Kansas City, Mo., thence over Santa Fe. First class rate of $3.935 charged, which was the rate to Deming, N. M. First class rate to Columbus was $3.74 subsequently increased to $3.945. HELD: Rate attacked applicable and not unreasonable or otherwise unlawful, complaint dismissed. Thomas Motor Co. v. A. T. & S. F. Ry., 118 I. C. C. 631.

(3h) Complainant attacked commodity rate on sugar from New Orleans, La., to Keokuk, Ia., as unreasonable and unduly prejudicial. Keokuk is a Mississippi river crossing, 39 miles north of Quincy, Ill., and 43 miles south of Burlington. Rate to Chicago is 54c and to Keokuk 57.5c. Short line distance is 918 miles from New Orleans to Chicago and 876 miles to Keokuk. The rate to Keokuk compares favorably with rates to points on the Mississippi river north of Keokuk, and the Commission finds no basis for condemning the adjustment complained of except to deny fourth section relief. Keokuk Shippers Asso. v. A. T. & S. F. Ry., 118 I. C. C. 683.

(3i) Complainant attacked commodity rates charged on dried beans, carloads, from Bovina, Limon, Sterling, and Trinidad, Colo., Huntley, Mont., and Kendrick, Ida., to Florence, Ala., group as unreasonable, unduly prejudicial and unduly preferential of Memphis, Tenn., Corinth, Miss., etc. Florence group is not in Mississippi valley territory, but is in southeastern territory about 150 miles southeast of Memphis and 55 miles east of Corinth. Memphis and Corinth are in Mississippi valley territory. Group joint rates are published on dried beans to the Florence group from the Colorado points of origin. Applicable rate $1.05, minimum 60,000 pounds and $1.28 minimum 40,000 pounds. Defendants show that the rates applicable on dried beans from Memphis and the Ohio river crossings to the Florence group do not compare unfavorably with rates in general to the southeast. HELD: Rates attacked not unreasonable, unduly prejudicial or otherwise unlawful, complaint dismissed. Florence Chamber of Commerce v. A. T. & S. F. Ry., 118 I. C. C. 710.

(3j) Combination rates on coal from certain mines in the New River district of West Virginia, on the C. & O. to interstate destinations on or via the Virginian Ry., and from mines on the Virginian to eastern interstate destinations on or via the C. & O., found not unreasonable, discriminatory, or unduly prejudicial as compared with rates accorded other mines similarly situated, which by trackage agreements or otherwise have the benefit of the district rate on or via either line. Rates sought are not shown to be necessary or that it would be in the public interest to open the markets served by either the Chesapeake or the Viriginian to shippers on the other line. Ragland Coal Co. v. V. Ry., 115 I. C. C. 147.

(3k) Rate equal to 90 per cent of sixth-class on box board from Halltown, W. Va., to Lynchburg, Va., found not unreasonable as compared with lower intrastate commodity rate on wood-pulp board from Covington, Va., to Richmond, it being shown that movement from Covington to Richmond involves but a local single-line haul whereas the movement from Halltown to Lynchburg is over two or more roads. Lynchburg Chamber of Commerce v. B. & O., 115 I. C. C. 465.

(3l) Upon reargument, former report, 101 I. C. C. 138, modified, and combination rates on shelled peanuts from points in Alabama, Florida, Georgia, and South Carolina, to Chicago, Ill., Milwaukee, Wis., Canton and Cleveland, Ohio, South Bend, Ind., and Dubuque, Iowa, and from Nashville, Tenn., to Chicago, found unreasonable due to factors north of the Ohio and Mississippi River crossings. Reasonable rates for future prescribed and reparation awarded only for the period extending back to date of filing of complaint. United Fig & Date Co. v. A. C. L., 115 I. C. C. 643.

(3m) Based upon light traffic density and unfavorable operating and financial conditions, joint distance commodity rate assessed on petroleum crude oil from Texon, Tex., to Texas City, Tex., for coastwise movement, found unreasonable because it exceeded lower rate subsequently established, such lower rate

being literally forced upon carrier to meet pipe-line competition. Kay County Gas Co. v. G., C. & S. F., 115 I. C. C. 736.

(3n) Upon reargument, former report, 92 I. C. C. 722, wherein it was found that class rates from western trunk-line, c. f. a., and trunk-line territories, and rates on various commodities from same territories and from Ohio River crossings and New Orleans, to Virginia, Minn., are not unreasonable or unduly prejudicial in their relation to rates to Duluth Minn., affirmed. Rates assailed do not compare unfavorably with those from and to other points in same territory as Virginia, for comparable distances, and notwithstanding fact that rates to Virginia are made on a combination basis, Virginia derives benefit of depressed rates to Duluth and its growth has not been retarded by rate situation. Moreover, the commission can not condemn through rates as unreasonable merely because they are constructed upon combination. Virginia Chamber of Commerce v. A. A. R. R., 118 I. C. C. 195.

(3o) Through rates may not be condemned as unreasonable merely because they are constructed upon a combination basis. Virginia Chamber of Commerce v. A. A. R. R., 118 I. C. C. 195, 199.

(3p) Complainant alleged rates on zinc and spelter, in pigs, slabs or ingots, in carloads, from Trenton, N. J., to Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga., as unreasonable, unjustly discriminatory and unduly prejudicial. It is not susceptible to damage in transit. Box cars are used to prevent pilferage, rated sixth class carloads, southern and official and fifth class in western. But for all important movements, commodity rates are maintained on a basis much lower than the class rates, subject to a substantially higher carload minimum. HELD, rates attacked unreasonable to extent they exceed 44 cents to Atlanta and Chattanooga and 48 cents to Birmingham, minimum 60,000 pounds. Federated Metals Corp. v. Pennsylvania R. R., 120 I. C. C. 181.

(3q) Complainant attacked class rates charged on less car load shipments of liquid meters from Boston to Pacific coast points since Aug. 15, 1922 as unreasonable to extent they exceeded $3.50. Because of the material used in construction and the manner of packing there is practically no loss or damage in transit. These meters are rated first class in western and third in official. Prior to Sept. 1, 1924 charged $5.55 first class, on that date a commodity rate of $2.91 was established from Group D, and effective Mar. 3, 1925 a commodity rate of $3.50 was established from Boston. The class rate as such is not attacked. HELD, rates attacked not unreasonable, complaint dismissed. Hersey Mfg. Co. v. B. & A. R. R., 120 I. C. C. 413.

(3r) Complainant attacked rates, combination charged on 54 cars of scrap iron car wheels shipped between Jan. 1 and Mar. 1, 1923, from Windsor, Ont., Can., to Michigan City, Ind., and Pullman, Ill., as unreasonable and unduly prejudicial to extent they exceeded the rates from Detroit, Mich., by more than 50 cents per gross ton. Charged $1.26 to Detroit, plus $3.66 to Michigan and $3.78 to Pullman. Correct rate Detroit to Michigan City was $3.65. Sixth class rate of 23.5 cents was applicable through to Michigan City and sixth class rate of 25 cents to Pullman, shipments undercharged. HELD, joint class rates charged unreasonable to extent they exceeded to Michigan City $4.20 per long ton and to Pullman $4.50, reparation awarded. Hyman Michaels Co. v. B. & O. R. R., 120 I. C. C. 417.

(3s) In 113 I. C. C. 280 the commission found rates on green or salted hides, pelts, skins, tallow and grease, in straight or mixed carloads shipped since July 1, 1922 from Norfolk, Neb., to Chicago, Ill., unreasonable to extent it exceeded 48.5 cents, and reparation awarded. There is no transportation condition to justify the charging of a relatively higher basis of rates from points in Nebraska such as Norfolk, west of Nebraska differential territory, than from points within that territory, and the fact that the carriers apply the differential basis from certain points in Nebraska and the higher combination basis from other points explains or accounts for the difference in the rates but affords no justification therefor. HELD, original findings affirmed, except that reparation is awarded only on shipments moving since Nov. 17, 1924 the date the complaint was filed. Robinson v. A., T. & S. F. Ry., 120 I. C. C. 452.

(3t) In 104 I. C. C. 104, in a portion of conclusion 3, page 135, the commission prescribed specific joint through rates on cured meats, and green salted

hides, in carloads, from Cedar Rapids, Ia., and from Missouri River packing points, Kansas City, Mo., to Sioux City, Ia., inclusive, to New York and other points in trunk line and c. f. a. territories. In conclusion 2, page 135, the commission prescribed a base rate on fresh meats, in carloads, from Chicago to New York and rates from certain other packing centers in central territory, including St. Louis, Mo., Davenport, Ia., and other upper Mississippi River points to various destinations throughout trunk line and New England territories, based on the application of the percentage system to the base rate. None of the complainants attack the reasonablenes of the rate factors up to the river. They attack only the rates from the Mississippi River crossings to the east, applicable as factors of through rates, on traffic originating west of the river. None of the complainants asked for the establishment of specific or joint rates from the Missouri River points or interior points to the East. HELD, conclusion No. 3 modified, that the rates attacked on cured meats, packed, and green salted hides, in carloads, from the Mississippi River crossings, St. Louis to Dubuque, inclusive, applicable on traffic from origins west thereof, are not unreasonable nor unduly prejudicial in relation to the existing rates on hogs and sheep in double deck cars, and on cattle, from and to the same points. Fresh meats from the Mississippi River. In conclusion 2, commission prescribed a reasonable base rate of 79 cents on fresh meats from Chicago to New York and required that the rates from certain other packing points in central territory should be based upon their respective customary percentages of the base rate. the base from St. Louis, Davenport and other upper Mississippi River crossings, were designated at 117%. HELD, conclusion modified to extent they exceed rates from Chicago by more than 8 cents, rates applicable on traffic originating beyond, basing on St. Louis and other crossings to be correspondingly changed. REPARATION. Claimants have no vested right to awards of reparation based upon the theory that the extent of the unreasonableness must have existed during a period extending from a date two years prior to the filing of their claims until the reduced rates became or may become effective. HELD, reparation denied. HELD, in conclusion No. 6 of original report that the rating in official classification of fourth class and rates on dried, dry salted smoked and pickled meats, loose in carloads, from the various packing points in central, western trunk line, and trans-Mississippi territories to all destinations in trunk line and New England territories unjust and unreasonable to extent it exceeds fifth class, reparation awarded. Morrell & Co. v. N. Y. C. R. R., 120 I. C. C. 537.

(3ta) Finding in prior report, 113 I. C. C. 343, that joint rates on newsprint paper from Espanola, Ontario, Canada, to destinations in Wisconsin, Minnesota, Illinois, Missouri, Iowa, and Nebraska, are and for future will be, in so far as transportation takes place within United States, unreasonable and unduly prejudicial to extent they exceed or may exceed by more than 4 cents per 100 pounds the rates contemporaneously applicable from Sault Ste. Marie, Ontario, to same destinations, affirmed on reconsideration. Spanish River Pulp & Paper Mills v. A. & W., 120 I. C. C. 251.

(3u) Complainant attacked joint rate of $2.77 per long ton charged on coal, carloads, shipped from Dante and Clinchfield, Va., to Lambert Point, Va., for transhipment, as unduly prejudicial to extent it exceeded $2.52 per long ton from Norton, Va., and points west of St. Paul, Va., to Lambert Point. Clinchfield is on the C. C. & O. 3 miles north of Carbo, Va., its junction with the N. & W. Dante is 7 miles north of St. Paul on the C. C. & O. Norton is 24 miles west of St. Paul. Complainants mines are in Clinchfield Group 1, while the other points mentioned are in Group 2. The C. C. & O. has indicated its willingness to establish the $2.52 rate from complainants mines. HELD, rate attacked unduly prejudicial to extent it exceeds the rate from Carbo and St. Paul. Clinchfield Coal Corp. v. C. C. & O. Ry., 122 I. C. C. 37.

(3v) In 88 I. C. C. 747 the Commission found the rates charged on paving and roofing material, carloads, shipped since Jan. 1, 1917 from St. Louis and Kansas City, Mo., Cleveland, Lockland, O., and Chicago, Aurora, Marseilles, Madison and East St. Louis, Ill., to Little Rock, Ark., as not unreasonable or otherwise unlawful. On Nov. 27, 1923 pursuant to 77 I. C. C. 473 a rate of 35c was established from St. Louis to Little Rock, and to Hope and Texarkana, Ark., and Shreveport, La., the alleged preferred points, were 40, 41 and 44c, re-

spectively. Present record affords no basis for reversing the previous finding, complaint dismissed. Cooperative Oil & Paint Co. v. Director General, 122 I. C. C. 227.

(3w) Complainant attacked combination rate charged on a carload of middlings shipped May 22, 1923 from New Castle, Pa., to Pioneer, O., as unreasonable, unjustly discriminatory and unduly prejudicial. Shipment moved as routed P. & L. E. to Youngstown, O., N. Y. C. to Toledo, O., and T. & W. beyond, charged 29.5c composed of 18c to Toledo and 11.5c beyond. Applicable rate was 31c, composed of 19.5c to Toledo and 11.5c beyond. Contemporaneously there was a joint rate of 18c, applicable over Erie or B. R. & P., T. & W. beyond, the intermediate carriers absorbing the reciprocal switching charge of the P. L. E. The tariff was subsequently amended, making the joint rate applicable over other routes, but no change was made in the rate over the route of movement. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Newsome Feed & Grain Co. v. P. & L. E. R. R., 122 I. C. C. 329.

(3x) Complainant attacked combination rates on wrapping paper and other paper articles, carloads, from Cincinnati, O., to destinations in Missouri, Kansas, Iowa, Nebraska and Colorado other than the socalled Mississippi river crossings as unreasonable, unjustly discriminatory and unduly prejudicial. Lockland and Arlington Heights are about 11 miles from Cincinnati and Rialto is 22.4 miles therefrom. Both within the switching limits of Cincinnati. The rates from Cincinnati are combination of the sixth class rate of 24c on plain and printed wrapping paper and paper bags, or fifth class rate of 30c on plain or printed garment bags, or the fourth class rate of 42.5c on plain or printed gummed paper tape and shopping bags to East St. Louis, applied as proportional rates to all other Mississippi river crossings as far north as East Dubuque, Ill., plus commodity rates beyond. The latter were prescribed in 66 I. C. C. 571. There are but two different rates on these commodities from the northern mills and from the river west, while from Cincinnati to the river there are three different rates. The different commodity groupings east and west of the river result in five different rates on these commodities from Cincinnati to this destination territory while there are but two different rates from the northern mills. HELD, rates attacked unduly prejudicial and unreasonable to extent they exceed specific rates to specified points. Rates attacked, judged as combination rates, do not produce excessive earnings, and therefore rates not unreasonable in the past. Fox Paper Co. v. A. T. & S. F. Ry., 122 I. C. C. 399.

(3y) The fair measure of the reasonableness of a through rate, exceeding the combination which would apply in the absence of such through rate, is the lowest combination which would apply if the through rate were canceled. Van Dyke Motor Co. v. M. P. R. R., 122 I. C. C. 412, 413.

(3z) Complainant alleged that rates charged on linseed oil, carloads, from Portland, Ore., to Seattle, Tacoma, Spokane and other destinations in Washington, to Boise, Ida., and to San Francisco, Paraffin, Berkely, Los Angeles and other California destinations were unreasonable and unduly prejudicial. HELD, rates attacked to Spokane not unreasonable or otherwise unlawful. The record shows that both the class and commodity rates from Portland to Tacoma and Seattle are now on a lower basis than would apply in the absence of water competition between the Pacific coast ports. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Portland Linseed Oil Works v. G. B. Ry., 122 I. C. C. 484.

(4a) While there may be reasons in some instances to justify the construction of grain rates so that the through rates are equal to the combinations of rate factors to and from important grain markets, there is a limit to the extent to which a policy can be followed with propriety in view of, the requirement of the act that all rates must be just and reasonable. Ogden Grain Exchange v. A. & S. Ry., 122 I. C. C 691, 702.

(4b) Combination rates based on Chicago, Ill., charged on shipments of automobiles and extra parts from South Bend, Ind., to Pueblo, Colo., found not unreasonable a s compared with lower combination subsequently established pursuant to commission's decision in 88 I. C. C. 728, or with lower combination contemporaneously in effect at time of movement via Gary, Ind. Tariff containing the Gary-Pueblo factor contained a provision which prevented its use in constructing through rates from points beyond Gary. Under such restriction all

shippers east of the Indiana-Illinois State line are placed upon the Chicago basis on traffic to Colorado and other States, and this constitutes an equalization measure which should not lightly be condemned. Moreover, difference in the total rates is relatively so inconsiderable that it could hardly be said to transgress the "flexible limits of judgment" in rate making. Van Dyke Motor Co. v. M. P., 122 I. C. C. 411.

(4c) The commission has consistently refused to condemn rates on grain merely because they are the same as, or are, in fact, the combination on the primary grain markets. Ogden Grain Exchange v. A. & S., 122 I. C. C. 691, 716.

(4d) Rates on coke and bituminous and anthracite coal from eastern points to Beaver Dam, Wis., found not unreasonable or unduly prejudicial because of factors from Milwaukee to Beaver Dam, or as compared with factors on same commodities from Milwaukee to various other eastern Wisconsin destinations. Factor assailed was established as outgrowth of a general revision of coal rates in Wisconsin with a view to harmonizing rates, and appears to be in line with the general level throughout that State. Through rates in issue are on a group basis, both as to origins and destinations, and represent efforts of years toward balancing the delicate competitive situation obtaining among carriers, producers, and distributors. Complainant's comparisons can not be taken as the measure of reasonableness in this wide territory, nor do exceptions which obtain at competitive Wisconsin points within a short distance of one or more docks show unreasonableness of rates to Beaver Dam. Beaver Dam Chamber of Commerce v. C., M. & St. P., 123 I. C. C. 5.

(4e) Combination rate on sporadic shipment of cane sirup from Inwood, Fla., to Columbus, Ga., found unreasonable as compared with lower rates between various points in same general territory for comparable distances, and to extent it exceeded a lower joint rate subsequently established. Reparation awarded. Hardaway-Cargill Co. v. L. & N., 123 I. C. C. 23.

(4f) Joint rates on shipments of bituminous coal during Federal control from central and southern Illinois to Edgebrook a point within Chicago switching district, and Morton Grove a point immediately outside of that district, found not unreasonable, but combination rates based on Chicago, plus local rate beyond, found unreasonable as compared with lower rates contemporaneously in effect to near-by competing points both within and without the district. See also 73 I. C. C. 152. Reparation awarded. Chicago Coal Merchants Asso. v. Director General, 123 I. C. C. 169.

(4g) Joint rate on lubricating oils and greases from East Chicago, Ind., to Houston, Tex., found unreasonable as compared with rates on petroleum products contemporaneously in effect from various Illinois and Missouri points to Houston for comparable distances and to extent it exceeded lower combination rate contemporaneously in effect based on New Orleans, and subsequently established as a joint rate. Reparation awarded. Sinclair Refining Co. v. A., T. & S. F., 123 I. C. C. 537.

(4h) Complainant attacked joint class B rate charged of 78c on a mixed shipment of freight and vegetable packages and box material March 20, 1924 from Crystal Springs, Miss., to Houma, La., as unreasonable to the extent it exceeded 24c. Crystal Springs is on the I. C. about 158 miles north of New Orleans, La., and 235 miles south of Memphis, Tenn. Houma is on the M. L. & T. in southern Louisiana, about 66 miles west of Gretna, La., opposite New Orleans. Interveners shipments moved, apparently via New Orleans, about 224 miles, exclusive of the distance across the river. A rate of 11.5c on fruit and vegetable package material will be established at an early date from New Orleans to Houma, which, combined with the rate of 13c from Crystal Springs to New Orleans would produce a through rate of 24.5c. HELD, rate attacked unreasonable to extent it exceeded 24.5c reparaawarded. Crystal Springs Mfg. Co. v. I. C. R. R., 126 I. C. C. 4.

(4i) Complainant attacked through rates charged on seven cars of gluten feed from Roby, Ind., to Hobart, Stamford, Grand Gorge, Oneonta, and Bloomsville, N. Y., during 1923 as unreasonable and unduly prejudicial. Shipment to Stamford, 33 miles, and two to Grand Gorge, 42 miles southeast of Oneonta on the U. & D., and two to Oneonta, a junction of the U. & D. and D. & H. 22 miles northeast of Sidney, N. Y., moved Dec. 6, 7, March 13, 20 and 26, 1923. Sidney is 125 miles over the N. Y. O. & W. east of Oswego, N. Y. Roby is 670 miles over the N. Y. C. from Oswego. The

combination of 43.5c charged to Oneonta, as compared with the joint rate of 31c in effect via many other routes, a number of them involving hauls of greater length than via the routes of movement, seems unduly high, and the reason for such a basis, embracing as it did the full sixth class rate for the last 22 miles, is unexplained of record. HELD, rates attacked unreasonable to extent the rate to Oneonta exceeded 31c, and to destinations on the U. & D. unreasonable to extent they exceed 31c to Oneonta plus the local rates of the U. & D. beyond, reparation awarded. American Maize Products Co. v. N. Y. C. R. R., 126 I. C. C. 137.

(4j) Complainant alleged that the rates charged on building and roofing material, in straight or mixed carloads, from Chicago, Ill., and St. Louis, Mo., and points taking same rates to Denver, Colorado Springs and Greeley, Col., since July 10, 1923 have been unreasonable. Rates attacked were 81c from Chicago and 76c from St. Louis prior to July 15, 1924 and 66.5c from Chicago and 61.5c from St. Louis on and after that date. The rates sought are 64c from Chicago and 58.5c from St. Louis. HELD, rates attacked not unreasonable, complaint dismissed. Mountain States Roofing Co. v. A. T. & S. F. Ry., 126 I. C. C. 475.

(4k) Joint rates on box material, including fruit or vegetable packages, from Crystal Springs, Miss. to Houma, La., FOUND unreasonable as compared with lower rates contemporaneously in effect for greater distances from Memphis to points in southern Louisiana from Hope, Ark., to New Orleans; with those prescribed in 80 I. C. C. 132, from Crystal Springs to Mobile; and to extent they exceeded combination rate based on rate contemporaneously in effect from Crystal Springs to New Orleans, plus rate voluntarily established by carriers from New Orleans to Houma. Reparation awarded. Crystal Springs Mfg. Co. v. I. C. R. R., 126 I. C. C. 4.

(4l) Joint rates on cedar posts and poles from points in Alabama, Georgia, and Tennessee to Illinois destinations, found not unreasonable as compared with lower combination rates contemporaneously in effect constructed by use of the combination rule which provides a specific method for constructing through rates made on combination. Carriers cited 100 I. C. C. 219; 120 I. C. C. 550, to support contention that joint rates in excess of combinations are not prima facie unreasonable. They also show that one factor is a proportional rate established to enable shippers in origin territory to compete with shippers of white cedar from western producing points, and that it is therefore subnormal and should not be used to condemn a reasonable through rate. Moreover, numerous rate comparisons show that from points in same general territory to less distant points in c. f. a. and eastern territories, rates are as high or higher than rates assailed. Nebraska Bridge Supply & Lbr. Co., v. A. G. S., 128 I. C. C. 94.

(4m) Complainant attacked commodity rate of 12.5c charged on linseed oil, carloads, from Chicago, Ill., to Milwaukee, Wis., two years prior to Dec. 3, 1925 as unjustly discriminatory and unduly prejudicial to the extent it exceeded 8c in the opposite direction. Shipments originated on the tracks of the Burlington to Chicago, moving via C., M. & St. P. to Milwaukee, the latter carrier absorbing switching and other terminal charges. The unreasonableness of the 12.5c northbound rate has not been established. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. American Linseed Co. v. C. M., & St. P. Ry., 128 I. C. C. 163

(4n) Rate and minimum weights on poles from San Pedro to Thenard, Calif., being part of through movement from interstate points of shipments reaching San Pedro by water, found not unreasonable or otherwise unlawful as compared with rates accorded competitors at Los Angeles, or with rates and minimum weights on lumber between points in the Los Angeles harbor district. While poles received by competitors are creosoted in the Pacific Northwest, thus reducing weight of poles transported, creosoting is permitted at Thenard and the creosoted poles move at the lower minimum sought on green poles under the through rates from San Pedro to Los Angeles and other southern California destinations. Although none of shipments involved exceeded the applicable minima, evidence does not establish that cars covered by the complaint were loaded to full capacity or that the applicable minimum could not have been loaded. Moreover, in 87 I. C. C. 1, per-car rate on lumber equal to that here assessed was found reasonable. Baxter & Co. v. S. P. Co., 128 I. C. C. 211.

(4o) Joint rates on cement from

Mankato, Minn., to Detroit, Mich., and Toledo and Cleveland, Ohio, found not unreasonable or otherwise unlawful as compared with lower rate subsequently established based on rates to and from Milwaukee, Wis., reduced by application of the socalled combination rule. Complainant introduced comparisons with rates in a different territory but failed to show that traffic circumstances and conditions were similar. Other comparisons indicate that rates assailed were not out of line with contemporaneous rates between points in the same territory. Moreover, rates from Mankato to numerous destinations in c. f. a. territory, distances considered, compare favorably with those assailed and with those subsequently established. Carney Co. v. A. A. R. R., 128 I. C. C. 255.

(4p) Combination rates on grain and products from Oklahoma points to destinations in Louisiana west of the Mississippi River, including points on west bank thereof, and to Mississippi River crossings in Mississippi and Louisiana on east bank thereof, found unreasonable as compared with rates contemporaneously in effect from Kansas City, Mo., and Council Bluffs, Iowa, and to extent they exceed through rates based on those prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203. Reasonable joint through rates prescribed for future. Oklahoma Millers' League v. A. & M., 128 I. C. C. 523.

(4q) Combination rates on grain and products from Oklahoma points to destinations in southeastern and Carolina territories found unreasonable to extent that factors east of Memphis, Tenn., exceed rates based on and approximating the class 12 rates prescribed in Southern Class Rate Investigation 113 I. C. C. 200, and to extent that factors west of Memphis from all points exceed present group rates, computed as provided in Consolidated Southwestern Cases, 123 I. C. C. 203, up to 610 miles and from points at greater distance from Memphis those graded up 1.5 cents on wheat and flour and made less by 10 per cent on coarse grains, for each 50 miles. Factors east of Memphis constructed as above should apply not only on Oklahoma traffic but also from other western states from which through rates are equalized via the various gateways. Reasonable joint through rates prescribed for future. Oklahoma Millers' League v. A. & M., 128 I. C. C. 523.

(4r) Through rates equal to combination of locals on the Virginia cities would clearly not be free from undue prejudice to North Carolina and undue preference of the Virginia cities. Southern Class Rate Investigation, 128 I. C. C. 567, 580.

(4s) Complainant attacked commodity rate of 11c charged on 43 carloads of paving brick between July 5 and 29, 1924 from Murphysboro, Ill., to Martin, Tenn., as unreasonable to extent it exceeded 8.5c. Murphysboro, a local station on defendants line, is in the southern part of Illinois. The shipments moved over I. C. to destination, a distance of 117 miles. At time of movement Murphysboro took the St. Louis, Mo., basis of rates. The rate charged is the result of the decision in Rates to, from and between points south of Ohio River, 64 I. C. C. 306, as modified by the general reductions of 1922. HELD, complaint dismissed. Murphysboro Paving Brick Co. v. I. C. R. R., 128 I. C. C. 635.

(4t) Complainant alleged that commodity rate of $1.73 charged on one car of peaches shipped Aug. 28, 1925 from Palisade, Colo., to Syracuse, N. Y., was unreasonable, unduly prejudicial and in violation of section four. Shipment moved D. & R. G. W. to Pueblo, Colo., Santa Fe to Chicago, Ill., N. Y. C. beyond 2,067 miles. Complainant contended that a rate of $1.38 would be reasonable. This contention is based upon a comparison of the rate assailed with certain rates from peach producing points in Georgia and also upon the fact that the rate of $1.73 also applies from California points to Syracuse. HELD, rate assailed not unreasonable or otherwise unlawful, complaint dismissed. Caruso Rinella Battaglia Co. v. D. & R. G. W. Ry., 128 I. C. C. 687.

(4u) Complainant attacked joint commodity rate of $2.88 charged on two cars of printing presses shipped April 18, 1925 from Vancouver, B. C., to Orlando, Fla., as unreasonable and unduly prejudicial. Machinery and machines including printing presses, are rated class A in western classification, fifth class in the official classification and sixth class in the southern classification. Rate charged is the same as class A except the latter is subject to minimum of 24,000 pounds subject to rule 34. Orlando is on the S. A. L. 181 miles south of Jacksonville, Fla. From Pacific coast

terminals, Group K rates apply to Orlando and Group A rates to New York. When the shipments moved the Group A rate was $2.31. Prior to Jan. 15, 1925 commodity rates to these destinations were on the same basis. Rates from Pacific coast terminals to New York were reduced, it is asserted by defendants, on account of canal competition. The southeastern carriers refused to concur in reductions to group K territory. Combination was $2.7325. HELD, applicable rate was $2.7325 not unreasonable or otherwise unlawful, overcharge to be refunded, complaint dismissed. Duplex Printing Press Co. v. B. C. E. Ry., 128 I. C. C. 692.

(4v) Combination rates on enamel, other than watch dial, from Cicero, Ill., to Chattanooga, Tenn., found unreasonable to extent that factor south of Cairo, Ill., second class under southern classification, exceeded the fifth-class rating contemporaneously applicable in western and official territories and subsequently established in southern. Fact that no carload movement existed at time second-class rating was establishing found not sufficient to justify spread in rating between southern and other territories. Reparation awarded. Tennessee Furniture Corp. v. B. & O. C. T., 128 I. C. C. 701.

(4w) Complainant attacked commodity rate charged on sand, carloads, from Pacific, Mo., to Fort Smith, Ark., as in violation of sections 1, 3, 4 and 6 of the act. Pacific and Fort Smith are each served by the M. P. and Frisco. Distance is 381 miles over Frisco and 530 miles over M. O., charged 12c. In section 2 of the tariff single line distances were published of 11.5c for 381 miles at 14.5c for 530 miles. HELD, rate of 12c not unreasonable over M. P. but it was unreasonable to extent it exceeded 11.5c over the Frisco, reparation awarded. Harding Glass Co. v. M. P. R. R., 128 I. C. C. 754.

(4x) Complainant alleged that rates and charges on numerous cars of coal shipped between March 1, 1920 and July 29, 1923 from Illinois, Indiana, and Kentucky to certain points within the Chicago switching district were unlawful, unreasonable and unduly prejudicial and in violation of the fourth section. The points of origin are mines on the I. C. C., B. & Q., and Big Four in southern Illinois, Indiana and Kentucky. The points of destination are on the C. & N. W. and C., M. & St. P. within the Chicago switching district. Edgewater, Ill., on the latter road, is a representative destination. The shipments were charged the local rates to Chicago, plus an arbitrary provided in the socalled Lowrey tariff. The originating line also published proportional rates from the points of origin to Chicago ranging generally from 10 to 14c per ton lower than the local rates. All of defendants concur in the Lowrey tariffs, and the tariffs of some of defendants publishing the rates to Chicago referred to the Lowrey tariffs for the basis of making rates to Edgewater and the other destinations. They also contained provisions for the application of the proportional rates under certain conditions to the Chicago district. The tariffs of defendant Big Four did not specifically refer to the Lowrey tariff, but did contain an omnibus clause providing for the application of switching and other terminal charges in accordance with the tariff of the delivering road on shipments to points beyond the tracks of the Big Four. In Wilson & Co. v. Director General, 107 I. C. C. 580, the Commission found that, even in the absence of any cross reference, the Lowrey tariff could be used in connection with the tariff of the line haul carrier. It is reasonably apparent that the applicable rates were assessed on these shipments and that the rates constructed by adding to the arbitraries named in the Lowrey tariff the local rates applying from the points of origin to Chicago constituted through rates within the meaning of the tariff provisions restricting the application of the proportionals. HELD, rates charged applicable, not unreasonable or otherwise unlawful, complaints dismissed. Chicago Coal Merchants Asso. v. N. Y. C. R. R., 129 I. C. C. 203.

(4y) Complainant alleged that through commodity rates on canned goods, including canned milk, in carloads, from points in I. F. A. and central territories to Memphis, Tenn., New Orleans, La., and other points in the lower Mississippi valley are unreasonable. In the original report in 14096, 96 I. C. C. 208, involves rates on canned goods from points in Wisconsin and St. Paul, Minn., to the same destination territory. No. 17776. In rates to, from and between points south of the Ohio river, 64 I. C. C. 106, the Commission revised the commodity rates from Ohio river crossings to the Mississippi Valley and prescribed a key rate of 57c on canned goods, in carloads, from St. Louis and Louisville, Ky.,

to New Orleans. Under this readjustment the carriers having the direct routes to the Valley were denied fourth section relief. Carriers operating to the valley through southeastern territory were temporarily given relief with the understanding that such departures from the long and short haul provision of the fourth section were later to be removed and the rates to both territories harmonized. Finally on July 1, 1923 all of the carriers reaching the valley united in a revision of the rates upon a few selected articles over all routes. Canned goods was one of these articles. On Oct. 15, 1924 the canned goods rates from Wisconsin were also increased to approximately the same extent from most points as the rates from Chicago in order to preserve the preexisting differentials. The evidence introduced by all parties seems to establish the fact that the present rates on canned goods to the valley are fairly aligned with those to the rest of the south. For comparable distances they approximate those now in effect in 9702 territory west of the Mississippi river. Complainants are interested principally in the rates from Chicago. These rates in particular appear more favorable in comparison with rates from Chicago to 9702 territory than do rates from points farther south, such as St. Louis. HELD, rates assailed from I. F. A. and central territories to Memphis, Tenn., New Orleans, La., and other points in the lower Mississippi valley not unjust or unreasonable. No. 14096. Prior to the decision in this case rendered Feb. 12, 1925, defendants had increased on Oct. 15, 1924 the rates from Wisconsin under consideration to correspond with the revision of rates from central territory and Chicago upon which they were, and are, constructed. In making the change from Wisconsin the increases were not always uniform. This has brought about a relationship between the points of origin somewhat different from that existing at the time of the first hearing. HELD, former finding that rates from Middleton, Wis., should not exceed the rates from Madison, Wis., by more than 2c is affirmed. Rates from Richland Center, Chilton, Berlin, Sparta, and Neillsville and any other points in Wisconsin no farther from Madison or Milwaukee, whichever is nearer, are and for future will be unreasonable to extent they exceed the rates from Madison and Milwaukee to the same destinations by more than 8c, rates throughout the balance of the territory here considered not unreasonable or otherwise unlawful. National Canners Asso. v. B. & O. R. R., 129 I. C. C. 269.

(4z) Complainant assailed fifth class rate of 94c charged on one car of soy, soja, or soya beans, from Bloomington, Ill., to Fort Smith, Ark., on April 18, 1924 as unreasonable. Shipment moved C. & A. to East St. Louis, Ill., Frisco beyond. On May 21, 1924 defendants established a rate of 38c from Fort Smith to Bloomington composed of 31c to St. Louis and 7c beyond. The 31c rate also applied from St. Louis to Fort Smith. On Jan. 31, 1926 defendants established a joint commodity rate of 42.5c from Bloomington to Fort Smith, made an arbitrary of 11.5c over the 31c rate from St. Louis. HELD, rate charged unreasonable to extent it exceeded 38c, reparation awarded. Binding Stephens Seed Co. v. A. T. & S. F. Ry., 129 I. C. C. 291.

(5a) Complainant alleged joint commodity rate of 15.5c charged on 88 cars of paving brick from Buffalo, Kas., to Dodge St. Irvington, Neb., during June 1924 was unreasonable and unduly prejudicial. Dodge St. is northwest of South Omaha, Neb., 5 miles beyond the switching limits. A joint rate of 13c was established July 1, 1924. Buffalo takes the same rate as Chanute, Kas. Dodge St. is 334 miles from Chanute and 347 miles from Buffalo, routing M. P. and C. & N. W. Galesburg, Ill., is 347 miles from Dodge St., and 13c rate applies. HELD, rate assailed not unreasonable but unduly prejudicial to extent it exceeded the rate from Galesburg, reparation awarded. Buffalo Brick Co. v. C. & N. W. Ry., 129 I. C. C. 294.

(5b) Complainant attacked rates charged on 24 cars of grapes from California to Ely, Gilbert, Chisholm, Hibbing and Keewatin, Minn., between Aug. 17 and Oct. 10, 1924 as unreasonable. Charged $1.99 to Gilbert and Hibbing $2.005 to Chisholm and Keewatin, and $2.07 to Ely. In Hansen Peterson Co. v. A. T. & S. F. Ry., 113 I. C. C. 575 the Commission found the rates charged unreasonable to extent they exceeded $1.73 the rate to Duluth. HELD, rates assailed unreasonable to extent they exceeded $1.73, reparation awarded. Fena v. A. T. & S. F. Ry., 129 I. C. C. 311.

(5c) Complainant alleged that the

combination rates on lumber and other forest products, in carloads, from points in Oregon and Washington on the S. P. & S., C. M. & St. P., G. N. to destinations in Minnesota, Montana, North Dakota and South Dakota west Duluth and Cardigan Jct., Minn., on the main line and branch lines of the Soo Line, are unreasonable, unjustly discriminatory and unduly prejudicial. At the hearing defendants conceded that joint through rates on the socalled coast group basis from the territory of origin should be established. The carriers, however, could not agree as to the routes over which such rates should apply. HELD, rates assailed not unreasonable or unjustly discriminatory but for future will be unduly prejudicial to extent they exceed the rates from the coast group. West Coast Lumbermens Asso. v. C. M. & St. P. Ry., 129 I. C. C. 363.

(5d) Complainant alleged that the rates from Dawkins, Ky., to central and trunk line territories on carloads of lumber originating at Royalton are unreasonable and unduly prejudicial. Royalton is on the Kentucky Railway 16 miles south of Dawkins. No joint rates are in effect from Royalton. Through rates to the destinations here considered are composed of the local rates of the Kentucky Ry. to Dawkins plus the rates maintained from that point by the C. & O. The latter factor also applies on shipments originating at Dawkins. With the exception of Blue Jay Jct., the C. & O. maintains proportional rates from the junction points which range from 3 to 5.5c less than the rates applicable on shipments originating at the junctions. Dawkins is about 62 miles south and Morehead is 64 miles west of Catlettsburg, Ky. Hitchins is intermediate to Morehead and Ashland, Ky. Blue Jay Jct., is about 15 miles south of Prince, W. Va., the junction of the Piney branch with the main line of the C. & O. Rates from Dawkins to central territory are made from 3.5c to 5c higher than from Catlettsburg. To eastern destinations, the Dawkins rates exceed rates from this main line point by amounts ranging from 6 to 9c. HELD, rates from Dawkins as applied on shipments from Royalton not unreasonable but will be unduly prejudicial to extent they exceed rates made the same differential under the local rates from Dawkins as the proportional rates from Meadow Creek to the same destinations are made under the local rates from the latter point. Dawkins Lumber Co. v. C. & O. Ry., 129 I. C. C. 415.

(5e) Complainant alleged that rates charged on muriatic, sulphuric and nitric acids, in carboys, in straight or mixed carloads, from Kansas Cty, Mo., Grasselli, Ind., and Hegewisch, Ill., to Omaha, Neb., were unreasonable. Short line distance to Omaha are, from Kansas City 200 miles, from Hegewisch 495 miles and from Grasselli 496 miles. They are generally loaded in box cars in two tiers and braced by strips of lumber. Western classification rates these acids, in carboys, class A minimum 30,000 pounds and, excepting nitric acid, in tank cars, fifth class. The rates on acids in carboys are usually higher than on acids in tank cars. Since June 24, 1918 commodity rates have been in effect from Kansas City to Omaha, on muriatic and sulphuric acids, in tank cars, whereas class rates applied on these acids in carboys until commodity rates were established May 15, 1923 over the U. P. and Nov. 30, 1923 over the Burlington. The foregoing is also true of the rates from Chicago to Omaha, except that commodity rates on acids, in carboys, were established May 1, 1923. Class A rates are still in effect on nitric acid, in carboys. HELD, rates assailed not unreasonable, complaint dismissed. Bruce & Co. v. C. & N. W. Ry., 129 I. C. C. 435.

(5f) Complainant alleged that commodity rates on petroleum products, carloads, from Augusta, Topeka and El Dorado, over the Santa Fe via Superior, Neb., or via Kansas City or other lower Missouri river points, thence Burlington to St. Francis, Kas., and intermediate destinations in Kansas and Nebraska on that line, were and are unreasonable. The destinations are on the main line of the Burlington west of Superior to Orleans, Neb., and on its branch line extending beyond Orleans to St. Francis, which is 133 miles from Orleans and 210 miles from Superior. Augusta and El Dorado are grouped with and take the same rates as other refining points in Kansas and Joplin, Mo., Group 2. The joint rates were and are restricted to apply via Kansas City or St. Joseph, Mo. Joint rates are not in effect via Superior. The extent of the circuity via the Missouri river points is illustrated in the haul from Augusta

to Bostwick via Kansas City, which is about 105% greater than via Superior. Under section 15 paragraph 3 of the act, Commission is required to establish through routes and joint rates whenever deemed by it to be necessary or desirable in the public interest. That joint rates via Superior are desirable in the public interest is evident from the facts that traffic can be and is interchanged at that point; that the hauls via Kansas City or St. Joseph are in general excessively circuitous; and that lower rates would obtain via Superior because of the much shorter distances via that junction. The denial to complainants of reasonable rates via Superior can only be said to be in the interest of the carriers. HELD, assailed rates from Augusta and Topeka to St. Francis, Bird City and Atwood via Kansas City or St. Joseph unreasonable to extent they exceed 49c, reparation awarded; rates from Augusta and El Dorado via Superior for future unreasonable to extent they exceed 33c to Riverton, 35c to Orleans, 38c to Marion, and 40c to St. Francis. White Eagle Oil & Refining Co. v. C. B. & Q. R. R., 129 I. C. C. 467.

(5g) Complainant alleged through commodity and combination commodity rates charged on cottonseed, carloads, since Jan. 1925 from Cairo, Ill., Success and Corning, Ark., and Essex and Neelyville, Mo., to Newton, Miss., were and are unreasonable, unjustly discriminatory and unduly prejudicial. Newton is on the G. M. & N. and Y. & M. V., 64 miles east of Jackson, Miss., and 31 miles west of Meridian, Miss. No cottonseed has moved from Cairo to Newton over the I. C. since that time. A joint rate applied from Cairo, and combination rates from the other points. Shipments from Cairo to Newton prior to Feb. 5, 1925 were assessed a 28.5c rate. When the shipments moved a 22.5c rate applied in the reverse direction. On April 17, 1926 the rate from Cairo to Newton was reduced to 22.5c. HELD, rates assailed not unreasonable or otherwise unlawful, complaint dismissed. Newton Oil Mill v. A. & V. Ry., 132 I. C. C. 33.

(5h) Complainant alleged that through commodity and combination rates charged on green salted hides, carloads, from New Orleans, La., group and from Jasper, Ala., to Manchester, N. H., were and are unreasonable and unduly prejudicial. Manchester is on the B. & M. 52 miles northwest of Boston, Mass., and takes Boston rates. 20 shipments from New Orleans were delivered to the I. C. unrouted and moved between Feb. 15, 1926 and Dec. 17, 1926, charged joint commodity rate of 71c. Six shipments were delivered to the Northern Alabama unrouted and moved between Nov. 14, 1925 and Jan. 14, 1927, over that line, the Southern and connecting carriers, charged 84c, composed of sixth class 22.5c to Birmingham and commodity rate of 61.5c beyond. The rate sought from Jasper is that proposed by the southern carriers but not published because their eastern and northern connections refused to concur therein. The rate sought from New Orleans is the same as that in effect prior to Feb. 1, 1926 and is 5.5c less than the rate sought from Jasper, although the distance from New Orleans over the route of movement is about 500 miles longer. HELD, rate assailed from New Orleans not unreasonable; rate assailed from Jasper unreasonable to extent it exceeded 73c, reparation awarded. International Shoe Co. v. I. C. R. R., 132 I. C. C. 37.

(5i) Complainant alleged that the joint rates and combination rates over the Ohio river crossings charged for the transportation of cane fibre lumber and cane fiber board, shipped from New Orleans switching district to points located, generally speaking, in central territory were and are unreasonable and unduly prejudicial as compared with rates maintained on insulating and construction materials, fibre board, and wall board, from Louisiana, Kansas, Wisconsin, Minnesota and New York to the same destinations. Fiber board and pulpboard are rated class A in southern territory, sixth class in official territory but rates on the basis of 90% of sixth class apply in central territory by exception to the classification. Local commodity rates are published on fiber board from New Orleans to Ohio river crossings, and also proportional rates which are 4.5c lower than the local rates to the same points. Specific joint rates are published to some points in central territory, and to other points, which are grouped to some extent, joint rates are made by using a territorial directory in connection with the specific rates. To other destinations combination rates apply. The factors used in constructing

the combination rates from New Orleans and also used in determining the amount of the joint rates, are the proportional rates to the Ohio river crossings and 90% of sixth class rates beyond. A joint rate of 45c applies from New Orleans, Port Chalmette, La., and Mobile, Ala., to Bay City, Mich., 1,154 miles from New Orleans. Defendants filed schedules subsequent to the hearing which proposed to cancel this rate and to apply in lieu thereof the combination rate of 51.5c, which was suspended in I. & S. 2892. The evidence in this proceeding fairly justifies defendants contention that the 45c rate to Bay City was established through error. The 51.5c rate here proposed to Bay City is on the same general level as the rates here assailed to points in the surrounding territory. HELD, where rates exceeded the aggregate of the intermediate rates they are unreasonable, but with this exception rates assailed not unreasonable or unduly prejudicial. Suspended tariffs justified. Celotex Co. v. A. C. & Y. Ry., 132 I. C. C. 190.

(5j) It is of course true that the mere fact that through rates are made upon a combination basis does not prove that they are unreasonable, particularly where the combinations are made up, as they often are, of proportional rather than local rates. The tendency of the Commission has been to disapprove the practice of constructing interterritorial rates upon a combination basis. Southern Cement Rates 132 I. C. C. 427, 449.

(5k) Failure of Illinois Central to maintain the same through rates via Memphis, Tenn., with transit arrangements thereat as it contemporaneously maintains via East St. Louis and Cairo, Ill., with transit at those points, on grain and products from points in Iowa, Illinois, Minnesota, and Wisconsin to destinations on its lines in Arkansas and Texas south of Brinkley, Ark., found unduly prejudicial. Distances and rates via the three markets are substantially the same from Omaha, Nebr., and various other points. Undue prejudice ordered removed. American Grain & Hay Co. v. I. C., 129 I. C. C. 225.

(5l) Upon further consideration through rates on horses and mules from St. Louis, Mo., Ohio River crssings, and numerous other points, to Atlanta, Ga., and certain other points, found not unreasonable nor in violation of aggregate-of-intermediates clause of section 4 of the act. Rates assailed compare favorably with rates contemporaneously maintained on like traffic from Ohio and Mississippi River crossings to other cities in the Southeast and with distance scale found reasonable for future in original report. Moreover, since disparity between through rates and combination rates appears to be due to low level of latter rather than any excessiveness in former, presumption of unreasonableness has been successfully rebutted. Findings in previous reports 63 I. C. C. 6; 74 I. C. C. 419; 93 I. C. C. 325, reversed. Hudson Mule Co. v. L. & N., 129 I. C. C. 365.

(5m) Contention that commission has power to prescribe maximum reasonable joint rates only, and that inasmuch as all-rail rates are depressed they can not properly be used as a yardstick for measuring maximum reasonable rail-barge rates, not sustained. Obviously if another through route is sought between certain points in cmpetition with exisiting through routes, joint rates prescribed over the new through route must be comparable with those over existing through routes or they will be of no avail. Under section 15 (3) of act, commission is empowered to establish through routes and joint rates "or the maxima or minima, or maxima and minima, to be charged (or, in case of a through route where one carrier is a water line, the maximum rates, fares, and charges applicable thereto)," which is an alternative to preceding provision empowering commission to establish through routes and joint rates without specifying that latter must be on either maximum or minimum level. Doubtless rates must be reasonable but must not necessarily reach pinnacle of reasonableness. See 92 I. C. C. 528, 546, and other cited casts. Inland Waterways Corp. v. C. G. W., 129 I. C. C. 521, 529, 531.

(5n) Joint water-and-rail rates on sugar from San Francisco, Calif., and points taking same rates, to Spokane, Wash. through ports of Portland, Oreg., and Seattle and Tacoma, Wash., found not unreasonable or otherwise unlawful as compared with rates contemporaneously in effect from Salt Lake City and Ogden, Utah, and elsewhere, but local rate from Portland, Oreg., to Spokane,

Wash., found unreasonable as compared with rates between various points for comparable distances. Reasonable rates prescribed for future and reparation awarded. M'Clintock-Trunkey Co. v. McCormick S. S. Co., 129 I. C. C. 591.

(5o) Joint rates on wool, in the grease, in sacks, from points in Nebraska, Kansas, and Missouri, just west of Missouri River, to Boston, Mass., based on distance scale prescribed in Wool Rates Investigation, 1923, 91 I. C. C. 235, found not unreasonable, unduly prejudicial, or unjustly discriminatory, as compared with combination of proportional rates previously in effect over same territry; with rates prescribed in 77 I. C. C. 431, fom Iowa points to Boston; and rates to Boston from territory west of that here involved. Attack is directed against reasonableness of scale as applied from a small portion of territory, which exceeded for a time the aggregate of intermediates. However, record shows this violation was removed by certain tariff restrictions and presumption of unreasonableness found to have been rebutted. Boston Wool Trade Asso. v. A., T. & S. F., 129 I. C. C. 681.

§13a. Burden of Proof.

See Evidence I.

(a) Where issue is one of reasonableness and propriety of through charges from point of origin to final destination, mere fact that such through charges included a factor which may have been too high is not controlling if total charges were not unreasonably high. Wright Lumber Co. v. A. A., 112 I. C. C. 337, 339.

(b) Complainant attacked commodity rate charged on 17 cars of bituminous coal shipped since July 18, 1925, from Earlington and Morton, Ky., to Shawneetown, Ill., as unreasonable, unjustly discriminatory and unduly prejudicial as compared with rates to point on defendant's line between Ashley, Ill., and East St. Louis, Ill. Shawneetown is the terminus of a branch line of defendant extending generally southeastwardly from McLeansboro the junction with defendant's Nashville-St. Louis line. Earlington and Morton are on this latter line and are included, as to coal, in the socalled western Kentucky group 2. The shipments moved wholly over defendant's rails, 157 miles from Earlington and 160 miles from Morton. Charged $1.80, rate claimed $1.485. Complainant's evidence of unjust disdiscrimination and undue prejudice consists wholly of a showing of the lower rates to the alleged preferred points. When the competitive situation obtained with respect to rates on coal to East St. Louis is kept in mind it becomes apparent that the showing is not persuasive. HELD: Rate charged not unreasonable or otherwise unlawful, complaint dismissed. Clayton v. L. & N. R. R., 113 I. C. C. 747.

(c) The Commission may properly give sympathetic consideration to straitened financial circumstances when passing upon the propriety of establishing or continuing through routes and joint rates. Restrictions in routing over S. L. & U. R. R., 122 I. C. C. 208, 212.

(d) Complaint is directed against the through rates. It is not a complete defense of a through rate to show that each factor composing it is reasonable for local application. The through rate must be shown to be reasonable. Fox Paper Co. v. A. T. & S. F. Ry., 122 I. C. C. 399, 402.

(e) Upon further consideration, finding in former report, 115 I. C. C. 357, that proposed elimination of Salt Lake & Utah R. R., an electric line, as an intermediate participating carrier in the routing of eastbound and westbound transcontinental traffic was not unreasonable or otherwise unlawful, affirmed. The inclusion of the Salt Lake & Utah in transcontinental routes can benefit no one but that line, and can add nothing to transportation facilities. It will result, rather, in inefficient and uneconomical operation, upon which the commission is unwilling to place its stamp of approval. Restrictions in Routing over S. L. & U., 122 I. C. C. 208.

(f) Existence of option contracts on shares of stock of a carrier, issued to shippers and conditioned upon the routing of traffic over the carrier's line, can have little weight in the consideration of whether or not the line of the carrier issuing the option contracts should be eliminated as an intermediate carrier in the routing of transcontinental traffic. The proper remedy for the practice of entering into such contracts, assuming it to be illegal, would be the elimination of the practice rather than of the carrier, in the routes. Restrictions in Routing over S. L. & U., 122 I. C. C. 208, 209, 210.

(g) The commission may properly give sympathetic consideration to the financial circumstances of carriers when passing upon the propriety of establishing or continuing through routes and joint rates. See 107 I. C. C. 523. However, the financial status of a weak line is not of such importance that all other elements must be subordinated to it. Restrictions in Routing over S. L. & U., 122 I. C. C. 208, 212, 213.

(h) It is not a complete defense of a through rate to show that each factor composing it is reasonable for local application—the through rate must be shown to be reasonable. See 96 I. C. C. 485. Fox Paper Co. v. A., T. & S. F., 122 I. C. C. 399, 402.

§13½. Factor of the Rate.

See Class Rates §2; Proportional Rates.

(a) Through rates on fresh meats from points west of Mississippi River to destinations in trunk-line and New England territories found unreasonable for future to extent they exceed lowest combination of contemporaneous factors west of Mississippi River or Chicago, plus rates herein found reasonable east thereof. Reasonable rates prescribed. Morrell & Co. v. N. Y. C., 104 I. C. C. 104, 136.

(b) Rates assessed on shipments of saw logs from Tobin's Siding and Ramsay, to Sheboygan, Wis., thence reconsigned to Wausau, Wis., found inapplicable and unreasonable to extent that factor from points of origin to reconsignment point exceeded lower contemporaneous rate on "Saw Logs and Bolts for Manufacture-Products to be reshipped," logs having been manufactured at Wausau and products reshipped. By virtue of reconsigning tariff, haul from Sheboygan to Wausau became part of a through movement, and it follows logically that all conditions attaching to factor from Sheboygan to Wausau attached likewise to rate for through movement. Reparation awarded. Oelhafen-Mondeau Co. v. C. & N. W., 104 I. C. C. 295.

(c) Under ordinary conditions practice of making through rates by adding to a rate for a long distance the local rate from basing point to destination, a relatively short distance beyond, can not be approved. Jewel Co. v. A., T. & S. F., 104 I. C. C. 380, 384.

(d) Rates on cattle and hogs from Chicago, Indianapolis, and South St. Paul to Allentown, Pa., found unreasonable to extent component from East Penn Junction, Pa., the interchange point, exceeded industrial switching charge from that point. Reasonable rate prescribed for future and reparation awarded. Arbogast & Bastian Co. v. L. V. R. R. 107 I. C. C. 105.

(e) Rate on bituminous coal from South Providence and Harbor Junction Wharf, R. I., to Sterling, Conn., as part of a through interstate movement from Virginia mines by rail and water, found unreasonable to extent it exceeded lower contemporaneous rate on like traffic from New Haven and Stratford to other destinations in Connecticut for comparable distances found reasonable in 83 I. C. C. 563. Reasonable rate prescribed and reparation awarded. United States Finishing Co. v. N. Y., N. H. & H. 107 I. C. C. 412.

(f) Rates on crate and box material from Bainbridge and Brunswick, Ga., to destinations in Florida on Florida East Coast Ry., found unduly prejudicial to complainants and unduly preferential of their competitors shipping intrastate in Florida to extent that the factors from Jacksonville exceed rates contemporaneously maintained on like traffic for equal distances moving intrastate from points in Florida to same destinations. Elberta Crate Co. v. A. C. L. 107 I. C. C. 499.

(g) Upon further hearing, rate on wrapping paper from Madison, Me., to New Hope, Pa., found unreasonable to extent that proportional rate comprising factor to Brunswick, Me., exceeded lower proportional rate from Enfield, Howland, Montague, and Lincoln, Me. farther distant points, which lower rate was established from Madison subsequent to movements here involved. Reparation awarded. To this extent former report, 88 I. C. C. 593, reversed. Universal Paper Bag Co. v. M. C., 107 I. C. C. 661.

(h) Rates on logs for movement from Cooper's Point to Victor Talking Machine Company's siding, both points being within the switching district of Camden, N. J., the original movement having been by barge from James River landings, Va., found unreasonable as compared with charges on various commodities for similar hauls between points within the Philadelphia indus-

trial district, and to the extent they exceeded lower switching charge contemporaneously in effect for the same movement on logs but restricted in its application so as not to apply on shipments arriving at or moved from Camden by water. Reparation awarded. Rickards v. P. R. R., 109 I. C. C. 297.

(i) Rates on vegetables from Jacksonville, Fla., to Wichita, Kans., except cabbage and potatoes, found unreasonable and unduly prejudicial to extent the factors, Jacksonville to Wichita, exceeded the factors, Jacksonville to Kansas city, by more than 10 per cent. Reasonable and nonprejudicial rates prescribed for future and reparation awarded. Wichita Chamber of Commerce v. A. & V., 109 I. C. C. 368.

(j) Factors of through rates on traffic destined beyond should be lower than local rates, except where latter are shown to be depressed by special conditions to an extent which makes them reasonable for application as proportional rates. Wichita Chamber of Commerce v. A. & V., 109 I. C. C. 368, 376.

(k) Combination through rate applicable on anthracite coal from mines in Pennsylvania to Minneapolis, Minn., found unreasonable to extent factor beyond Suspension Bridge exceeded rate contemporaneously in effect over other and longer routes, which lower rate was subsequently established over route of movement. Transportation conditions over various routes are similar, and failure to include in tariff the routing here considered was due to error. Waiver of undercharges authorized. Elliott Fuel Co. v. M., St. P. & S. S. M., 109 I. C. C. 385.

(l) Rates on pulp wood from Minnesota points to Wisconsin Dam and Kings, Wis., points served exclusively by Marinette, Tomahawk & Western Ry., when routed from Duluth or Missabe Junction over the Soo Line via Bradley, Wis., thence over the Marinette, found unreasonable because of factor from Duluth or Missabe Junction to destinations. Reparation awarded and a reasonable proportional rate, which takes into consideration the financial condition of the Marinette and fact that movement requires a haul over two lines, prescribed for future. Tomahawk Kraft Paper Co. v. C. & N. W., 109 I. C. C. 517.

(m) Combination rates, component factors of which are joint rates, assessed on gasoline moving from Peckham, Okla., to Port Arthur, Ontario, Canada, found not unreasonable or otherwise unlawful, due to factor beyond Duluth, or as compared with lower rates contemporaneously maintained to Winnipeg. In an endeavor to establish unreasonableness, complainant showed distances and rates on gasoline from Peckham to North Dakota points and on various commodities moving from Duluth to Port Arthur. However, competition met by shippers at Winnipeg is due to fact that oil is shipped by tank steamers on Lake Superior, carrier competition and equalizing of commercial advantages between neighboring destination points being controlling elements in establishing petroleum rates to the Northwest. Northwestern Oil Co. v. St. L.-S. F., 112 I. C. C. 488.

(n) Rates on canned meats from Atlanta, Ga., to Chicago, Ill., found unreasonable due to the factors from Atlanta to the Ohio River crossings. The omission of canned meats from the canned-goods list clearly was and is an exception to the general basis of commodity rates on canned goods in the Southeast, numerous comparisons of rates from and to other points indicate that the assailed factor and through rate resulting from its use were and are inherently unreasonable, and the fact that canned meats are classified with other canned goods and that the proportional c. l. rate on canned meats exceeded both the local and proportional l. c. l. rate on other canned goods is prima facie evidence of unreasonableness of the rates assailed. Reasonable rates for the factor Atlanta to Ohio River crossings prescribed for the future, reparation awarded, and original report, 93 I. C. C. 360, reversed. Armour & Co. v. L. & N., 112 I. C. C. 695.

(o) Rates charged on one car of poles originally shipped from Colville, Wash., to Minneapolis, Minn., there stored and subsequently reforwarded to Zwingle, Iowa, found not unreasonable, discriminatory, or unduly prejudicial; except that local rate from Minneapolis to Zwingle was unduly prejudicial to extent it exceeded a lower proportional contemporaneously in effect on similar traffic shipped from territory west of the Montana-Dakota State line to Min-

nesota Transfer and Cologne, Minn., for storage and reforwarding to same ultimate destination. Lindsley Bros. Co. v. G. N. Ry., 113 I. C. C. 166.

(p) Combination through rates on live poultry from numerous points in Tennessee to New York, N. Y., found unreasonable to extent that factor from Harriman, Tenn., to New York exceeded a lower proportional rate contemporaneously in effect from Chattanooga to New York, which lower rate was subsequently established from origin points here involved. Reparation awarded Getz v. T., K. & N. R. R., 113 I. C. C. 173.

(q) Complainant attacked combination rate of 68c composed of 49.5c to Grand Jct., Colo., and 18.5c beyond charged on nine cars of asphalt shipped between Sept. 4 and Oct. 30, 1924, from Richmond, Calif., to Delta, Colo., as unreasonable. Shipments moved Santa Fe to Stockton, Calif., 68 miles, W. P. to Salt Lake City, 834 miles, and D. & R. G. W., beyond 347 miles. From Richmond and other California terminals to Pueblo and Denver, Colo., rate was and is 49.5c. A proportional rate of 10c was established Nov. 8, 1924, from Grand Jct. to Delta, resulting in a rate from Richmond of 59.5c, the present rate. Delta is 51 miles from Grand Jct. HELD: rate attacked unreasonable to extent the factor from Grand Jct. to Delta exceeded 10c, reparation awarded. Strange MaGuire Paving Co. v. A. T. & S. F. Ry., 118 I. C. C. 509.

(r) Shipments of condensing machinery, condensers, pumps, and parts thereof from North Philadelphia, Pa., to Florida points moved under combinations, the factor beyond Jacksonville being based on rates per carload, minimum 20,000 pounds excess in proportion. Tariff naming rates was governed by exceptions to the classification which omitted the words "excess in proportion." Upon contention of shipper that, due to such omission, the rates stated in the tariff were the applicable total charges for each carload, regardless of weight of contents, HELD: While omission of phrase made application of rates confusing, the tariff naming them stated that they applied "Per Carload. As prescribed in classification, excess in proportion," thereby supplying the measure of the carload unit while the minimum weight was supplied by the classification exceptions. Rates assailed were, therefore, applicable. Wheeler Mfg. Co. v. A. C. L., 115 I. C. C. 527.

(s) Combination rate on asphalt from Richmond, Calif., to Delta, Colo., found unreasonable as compared with lower rates contemporaneously in effect to destinations in the Denver group and to extent it exceeded a lower rate subsequently established when a proportional rate of 10 cents was made effective from Grand Junction to Delta on shipments originating beyond. Reparation awarded. Strange-Maguire Paving Co. v. A., T. & S. F., 118 I. C. C. 509.

(t) Combination rates charged on cordwood from Twin and Crosby, Miss., to Braithwaite, La., found unreasonable due to factor of the Louisiana Southern Ry., from New Orleans to Braithwaite. Reparation awarded. E-Z Opener Bag Co. v. P. R. V., 118 I. C. C. 524.

(u) Rates on coke and bituminous and anthracite coal from eastern points to Beaver Dam, Wis., found not unreasonable or unduly prejudicial because of factors from Milwaukee to Beaver Dam, or as compared with factors on same commodities from Milwaukee to various other eastern Wisconsin destinations. Factor assailed was established as outgrowth of a general revision of coal rates in Wisconsin with a view to harmonizing rates, and appears to be in line with the general level throughout that State. Through rates in issue are on a group basis both as to origins and destinations, and represent efforts of years towards balancing the delicate competitive situation obtaining among carriers, producers, and distributors. Complainant's comparisons cannot be taken as the measure of reasonableness in this wide territory, nor do exceptions which obtain at competitive Wisconsin points within a short distance of one or more docks show unreasonableness of rates to Beaver Dam. Beaver Dam Chamber of Commerce v. C., M. & St. P., 123 I. C. C. 5.

(v) Tariffs naming one-factor through ocean-rail rates between interior trunkline and eastern defined-territory points and the Southwest and Kansas-Missouri territory without concurrence of rail lines to the north Atlantic ports found unlawful. Such rates required to be published as joint through rates in accordance with provisions of section 6 of the act and commission's tariff rules

promulgated pursuant to that act. Consolidated Southwestern Cases, 123 I. C. C. 203, 380.

(w) Rates on hollow building tile from Volant, Pa., to Hamersville, Ohio, found unreasonable to extent that factor from Carrel Street (Cincinnati), to Hamersville exceeded lower rate subsequently established and contemporaneously applicable on common, pressed, fire, or paving brick. In 68 I. C. C. 213, equal rates were accorded face, fire, and paving brick, hollow building tile, and other clay products of similar transportation characteristics from and to same points east of the Rocky Mountains. Reparation awarded. Moores-Coney Co. v. C., G. & P., 123 I. C. C. 559.

(x) Rate and minimum weights on poles from San Pedro to Thenard, Calif., being a part of through movement from interstate points, of shipments reaching San Pedro by water, found not unreasonable or otherwise unlawful as compared with rates accorded competitors at Los Angeles, or with rates and minimum weights on lumber between points in the Los Angeles harbor district. While poles received by competitors are creosoted in the Pacific Northwest, thus reducing weight of poles transported, creosoting is permitted at Thenard and the creosoted poles move at the lower minimum sought on the green poles under the through rates from San Pedro to Los Angeles and other southern California destinations. Although none of shipments involved exceeded the applicable minima, evidence does not establish that cars covered by the complaint were loaded to full capacity or that the applicable minimum could not have been loaded. Moreover, in 87 I. C. C. 1, per-car rate on lumber equal to that here assessed was found reasonable. Baxter & Co. v. S. P., 128 I. C. C. 211.

(y) Combination rates on enamel, other than watch dial, from Cicero, Ill., to Chattanooga, Tenn., found unreasonable to extent that factor south of Cairo, Ill., second class under southern classification, exceeded the fifth-class rating contemporaneously applicable in western and official territories and subsequently established in southern. Fact that no carload movement existed at time second-class rating was established found not sufficient to justify spread in rating between southern and other territories. Reparation awarded. Tennessee Furniture Corp. v. B. & O. C. T., 128 I. C. C. 701.

(z) Complainant attacked combination rate charged on two cars of enamel, other than watch dial, shipped July 3 and Sept. 17, 1924 from Cicero, Ill., to Chattanooga, Tenn., as unreasonable. Cicero is within the switching district of Chicago, Ill. Shipments delivered B. & O. C. T. routed I. C. care N. C. & St. L. and moved I. C. to Martin, Tenn., and N. C. & St. L., beyond 710 miles charged $1.20 combination applicable fifth class and second class rates of 28 and 92c to and beyond Cairo, Ill. Complainant contended that this rate was unreasonable to the extent that the component south of Cairo, which was governed by the southern classification exceeded the fifth class rate of 56.5c. Subsequent to movement the rating in the southern classification was changed to third class in less carloads and fifth class carloads. HELD, rate attacked unreasonable to extent the factor south of Cairo exceeded fifth class of 56.5c, reparation awarded. Tennessee Furniture Corp. v. B. & O. C. T. R. R., 128 I. C. C. 701.

(aa) Complainant alleged that charges on a carload of sawmill machinery and a mixed carload of such machinery and a power boiler from Darnell, La., on May 17, 1924 to Carrabelle, Fla., were unjust, unreasonable and inapplicable. Claim as to unreasonableness was not filed within two years after date of delivery and the Commission is without jurisdiction to award reparation on that ground. Charges applicable were three factor combinations made on New Orleans, La., and River Junction, Fla., the factor beyond the latter point being $61 per car as per classification. It is with respect to the factor from River Junction to Carrabelle that there is disagreement. HELD, beyond River Jct., the applicable charge on the mixed car of machinery and boiler was $99.43 and on the carload of machinery $61, reparation awarded. West Florida Lumber Co. v. G. F. & A. Ry., 129 I. C. C. 62.

(bb) Factor of applicable combination rates on wrought-iron pipe from Lorain, Ohio, to Mississippi River crossing, was full fifth-class rate applicable to iron and steel articles. Lower rates on wrought-iron pipe than on iron and steel articles were prescribed in 29 I. C. C. 544 and 36 I. C. C. 86, and ton-

mile earnings under rates from Lorain were higher than from Chicago to same destination. Combination rates based on Mississippi River Crossing found unreasonable to extent they exceeded combination based on Jacksonville, Ill. Reparation awarded and waiver of undercharges authorized. National Tube Co. v. A., T. & S. F., 129 I. C. C. 693.

§13½a. Differentials.

See Differentials.

(a) The addition of differentials for joint line hauls from and to many points over a wide scope of territory is always attended with serious complications. The absence of such differentials should be given some weight in determining the level of the distance scale. Salt between Western and Southwestern Points, 120 I. C. C. 91, 108.

(b) Rates on flaxseed from points in South Dakota to Fredonia, Kans., constructed by adding proportionals to local rates to Missouri River, found unreasonable and unduly prejudicial as compared with rates contemporaneously in effect to Minneapolis, Des Moines, Chicago, and St. Louis, competing points, and to extent they exceeded corresponding rates to Omaha, Nebr., by more than 16 cents. Reasonable and nonprejudicial rates prescribed for future and reparation awarded. Fredonia Linseed Oil Works Co. v. A., T. & S. F., 123 I. C. C. 525.

§14. Divisions.

See Divisions §4; Evidence §13 (2).

(a) Joint rates in which Canadian lines participate FOUND to apply to a service which is not "wholly within the confines of the United States" within meaning of section 1 of the act and over which the commission has no jurisdiction. The commission having no power to prescribe such joint rates, it must follow that it is also without power to prescribe their divisions. In absence of treaty provisions or concurrent legislation in both countries affecting the matter, conflict of authority would be inevitable if any different rule were followed. New England Divisions, 126 I. C. C. 579, 637, 671.

(b) Divisions of joint rates on anthracite coal form Pennsylvania points to destinations in Illinois beyond Chicago switching district, found unreasonable, inequitable, and unduly prejudicial to extent they exceed applicable arbitraries over Chicago, plus 20 cents per ton, subject to defendant's local rates as maxima, to accrue to defendants, with balance of through rates to accrue to complainants. In 73 I. C. C. 161, arbitraries over Chicago were prescribed to remove undue prejudice which arbitraries carriers established by reducing through rates so as to maintain the arbitraries. Here, divisions claimed by complanants would stand no portion of a similar reduction; those claimed by defendants only a portion of it; and no consideration would be given to divisions accruing to connecting lines. Erie Railroad Co. v. C. & N. W., 129 I. C. C. 743.

§15. Exceeding Combination of Intermediates.

See Evidence §13 (2), §13 (3), §13 (5); Local Rates and Combinations; Long and Short Hauls §6¾; State Rates and Regulation (q).

(a) Rates on iron and steel articles from Pittsburgh and other points in western Pennsylvania to Barberton, Ohio, and from Barberton to Pittsburgh, Nadine, Corliss, and Midland, Pa., found unreasonable to extent they exceeded aggregate-of-intermediate rates contemporaneously in effect. Reparation awarded. Babcock & Wilcox Co. v. Director General, 104 I. C. C. 405.

(b) Rates on grain from Minnesota points to Chicago, Milwaukee, and other Wisconsin destinations taking same rate, which, at time of movement exceeded contemporaneous combination of locals to, and proportionals from, Winona, Minn., found not unreasonable. In view of commission's finding in 78 I. C. C. 110, that such through rates were reasonable, carriers could have complied with fourth section by increasing several components or by cancelling outbound proportionals from Winona. They elected however to reduce through rates to combination basis and later cancelled proportionals. In support of reasonableness of rates charged, defendants presented numerous comparisons of through rates, and of components of lower combinations on Winona, with other rates from Iowa points to Minneapolis and between other points in same general territory. Lewiston Elevator Co. v. C. G. W., 104 I. C. C. 473.

(c) A through rate higher than the

aggregate-of-intermediate rates over same route is prima facie, but not conclusively, unreasonable. Presumption of unreasonableness can be rebutted upon satisfactory evidence. Lewiston Elevator Co. v. C. G. W., 104 I. C. C. 473, 475.

(d) Joint rate on flour from Grand Rapids, Mich., to Birmingham, Ensley, Bessemer, and Montgomery, Ala., found not unreasonable during period when they exceeded aggregate of intermediates contemporaneously in effect. The fourth section departures were due to application of different percentage increases in different territories under general rate advances approved by commission. Such departures, however, were protected by appropriate fourth section orders, and carriers rebutted presumption of unreasonableness attaching to joint rates by showing higher rates on flour from Grand Rapids and other points to destination in Alabama, Georgia and Tennessee, for similar distances. Valley City Milling Co. v. C. & O., 104 I. C. C. 634.

(e) Where carriers rebut presumption of unreasonableness attaching to a joint rate that exceeds aggregate of intermediates contemporaneously in effect, no reparation will be awarded by commission. See Patterson v. L. & N. R. R. Co., 70 L. Ed. 8. Valley City Milling Co. v. C. & O., 104 I. C. C. 634, 636.

(f) Fact that a joint rate exceeds aggregate-of-intermediate rates does not afford a basis for an award of reparation where commission has granted fourth section relief. Valley City Milling Co. v. C. & O., 104 I. C. C. 634, 636.

(g) Class rates on fresh meats, packing-house products, and other articles, in peddler cars, from Chicago and East St. Louis, Ill., to points on C. & O. east of Gauley, W. Va., found unreasonable to extent they exceeded aggregate of intermediates to and from Gauley. Reasonable class rates prescribed for future and reparation awarded. Wilson & Co. v. C. & O., 104 I. C .C. 641.

(h) Rate on iron and steel articles from Pittsburgh group to Canton and Massillon, Ohio, found unreasonable to extent it exceeded aggregate-of-intermediate rates over routes of movement. Reparation awarded. Canton Bridge Co. v. B. & O., 107 I. C. C. 141.

(i) Rate on wood-pulp board from Bellows Falls, Vt., to Oklahoma City found not to have been unreasonable in past, but present rate found unreasonable to extent it exceeds lowest combination. Reasonable basis of rates prescribed for future. Express Publishing Co. v. A. S., 107 I. C. C. 528.

(j) Rates on Bristol board and printing paper from Holyoke, Mass., to Oklahoma City found unreasonable to extent they exceed lowest combination. Reasonable basis of rates prescribed for future and reparation awarded. Express Publishing Co. v. A. S. 107 I. C. C. 528.

(k) Joint rail and water rate via New York City on canned fruit, in tins, from Red Creek, N. Y., to Jacksonville, Fla., found unreasonable to extent it exceeded lower combination rail-and-water rate contemporaneously in effect. Reparation awarded. Smith, Richardson & Conroy v. N. Y. C., 107 I. C. C. 553.

(l) Through rate on empty returned beverage packages from Little Rock to St. Paul, found not unreasonable because in excess of lower aggregate-of-intermediate rates contemporaneously in effect, presumption of unreasonableness having been overcome by showing that sum of intermediate rates was less than reasonable maximum charge. Hamm Brewing Co. v. Director General, 107 I. C. C. 600.

(m) Joint rates which exceed aggregate of intermediates are prima facie unreasonable, but this presumption is rebuttable. Hamm Brewing Co. v. Director General, 107 I. C. C. 600, 602.

(n) Fifth-class rates on iron and steel articles from Buffalo, N. Y., Johnstown and Pittsburgh, Pa., Wheeling, W. Va., and points grouped therewith, to Cleveland, Elyria, and Lorain, Ohio, found unreasonable to extent they exceeded lower combination rates contemporaneously in effect over routes of movement. Reparation awarded. Columbia Steel Co. v. B. & O., 109 I. C .C. 46.

(o) Rates on iron and steel articles from Girard, New Philadelphia, Youngstown, and Newton Falls, Ohio, to Parkersburg, W. Va., found unjust and unreasonable to extent they exceeded aggregate-of-intermediate rates contemporaneously in effect to and from Wheeling, W. Va. Reparation awarded. Parkersburg Rig Reel Co. v. B. & O., 109 I. C. C. 209.

(p) Violation of aggregate-of-intermediates provision of section 4 of the act, where not protected by applications

to or permissions from commission, are unlawful. Decker & Sons v. C., R. I. & P., 109 I. C. C. 261, 271.

(q) Joint rates on petroleum and products moving from Casper to Buffalo, Wyo., during Federal control, found unreasonable to extent they exceeded the aggregate-of-intermediates contemporaneously in effect. Reparation awarded. Continental Oil Co. v. Director General, 109 I. C. C. 289.

(r) Joint rate on fresh vegetables from Denver, Colo., to Jacksonville, Fla., found unreasonable to extent it exceeded the aggregate of intermediates contemporaneously in effect. Reparation awarded. Hulsey-Bessent Co. v. S. A. L., 109 I. C. C. 389.

(s) A through rate in violation of the aggregate of intermediates contemporaneously in effect is prima facie unreasonable. See 18 I. C. C. 162; 100 I. C. C. 153. Hulsey-Bessent Co. v. S. A. L., 109 I. C. C. 389, 390.

(t) Through rate on horses and mules from Memphis, Tenn., to Fort Worth, Tex., found unreasonable as compared with lower rates from and to other points in same general territory for comparable distances, and to extent it exceeded charges which would have accrued on basis of rates subsequently established equal to the aggregate of intermediates contemporaneously in effect at time of movement. Reparation awarded. Darnell Commission Co. v. M. P., 109 I. C. C. 427.

(u) The aggregate-of-intermediate rates within meaning of section 4 of the act must be determined without reference to combination rule which provides a specific method for constructing through rates made on combination. McLeod case, 100 I. C. C. 219. Darnell Commission Co. v. M. P., 109 I. C. C. 427, 428.

(v) Through rates on returned empty beverage packages from Little Rock and Fort Smith, Ark., to St. Paul, Minn., found not unreasonable because in excess of aggregate of intermediates based upon Kansas City or St. Louis, evidence introduced by defendant being sufficient to rebut presumption of unreasonableness which attaches to a through rate which exceeds the aggregate of intermediates contemporaneously in effect. Hamm Brewing Co. v. Director General, 109 I. C. C. 444.

(w) Rate on canned fruit from New Orleans, La., to Haynesville, La., moving via an interstate route, found unreasonable to extent it exceeded the aggregate-of-intermediates rates contemporaneously in effect to and from Gibsland, La. Reparation awarded. Haynesville Provision Co. v. L. & N. W. R. R. 109 I. C. C. 451.

(x) Fifth-class rates on iron and steel articles from Pittsburgh, and certain other points in Pittsburgh district; from Washington, Pa., Follansbee, W. Va., and Massillon and Canton, Ohio, to Erie, Pa., found unreasonable to extent they exceeded combination of commodity rates based on Youngstown, Ohio, and other intermediate points. Reparation awarded. Erie Bolt & Nut Co. v. B. & O., 109 I. C. C. 590.

(y) Joint rates on compo-board (fiber board and wood combined), from Minneapolis to points in c. f. a. territory, found unreasonable to extent they exceeded the aggregate-of-intermediates rates contemporaneously in effect. Factors of the intermediate rates are not shown to be unduly low, nor was evidence submitted tending to rebut presumption of unreasonableness that attaches to through rates which exceed aggregates of intermediates. Formal report, 80 I. C. C. 185, reversed in part and reparation awarded. Green Lbr. Co. v. A. A. R. R., 109 I. C. C. 710.

(z) Fact that rates on numerous noncompeting commodities compare favorably with those on a specific commodity for like distances can not be accepted as justification for maintaining through rates in excess of aggregates of intermediate rates. Green Lumber Co. v. A. A. R. R., 109 I. C. C. 710, 711.

(aa) Shipments from Wilmington and Modesto, Calif., to Jacksonville, Fla., were routed by shipper and a joint through rate assessed. Governing tariff contained alternative rule providing for application of aggregate-of-intermediate rates when less than the through rate, and a lower combination, unrestricted as to routing, applied via Memphis. Upon contention that under rule 5 (b) of Tariff Circular 18-A such lower combination was applicable, HELD: Only application of rule 5 (b) is when "no joint rate applies," or "in the absence of a specified rate," and therefore had no application in the situation here presented. Moreover, had shipments moved

via Memphis an out-of-line haul of more than 1,000 miles would have resulted. Joint rate assessed found applicable. Rosser & Fitch v. Director General, 109 I. C. C. 724.

(bbcc) A lower combination applicable over a particular route does not establish the unreasonableness of a higher joint through rate applying over another route. Refiners Oil Co. v. Pennsylvania R. R., 112 I. C. C. 680, 682.

(dd) Complainant attacked combination rate charged on 129 cars of celery and on one mixed car of celery and green peppers from Sanford, Sipes, Moores, Beardall, Brisson and Beck Hammock, Fla., to Chicago between Feb. 13, 1918 and Feb. 28, 1920, as unjust, unreasonable, and illegal. Shipments moved via Cairo, Ill., by various routes. Charged joint commodity rates, factors of which were separately stated in the same tariff. Prior to June 25, 1918 these factors were the socalled gathering charge of 11c for movement up to Jacksonville, Fla., a proportional rate of 30c from Jacksonville to Cairo and a proportional carload arbitrary of 20c from Cairo to Chicago. June 25, 1918 these factors became 14c, 37.5c and 25c respectively. Complainants point out that the joint through rates exceeded the aggregates of intermediate rates composed of the joint rates to Cairo plus the local rates beyond. Fourth section departure was protected by appropriate application. HELD, rate attacked not unreasonable or illegal, complaint dismissed. Zulfer & Company v. Director General, 112 I. C. C. 723.

(ee) Joint rate on strawberries from Stevensville, Mich., to Duluth, Minn., found unreasonable to extent it exceeded aggregate of intermediates contemporaneously in effect to and from Chicago. Reparation awarded. Stacy-Merrill Fruit Co. v. P. M., 112 I. C. C. 189.

(ff) Following Windsor Turned Goods Co., 18 I. C. C. 162, wherein it was held that the fair measure of a joint through rate that exceeds the combination between same points over same route is the lowest combination that would lawfully apply if the joint through rate were canceled, the joint rate on cantaloupes from Rocky Ford, Colo., to Jacksonville, Fla., found unreasonable to extent it exceeded lowest combination, which is based on Montgomery, Ala. Reparation awarded. Hulsey-Bessent Co. v. S. A. L., 112 I. C. C. 392.

(gg) The fair measure of a joint through rate that exceeds the combination between same points over same route is the lowest combination that would lawfully apply if the joint through rate were canceled. See 18 I. C. C. 162. Hulsey-Bessent Co. v. S. A. L., 112 I. C. C. 392, 394.

(hh) Joint fifth-class rate on iron and steel articles from Cleveland, Youngstown, Girard, and Warren, Ohio, to Black Rock and Buffalo, N. Y., found unreasonable to extent it exceeded contemporaneous aggregate-of-intermediate rates over routes of movement. Reparation awarded. Taylor Co. v. P. R. R., 112 I. C. C. 541.

(ii) Rates applicable on caustic soda and calcium chloride from Midland, Mich., to points in Oklahoma, found not unreasonable or otherwise unlawful. Complaint alleged that joint rates charged exceeded combinations on certain gateways, but did not show that shipments were routed through these points. Nor that rates charged were higher than the lowest aggregate of intermediates over routes of movement. There is no violation of this clause of fourth section unless carrier maintains a specific through rate which is higher than lowest aggregate of intermediates over same route. See 89 I. C. C. 356. Dow Chemical Co. v. P. M., 112 I. C. C. 559.

(jj) Upon further consideration, finding in 102 I. C. C. 249, that the joint rate charged on lubricating oil moving from points in Texas to Dayton, Ohio, was not unreasonable or otherwise unlawful, affirmed. Unreasonableness alleged was based on ground that rates charged exceeded aggregate of intermediates via a route other than route of movement and that following 18 I. C. C. 162 shipper was entitled to lowest combination. But the lowest combination would not have applied over route of movement in the event of cancellation of joint rate. Moreover, fact that a lower combination applies over a particular route does not establish unreasonableness of a higher joint through rate applying over another route. Refiners Oil Co. v. P. R. R., 112 I. C. C. 680.

(kk) A joint rate over one route which exceeds aggregate of interme-

diates from and to same points by way of another route does not constitute a violation of section 4 of the act. Nor does it establish unreasonableness of higher joint through rate. Refiners Oil Co. v. P. R. R., 112 I. C. C. 680, 682.

(ll) Joint rates on celery, from points in Florida to Chicago, composed of factors separately stated in same tariff, found not unreasonable or illegal because in excess of contemporaneous aggregate of intermediates composed of joint rates to Cairo plus local rates beyond. The fourth-section departures were protected by appropriate applications and rates charged were contained in tariffs on file with commission. Carriers overcame presumption of unreasonableness which attaches to a joint rate that exceeds the aggregate of intermediates contemporaneously in effect by a showing that individual factors making up the joint rate were prescribed or approved by commission. Zulfer & Co. v. Director General, 112 I. C. C. 723.

(mm) Following American Shipbuilding Co., 89 I. C. C. 601, and 102 I. C. C. 530, joint rate on bar steel from Pittsburgh and South Duquesne, Pa., to Orrville, Ohio, found unreasonable to extent it exceeded aggregate of intermediate rates contemporaneously in effect to and from Youngstown, Ohio. Reparation awarded. Sanderson Cyclone Drill Co. v. P. R. R., 113 I. C. C. 213.

(nn) Joint commodity rate on cotton piece goods from Norwich, Conn., and Canton, Mass., to Lynchburg, Va., which exceeds the class rate contemporaneously in effect to same destination and to Montview, Va., found not unreasonable, discriminatory, or unduly prejudicial, but to violate long-and-short-haul provision of section 4 of the act. The rate assailed is not out of line with level of rates on cotton piece goods from Boston to Virginia territory. Moreover, it is shown that a higher basis of rates generally applies on cotton piece goods in official territory than rate under attack. Lynchburg Chamber of Commerce v. N. Y., N. H. & H., 113 I. C. C. 270.

(oo) Through rate on sirup from Montgomery, Ala., to Tampa, Fla., composed of local rate to Jacksonville and a proportional beyond, found unreasonable to extent it exceeded combination of locals contemporaneously in effect. Generally speaking a proportional rate is lower than a local rate between same points and ordinarily there should be no reason for a through rate in excess of combination of locals, it being obvious that cost of handling a through shipment is less than cost of handling a shipment into and out of some point intermediate to final destination. Alabama-Georgia Syrup Co. v. A. C. L., 113 I. C. C. 283.

(pp) Upon further hearing, original report, 88 I. C. C. 273, affirmed and rates on pickles from Colorado producing points to Oklahoma destinations found unreasonable to extent they exceeded the aggregates of intermediates over routes of movement. Reparation awarded. Ridenour-Baker Mercantile Co. v. A., T. & S. F., 113 I. C. C. 629.

(qq) Class rates on iron and steel articles between Pittsburgh, Pa., district and other points on the one hand, and Ohio points on the other, found unreasonable to extent they exceeded lowest aggregate of intermediate commodity rates contemporaneously in effect. See also 89 I. C. C. 601. Reparation awarded. Firestone Tire & Rubber Co. v. Director General, 113 I. C. C. 751.

(rr) While through rates in excess of the intermediates are prima facie unreasonable, the commission is constrained to hold that, in view of the showing of comparable rates to inland points similarly situated, the presumption of unreasonableness has been rebutted. Birmingham Traffic Bureau v. Director General, 115 I. C. C. 33, 37.

(ss) The through rate should be somewhat less than the sum of the rates to and from an intermediate point. Grain and grain products to Arkansas, 115 I. C. C. 457, 459.

(tt) That through class rates lower than the combination of local rates to and from the boundary lines should be established between official and southern territories, and there is no sufficient reason why such through class rates should be relatively higher than the maximum class rates herein found reasonable within southern territory. Taylor Produce Co. v. A. C. L. R. R., 115 I. C. C. 633, 638.

(uu) The presumption of unreasonableness under section 1 attaching to a joint rate in excess of the combination rate which would apply in the absence of the joint rate, may be successfully

rebutted. Thornton Claney Lumber Co. v. M. & O. R. R., 118 I. C. C. 25, 26.

(vv) Complainant attacked joint commodity rate of $5.63 charged on 15 cars of manure shipped during October, November and December, 1924, from New Orleans, La., to Havana and Hinson, Fla., as unreasonable and in violation of section 4. Shipments moved L. & N. to River Jct., Fla., A. C. L. to Bainbridge, Ga., and G. F. & A. beyond. Contemporaneous aggregate of intermediates were $3.92 to Bainbridge and $1.13 beyond. A joint commodity rate of $5.05 was made applicable January 1, 1925. HELD: Rate attacked unreasonable to extent it exceeded $5.05, reparation awarded. American Sumatra Tobacco Co. v. A. C. L. R. R., 118 I. C. C. 503.

(ww) The commission has repeatedly found that a joint rate which exceeds the aggregate of intermediates is prima facie unreasonable. American Sumatra Tobacco Co. v. A. C. L. R. R., 118 I. C. C. 503, 504.

(xx) Joint rate on steel-frame pitless farm scales from Pleasant Hill, Mo., to Logan, Iowa, stopped at Missouri Valley, Ia., for partial unloading, found unreasonable to extent it exceeded the aggregate of intermediate rates to Missouri Valley, plus an l. c. l. rate beyond. Reparation awarded. Deere Plow Co. v. Director General, 115 I. C. C. 1.

(yy) In absence of evidence rebutting the presumption joint rates in excess of the aggregate of intermediate are to that extent unreasonable. Deere Plow Co. v. Director General, 115 I. C. C. 1, 2.

(zz) While through rates in excess of aggregate of intermediates are prima facie unreasonable, the commission is constrained to so hold where the presumption of unreasonableness has been rebutted by a showing of comparable rates. Birmingham Traffic Bureau v. Director General, 115 I. C. C. 33, 37, 38.

(3a) Joint rate on pine lumber from Bonneau, S. C., to Chatham, Va., found not to violate section 4 of the act because lower combinations were contemporaneously in effect via routes other than route of movement. Lynchburg Traffic Bureau v. A. C. L., 115 I. C. C. 121.

(3b) Fifth-class rate on steel plates and bar steel from Pittsburgh, Junction Transfer, and Bessemer, Pa., to Zanesville and Malta, Ohio, found unreasonable to extent they exceeded aggregate of intermediate commodity rates contemporaneously in effect over routes of movenent. Reparation awarded. Brown Mfg. Co. v. B. & O., 115 I. C. C. 352.

(3c) Rates found to violate the aggregate-of-intermediates provision of section 4 of the act, due to differences in the minima on the through rates and the combination of locals. Hauber Cooperage Co. v. A., T. & S. F., 115 I. C. C. 533.

(3d) Applicable class A rate on marine-engine parts from Hamilton, Ohio, to Oakland, Calif., found unreasonable to extent it exceeded lower aggregate-of-intermediates commodity rate contemporaneously in effect, one factor of which was limited to specific kinds of machinery, not including marine-engine parts. Reparation awarded. Moore Shipbuilding Co. v. C., I. & W., 118 I. C. C. 3.

(3e) Joint rates on alfalfa meal from points in Colorado, Nebraska, and Kansas, to Jackson, Miss., found unreasonable to extent they exceeded aggregate of intermediate rates contemporaneously in effect to and from Memphis. Reparation awarded. Jackson Traffic Bureau v. A. & V., 118 I. C. C. 27.

(3f) Joint rates on annealing boxes, rough castings, and rolling-mill rolls from Vandergrift, Pa., to Cleveland, Elyria, Canton, and Ashtabula, Ohio, found unreasonable to extent they exceeded the aggregate of intermediates contemporaneously in effect to and from Youngstown, Ohio. Reparation awarded. United Engineering & Foundry Co. v. B. & O., 118 I. C. C. 43.

(3g) Rates on soap, soap powder, and cleaning, cleansing, and scouring compounds, l. c. l., from Jersey City, N. J., to points in Kentucky, Tennessee, and Georgia, and to Cairo, Ill., and Evansville, Ind., found unreasonable to extent they exceeded lower aggregate-of-intermediates rate contemporaneously in effect. While fourth-section relief was granted regarding publication of rates to intermediate points upon demand, carriers failed to amend their tariffs in compliance therewith, which action should not be allowed to defeat right of a shipper to reparation. Reasonable rates for the future prescribed and reparation awarded. Colgate & Co. v. P. R. R., 118 I. C. C. 243.

(3h) Fifth-class rate charged on bar steel from Massillon, Ohio, to Swissvale, Pa., found unreasonable to extent it exceeded contemporaneous aggregate-of-intermediates rate over same route. Reparation awarded. Central Steel Co. v. P. R. R., 118 I. C. C. 497.

(3i) Joint commodity rate on manure from New Orleans, La., to Havanna and Hinson, Fla., found unreasonable to extent it exceeded a lower joint rate subsequently established and equal to aggregate of intermediates in effect via route of movement at time of shipment. Although complainant asked for and had been promised the lower rate prior to movement, through oversight it was not made effective until subsequent thereto. In addition, carriers submitted no evidence to rebut the presumption of unreasonableness attaching to a joint rate which exceeds the aggregate of intermediates. Reparation awarded. American Sumatra Tobacco Co. v. A. C. L., 118 I. C. C. 503.

(3j) A joint rate which exceeds the aggregate of intermediates is prima facie unreasonable. American Sumatra Tobacco Co. v. A. C. L., 118 I. C. C. 503, 504.

(3k) Through rate on steel plates from Rankin, Pa., to Barnesville, Ohio, found unreasonable to extent it exceeded aggregate of intermediates contemporaneously in effect via route of movement. Carriers sought to rebut the prima facie presumption that rate charged was unreasonable by comparing it with rates from other producing points to other consuming points in same general territory for similar distances. The comparisons while persuasive, failed to accomplish their purpose. Watt Mining Car Wheel Co. v. B. & O., 118 I. C. C. 567.

(3l) Through rates on printing paper from Otsego, Mich., to Wichita, Kans., and on mixed carloads of printing paper and box board from Kalamazoo, Mich., to Wichita, found unreasonable to extent they exceeded lower combination of intermediates contemporaneously in effect. Reparation awarded. Western Newspaper Union v. A., T. & S. F., 118 I. C. C. 692.

(3m) The mere fact that through rates are the same as the combination of local factors to and from intermediate points does not constitute proof of unreasonableness in the absence of a showing that neither of the factors is depressed below what would normally be a reasonable level. Wool Rates Investigation, 1923, 120 I. C. C. 493, 506.

(3n) The fair measure of the reasonableness of a joint through rate that exceeds the combination between the same points via the same route is and will hereafter be held to be the lowest combination that would lawfully apply if the joint through rate were canceled. McLeod v. T. & P. Ry., 120 I. C. C. 550, 551.

(3o) Joint rates on grapefruit from points in Florida to Salt Lake City and Ogden, Utah, found unreasonable to extent they exceeded the aggregate of intermediate rates contemporaneously in effect to and from Jacksonville. Ryan Fruit Co. v. Director General, 120 I. C. C. 206.

(3p) Through rates on watermelons from points in Georgia, Florida, and Alabama, to Chicago and Peoria, Ill., and Milwaukee, Wis., found not in violation of section 4 of the act, because protected by appropriate applications, but unreasonable to extent they exceeded the aggregate of intermediate rates contemporaneously in effect to and from Nashville, Tenn. Reparation awarded. Alderman v. A. & V., 120 I. C. C. 387.

(3q) A through rate in excess of the aggregate of intermediates, protected by an appropriate application, does not constitute a violation of fourth section of the act. See 269 U. S. 1. Alderman v. A. & V., 120 I. C. C. 387, 388.

(3r) Class and various commodity rates from Kansas City, St. Louis, Memphis, New Orleans, and points in defined and seaboard territories, to Marshall and Jefferson, Tex., found unreasonable to extent they exceeded the aggregate of intermediate rates contemporaneously in effect, carriers having failed to rebut presumption of unreasonableness attaching to such rates. Similar findings in 85 I. C. C. 115, affirmed and reparation awarded. Marshall and Jefferson v. T. & P., 120 I. C. C. 455.

(3s) Rates which exceed the aggregate of intermediates contemporaneously in effect are prima facie unreasonable, but the presumption may be rebutted. See 107 I. C. C. 600. Marshall and Jefferson v. T. & P., 120 I. C. C. 455, 458.

(3t) While commission has frequently prescribed joint rates lower than the aggregate of intermediate local rates both for all-rail and for rail-and-water movements, it does not follow that in all cases

such rates should be prescribed. Wool Rates Investigation, 1923, 120 I. C. C. 493, 506.

(3u) Rates on sulphate of alumina from Kokomo, Ind., to Wisconsin destinations, found unreasonable to extent they exceed the aggregate of intermediate rates contemporaneously in effect over same route. Como Chemical Co. v. A., T. & S. F., 120 I. C. C. 517.

(3v) Rates on sulphate of alumina, from Kokomo, Ind., to Wisconsin destinations, found unreasonable to extent they exceed the aggregate of intermediate rates contemporaneously in effect, and unduly prejudicial to extent they exceed the contemporaneous rates on like traffic from Chicago Heights and Joliet, Ill., by more than 5.5 cents. Reasonable and nonprejudicial rates prescribed for future. Como Chemical Co. v. A., T. & S. F., 120 I. C. C. 517.

(3w) Upon further hearing, previous finding in 89 I. C. C. 356, that joint rates on gasoline from points in Texas and Oklahoma to destinations in California were applicable, and that there is no violation of the aggregate-of-intermediates clause of section 4 of the act unless carriers maintain a specific through rate which is higher than lowest aggregate of intermediate rates over same route, the product of intermediate rates treated by the combination rule and resulting in something less than the aggregate, not being an aggregate within meaning of the fourth section, affirmed. McLeod v. T. & P., 120 I. C. C. 550.

(3x) Through rate on green and green-salted hides and pelts, and tallow, in straight and mixed carloads from Wenatchee, Wash., to Portland, Oreg., made up of line-haul rates to Portland plus a switching charge for movement to complainant's warehouse at that point, found unreasonable to extent it exceeded the aggregate of intermediates to or from Seattle or any other intermediate point. Bissinger & Co. v. G. N., 120 I. C. C. 745.

(3y) A through rate which exceeds the aggregate of intermediate rates is prima facie unreasonable to that extent. Bissinger & Co. v. G. N., 120 I. C. C. 745, 749.

(3z) Generally speaking, joint through rates should not exceed combinations of proportional rates. The Commission has consistently said that a joint rate generally should be somewhat less than the full combination of locals on some intermediate point. Granite, Marble and stone from eastern points, 122 I. C. C. 319, 324.

(4a) Complainant attacked rates charged on two cars of strawboard egg case fillers moving on Dec. 21, 1923 and Jan. 2, 1924 from Tama, Ia., to Siloam Springs and Gravette, Ark., as unreasonable and unduly prejudicial and in violation of the fourth section. Tama is in central Iowa and takes Chicago territory rates on traffic to these destinations, which are in northwest Arkansas and take Fort Smith group rates. Shipments moved as routed over K. C. S. beyond Kansas City. Applicable fifth class rates charged of 91.5c to Siloam Springs and 84.5c to Gravette. Subsequent to the filing of the complaint and effective Feb. 21, 1925 a joint commodity rate of 53.5c was made applicable on mixed carload shipments of egg case fillers and related articles. The bases for these rates were prescribed in 66 I. C. C. 571. At time of movement combination on Kansas City was lower than the through rates. HELD, rates attacked unreasonable to extent they exceeded the aggregate of intermediates, reparation awarded. Cherry Co. v. C. M. & St. P. Ry., 123 I. C. C. 59.

(4b) Joint rates which exceed the aggregate of the intermediate rates have uniformly been found to be prima facie unreasonable. This presumption can be overcome only by a clear showing that the aggregate of the intermediate rates is less than a reasonable maximum charge. McFarland Co. v. G. N. Ry., 123 I. C. C. 631, 635.

(4c) A joint rate generally should be somewhat less than the full combination of locals on some intermediate point, and, generally speaking, joint through rates should not exceed combinations of proportional rates. Granite Marble and Stone from Eastern Points, 122 I. C. C. 319, 324.

(4d) Through sixth-class rate on l. c. l. shipments of rice from New Orleans, La., to Lynchburg, Va., which exceeded the contemporaneous aggregate of intermediate rates, found not unreasonable or otherwise unlawful. In rebutting the presumption of unreasonableness attaching to through rate, carriers showed that no shipments of rice have moved during the last five years to Montview, Va., the intermediate point on which lower combination is based, that a con-

siderable volume of rice moves at sixth-class rates from New Orleans and various other points to North Carolina and Virginia destinations, and that effective class rates from New Orleans to Lynchburg were approved by commission in 64 I. C. C. 107. Lynchburg Chamber of Commerce v. N. O. & N. E., 122 I. C. C. 371.

(4e) A rate in excess of the aggregate of intermediate rates is prima facie unreasonable. This is true apart from any statutory enactment, but conditions may exist or evidence may be introduced which establishes the reasonableness of the through rate. Lynchburg Chamber of Commerce v. N. O., & N. E., 122 I. C. C. 371, 372.

(4f) Rate and minimum weight applicable or mixed carloads of egg-case fillers and related articles from Tama, Iowa, to Siloam Springs and Gravette, Ark., found unreasonable to extent they exceeded rates based on lowest contemporaneous aggregates of intermediate rates and minimum weights over routes of movement, the presumption of unreasonableness attaching to such rates not having been rebutted by carriers. Reparation awarded. Cherry Co. v. C., M. & St. P., 123 I. C. C. 59.

(4g) Rates on glass bottles from Terre Haute, Ind., to Homer, La., found unreasonable as compared with rates to various Louisiana and Texas points for comparable distances and to extent they exceeded the aggregate of rates to and from Mohawk, Homer being intermediate thereto over route of movement specified in bills of lading. Reparation awarded. Root Glass Co. v. E., I. & T. H., 123 I. C. C. 68.

(4h) Joint sixth-class rate on lumber from Sunridge, Ontario, Canada, to Naperville, Ill., found unreasonable to extent it exceeded a lower combination rate contemporaneously in effect over route of movement, and subsequently published as a joint commodity rate. Carriers submitted no evidence to rebut presumption of unreasonableness attaching to a through rate which exceeds the aggregate of intermediates. Reparation awarded against United States carriers only. Kroehler Mfg. Co. v. C. N. Ry., 123 I. C. C. 555.

(4i) A rate which exceeds the aggregate of intermediates is prima facie unreasonable. Kroehler Mfg. Co. v. C. N. Ry., 123 I. C. C. 555.

(4j) Sixth-class rate on common sand from Cape May, N. J., to East Radford, Va., found unreasonable to extent it exceeded aggregate of intermediate rates contemporaneously in effect and joint rate subsequently established. Reparation awarded. Lynchburg Chamber of Commerce v. W. J. & S., 123 I. C. C. 579.

(4k) Rates on cedar poles from Sand Point, Idaho, to Shingle Springs, Calif., found unreasonable, as compared with lower rates contemporaneously in effect to San Jose, Stockton, Los Angeles, and Fresno, Calif., farther distant points; with those from San Pedro, Calif., to El Paso, Tex., and Colorado common points for comparable distances; and to extent they exceeded the contemporaneous aggregate of intermediate rates. While record indicates that factors making up the lower combination are influenced by water competition, it fails to convince that the combination is less than a reasonable maximum charge. Reasonable rates prescribed for future and reparation awarded. McFarland Co. v. G. N., 123 I. C. C. 631.

(4l) Joint rates which exceed aggregate of the intermediate rates have uniformly been found to be prima facie unreasonable and this presumption can be overcome only by a clear showing that the aggregate of the intermediate rates is less than a reasonable maximum charge. McFarland Co. v. G. N., 123 I. C. C. 631, 636.

(4m) Upon contention that the joint fifth-class rate assessed on brass ingots, moving in accordance with shipper's routing instructions from Charleston, S. C., to Pittsburgh, Pa., was unreasonable to extent it exceeded a lower combination rate contemporaneously in effect via another route. HELD: No presumption of unreasonableness attaches to a joint through rate applicable over a particular route because of the fact that the intermediate rates via another route make a lower charge. Bell Bros. v. A. C. L., 123 I. C. C. 683.

(4n) The Commission is correct in holding, that if a through rate higher than the aggregate of intermediates is attacked under section 1, the prima facie presumption that such higher through rate is unreasonable, and hence unlawful, obtains. Burns & Knapp v. A. G. S. R. R., 126 I. C. C. 410, 413.

(4o) The aggregate of intermediate rates within the meaning of section 4 of

the act is the sum of the separate rates, and not the sum of those rates subjected to the combination rule. See 96 I. C. C. 259. Walrath & Sherwood Lbr. Co. v. C. & N. W., 126 I. C. C. 97, 98.

(4p) Joint rates in excess of combinations of local rates which would apply in absence of joint rates are prima facie unreasonable. Walrath & Sherwood Lbr. Co. v. C. & N. W., 126 I. C. C. 97, 101.

(4q) Through first-class rate on boiler flues from Washington, Pa., to Zaneville and Cleveland, Ohio, FOUND unreasonable to extent they exceeded the aggregate of intermediate commodity rates contemporaneously maintained over routes traversed. Evidence introduced by carrier was insufficient to rebut presumption of unreasonableness attaching to a through rate in excess of aggregate of intermediates. Tyler Tube & Pipe Co. v. B. & O. 126 I. C. C. 135.

(4r) Joint rates applicable on broomcorn from Fairview, Leedey, and Longdale, Okla., to Philadelphia and Hamburg, Pa., and Atco, N. J., by way of Chicago and East St. Louis, Ill., found unreasonable to extent they exceeded aggregates of intermediate rates contemporaneously in effect. Reparation awarded. Hamburg Broom Works, v. C., R. I. & P., 126 I. C. C. 171.

(4s) Upon contention that combination of domestic commodity rates lower than the import rate is a violation of the aggregate-of-intermediates clause of section four of the act, HELD: Contention is without merit, for in applying provisions of the fourth section, rates and fares of the same kind must be compared with one another. See Conf. Ruling 304. Moreover, domestic rates apply only in absence of tariffs naming specific import rates. Egyptian Powder Co., v. I. C. 126 I. C. C. 293, 301.

(4t) In attempting to rebut prima facie unreasonableness of through rate in excess of aggregate of intermediates, carrier cited 2 Fed. (2d) 592, affirmed in 269 U. S. 1, in which latter court said in part: "Whether commission intended to base its order of reparation upon section 1 or upon aggregate-of-intermediates clause of section 4, or upon both, is left uncertain by language used." HELD Language of Supreme Court, notwithstanding affirmance of lower court's decision, does not avail carrier. In instant case commission found through rate unreasonable to extent it exceeded aggregate of intermediates. Technical use of word "unreasonable" in connection with section 1 only is too well understood to warrant discussion, and words "to extent that it exceeded aggregate of intermediate rates" indicate measure of unreasonableness under section 1 and do not denote a finding under section 4. Burns & Knapp v. B. S. & K. R., 126 I. C. C. 410.

(4u) Joint rates on cedar posts and poles from Lim Rock, Ala., to Mason City, Ill., and from Rising Fawn, Ga., to Olive Branch, Ill., found unreasonable to extent they exceeded the contemporaneous aggregate-of-intermediates rates. Reparation awarded. Nebraska Bridge Supply & Lbr. Co. v. A. G. S., 128 I. C. C. 94, 96.

(4v) Full aggregates of intermediate rates were assessed under an alternative rule providing that if such rates made less than joint through rates they would be applied. Contemporaneously tariff carried the combination rule which provides a specific method for constructing through rates made on combination. Upon contention that lower rates constructed in accordance with that rule should have been assessed, FOUND: In 89 I. C. C. 356; 100 I. C. C. 219, it was stated that the product of intermediate rates treated by a rule which results in less than the aggregate is not the aggregate within meaning of the alternative rule. Therefore, it is the alternative rule which specifies what rate shall apply in place of the joint rate, and when that rule designates a lower aggregate of intermediates as displacing the joint rate, it means the full aggregate of intermediates and not the product of intermediate rates treated by the combination rule. Rates assailed were therefore legally assessed. Calif. Dressed Beef Co. v. A. T. & S. F., 128 I. C. C. 607, 609, 610.

(4w) No presumption of unreasonableness attaches to a joint through rate applicable over a particular route because of the fact that the sum of the intermediate rates by way of another route would make a lower charge. Carfiel & Morris v. N. Y. C. R. R., 129 I. C. C. 658, 663.

(4x) Ordinarily the fair measure of the reasonableness of a joint through rate which exceeded the combination between the same points over the same route is the lowest combination which would lawfully apply if the joint

through rate were canceled. Darling & Company. v. N. Y. C. R. R., 132 I. C. C. 568, 570.

(4y) Shipments moved under joint through rates. Contemporaneously a lower combination rate was in effect, tariff governing one factor of which made reference to the combination rule which provides a specific method for constructing through rates made on combination. Citing Slige Case, 62 I. C. C. 643, and other cases, complainant contended that lower combination rate should have been applied. FOUND: In accordance with Conf. Rulings 220 (g) and 443, the only lawful rate was the joint through rate assessed. Therefore, principle laid down in cases cited did not apply. North American Cement Corp. v. W. M., 129 I. C. C. 90, 91.

(4z) Combination rates on cottonseed cake and meal from points in the Southwest and Mississippi Valley to York and Lancaster, Pa., and Buffalo, N. Y., there mixed in transit and product feed forwarded to trunk-line and New England destinations, found unreasonable and unduly prejudicial to extent they exceeded the contemporaneous joint rates from same origin territory to basing points with which destinations named are usually grouped. While rates assailed to c. f. a. destinations are not on proper basis record is inadequate to make finding as to their reasonableness, partly due to fact that no basing points have been established in connection with cake and meal to that territory and further that existing joint commodity rates were published to destinations to which there was a known movement. Reparation awarded. American Feed Mfrs. Asso. v. A. & S., 129 I. C. C. 157.

(5a) In relation to departures from aggregate-of-intermediates clause of section 4, rule 56 (1-c) of Tariff Circular 18-A, authorizes carriers to correct such departures by reducing through rate to sum of intermediate rates on one day's notice. Form of notice under that paragraph, which carriers are authorized to incorporate in tariffs naming joint rates, provides that a through rate equal to sum of intermediate rates will be established within 30 days from date carrier's attention is called to such departure and that authority will be sought from commission to make reparation on any shipments which move during the interim. Carriers who comply with this rule should have no difficulty in conforming their rates to the aggregate-of-intermediates clause of fourth section. Fourth Section Departures, 129 I. C. C. 187, 191, 192.

(5b) Through rates on coal from Illinois, Indiana, and Kentucky to points within Chicago switching district, consisting of locals to Chicago plus arbitraries beyond, found not in violation of aggregate-of-intermediates clause of fourth-section or otherwise unlawful. While contemporaneously lower proportional rates were in effect to Chicago, they could not be used in connection with the arbitraries but were restricted to apply only in connection with local rates beyond Chicago, on which basis charges higher than those assessed would result. Chicago Coal Merchants Asso. v. N. Y. C., 129 I. C. C. 203, 207, 208.

(5c) Motion for further hearing on ground of two alleged errors in original report 63 I. C. C. 6, viz, statement that departures from aggregate-of-intermediates provision were protected by applications, heard but not determined, and statement that rates found unreasonable appeared not unduly high, denied. Question of whether departures were protected by application was res adjudicata not because of commission's decision but that of Supreme Court in 269 U. S. 1. Even if question had not been res adjudicata and commission concluded that departures were not protected, complainants would not be entitled to reparation for violation of fourth section, since there was no proof that they suffered any special damage, and no such proof was submitted at further hearing. Hudson Mule Co. v. L. & N., 129 I. C. C. 365, 368.

(5d) Upon reconsideration, maintenance of combination rates on rosin from points in the South and Southeast to Hamilton, Ontario, Canada, accorded transit at Ivorydale (Cincinnati), Ohio, higher than joint rates from more distant points over the same route, in the same direction, the shorter being included within the longer distance, when shipments are accorded transit at Latonia or Central Covington, Ky., found to contravene the long-and-short-

haul provision of section 4 of the act. See 35 I. C. C. 27, and other cited cases. Moreover, such rates contravene the fourth section notwithstanding fact that such rates are joint rates from point within United States to Canadian destinations. See Conf. Ruling 447; 66 I. C. C. 627, and other cited cases. Former report 112 I. C. C. 381. Procter & Gamble Co. v. A. & V., 129 I. C. C. 385.

(5e) A through rate exceeding a combination under rule 5 (b) of Tariff Circular 18-A, does not violate fourth section of the act. See 83 I. C. C. 212. National Tube Co. v. A., T. & S. F., 129 I. C. C. 693, 694.

(5f) Contention that through rate exceeded contemporaneous aggregate of the intermediate rates found without merit where one of factors making combination applied only on intrastate traffic. Grovier-Starr Produce Co. v. C., R. I. & P., 129 I. C. C.711, 715.

§15½. Rate Via Other Routes.

See Evidence §47.

(a) Joint rate on refined sulphur from Freeport, Tex., to Carl Junction, Mo., found unreasonable to extent it exceeded lower rate contemporaneously in effect from Sulphur Mine, La., generally grouped with and taking same rate as Freeport, which lower rate also applied under Rule 77 of Tariff Circular 18-A to Pittsburg, Kans., a farther distant point over route of movement, and to which Carl Junction is directly intermediate. Such lower rate was subsequently established from Freeport, and it was not necessary for shipper to request its establishment at Carl Junction in order to be entitled to reparation to basis of such rate. Reparation awarded. Stauffer Chemical Co. of Texas v. H. & B. V., 112 I. C. C. 311.

(b) No presumption of unreasonableness attaches to a joint rate over a route of movement because a lower combination was and is in effect over another route. See 24 I. C. C. 626. Nor does fact that lower combination applies over another route constitute a fourth-section violation. Baker & Holmes Co. v. I. C., 112 I. C. C. 407, 408.

(c) Upon further consideration, finding in 102 I. C. C. 249, that the joint rate charged on lubricating oil moving from points in Texas to Dayton, Ohio, was not unreasonable or otherwise unlawful, affirmed. Unreasonableness alleged was based on ground that rate charged exceeded aggregate of intermediates via a route other than route of movement and that following 18 I. C. C. 162 shipper was entitled to lowest combination. But the lowest combination would not have applied over route of movement in the event of cancellation of joint rate. Moreover, fact that a lower combination applies over a particular route does not establish unreasonableness of a higher joint through rate applying over another route. Refiners Oil Co. v. P. R. R., 112 I. C. C. 680.

(d) Joint commodity rate on cotton piece goods from Norwich, Conn., and Canton, Mass., to Lynchburg, Va., which exceeds the class rate contemporaneously in effect to same destination and to Montview, Va., found not unreasonable, discriminatory, or unduly prejudicial, but to violate long-and-short-haul provision of section 4 of the act. The rate assailed is not out of line with level of rates on cotton piece goods from Boston to Virginia territory. Moreover, it is shown that a higher basis of rates generally applies on cotton piece goods in official territory than rate under attack. Lynchburg Chamber of Commerce v. N. Y., N. H. & H., 113 I. C. C. 270.

(e) Combination rate charged on lumber moving from Philadelphia, Pa., to Erie station in Paterson, N. J., there refused by consignee and reconsigned to Broadway station on the New York, Susquehanna & Western R. R., in the same city, based on rates to and from reconsignment point, found not unreasonable. While a lower through rate applied from Philadelphia to these two stations in connection with the Erie and the New York, Susquehanna & Western, separately, under complete routes, such lower rate was not applicable over the Erie as an intermediate carrier through Erie station to Broadway station. Complainant here seeks two possible deliveries at Paterson under a single rate and to direct carriers to publish such through rate over that route would be to compel the Susquehanna to short haul itself. Wilgus v. P. R. R., 113 I. C. C. 617.

(f) No presumption of unreasonableness attaches to a joint through rate applicable over a particular route because of the fact that the intermediate rates via another route make a lower charge. Bell Bros. v. A. C. L., 123 I. C. C. 683.

(g) Joint commodity rate assessed on printing presses from Vancouver,

British Columbia, to Orlando, Fla., found inapplicable to extent it exceeded lower combination of locals contemporaneously applicable under an alternative provision contained in tariff. Refund of overcharges directed. Duplex Printing Press Co. v. B. C. E., 128 I. C. C. 692.

(h) Rates, rules, and regulations on cotton, any quantity, shipped uncompressed to be compressed by and at carrier's expense, from points in Pecos Valley of New Mexico on the Santa Fe to Texas Gulf ports and beyond, moving over that line via Pecos, Tex., with option of concentration, at that point, thence over Texas & Pacific to Sweetwater, Tex., and Santa Fe beyond, found not unreasonable as compared with lower rate contemporaneously in effect over Santa Fe system's longer route via Clovis, N. Mex., and Sweetwater, with option of concentration at either Pecos or Roswell, N. Mex., or with rates from Texas stations on the T. & P., Fort Worth & Denver City, and Santa Fe for comparable hauls. Record fails to show that Santa Fe route is unreasonably long or results in wasteful transportation. See also 98 I. C. C. 183, 252. Smith-Wilson & Co. v. A., T. & S. F., 129 I C. C. 65.

(i) Rate on petroleum fuel oil from Granfield, Okla., originally destined to Granite City, Ill., and diverted to East Chicago, Ind., found inapplicable. A lower combination applicable under the combination rule was contemporaneously in effect over route of movement. Reparation awarded. Barnsdall Refineries v. C., R. I. & P., 129 I. C. C. 443.

(j) No presumption of unreasonableness attaches to a joint through rate applicable over a particular route because of fact that the sum of intermediate rates by way of another route would make a lower charge. Carfiel & Morris v. N. Y. C., 129 I. C. C. 658, 663.

(k) A through rate exceeding a combination under rule 5 (b) of Tariff Circular 18-A, does not violate fourth section of the act. See 83 I. C. C. 212. National Tube Co. v. A. T. & S. F. 129 I C. C. 693, 694.

§16. Reparation.

See Procedure Before Commission V; Reparation.

(a) Where carriers rebut presumption of unreasonableness attaching to a joint rate that exceeds aggregate of intermediates contemporaneously in effect, no reparation will be awarded by commission. See Patterson v. L. & N. R. R., 70 L. Ed. 8. Valley City Milling Co. v. C. & O., 104 I. C. C. 634, 636.

(b) Points of origin and destination are located on lines of carriers not named in the complaint, but rates found unlawful were joint through rates in which carriers not named participated. Upon objection to introduction of evidence tending to prove damage on shipments moving over lines of carriers not named as defendants in original complaint, HELD: Following 295 Fed. 53 the participation by initial carriers in a violation of the act by exacting unreasonable rates is enough to make such carriers liable for full amount of damages sustained in consequence of such violation, liability against such carrier resulting from its unlawful action in charging unreasonable rates, that liability being enforceable against defendants though other parties to such joint rates were also liable, but were not proceeded against. South Carolina Mfrs. Assn. v. C., C. & O., 112 I. C. C. 683, 685.

(c) No carrier participating in a through route, except by special agreement with its connection or connections, can be charged with responsibility for transporting any shipment over such through route until that shipment has been offered to it at a recognized interchange point on its lines. Until it has been so offered the responsibility rests with connecting line. C., R. I. & P. v. B. & O., 113 I. C. C. 681, 689.

(d) Where unreasonableness of through combination rate is found due to a particular factor, and the other factor or factors in no way contribute to such unreasonableness, reparation will be awarded against carrier whose factor is found unreasonable. E-Z Opener Bag Co. v. P. R. V., 118 I. C. C. 524.

(e) In 113 I. C. C. 343, division 1, found that the present joint rates on newsprint paper, in carloads, from Espanola, Ont., to Wisconsin, Minnesota, Illinois, Missouri and Iowa and to Omaha, Neb., are, and for future will be, in far as the transportation takes place within the United States, unreasonable and unduly prejudicial to extent they exceed by more than 4 cents the rates

applicable on the same commodity from Sault Ste. Marie, Ont., to the same destinations. The fact that the point of origin or destination may be in another country and that carriers not subject to the jurisdiction of the commission may be parties is an incident and does not nullify the requirements of the act as to American carriers. If the commission may require American lines to pay reparation under international joint rates, how much more rational is the assumption that the commission may require than to refrain from participating in and applying rates which will render them subject to such judgments. HELD, prior report affirmed. Spanish River Pulp & Paper Mills v. A. & W. Ry., 120 I. C. C. 251.

(f) In a situation where the portion of a through rate which was unreasonable is easily and certainly ascertainable it is no defense to an award of reparation that the parties who paid and bore the reasonable portion of the through rate are not before commission and that complainants who bore unreasonable portion are without assignments from them. Nelson Fuel Co. v. C. & O., 120 I. C. C. 723, 726.

(g) It is settled that where an unreasonable joint rate has been collected the liability of the parties is joint and several and the Commission may award reparation against one of the defendant carriers which participated in the traffic even though other roads which performed a part of the service are not made defendants. But where combination rates are found to have been unreasonable to the extent that components thereof exceeded certain amounts no order may be entered against a defendant for damages resulting from unreasonableness found in components in which it did not participate. Kohlman Bros. & Sugarman v. L. & N. R. R., 123 I. C. C. 56, 57.

(hi) Where an unreasonable joint rate has been charged, liability of carriers is joint and several. But in case of a combination rate, where but one factor is found unreasonable, an entirely different situation is presented. Each carrier participating in the combination has control over no factor except that maintained by it, nor contributes in any way to the injury resulting from the line maintaining the unreasonable factor. To find in such a case that all carriers are jointly and severally liable would be to require them to bear in part the injury done by the carrier whose factor only is unreasonable. See 91 I. C. C. 571. Midwest Refining Co. v. G. N., 122 I. C. C. 205, 207.

(j) Where an unreasonable rate has been collected, the liability of carriers is joint and several, and commission may award reparation against one of the carriers which participated in the traffic, even though other carriers which performed a part of the service are not made parties defendant. See 60 I. C. C. 595. Armour & Co. v. C., M. & St. P., 122 I. C. C. 380, 381.

(k) Where an unreasonable joint rate has been collected the liability of parties is joint and several, and reparation may be awarded against one of the defendant carriers which participated in the traffic even though other roads which performed a part of the service are not made defendants. But where combination rates are found unreasonable to extent that components thereof exceeded certain amounts no order may be entered against a carrier for damages resulting from unreasonableness found in components in which it did not participate. See 91 I. C. C. 571. Kohlman Bros. & Sugarman v. L. & N., 123 I. C. C. 56, 57.

(l) Where an unreasonable joint rate has been collected, the liability of parties to such action is joint and several and commission may award reparation against one of the carriers which participated in the traffic even though other carriers which preformed a part of the service are not made defendants. See 91 I. C. C. 571. Root Glass Co. v. E., I. & T. H., 123 I. C. C. 68, 70.

(m) Charging of unreasonable through rate is joint tort, and carriers participating therein are jointly and severally liable for damages sustained, though other carriers also liable were not made parties to proceeding. World Pub. Co., v. Davis, Agent. Tulsa Paper Co. v. Same, Democrat Printing Co., v. Same, 16 Fed. (2d) 130.

(n) Under Interstate Commerce Act § 8 (Comp. St. § 8572), liability as between connecting carriers for exaction of excessive joint through rates is joint and several, and reparation order of Interstate Commerce Commission, holding initial carrier liable for total excess of 35 cents per ton on pig iron shipments, HELD not void to extent of 12 cents per ton, though Commission under section

15 (Comp. St. § 8583), when requested by carriers, later determined that initial carrier on future shipments should bear shrinkage of but 23 cents per ton, the remaining 12 cents being borne by connecting carriers, notwithstanding rate was constructed out of existing proportional rates, and its establishment induced by carrier's duty under section 1 (b), which could be enforced by Commission under section 15 (c) Louisville & N. R. Co. v. Sloss-Sheffield Steel & Iron Co., 46 Sup. Ct. 73.

(o) Complainant seeks reparation on shipments from Augusta and Topeka, Kans., to St. Francis, Kans., which moved via Kansas City, Mo., to basis of rates which may be found reasonable via Superior, Nebr. FOUND: Prescription of joint rates over a new route which will result in a widespread readjustment of rates does not warrant an award of reparation on shipments made prior to time that joint rates over the new route are required to be maintained. White Eagle Oil & Refining Co. v. C., B. & Q., 129 I. C. C. 467, 470.

§16½. State Rates.

See Evidence §13 (6); State Rates and Regulations.

(a) Contention that through rate exceeded contemporaneous aggregate of the intermediate rates found without merit where one of factors making combination applied only on intrastate traffic. Grovier-Starr Produce Co. v. C., R. I. & P. 129 I. C. C. 711, 715.

V. TARIFFS AND CONSTRUCTION.

See Tariffs IV.

§17. In General.

(a) Section 6 of the act deals with two classes of rates, joint through rates and, in the absence thereof, application of separately established rate factors applicable to through movement over through route. In addition to the two methods of rate making the commission has in rule 5(b) of Tariff Circular 18-A outlined another plan of making through rates. FOUND: That the so-called Florida basis book containing proportional rate factors used for making through combination rates on Jacksonville and other Florida junction points does not conform to rule 5(b), nor are carriers serving a large part of origin territory here involved named as participating carriers. The basis book, therefore, can only be considered as containing proportional rates, which may be used in combination when such combinations are lower than other lawfully established combination rates applicable over route of movement. Lumber from or to Florida Points, 112 I. C. C. 133, 138.

(b) In relation to departures from aggregate-of-intermediates clause of section 4, rule 56 (1-c), of Tariff Circular 18-A, authorizes carriers to correct such departures by reducing through rate to sum of intermediate rates on one day's notice. Form of notice under that paragraph, which carriers are authorized to incorporate in tariffs naming joint rates, provides that a through rate equal to sum of intermediate rates will be established within 30 days from date carrier's attention is called to such departure and that authority will be sought from commission to make reparation on any shipments which move during the interim. Carriers who comply with this rule should have no difficulty in conforming their rates to the aggregate-of-intermediates clause of fourth section. Fourth Section Departures, 129 I. C. C. 187, 191, 192.

(c) Estabishment of a rate subject to rule 77 of Tariff Circular 18-A does not make that rate applicable to intermediate points, but is only a holding out that it will be extended to said intermediate points upon a reasonable request. Woodward Auto Co. v. C., M. & St. P., 129 I. C. C. 613, 615.

§18. Application of Proportional Rate.

See Supra §13½; Facilities and Privileges §11½, §15, §18; Proportional Rates; Reconsignment §6¼.

(a) Complainant attacked commodity rates charged on tank cars of crude and refined oil shipped between Nov. 25, 1920 and Dec. 31, 1921 from Kentucky, Kansas, and Oklahoma to Lawrenceville, Ill., and Toledo and Findlay, O., as inapplicable. No joint rates were in effect and combinations of proportionals to and from the above gateways applied. The through rates sought are obtained by deducting 6c from each of the respective components and adding 6c to the sum of the remainders under a socalled combination rule in the tariffs naming the factors from the gateways. At no

time was the combination rule applicable in connection with combinations of proportionals over the gateways, but it was applicable in connection with the locals from the gateways. If the locals north or east of the river in combination with the proportionals to the gateways were treated by the combination rule the resulting through rates would be lower than the combinations of straight proportionals charged. The important question here is as to what were the applicable rates available to be used as components of combinations. It is a necessary premise to complainants contention that the local and proportional rates were equally available, or, in other words, that the tariff carried conflicting rates on the same traffic and that the shipper was entitled to use the one which resulted in the lowest charges. The primary purpose of a local rate is to apply to local shipments of the commodity which it covers from and to the points specified, although in the absence of joint through rates or of proportional rates of the same character between the same points, it applies on through traffic as well as local traffic. The tariff rules of the commission do not authorize or permit the publication of conflicting rates. They provide that where a commodity rate is established between two points it removes the application of the class rate between the same points without requiring the cancellation of the class rate. The rules also authorize the publication of proportional rates and are silent as to the necessity for cancelling the local rates between the same points for application on through traffic. Since the rules do not provide that proportional rates conflict with local rates, it follows that the establishment of a proportional commodity rate removes the application on through traffic of a local commodity rate on the same article between the same points. The combination rule east or north of the gateways is applicable only in connection with the local rates from the gateways, and thus can not be applied to this traffic unless the local rates are applicable. There being specific proportional commodity rates applicable between the same points, the local rates clearly were not applicable from and to those points on through traffic coming from west or south of the gateways. HELD, rates applicable, complaint dismissed. Indian Refining Co. v. L. & N. R. R., 112 I. C. C. 732.

(b) Complainant attacked rates on grain and grain products, carloads, from transcontinental groups F and G and other points east of Pasco, Wash., on the N. P., and east of Spokane, Wash., on the G. N., to destinations north of Centralia, Wash., to and including Seattle and Tacoma and Everett, Wash., on shipments routed via Portland, as unduly prejudicial to Portland, and unduly preferential of Tacoma, Seattle and Everett, Wash., in that mills located at the latter points are accorded through rates and transit privileges on that traffic which are denied Portland millers. The gravamen of the complaint lies in the fact that when shipments of grain and grain products move to Portland, receive treatment and are reforwarded to Tacoma, Seattle and Everett, joint rates from points of origin to ultimate destinations are not available, whereas competitors at the Puget Sound points may draw grain and grain products from the same sources, transit them and reforward the traffic to Portland on basis of joint rates. Complainant shows that competition in mill products is very keen and that the disadvantage suffered by it because of the present freight rate adjustment seriously handicaps it in the Puget Sound markets and that its Puget Sound competitors have a wide scope of activity and can reach more distant markets, including Portland. HELD: Following 88 I. C. C. 99, failure to include transit at Portland on this grain and grain products unduly prejudicial. Crown Mills v. N. P. Ry., 115 I. C. C. 15.

(c) Following 88 I. C. C. 99, refusal of carriers to accord north Pacific terminal rates on grain and products from points in transcontinental Groups F and G and other points east of Pasco and Spokane, Wash., to destinations north of Centralia, to and including Seattle, Tacoma, and Everett, Wash., with milling and cleaning in transit at Portland, Oreg., while according such arrangements at Puget Sound milling points on shipments from said points of origin destined to Portland, found unduly prejudicial to Portland and preferential of competitors on Puget Sound. Crown Mills v. N. P. Ry., 115 I. C. C. 15.

(d) On cotton moving from stations south of Montgomery, Ala., there concentrated and compressed and reshipped to Mobile, Pensacola, and New Orleans, locals to Montgomery and reshipping

rates therefrom were assessed. Local factor published combination rule which provides a specific method for constructing through rates made on combination, but at no time were reshipping rates from Montgomery subject to a similar rule. HELD: Following principle laid down in 62 I. C. C. 643; 73 I. C. C. 551, reference to the rule in tariff containing one factor of combination necessitated protection of a through rate arrived at by use of the rule in connection with both factors. Applicable rates were therefore those constructed in accordance with the rule. Former report 112 I. C. C. 325 reversed and refund of overcharges directed. Montgomery Cotton Exchange v. L. & N. R. R., 118 I. C. C. 157.

(e) It would be manifestly impossible to adjust inbound and outbound rates from and to all market points so that combination of rates to any destination would be same through all markets. Nashville Traffic Bureau v. L. & N., 118 I. C. C. 748, 753.

(f) It is not unreasonable to apply the combination of locals on a shipment which has been placed for unloading at original destination and is subsequently reforwarded to a different destination. This is doubly true where the shipment has been unloaded by the shipper and is subsequently reforwarded by him or another to a different destination. Sioux City Live Stock Exchange v. C. & N. W., 122 I. C. C. 177, 186.

(g) While there may be reasons in some instances to justify the construction of grain rates so that through rates are equal to combinations of rate factors to and from important grain markets, there is a limit to the extent to which such a policy can be followed with propriety in view of requirements of the act that all rates must be just and reasonable. Ogden Grain Exchange v. A. & S., 122 I. C. C. 691, 702.

(h) In original report, 98 I. C. C. 619, the assessment of inbound and outbound, rates on shipments of cotton from Jonesboro, Pine Prairie, and Mamou, La., compressed at Alexandria, La., and reshipped to New Orleans, was found proper because shipments were not redelivered for outbound movement after compression to same carrier performing the inbound haul in accordance with applicable tariff. Upon further hearing, it being shown that such shipments were so delivered, original report reversed and through rates, less published allowance for compression, found applicable. Reparation awarded. Haas & Co. v. Director General, 123 I. C. C. 121.

(i) Alfalfa meal from Colorado to Dyersburg, Tenn., moved under combination rates via Memphis. Via East St. Louis, factor from that point to Dyersburg accorded transit on alfalfa meal mixed into feed at Dyersburg except where outbound shipment consisted of more than 30 per cent nontransit materials when local rates would apply to entire shipment. No transit was accorded via Memphis. Upon contention that as tariff specified alfalfa meal as a "transit ingredient," that regardless of how it reached Dyersburg it should not be considered in computing the 30 per cent of nontransit material in ascertaining whether remainder of outbound shipment is entitled to transit privileges, FOUND: Term "transit ingredient" comprehends only such shipments as may be transited under tariff provisions, and since nontransit material exceeded 30 per cent, meal moving via Memphis was nontransit material. Dyersburg Milling Co. v. Director General, 129 I. C. C. 739.

§19. Breaking Transit.

See Fabrication in Transit; Facilities and Privileges §15, §18; Interstate Commerce §1; Proportional Rates; Stoppage-In-Transit; Storage-In-Transit.

(a) When practicable, rates through important grain markets should break into definitely known inbound and outbound components. Minnesota-Dakota Transit Millers v. A. A. R. R., 118 I. C. C. 585, 595.

§20a. Combination Rule.

See Infra §21.

(a) Shipments originated at or were destined to points on nonfederally controlled roads and moved over routes embracing carriers under Federal control. Full combinations, both factors of which were increased under General Order No. 28 of director general, were assessed. Agency tariff carrying combination rule, which provided for application of but a single increase to through rates made on combination, named as participating carriers roads enumerated in a certain circular, and also provided for its application where specific reference to rule was made. HELD: Applicable rates were the full combinations to and from

junctions of nonfederally controlled and federally controlled lines in instances where roads not under Federal control were not named in the circular and where they did not publish or make reference to the rule. Pacific Coast Shippers Asso. v. Director General, 109 I. C. C. 166.

(b) Shipments originated at or were destined to points on nonfederally controlled roads and moved over routes embracing carriers under Federal control. Full combinations, both factors of which were increased under General Order No. 28 of director general, were assessed. The combination rule, which provided for application of but a single increase to through rates made on combination, was published in tariffs of individual lines. HELD: Applicable rates were those made by applying combination rule in instances where one or more of the individual tariffs contained or made appropriate reference thereto, and in instances where none of the individual tariffs contained or made such reference the combinations to and from junctions were applicable. Pacific Coast Shippers Asso. v. Director General, 109 I. C. C. 166.

(c) No joint rate in effect, tariff of one participating carrier neither carried nor referred to combination rule which provided a specific method for constructing through rates made on combination. HELD: Since other carriers comprised in through route authorized by their tariffs the use of combination rule, there was a holding out to shipper of a through rate constructed in accordance with that rule, which they must protect. Applicable rates found to be a through combination constructed by use of the rule. Ladd Lime & Stone Co. v. L. & N., 109 I. C. C. 251.

(d) Where one of the carriers comprised in a through route authorizes by its tariff the use of combination rule, which provides a specific method for constructing through rates made on combination, there is a holding out to shipper by that carrier of a through rate constructed in accordance with that rule, which that carrier must protect. Sligo Iron Store Co.; 62 I. C. C. 643; 73 I. C. C. 551, and other cited cases. Ladd Lime & Stone Co. v. L. & N., 109 I. C. C. 251, 252.

(e) Intrastate shipments of petroleum made during Federal control moved partly over short lines not under Federal control. No joint rates being in effect, combinations were assessed each factor of which was increased under General Order No. 28 of the director general. Tariffs publishing factors applicable over the federally controlled lines contained the combination rule which provided a specific method for constructing through rates made on combination, but no similar rule, or reference thereto, was carried in tariffs of short lines. HELD: The combination rule being unrestricted in its application, the applicable rates were those constructed in conformity therewith. Shipments found overcharged and reparation awarded. Continental Oil Co. v. Director General, 109 I. C. C. 289.

(f) Shipments moved in part over a line not under Federal control. No joint rates being in effect, combinations were assessed each factor of which had been increased under General Order No. 28 of the director general. Tariffs of federally controlled lines carried combination rule which provided a specific method for constructing through rates made on combination, the tariff of the nonfederally controlled line not carrying a similar rule or concurring in or making reference to tariffs in which it was published. HELD: That applicable rates were those constructed in conformity with combination rule, except during period when such rule was specifically restricted so as to apply in connection with rates between points on railroads "under Federal control" during which period the full combinations were applicable. Reparation awarded. Calif. Cotton & Factorage Co. v. Director General, 109 I. C. C. 293.

(g) Fact that shipments moved entirely intrastate during Federal control does not relieve carriers from their obligation to protect rates constructed under combination rule, which provides a specific method for constructing through rates made on combination, when such rule is carried in their tariffs. See 89 I. C. C. 645. Calif. Cotton & Factorage Co. v. Director General, 109 I. C. C. 293, 295.

(h) Proposed cancellation of the Kelly combination rule on livestock originating on C. & N. W. and C., M. & St. P. Railways in South Dakota and intermediate stations in adjoining States and publication in lieu thereof of proportional rates lower than corresponding locals from Chicago which reflect proper

proportion of increases under General Order No. 28 of director general when applied to through traffic, found justified. When the Kelly rule was first established it was never intended that one carrier alone should bear burden of adjusting its rates so as to take care of the entire increase under General Order No. 28 in connection with traffic moving under combination rates. At that time all participating carriers bore their proportional share. To now require the equalization to be made by a single line smacks not only of inequity and unreasonableness, but would saddle upon respondents a shrinkage of their earnings which they should not be called upon to bear. Proportional Rates on Livestock, 109 I. C. C. 417.

(i) The combination rule is applicable in the absence of a joint rate over the route traversed regardless of joint rates over other routes. Gunther v. L. & N. R. R., 112 I. C. C. 387, 388.

(j) Complainant attacked through rates charged on lumber and other forest products, carloads, since Dec. 24, 1921 from Washington, Oregon, Idaho, Montana and British Columbia to Indiana, Michigan and Ohio as unlawful in violation of section 6. In these tariffs, not only the destinations named are indexed within the meaning of the intermediate rule, but all points falling within the descriptions of "all points" "all other points" and "unnamed intermediate points located between two of the above named points" are likewise indexed. The expression last quoted is taken to mean that the unnamed intermediate point must be located within the territory covered by the specific rates. That is to say, a point in the higher rated territory, covered by the description "all other points" is not to be regarded as located between two named points merely because there is a possible route from one named point to another through such higher rated territory. Under such construction all points in Ohio, Indiana, and Michigan were indexed in the tariffs and had specific rates provided thereto, and so far as destinations in these states are concerned, the intermediate rule had no application. The tariffs named rates not only to destinations in these states, but throughout central, trunk line, and New England territories. The intermediate rule was one of general application and could be given effect in some states to which the tariffs provided rates only to specifically named points. Pennsylvania and New York being examples. In the instances where a point was indexed as located in a particular state the rate shown thereto was applicable to any destination of that name in that state upon the lines of carriers participating in the tariffs. The construction which the Commission has given these tariffs is warranted by their provisions considered as a whole, is reasonable under all the circumstances, and is undoubtedly intended by the maker so far as it can judge their intention by the tariffs. HELD: Complaint dismissed. Pacific Coast Shippers Asso. v. A. & C. Y. Ry., 112 I. C. C. 527.

(k) Full combination rates charged on shipment of lumber from Pachuta, Miss., to Homestead, Meadville, Titusville, and Mercer, Pa., found illegally assessed. Applicable rate found to be a through rate constructed by use of combination rule which provided a specific method for constructing through rates made on combination, each factor of combination being subject thereto. Reparation awarded for overcharges. Moore-Marshall Lbr. Co. v. N. O. & N. E., 112 I. C. C. 33.

(l) Tariff governing one factor of combination rate carried the combination rule, which provided a specific method for constructing through rates made on combination. Tariff governing other factor specifically provided for nonapplication of such rule. HELD: Following Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, combination rate constructed by use of the rule was applicable, and restriction in tariff governing other factor did not operate to prevent application of principle laid down in cited case. See also 81 I. C. C. 193, 194. Refund of overcharges directed. Thompson, Weinman & Co. v. N. Y., N. H. & H., 112 I. C. C. 65.

(m) Tariff governing one factor of combination rate contained provision to effect that rates named therein were subject to combination rule carried in an agency tariff, which provided a specific method for constructing through rates made on combination. Tariff of carrier governing other factor contained no combination rule, or similar reference, and provided specifically that rates named therein were not subject to agency tariff. HELD: Reference to agency tariff was

equivalent to publication of the rule in rate tariff of the individual line, which must protect the aggregate rate constructed by use of the rule. See 93 I. C. C. 186. The principle laid down in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, is controlling and there was a holding out to shipper of the rate constructed in conformity with the rule, which publishing carrier must protect. Overcharges found and reparation awarded. Phosphate Products Corp. v. C. & O., 112 I. C. C. 161.

(n) Shipment of dried lima beans from Santa Monica, Calif., to Tampa, Fla., billed via a rail-and-water route was diverted at request of shipper to an all-rail route. Combination rate based on Jacksonville, Fla., assessed. FOUND: As there was no published joint all-rail rate from point of origin to destination, shipper was entitled to lowest combination, which, under rule 5(b) of Tariff Circular 18-A, was a combination based on Memphis and Jacksonville. Reparation awarded for overcharges. Harman & Hulsey v. Director General, 112 I. C. C. 275.

(o) Joint rate on refined sulphur from Freeport, Tex., to Carl Junction, Mo., found unreasonable to extent it exceeded rate to Pittsburg, Kans., a farther distant point over route of movement, which lower rate could have been applied to Carl Junction under rule 77 of Tariff Circular 18-A. It was not necessary for shipper to request establishment of lower rate to Carl Junction in order to be entitled to reparation to basis of such rate. Stauffer Chemical Co. v. H. & B. V., 112 I. C. C. 311, 312.

(p) The combination rule applies to combination rates over routes where no joint rates are applicable regardless of whether joint rates are maintained from and to same points over other routes. See 81 I. C. C. 745 and 93 I. C. C. 614. Montgomery Cotton Exchange v. L. & N., 112 I. C. C. 325, 328.

(q) Rate charged on baled cotton transported over an interstate route from Brownsville, Tenn., to Delano, Tenn., found inapplicable. Lower combination in effect referred to a tariff carrying so-called combination rule, which provided a specific method for constructing through rates made on combination. While schedule carrying combination rule applied "where no published through rates are in effect from point of origin to destination," and there was a through rate from Brownsville to Delano over a route other than route of movement, conclusions reached in 95 I. C. C. 451, wherein commission held that this rule is applicable in the absence of a joint rate over the route traversed, regardless of joint rates over other routes, is controlling. Applicable rates found to be those constructed by use of combination rule, and reparation awarded for overcharges. Gunther & Co. v. L. & N., 112 I. C. C. 387.

(r) Rates on lumber and other forest products from points in Washington, Oregon, Idaho, Montana, and British Columbia to destinations in Indiana, Michigan, and Ohio found illegal in some instances and legal in others, due to construction of an intermediate clause. Construction given tariffs is warranted by their provisions considered as a whole, is reasonable under all circumstances, and is undoubtedly that intended by makers, so far as their intention can be judged by tariffs. Construction sought by complainants would lead to absurd results. Pacific Coast Shippers' Assn. v. A., C. & Y., 112 I. C. C. 527.

(s) Upon contention of complainants that, under an intermediate clause and open routing of the tariffs, where point of destination was intermediate to a named point designated as taking a particular group rate, a shipment could be routed over any lines parties to the tariffs and that hence the rate to any point not specifically named would be that applicable to unnamed intermediate points located between two named points, HELD: Not only destinations named are indexed within meanings of intermediate rule in question, but all points falling within the descriptions of "all points," "all other points," and "unnamed intermediate points located between two of the above-named points" are likewise indexed, i. e., a point in the higher rated territory, covered by the description "all other points" is not to be regarded as located between two named points merely because there is a possible route from one named point to another through such higher rated territory. Pacific Coast Shippers' Assn. v. A., C. & Y., 112 I. C. C. 527.

(t) On shipments of crude and refined petroleum from points in Kentucky, Kansas, and Oklahoma to Lawrenceville, Ill., and Findlay, Ohio, no joint rates

were in effect. Combinations of proportional and local rates to and from certain intermediate points, subject to combination rule produced lower charges than combinations of proportional rates to and from same intermediate points, not subject to the rule. HELD: The combination rule not being at any time applicable in connection with combinations of proportionals, but only in connection with locals from the intermediate points, and since a proportional commodity rate takes precedence over a local commodity rate on through traffic on same article between same points, the combination of proportionals was legally applicable. Indian Refining Co. v. L. & N., 112 I. C. C. 732.

(u) On shipments of crude and refined petroleum from points in Kentucky, Kansas, and Oklahoma to Lawrenceville, Ill., and Findlay, Ohio, no joint rates were in effect. Combinations of proportional and local rates to and from certain intermediate points, subject to combination rule produced lower charges than combinations of proportional rates to and from same intermediate points, not subject to the rule. Contention that under 5(c) of Tariff Circular 18-A, there being no joint rate in effect, shipper was entitled to lowest combination over the routes of movement, not sustained. Rule relied upon provided that where a combination is to be used it shall be the lowest combination of applicable rates and here the applicable rates were the combinations of proportionals. Indian Refining Co. v. L. & N., 112 I. C. C. 732, 735.

(v) On a carload of cement from York, Pa., to Cape Girardeau, Mo., a combination of two local rates to and from an intermediate point, subject to combination rule, produced a lower charge than a combination of a local and a proportional rate to and from same intermediate point, not subject to said rule. Following Indian Refining Co., 112 I. C. C. 732, FOUND: That the higher combination of the local and the proportional rate was applicable. Sandusky Cement Co. v. P. R. R., 112 I. C. C. 737.

(w) Shipments moved under combination rates, tariffs governing some factors being subject to combination rule, which provided a specific method for constructing through rates made on combination. Originating line was not a party to tariff publishing the rule nor did tariff of that carrier refer to the rule or to tariff which published it. HELD: Following Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, and Armour Fertilizer Works, 93 I. C. C. 186, applicable rates were those constructed in conformity with the rule which publishing carriers must protect. Reparation awarded. Irvin v. P. R. R., 112 I. C. C. 746.

(x) Shipment moved under combination rate. Tariff governing one factor made reference to combination rule which provided a specific method for constructing through rates made on combination. Tariff governing other factor made no similar reference nor contained a similar rule. HELD: There was a holding out to shipper of rates constructed in accordance with rule which publishing carrier must protect and applicable rates were through rates constructed by application of the rule. See 93 I. C. C. 279. Reparation awarded. Ransom & Co. v. L. & N., 113 I. C. C. 177.

(y) Shipments moved under combination rates, tariff governing one factor carrying combination rule which provided a specific method for constructing through rates made on combination. Tariff governing other factor contained no similar rule nor did publishing carrier concur in tariff in which it was carried. HELD: Following Sligo case, 62 I. C. C. 643, 73 I. C. C. 551, the lawful rates were those constructed by use of the rule. Reparation awarded. Security Cement & Lime Co. v. B. & O., 113 I. C. C. 579.

(z) One factor of the combination was a class rate and the combination rule does not apply to the combination of a class and commodity rate. Bush & Co. v. L. & N. R. R., 115 I. C. C. 45, 46.

(aa) Although the commission has frequently indicated that the combination rule, designed as a temporary expedient, is undesirable as a permanent tariff rule, it does not think that carriers publishing one factor of a through rate under which there is substantial movement, should be permitted to cancel the application of the combination rule to that factor, unless carriers publishing the other factors join in the cancellation or in the publication of joint through rates. Combination rule on brick, 115 I. C. C. 293, 303.

(bb) Complainant attacked combination commodity rate charged on a car of

cedar posts shipped March 26, 1924, from spur 28, Minn., to Treaty, Ind., as inapplicable and unreasonable. Shipment moved, as routed, over M. R. L. & M. to Bemidji, Minn., M. & I. to Brainerd, Minn., N. P. to Minneapolis, M. & St. L. to Albert Lea, Minn., I. C. to Chicago and Big Four, 1,017.5 miles, charged 9c to Bemidji and 36.5c beyond. The question is one of tariff interpretation. By specific reference in the tariff names the joint rates from Bemidji that rate was made subject to the combination rule but the local rate of 9c was not. HELD: Applicable rate was 43.5c, reparation awarded. Pendleton & Gilkey v. M. R. L. & M. Ry., 115 I. C. C. 413.

(cc) The publication of the combination rule in a carrier's tariff is a holding out of a manner of making combination rates on through shipments which that carrier must protect. Pendleton & Gilkey v. M. R. L. & N. Ry., 115 I. C. C. 413, 414.

(dd) On cottonseed meal from Greenwood, Miss., to Angola, La., a combination rate based on Baton Rouge, La., was assessed. A lower joint rate was contemporaneously in effect from Memphis to Angola via Baton Rouge, tariff publishing that rate containing an intermediate rule restricted to apply via direct available routes only. HELD: Application of the lower rate not being confined to a single direct route, but being applicable over all "direct available routes," and record not establishing that route through Greenwood was not available direct route from Memphis to Angola, such lower joint rate was applicable from Greenwood and shipments were overcharged. Reparation awarded. Planters Oil Mill v. Y. & M. V., 115 I. C. C. 21.

(ee) Combination rates charged on common brick moving from Nashville, Tenn., to Morehead, Ky., found inapplicable. When shipments moved a specific commodity rate applied from Nashville to Maysville, Ky., and under an intermediate clause this rate applied from Nashville to Morehead. Shipments were therefore overcharged. Bush & Co. v. L. & N., 115 I. C. C. 45, 46.

(ff) Combination rate charged on yellow-pine lumber from Ragland, Miss., to Pittsburgh, Pa., found inapplicable to extent it exceeded rate constructed in accordance with combination rule. Application of the rule was restricted to cases where no published through rates were in effect from origin to destination. Defendant's contention that rule was therefore inapplicable to complainant's shipments because joint rates were in effect over other routes, but not via route of movement, not sustained. Usher Brothers v. A. & V., 115 I. C. C. 89.

(gg) Combination rate on iron roofing from Delphos, Ohio, to Springfield, Tenn., found inapplicable. Tariff naming a lower rate to Bowling Green and Nashville, unrestricted as to routing, carried the so-called intermediate clause which provided for its application at intermediate destinations. While Springfield is not between Bowling Green and Nashville via direct route it is directly between them on a route over which lower rate applies. Reparation awarded. Cincinnati Sheet Metal & Roofing Co. v. P. R. R., 115 I. C. C. 133.

(hh) Shipments moved under combination rate. Tariff governing one factor made reference to combination rule which provided a specific method for constructing through rates made on combination. Tariff governing other factors made no similar reference nor contained a similar rule. HELD: There was a holding out to shipper of rate constructed in accordance with the rule which publishing carrier must protect, and applicable rate was through rate constructed by application of the rule. See 62 I. C. C. 643 and 73 I. C. C. 551. Reparation awarded. Knoxville Traffic Bureau v. S. Ry., 115 I. C. C. 187.

(ii) Proposal to cancel combination rule on brick and related articles between stations in Iowa, Missouri, Kansas, Nebraska, the Dakotas, Minnesota, and other Western States, and, in some instances, to establish in lieu thereof proportional rates to and from certain specified junctions, found not justified. While the commission has commented upon the undesirability of the combination rule from a tariff standpoint and has made suggestions looking to the ultimate elimination of combination tariffs, such suggestions did not contemplate increases in rates. Carriers can not expect commission to sanction advances which would here be brought about because of a failure on part of carriers to coordinate their efforts in a unified attempt to eliminate the rule by establishing proportionals which would result in combinations not in excess of those now in

effect. Combination Rule on Brick, 115 I. C. C. 293.

(jj) Shipments moved under combination rates. Tariff governing one factor made reference to combination rule which provided a specific method for constructing through rates made on combination. Tariff of delivering line, however, carried no similar rule but specified that rates named therein were not subject thereto. Carriers contended that the rule may be availed of only where each of the tariffs naming the respective factors of combination makes reference to tariff in which it is contained, and since one tariff specifically prohibited its use the principle laid down in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551 did not apply. HELD: Following 81 I. C. C. 193, effect of such restriction was tantamount to absence of a rule, and the tariff must be construed as containing no rule. The Sligo principle was therefore controlling and rates constructed in accordance with the rule were applicable. Reparation awarded. West Construction Co. v. N., C. & St. L., 115 I. C. C. 355.

(kk) Shipment moved under combination rate. Tariff governing one factor made reference to combination rule which provided a specific method for constructing through rates made on combination, while tariff governing other factor carried no such reference or rule. Upon contention of carriers that as tariff of initial line was not made subject to the rule it would be improper to apply the rule to either factor in constructing through rates. HELD: Publication of the combination rule in carrier's tariff is a holding out of a manner of making through combination rates which that carrier must protect. See 62 I. C. C. 643; 73 I. C. C. 551. Moreover, a provision in a tariff carrying rates which may be used in combination, to the effect that the rates are subject to the combination rule, is equivalent to publication of the rule in rate tariff. See 78 I. C. C. 579. Applicable rate was, therefore, through rate constructed in accordance with the rule. Reparation awarded. Pendleton & Gilkey v. M. R. L. & M., 115 I. C. C. 413.

(ll) Shipments of refuse sand from Detroit, Mich., to Indianapolis, Ind., moved as routed by shipper. Applicable tariffs carried so-called intermediate clause, such clause via one of the routes being unrestricted in its application, whereas via the other route the clause contained phrase "on the same line." HELD: That on shipments moving via the unrestricted route the clause was applicable and lower rates provided thereunder applied. As to shipments moving over the other routes the words "on the same line" in intermediate rule required that intermediate point be on line of same carrier as the more distant point to which a rate is published and since rails of delivering line did not reach the farther distant point the intermediate rule did not apply on shipments moving thereover. American Radiator Co. v. D. & T. S. L., 115 I. C. C. 529.

(mm) Cotton from Gieger, Ala., to Rossville, Ga., moved under combination rates, no joint rates being in effect. Tariff governing one factor made reference to the so-called combination rule which provided a specific method for constructing through rates made on combinations, tariff governing other component neither carrying the rule nor making any reference thereto. HELD: That the holding-out principle as laid down in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551 is controlling, and carrier whose tariff referred to the rule must protect the aggregate rate constructed in conformity therewith. Shipments found overcharged and reparation awarded. Peerless Woolen Mills v. A., T. & N. R. R. Corp., 115 I. C. C. 577.

(nn) On shipments moving during Federal control no joint rates were in effect and combinations were assessed, the separate factors of which were increased under General Order No. 28 of director general. , HELD: In instances where none of the components carried or made reference to combination rule, which provided a specific method for constructing through rates made on combination, the holding-out principle laid down in the Sligo case, 62 I. C. C. 643 73 I. C. C. 551, did not apply. However, where tariff governing one factor carried or referred to the rule, the principle cited was controlling and shipments were overcharged. Reparation awarded. Utah-Idaho Sugar Co. v. Director General, 115 I. C. C. 707.

(oo) Rate on lumber from Brooksville, Miss., to Chicago, Ill., found not unreasonable or otherwise unlawful. Complainant contended for a lower combination of intermediates constructed by use of combination rule, but as joint

rate assessed was applicable, use of the rule was clearly prohibited. Moreover, presumption of unreasonableness under section 1 attaching to joint rate in excess of combination of locals which would apply in its absence, was successfully rebutted by a showing that it compares favorably with rates on lumber from numerous Mississippi, Georgia, Alabama, and Tennessee points to Chicago for similar distances. Thornton-Claney Lbr. Co. v. M. & O., 118 I. C. C. 25.

(pp) Combination rate treated by the combination rule which provides a specific method for constructing through rates made on combination, is not an aggregate of intermediate rates within meaning of section 4 of the act. See also 89 I. C. C. 356, 357. Thornton-Claney Lbr. Co. v. M. & O., 118 I. C. C. 25, 26.

(qq) On cotton moving from stations south of Montgomery, Ala., there concentrated and compressed and reshipped to Mobile, Pensacola, and New Orleans, the locals to Montgomery and reshipping rates therefrom were assessed. Local factor published combination rule which provides a specific method for constructing through rates made on combination, but at no time were reshipping rates from Montgomery subject to a similar rule. HELD: Following principle laid down in 62 I. C. C. 643; 73 I. C. C. 551, reference to the rule in tariff containing one factor of combination, necessitated protection of a through rate arrived at by use of the rule in connection with both factors. Applicable rates were therefore those constructed in accordance with the rule. Former report 112 I. C. C. 325 reversed and refund of overcharges directed. Montgomery Cotton Exchange v. L. & N. R. R., 118 I. C. C. 157.

(rr) Through rates may not be condemned as unreasonable merely because they are constructed upon a combination basis. Virginia Chamber of Commerce v. A. A. R. R., 118 I. C. C. 195, 199.

(ss) Shipments moved under combination rates. Tariff governing one factor made reference to so-called combination rule which provides a specific method for constructing through rates made on combination. Tariff governing other factor made no such reference nor contained a similar rule. HELD: Following the Sligo principle laid down in 62 I. C. C. 643; 73 I. C. C. 551; publication of combination rule in one of the tariffs was a holding out of the manner of making combination rates on through shipments which publishing carrier must protect. Applicable rates were, therefore, the through rates constructed by application of the rule. Reparation awarded. Lehigh Portland Cement Co. v. B. S. & K. R., 118 I. C. C. 507.

(tt) Shipment moved under combination rate. Tariff governing one factor made reference to combination rule, which provides a specific method for constructing through rates made on combination. Tariff governing other factor made no such reference nor contained a similar rule. Carrier contended that under such circumstances the rule was not applicable. HELD: This contention has been advanced in numerous cases wherein commission has applied holding-out principle laid down in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551. Reparation awarded. Standard Lbr. Co. v. A. C. L., 118 I. C. C. 703, 704.

(uu) Where one of the tariffs used in making combination rates on through shipments contains the combination rule, there is an undertaking by the carrier publishing the rule to protect the resulting aggregate rate. Dann Gerow Co. v. A. C. L. R. R., 120 I. C. C. 163, 164.

(vv) Rate on bones, horns, and hoofs, in mixed carloads, from El Paso, Tex., to Chicago, Ill., found unreasonable to extent it exceeded a lower joint commodity rate contemporaneously in effect from Deming, N. Mex., a farther distant point, over available routes through El Paso. Tariff naming lower rate referred to rule 77 of Tariff Circular 18-A, and commission has repeatedly found that publication of a rate under such authority is a substantial compliance with requirements of fourth section, and equivalent to an admission by carriers that higher rate from the intermediate point is unreasonable. See 66 I. C. C. 611. Reparation awarded. Tomkins-Summer Co. v. C., M. & St. P., 120 I. C. C. 677.

(ww) Combination rate was composed of two proportionals. One factor made reference to combination rule which provides a specific method for constructing through rates made on combination. Tariff governing other factor neither carried nor made reference to rule and prohibited its use. Upon contention that under the circumstances there was no holding out to the public of rates constructed by use of the rule and that the Sligo principle laid down in 62 I. C. C. 643 is not controlling

HELD: Similar contention advanced in 93 I. C. C. 186 was adversely decided; moreover, in other decisions commission has found that a reference to combination rule is equivalent to its publication in the rate tariff, and that the rule is applicable to through combinations, even though the tariff governing other factor made no reference thereto. Shipments found overcharged and reparation awarded. Armour & Co. v. C. & N. W., 120 I. C. C. 737.

(xx) The publication of the combination rule in a carriers tariff is a holding out of a manner of making combination rates on through shipments which that carrier must protect. A provision in a tariff carrying rates which may be used in combination to the effect that the rates are subject to the combination rule is equivalent to the publication of the rule in the rate tariff. Pendleton & Gilkey v. C. & O. Ry., 122 I. C. C. 287, 288.

(yy) Where one of the tariffs used in making the combination rates on through shipments contains the combination rule, there is a holding out to the shipper of a manner of construing combination rates which the carrier publishing the tariff must protect. The Commission has also found that where one factor of the combination was restricted by a statement that the combination rule was not applicable, the effect of such restriction was tantamount to the absence of a rule; that the combination rule referred to in the tariff publishing the other factor was applicable to the through combination; and that the applicable rate was the sum of the local rates treated in accordance with the rule. Acme Brick Co. v. C. of Ga. Ry., 123 I. C. C. 660, 661.

(zz) On cedar posts from spur 28, Minn., to Gaston, Ind., a combination rate was charged. One factor referred to combination rule which provided a specific method for constructing through rates made on combination, but other factor neither carried nor referred the rule. HELD: That a tariff provision carrying rates which may be used in combination to effect that rates are subject to the combination rule is equivalent to publication of the rule in the rate tariff. See 78 I. C. C. 579. Moreover, in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, the principle was announced that publication of combination rule in a carrier's tariff is a holding out of a manner of making combination rates on through shipments which the publishing carrier must protect. Accordingly, rates constructed by use of the rule were applicable. Reparation awarded. Pendleton & Gilkey v. C. & O., 122 I. C. C. 287.

(3a-4a) No specific commodity rates were provided on hay from certain Illinois points to St. Louis, Mo., and charges were assessed on class rate basis. At time of movement commodity rates were in effect from farther distant point of origin in Illinois, tariff publishing such rates carrying the intermediate clause. Carriers contended that the intermediate clause has no application here because route through farther distant point is not one customarily used. HELD: Since tariff publishing the intermediate clause contains no routing restrictions and route via the farther distant point is not impracticable, the rates charged were inapplicable. Reparation awarded. Toberman Mackey Co. v. C., B. & Q., 122 I. C. C. 299.

(4b) Shipments moved under combination rates, one factor of which was subject to combination rule which provided a specific method for constructing through rates made on combination, tariff governing other factor specifically providing that rates named therein were not subject thereto. HELD: So far as the tariff which provided for nonapplication of the rule is concerned it must be construed as containing no rule, and as to the factor subject to such rule, the carriers parties thereto were required to protect the aggregate rate constructed in accordance therewith. See also 93 I. C. C. 186. Reparation awarded. U. S. Gypsum Co. v. St. L.-S. F., 123 I. C. C. 200.

(4c) Combination rates were assessed on fire brick from Mineral City, Ohio, to Miami and Tampa, Fla., there being no joint rates in effect. Upon contention that factors beyond Jacksonville were made subject to combination rule, which provides a specific method for constructing through rates made on combination, in accordance with Sligo principle laid down in 62 I. C. C. 623; 73 I. C. C. 551, HELD: Tariffs naming factors to Jacksonville made no reference nor were subject to tariff carrying the rule and factors from Jacksonville to Miami and Tampa were subject to a note which specifically precluded use of the rule. Therefore, since none of factors were subject to the rule, principle mentioned in cited cases did not apply and applicable rates were

those assessed. Federal Clay Products Co. v. A. C. L., 123 I. C. C. 557.

(4d) Shipments moved under combination rates. Tariff governing one factor made reference to combination rule which provided a specific method for constructing through rates made on combination. Tariff governing other factor made no similar reference nor contained a similar rule. Upon contention that rule may be applied only when each tariff in which factors of combination are published refer to the rule, and that all carriers over whose lines factors of combination rates apply must be named as participating carriers therein, HELD: Similar contentions have been rejected in 62 I. C. C. 643; 73 I. C. C. 551, and other cited cases, wherein the Sligo principle has been upheld. Rates constructed in accordance with the rule were therefore applicable. Refund of overcharges directed. Allen Gravel Co. v. C., R. I. & P., 123 I. C. C. 650.

(4e) Shipments moved under combination rates. Tariff governing one factor carried the combination rule which provides a specific method for constructing through rates made on combination. Tariff governing other factor specifically prohibited use of the rule. Upon contention that as rate assessed was less than rate based on distance scale prescribed in 77 I. C. C. 473, and that since one factor precluded use of the rule the Sligo principle laid down in 62 I. C. C. 643; 73 I. C. C. 551, did not apply, HELD: Cases containing similar situations have been frequently considered wherein rates constructed in accordance with the combination rule were found applicable. Reparation awarded. Acme Brick Co. v. C. of G., 123 I. C. C. 660.

(4f) The carrier authorizing the use of the combination rule held out to shippers through rates constructed in accordance with the rule which those carriers must protect. Tuffli Bros. v. W. M. Ry. 126 I. C. C. 737, 738.

(4g) Shipments of tin cans from Chicago to North Prairie, Wis., tendered unrouted moved via Waukesha, Wis. Contemporaneously a lower rate applied to Waukesha via Bardwell, Wis., over which route North Prairie is directly intermediate to Waukesha, and was applicable to North Prairie under an intermediate clause providing for application of rates to intermediate points. Upon contention that operating and other transportation conditions rendered it inadvisable and uneconomical to use the Bardwell route, and, in accordance with statement in 247 U. S. 477 that carriers may resort to the more expensive route where in their opinion the cheaper route is unreasonable, that it was therefore justified in shipping via Waukesha, HELD: Fact that carrier subsequently restricted rates to shortest route thus making rate to North Prairie applicable only via Bardwell, clearly indicates that this route is not impracticable nor so uneconomical as to be not generally usable. Rate via Bardwell was therefore applicable and shipments were misrouted. Nelson v. C., M. & St. P. Ry. 126 I. C. C. 713.

(4h) Joint rates on cedar posts and poles from points in Alabama, Georgia, and Tennessee to Illinois destinations found not unreasonable as compared with lower combination rates contemporaneously in effect constructed by use of the combination rule which provides a specific method for constructing through rates made on combination. Carriers cited 100 I. C. C. 219; 120 I. C. C. 550, to support contention that joint rates in excess of combinations are not prima facie unreasonable. They also show that one factor is a proportional rate established to enable shippers in origin territory to compete with shippers of white cedar from western producing points; that it is therefore subnormal and should not be used to condemn a reasonable through rate. Moreover, numerous rate comparisons show that from points in same general territory to less distant points in c. f. a. and eastern territories, rates are as high or higher than rates assailed. Nebraska Bridge Supply & Lbr. Co. v. A. G. S., 128 I. C. C. 94.

(4i) Complainant attacked through commodity rates charged on cement, carloads, from Mankato, Minn., to Detroit, Mich., and Toledo and Cleveland, O., between March 18, 1924 and March 25, 1925 as unreasonable to extent they exceeded rates to and from Milwaukee, Wis., reduced by using the socalled combination rule. Joint through rates were assessed which were applicable via either Chicago, Milwaukee or Manitowoc. The aggregate of the separately established rates to and from Chicago, Milwaukee, and Manitowoc reduced by using the combination rule would have produced lower through rates than those

charged. Effective April 15, 1925 the joint through rates on cement from Mankato to Detroit, Toledo, and Cleveland, over all routes, were voluntarily reduced by the carriers to 28, 27 and 29c, respectively, thus equaling the combination to and from Milwaukee reduced by using the combination rule. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Carney Co. v. A. A. R. R., 128 I. C. C. 255.

(4j) Joint rates on cement from Mankato, Minn., to Detroit, Mich., and Toledo and Cleveland, Ohio, found not unreasonable or otherwise unlawful as compared with lower rate subsequently established based on rates to and from Milwaukee, Wis., reduced by application of the socalled combination rule. Complainant introduced comparisons with rates in a different territory but failed to show that traffic circumstances and conditions were similar. Other comparisons indicate that rates assailed were not out of line with contemporaneous rates between points in the same territory. Moreover, rates from Mankato to numerous destinations in c. f. a. territory, distances considered, compare favorably with those assailed and with those subsequently established. Carney Co. v. A. A. R. R., 128 I. C. C. 255.

(4k) Shipments moved under combination rate. Tariff governing one factor made reference to combination rule, which provides a specific method for constructing through rates made on combination. Tariff governing other factor made no similar reference nor contained a similar rule. Upon attempt of carriers to distinguish present case from Sligo Iron Store, 62 I. C. C. 643 and 73 I. C. C. 551, HELD: That similar contentions were considered in 93 I. C. C. 279, in which it was found that rate constructed in accordance with combination rule was applicable. Hines Yellow Pine Co., v. M. S. 128 I. C. C. 511.

(4l) If, in connection with one of the factors of a combination rate and not with the others, a carrier makes reference to the combination tariff there is a holding out to the shippers that the through rate constructed in accordance with the combination tariff will be protected by that carrier. Edward Hines Yellow Pine Co., v. M. S. R. R., 128 I. C. C. 511, 512.

(4m) Full aggregates of intermediate rates were assessed under an alternative rule providing that if such rates made less than joint through rates they would be applied. Contemporaneously tariff carried the combination rule which provides a specific method for constructing through rates made on combination. Upon contention that lower rates constructed in accordance with that rule should have been assessed, FOUND: In 89 I. C. C. 356; 100 I. C. C. 219, it was stated that the product of intermediate rates treated by a rule which results in less than the aggregate is not the aggregate within meaning of the alternative rule. Therefore, it is the alternative rule which specifies what rate shall apply in place of the joint rate, and when that rule designates a lower aggregate of intermediates as displacing the joint rate, it means the full aggregate of intermediates and not the product of intermediate rates treated by the combination rule. Rates assailed were therefore legally assessed. Calif. Dressed Beef Co., v. A., T. & S. F., 128 I. C. C. 607, 609, 610.

(4n) Shipments moved under combination rates. Tariff governing two factors made reference to combination rule, which provided a specific method for constructing through rates made on combination. Tariff governing other factor made no similar reference nor contained a similar rule. FOUND: There was a holding out to shipper of rate constructed in accordance with the rule which publishing carrier must protect, and applicable rate was the through rate constructed by use of the rule. Refund of overcharges directed. See 62 I. C. C. 642; 73 I. C. C. 551; 74 I. C. C. 188. Culler Lbr. Co., v. C. B. & Q. 128 I. C. C. 723.

(4o) Where one of the tariffs used in making the combination rates on through shipments contains the combination rule, there is a holding out to the shipper of the manner of constructing combination rates which the carrier publishing the tariff must protect. Culler Lumber Co., v. C. B. & Q. R. R., 128 I. C. C. 723, 724.

(4p) Complainant alleged combination rates charged on five cars of copper wire shipped in April and Nov. 1923 from Black Eagle, Mont., to Topeka, Kans., and to Northport and Lexington, Neb., were inapplicable. Shipments to

Topeka and Northport were routed "G. N., O. S. L., U. P." with no rate entered on the bills of ladings; to Lexington routed G. N., U. P., delivery and a rate of 88c inserted on the bill of lading. All the cars moved over the G. N. to Butte, Mont., O. S. L. to Granger, Wyo., and U. P., beyond, charged at combination rates of $1.28, 1.48 and $1.355 to Topeka, Northport and Lexington, respectively. Joint rates were in effect to Omaha, Neb., Kansas City, Mo., and points grouped therewith. Topeka is a Kansas City rate point and Northport and Lexington are Omaha rate points, 99c to Kansas City and 88c to Lexington. Effective May 1, 1924 defendants amended their tariffs to provide for the application of the joint rates over the route of movement. Rates charged to Topeka and Lexington exceeded the applicable combination rates by 6 and 21c. HELD, rate charged to Northport applicable, rate charged to Topeka and Lexington inapplicable to extent they exceeded $1.22 and $1.145, reparation awarded. Complaint dismissed. Sinclair Pipe Line Co. v. G. N. Ry., 129 I. C. C. 251.

(4q) In the absence of a joint rate the combination on a point beyond would have applied under rule 5b of tariff circular 18-A but joint through rates in excess of combinations under that rule do not contravene section four. Lynchburg Chamber of Commerce v. D. L. & W. R. R., 132 I. C. C. 321, 323.

(4r) Where one of the tariffs used in making combination rates on through shipments contains the combination rule there is a holding out to the shipper of a means of constructing combination rates which the carrier publishing the rule must protect. Pendleton & Gilkey v. M. R. L. & M. Ry., 132 I. C. C. 359, 360.

(4s) In the absence of a joint rate over the route traversed the combination rule is applicable regardless of joint rates over other routes. Underwood Lumber Corp. v. C. of Ga. Ry., 132 I. C. C. 398, 399.

(4t) Shipments moved under joint through rates. Contemporaneously a lower combination rate was in effect, tariff governing one factor of which made reference to the combination rule which provides a specific method for constructing through rates made on combination. Citing Sligo Case, 62 I. C. C. 643, and other cases, complainant contended that lower combination rate should have been applied. FOUND: In accordance with Conf. Rulings 220 (g) and 443, the only lawful rate was the joint through rate assessed. Therefore, principle laid down in cases cited did not apply. North American Cement Corp. v. W. M., 129 I. C. C. 90, 91.

(4u) Shipments moved under combination rates. Tariff naming one factor made reference to combination rule which provides a specific method for constructing through rates made on combination. Tariff naming other factor made no similar reference nor contained a similar rule. Upon contention that carrier publishing latter rate was not shown as a participating carrier and therefore the principle announced in 62 I. C. C. 643, and other cited cases, was not applicable, FOUND: Situation here is identical with that considered in 113 I. C. C. 579, in which rates treated by combination rule were found applicable. Reparation awarded. North American Cement Corp. v. W. M., 129 I. C. C. 90, 91.

(4v) Rates on scrap brass and brass ingots from Pittsburgh, Pa., to Jersey City, N. J., and Baltimore, Md., found inapplicable. Lower rates were contemporaneously maintained from Zanesville, Ohio, subject to a clause which authorized their application from Pittsburgh as an intermediate point. Refund of overcharges directed. S. Hausman & Sons Co. v. P. R. R., 129 I. C. C. 233.

(4w) Proposed restriction of combination rule so as to prohibit any construction thereof by which respondents may be held liable for failure of some other line to make provision for single or maximum increase, found not justified. Proposed restriction would result in increases or avoid reductions of respondents' own local rates when used as factors of through rates, as well as relieve them of shrinkage in factors not published by them. However, as it would be inadequate to require them to continue a tariff rule under which they receive less for their services than carriers maintaining joint rates, and in view of finding in 93 I. C. C. 458, suspended schedules ordered canceled without perjudice to filing others which will relieve respondents of shrinkage-chargeable to their connections but will

not avoid responsibility for that portion which belongs to them. Combination Rule on Lumber, 129 I. C. C. 564.

(4x) First-class rate on passenger automobiles from Janesville, Wis., to Mason City, Iowa, found applicable and not unreasonable or unduly prejudicial. Under a restricted tariff a lower joint commodity rate subject to rule 77 of Tariff Circular 18-A was contemporaneously in effect to Ames. Complainant contended that as Mason City was intermediate to Ames over a circuitous route and shipment moved in compliance with routing restriction the lower rate was applicable. FOUND: That publication of rule 77 does not warrant a finding of unreasonableness where, as in this case, point which is claimed to be intermediate to lower-rated point is intermediate only via excessively circuitous and unnatural routes over which no shipper could reasonably request transportation under provisions of section 1 (4) of the interstate commerce act. Woodward Auto Co. v. C., M. & St. P., 129 I. C. C. 613

(4y) The commission has frequently found that rule 77 of Tariff Circular 18-A is a substantial compliance with the fourth section of the act and awarded reparation on shipments moving from or to intermediate point under rates that were higher than those from or to more distant points where rates from or to latter points were subject to rule 77 and the less distant points were intermediate over route traffic moved. Woodward Auto Co. v. C., M. & St. P., 129 I. C. C. 613, 615.

(4z) Seattle-Portland factor of combination rates on wooden poles from Washington points to California was described in the governing tariff as a porportional rate but was, nevertheless, an arbitrary. Tariff authorized the application of the combination rule "except as otherwise indicated" and restricted use to "separately established commodity(or class) rate factors," thus precluding use of the rule in connection with the Seattle-Portland arbitrary. Rates assessed found applicable except that overcharge, not due to inapplicable rate, was assessed on one shipment. Complaint dismissed. National Pole Co. v. G. N., 129 I. C. C. 697.

(5a) If the Seattle-Portland factor was a proportional rate, it was a separately established commodity-rate factor and subject to a deduction under the combination-rule provision notwithstanding fact that a specific negative application of rule was shown in connection with that factor. National Pole Co. v. G. N., 129 I. C. C. 697, 699.

§20½. Concurrences.

See Blanket Rates §12½ (i); Routing and Misrouting §6½ (a).

(a) Southern Ry. system FX3 concurrence to a tariff of St. Louis & Tennessee River Packet Co., the originating line, found not sufficient to make Northern Alabama Ry., one of the Southern system lines, not specifically shown as a concurring carrier therein, a party to such tariff. Florence Chamber of Commerce v. N. O. & N. E., 118 I. C. C. 228.

(b) Tariffs naming one-factor through ocean-rail rates between interior trunkline and eastern defined-territory points and the Southwest and Kansas-Missouri territory without concurrence of rail lines to the north Atlantic ports, found unlawful. Such rates required to be published as joint through rates in accordance with provision of section 6 of the act and the commission's tariff rules promulgated pursuant to that act. Consolidated Southwestern Cases, 123 I. C. C. 203, 380.

(c) Connecting carriers' participation in joint rates does not make them liable as partners for tort of others engaged in the common enterprise, but the establishment of a joint rate by concurrence of connecting carriers is the act of each. Louisville & N. R. Co. v. Sloss-Sheffield Steel & Iron Co., 46 Sup. Ct. 73.

(d) Local rates to Chicago plus arbitrary to points within Chicago switching district beyond, found to constitute through rates where partcipating carriers concurred in tariffs publishing both local rates and arbitrary. hicago Coal Merchants Asso. v. N. Y. C., 129 I. C. C. 203, 207.

§21. Intermediate Clause.

See Supra §20a; Tariffs §13a.

(a) Applicable class A rate on marine-engine parts from Hamilton, Ohio, to Oakland, Calif., found unreasonable to extent it exceeded lower aggregate-of-intermediates commodity rates

contemporaneously in effect, one factor of which was limited to specific kinds of machinery, not including marine-engine parts. Reparation awarded. Moore Shipbuilding Co. v. C., I. & W., 118 I. C. C. 3.

(b) Shipment of drugs and medicines from Elkhart, Ind., to New York and Philadelphia, found overcharged to extent third-class rates assessed exceeded lower commodity rates contemporaneously in effect from Kalamazoo, Mich. Tariff carried an intermediate clause providing that an intermediate origin station from which no specific rate is published is entitled to higher rates from either of two stations between which it is located from which rates are published. No specific rates were published from Elkhart which is directly intermediate to Kalamazoo, and it was therefore entitled to lower commodity rate. Refund of overcharges directed. Miles Medical Co. v. B. & O., 118 I. C. C. 33.

(c) Finding in original report, 113 I. C. C. 699, that combination rates on grain and products from Colorado, Kansas, and Nebraska to destinations in Tennessee, Georgia, and Alabama, were applicable, affirmed. Complainant sought lower joint rates to intermediate points constructed in accordance with an intermediate rule, contending that while routing as published was incomplete to certain stations, it could be properly completed by shipper by adding lines of any carriers parties to tariff carrying the rule. However, Rule 4 (j) of Tariff Circular 18-A provides that when a tariff specifies routing, rates may not be applied via routes not specified, and since routes sought were not specified, lower equal joint rates did not apply. Moreover, even though destinations involved were intermediate over routes constructed by complainant, they were not directly intermediate as the routes were unreasonably circuitous. Russell Grain Co. v. A. G. S. 126 I. C. C. 405.

(d) Rates on asphalt from North Baton Rouge, La., to Louisville and Philadelphia, Miss., higher than to more distant point to which they were intermediate, found applicable and not unreasonable. An intermediate clause provided for application of this lower rate to unnamed intermediate points, but Louisville and Philadelphia were both named in tariff and fourth-section departures were protected. Merrill Engineering Co. v. G., M. & N., 129 I. C. C. 249.

(e) Combination rates were collected on automobiles and parts from points in Illinois, Indiana, Michigan, Pennsylvania, Ohio, Missouri, Wisconsin, and Iowa to Klamath Falls, Oreg. Upon contention that lower joint commodity rate contemporaneously published to Reed, Calif., and Modoc Point, Oreg., to which Klamath Falls is directly intermediate, was applicable because of intermediate clause published in the tariff naming lower rates, FOUND: Intermediate rule applied only when rates were not specifically provided for points directly intermediate to stations to which rates were published. As joint through class rates were published to Klamath Falls, rule has no application and rates collected were applicable. Baldwin Hardware Co. v. Direcor General, 129 I. C. C. 708.

§22. What is Legal Rate.

See Supra §18, §20; Facilities and Privileges §18; Legal Rates; Tap Lines; Tariffs §3 (1), §3 (2), §18.

(a) Fremont, Ind., and Montgomery and Reading Mich., are intermediate to Angola, Ind., and Hillsdale, Mich., over different routes. On shipments moving from these origin points rates from Angola, which were higher than from Hillsdale, were assessed. FOUND: Angola rates were legally applicable since tariff provided that where rates were not specifically named from origin points located directly between two points from which rates were named, such intermediate points would take higher of named rates. Nor was rate assessed unreasonable since based on those prescribed in 36 I. C. C. 675, 694, no evidence being adduced other than that they are higher than rates from Hillsdale. Moreover, Hillsdale rates, while technically applicable through these origin points because unrestricted in their application, are lower than rates based on those found reasonable for distance over that route. Ohio Farm Bureau Federation v. N. Y. C., 104 I. C. C. 490.

(b) After establishment of joint commodity rates on paper when classified fifth class, carrier published an exception to classification providing a rating of sixth class from points on its

line to destinations to which joint rates were published. Contention that this exception removed newsprint paper from fifth-class rating and therefore, rendered commodity rates inapplicable. not sustained. The exception did not change description of paper, nor did it have effect of canceling specific commodity rates applicable to commodities covered by that description. Hartford Times v. M. C., 107 I. C. C. 536, 537.

(c) Interstate rate and reconsignment charge collected for the intrastate movement, Tulsa to Okmulgee, Okla., of fabricated iron and steel tank material, k. d. originating at Parkersburg, W. Va., found legally assessed. Common carriers are under legal obligation to apply their lawful rates and charges, which places upon them duty of determining, in first instance, the essential character of the commerce. When it is considered that on day shipment arrived at Tulsa from interstate point of origin, and before placed for unloading, complainant surrendered original billing, which was unnecessary except to effect reconsignment, and directed movement to another point to which reconsignment was authorized, the presumption is strong that carriers properly considered character of the shipment to be interstate. Parkersburg Rig & Reel Co. v. St. L.-S. F., 109 I. C. C. 235.

(d) Shipments from Wilmington and Modesto, Calif., to Jacksonville, Fla., were routed by shipper and a joint through rate assessed. Governing tariff contained alternative rule providing for application of aggregate-of-intermediate rates when less than the through rate, and a lower combination, unrestricted as to routing, applied via Memphis. Upon contention that under rule 5 (b) of Tariff Circular 18-A such lower combination was applicable, HELD: Only application of rule 5 (b) is when "no joint rate applies," or "in the absence of a specific rate," and therefore had no application in the situation here presented. Moreover, had shipments moved via Memphis an out-of-line haul of more than 1,000 miles would have resulted. Joint rate assessed found applicable. Rosser & Fitch v. Director General 109 I. C. C. 724.

(e) Tariff named joint commodity rates on cigar-box lumber. Contemporaneously there were in effect lower rates on "Lumber, except cedar, cherry, mahogany, walnut, and cigar-box material" the lower rated tariffs also providing that lumber rates would apply on "Box and crate material, wood, wired, loose or in bundles." Upon contention that exceptions to lumber descriptions first above quoted did not exclude cigar-box material from list of commodities taking the lumber rate; also that cigar-box lumber came within description of box and crate material last quoted, HELD: Under above-quoted tariff provisions cigar-box material was in fact excepted from list of articles taking the lumber rates, and description of box and crate material did not take precedence over specific description of cigar-box material. Applicable rates were those specifically named in the tariff on "cigar-box lumber." Eggerss-O'Flyng Co. v. A. G. S., 112 I. C. C. 218, 219.

(f) Scrap steel rails from Detroit to Kenosha, Wis., purchased "f. o. b. Chicago," moved under through bills of lading at joint rates. Upon complaint alleging overcharges due to failure of director general to refund charges down to basis of lowest published rate from Chicago to Kenosha, upon theory that movements from Detroit to f. o. b. point was separate and distinct from those beyond, HELD: Complainant would have been entitled to lowest rate from Chicago to Kenosha had shipments originated at Chicago or had billing indicated that rails were "company material" entitled to free transportation to that point. However, shipments originated at Detroit, moved on through bills of lading correctly describing commodity without indicating that it was company material. Moreover, through movements were intended by consignor and nothing indicates that movement to Chicago was to be a nonrevenue haul or that transportation should begin there. Claim arises out of terms of contract of sale over which commission has no jurisdiction. Joint rate assessed found applicable. Briggs & Turivas v. Director General, 112 I. C. C. 313.

(g) Combination rates and demurrage charges assessed on shipments of lumber originally moving from Eutaw, Ala., to Louisville and Cincinnati, shipment to latter point being reconsigned to Latty, Ohio, and all subsequently reconsigned to Nicetown Station, Philadelphia, found inapplicable. Carriers contended that cars were accepted at Louisville and Latty only as new shipments

subject to local rates to and from those points upon theory that shipments could not have been reconsigned because of a tariff rule which prohibited reconsignment to embargoed points. Such rule, however, placed a limitation only on reconsignments "to a station on point of delivery" against which an embargo has been placed and here no embargo was in effect against points above outlined, including Nicetown Station. Moreover, circumstances under which shipments were handled and reshipped did not change their essential character as through reconsigned shipments and lower joint rates were applicable thereon. See also 51 I. C. C. 174; 92 I. C. C. 469. Reparation awarded. Elledge v. Director General, 113 I. C. C. 704.

(h) Complainant attacked class rates charged on less carload shipments of cheese from Burnett, Random Lake, Mayfield and Hartford, Wis., to Cincinnati, O., between May 25, 1918, and February 28, 1920, as overcharged and unjust and unreasonable. Shipments moved through Milwaukee, Wis. Complainants apparently believe that in the absence of a joint through rate they are entitled to the lowest available combinations. Rates constructed in accordance with the provisions of pages 119 and 120 of Boyds I. C. C. A 813, are clearly constituted the legal through rates between the points in question and it follows that they take precedence over the lower combinations contemporaneously in effect. HELD: Complaint dismissed. Rohan Co. v. Director General, 118 I. C. C. 83.

(i) Complainant attacked commodity rates charged on 12 cars of bituminous coal shipped between September 11 and October 31, 1922, from Herrin, Ill., to Bannister, Ashley, North Star and Ithaca, Mich., as unjust and unreasonable to extent they exceeded $3.30. Shipments originated on the M. P. and were delivered by switch movement to the I. C. at Herrin, routed by shipper I. C., Matteson, Ill., M. C. R. R. Ann Arbor, Mich., and A. A. R. R. or I. C. Matteson M. C. Ann Arbor, no rate being shown in the bill of lading. They moved I. C. to Kensington, Ill., and from there 11 cars moved M. C. to Ann Arbor and 1 car to Owosso, Mich., from both latter points via Ann Arbor R. R. Charged combination rates. There was in effect a rate of $3.30 via I. C. to Harvey, G. T. to Durand, Mich., A. A. beyond subsequently canceled. The evidence bearing on the unreasonableness of the rate attacked is not convincing. The rate of $3.30 was not established by defendants over the route of movement until nearly two years after complainants shipments moved, and was subsequently withdrawn because unremunerative. HELD: Rates attacked with exception of rate of $4.81 to Ashley and one to Ithaca via Owosso were applicable, reparation awarded to basis of applicable rate. Rates attacked not unreasonable. Crerar Clinch Coal Co. v. A. A. R. R., 118 I. C. C. 171.

(j) Shipment of grapes from Portland, N. Y., originally consigned to and accepted by complainant at Memphis, Tenn., was subsequenty reshipped to New Orleans on a separate bill of lading. Upon contention that shipment was entitled to reconsignment privilege at Memphis and that lower joint rate contemporaneously in effect from Portland to New Orleans was applicable, HELD: Original billing called for delivery at Memphis and there being no intention to reconsign the car prior to its arrival at that point, subsequent movement to New Orleans constituted a new contract of carriage. The car was therefore reshipped from Memphis and not reconsigned and combination rate to and from Memphis assessed was applicable. Canale & Co. v. Director General, 115 I. C. C. 415.

(k) Through rates take precedence over lower combinations contemporaneously in effect. Rohan Co. v. Director General, 118 I. C. C. 83, 84.

(l) The lawful rate or fare for through movement is the through rate or fare, wherever such through rate or fare exists, even though some combination makes a lower rate or fare and even though the practice in the past has been to give to some the benefit of such lower combination. Fraser, Jr. v. B. & O. R. R., 120 I. C. C. 675, 676.

(m) Combination rate was assessed on cotton linters moving from Cooper, Tex., to Pittsburgh, Pa., and reconsigned to Newburgh, N. Y. Contemporaneously a lower combination rate via Marion, Ind., was in effect. Upon contention of carriers that as factor to Pittsburgh was a joint rate, under Conference Ruling 220 (g), they could not lawfully protect any lower combination of locals. HELD, had final destination been Pittsburgh, this contention would be sound, but under reconsignment theory this was a through shipment from Cooper to New-

burgh, and since applicable tariff did not require application of the joint rate to reconsignment point plus the rate beyond, and there was no joint rate in effect from Cooper to Newburgh, the lowest combination which made on Marion was applicable. Reparation awarded. Fraser v. B. & O., 120 I. C. C. 675.

(n) Shipment of hay from Manhattan, Kans., to Birmingham, Ala., was upon refusal at that point reconsigned to Jasper, Ala., a point intermediate to Birmingham. Combination rate to Birmingham plus local rate back to Jasper was assessed. Contemporaneously a lower combination rate unrestricted as to routing applied via Memphis to Jasper. HELD: Contention that Memphis rate was applicable through Jasper to Birmingham and back to Jasper is founded upon an unreasonable construction of the tariff. Manifestly a rate from one point to another does not contemplate movement beyond destination and back again. Combination rate based on Birmingham was, therefore, applicable. Arnold & Co. v. S. Ry. 126 I. C. C. 141.

(o) Grain from west-bank Mississippi River points and from Illinois, mixed into feed at Chicago, and product forwarded to c. f. a. destinations was assessed grain rates to Chicago and proportional or reshipping grain-products rates beyond. Tariff provided that when shipment originated at point from which no joint through rate to final destination applied via the transit point, rates would be the reshipping or proportional rates, except when commodity consisted of grain, in which event rate on outbound shipment would be that applicable to grain products. Here, through grain-products rates but no through by-products rates were published. HELD: Words "no joint through rate" refer to grain products. If carriers intended that the rule refer to through grain rates, tariff should have been so worded. Accordingly through one-factor rates on grain products from origins to final destinations, in effect when grain originated, were applicable. Refund of overcharges directed. Arcady Farms Milling Co. v. A., C. & Y. 126 I. C. C. 449.

(p) Shipments of grain from west-bank Mississippi River points and from Illinois mixed into feed at Chicago, and product forwarded to c. f. a. destinations, were assessed grain rates to Chicago and proportional or reshipping rates on grain products beyond. Tariff provided that "through rates on commodity forwarded from transit station" will be applied from origin to ultimate destination on shipments originating on specified lines. HELD: Since shipments here involved originated on lines named, the one factor through rates on by-products were applicable. Refund of over-charges directed. Arcady Farms Milling Co. v. A., C. & Y., 126 I. C. C. 449.

(q) Charges on grapes from Reedley, Calif., to Croxton, N. J., reconsigned to Scranton, Pa., assessed on basis of through rate to Croxton plus second-class rate to Scranton FOUND inapplicable. The through rate applied both to Scranton and Croxton and governing tariff provided that to points on directe route reconsignment would be made at through rate plus reconsignment charge except on shipments, involving a back haul, in which event charges would be computed on a mileage basis, plus reconsignment charge, for back hauls not exceeding 300 miles. Here movement involved a back haul exceeding 300 miles and class rate was assessed. However, as the through rate was unrestricted as to routing and shipments could have moved via a route involving a back haul less than 300 miles, charges based on mileage over the shorter route should have been asssessed. Reparation awarded. California Table Fruit Co. v. A., T. & S. F. Ry. 126 I. C. C. 700.

(r) Joint rates were assessed on cedar posts and poles under tariff naming rates on "fence posts, piles and telegraph and telephone poles." Upon contention that as a subsequent amendment to tariff made joint rates specifically applicable on cedar posts and poles and used symbols which indicated that addition of cedar posts and poles resulted in reductions. the rates assessed were inapplicable, HELD: Rates assailed were applicable on fence posts, piles, and telegraph and telephone poles without restriction as to kind of wood and as there is no showing that shipments did not consist of those articles, rates were therefore applicable on cedar posts, piles, telephone and telegraph poles. Nebraska Bridge Supply & Lbr. Co., v. A. G. S., 128 I. C. C. 94.

(s) Complainant alleged commodity rates charged on anthracite and bituminous coal, carloads, from Illinois, Indiana. Pennsylvania, and West Virginia to Mayfair and Peterson Ave., in the Chicago switching district on shipments

made Jan. 15 to July 30, 1924, were unreasonable and unduly prejudicial. Shipments were delivered on the C. & N. W. a little over 0.5 mile north of Mayfair and about 1.5 miles south of Peterson Ave. Rates charged and legally applicable were the same as the rates to Peterson Ave., and exceeded the rates to Chicago by 38c per ton on anthracite and 13c per ton on bituminous coal. The flat Chicago rate applied at Mayfair. In Chicago Coal Merchants Asso. v. Director General, 73 I. C. C. 161; 89 I. C. C. 137 and 123 I. C. C. 169, the rates attacked were found not unreasonable. HELD, complaint dismissed. Chicago Coal Merchants Asso. v. C. & N. W. Ry., 128 I. C. C. 519.

(t) Apples from Wenatchee, Wash., to New York, ordered diverted in transit to Philadelphia, moved to Jersey City, where diversion was effected. Joint commodity rate to Jersey City and local rate beyond was assessed. Complainant contended that joint rate applied from origin to final destination, but carriers insisted that under governing tariff the through rate could not be protected unless diversion was made at a point on direct line. FOUND: Tariff provision would not have prevented routing shipment through Jersey City if it had been originally consigned to Philadelphia and within meaning of tariff movement from Jersey City to Philadelphia is not out of route. Moreover, in 96 I. C. C. 229, on a shipment from Pacific Coast billed to New York and reconsigned at Croxton, N. J., to Philadelphia, the through rate was held applicable. Had carriers here desired to restrict application of through rate they should have done so in clear and unequivocal language. See 47 I. C. C. 59, 61. Refund of overcharges directed. Northwestern Fruit Exchange v. G. N., 128 I. C. C. 538.

(u) If no specific rate from point of origin to destination of a through shipment is provided, and no specific manner of constructing combination rate for it is prescribed, the lowest combination of rates applicable via the route over which the shipment moves is the lawful rate for that shipment. National Tube Co., v. A. T. & S. F. Ry., 129 I. C. C. 693, 694.

(v) Complainant alleged that rates charged on six cars of wooden poles which moved during May, June and October, 1922, from points in Washington to California were inapplicable. Three of the shipments moved from Machias Wash., to Fresno, Calif., over N. P. to Portland and S. P. beyond; one from Everett originally billed to Viaslia, Calif., was diverted at Fresno to Delano, Calif., moved G. N. to Portland and S. P., beyond; one from Everett to Friant, Calif., via Portland; remaining shipment from Bucoda, Wash., to Fresno over O. W. R. R. & N., to Portland S. P., beyond. Prior to Oct., 9, 1922 and during the time that all of the shipments moved except the one from Everett to Friant, S. P., I. C. C. 4165 provided that the rates from Seattle and Bucoda to the destinations involved should be arrived at by adding 7c to the rate from Portland to these destinations and expressly excepted this factor, from the application of the combination rule. The rates to the destinations named were made up of factors from Everett or Machias to Seattle plus the factors to and beyond Portland; except that from Bucoda, which is situated between Seattle and Portland, the sum of the factor rates to and beyond Portland made the through rate. All tariffs naming these factors provided reference to the combination rule. The Seattle-Portland factor although described as a proportional rate was nevertheless an arbitrary, because it did not apply as an independent rate factor from Seattle to Portland on traffic destined beyond Portland. The incorrect description used did not change the character of the rate. HELD, rates assailed applicable except an admitted overcharge on a car from Machias to Fresno which should be refunded, complaint dismissed. National Pole Co., v. G. N. Ry., 129 I. C. C. 697.

(w) Complainant alleged that the rate and reconsignment charge on one car of peaches from North Mountain, W. Va., to Toledo, O., were unreasonable, unduly prejudicial, and unjustly discriminatory and inapplicable. Shipment was billed to consignor at Cincinnati, O., on Sept., 4, 1924; the following day it reconsigned the shipment, unrouted, to Joseph Flaherty Co., at Pittsburgh. Defendant, B. & O., diverted the shipment at Cumberland, Md., and routed it over its line to Everson, Pa., and Pennsylvania beyond, which route to Pittsburgh was accorded the lowest rate. Charged 66.5c to Pittsburgh and 66c beyond. There was in effect at time of movement, a joint through rate of 89c

from North Mountain to Toledo. The 89c rate was restricted to apply over the B. & O., to Allegheny, Pa., and Pennsylvania beyond, it did not apply over the route traversed. The record does not indicate that, at the time the shipment moved, the defendants knew that Pittsburgh was not to be the ultimate destination. The prayer for the establishment of a joint rate over the route of movement is not supported by evidence tending to show that it is necessary or desirable in the public interest to open up this additional route to through traffic. HELD, rate attacked applicable, not unreasonable, but for the future will be unreasonable to provide for reconsignment charge at Pittsburgh on the Pittsburgh combination. Purse Bros. v. B. & O. R. R., 129 I. C. C. 727.

(x) Complainant alleged rate charged on one car of tractors shipped June 29, 1923 from Peoria, Ill., to Vernon, Tex., was unreasonable and unlawful. Shipment was routed by complainant "C., R. I. & P., K. C. M. & O., M. K. & T., Ft. W. & D. C., stopover at Nacona, Tex., to partly unload." Defendants stated that the shipment moved as directed, over a route through Wichita, Kas., and Altus, Okla., thence to Nacona and back to Wichita Falls, Texas, over the M. K. T. lines, and to Vernon over Ft. W. & D. C. Charges applicable were $441.60 based on a rate of $1.45 with the deduction of a differential of $7.50 because of movement over the K. C. M. & O., and addition of stopover charge of $6.30. Movement through Nacona necessitated an out of line haul and prevented the application of the through rate. HELD, shipment overcharged $75.10, defendants to refund, complaint dismissed. Holt Co., of Texas v. C. R. I. & P. Ry., 132 I. C. C. 329.

(y) The lawful rate or fare for through movement is the through rate or fare wherever such through rate or fare exists even though some combination makes a lower rate or fare and even though the practice in the past has been to give to some the benefit of such lower combination. Fruen Grain Co., v. L. C. & S. E. Ry., 132 I. C. C. 747, 748.

(z) One factor of combination rate on a mixed carload of sawmill machinery and a power boiler, shipped in a car 41 feet 4 inches in length, was published as $61 per car as per classification." Governing classification rated both sawmill machinery and power boilers sixth class, minimum 24,000 pounds, subject to rule 34. Exceptions to classification, however, provided class N rating to apply on "Boilers, steam power * * * in straight or mixed carloads, with machinery and machines, per car 20,000, excess in proportion," for cars 36 feet 6 inches, or under, larger cars being subject to rule 34. Complainant's contention that the rate of $61 is applicable to 20,000-pound units of freight with any fractional excess in proportion, sustained, and charges collected found inapplicable to extent they exceeded charges computed by multiplying the rate per car by the weight of shipment and dividing by 20,000 units. Reparation awarded. West Florida Lbr. Co. v. G. F. & A., 129 I. C. C. 62.

(aa) One factor of combination rate on a carload fo sawmill machinery, shipped in a car 41 feet 4 inches in length, was published as "$61 per car as per classification" Governing classification rated sawmill machinery sixth class, minimum 24,000 pounds, subject to rule 34, and exceptions thereto provided class N rating on "Machines and machinery, c. l., * * * minimum weight 20,000 pounds," for cars 36 feet 6 inches, or under, larger cars being subject to rule 34. Upon contention by carriers that under rule 34 the rate of $61 should be regarded as applicable to a unit of 23,400, the minimum weight for a car of size used, and that excess above such weight should be computed proportionately. HELD: The portion of rule 34 on which carriers rely ordinarily situation where rates are applicable to suecified units of weight, but has no reasonable application where, as here, the rate stated as a flat charge per carload, and charges collected were inapplicable. Reparation awarded. West Florida Lbr. Co. v. G., F. & A., 129 I. C. C. 62.

VI. RIGHT TO WITHDRAW OR MODIFY.

§24. In General.

See Infra §26; Supra §9, §14; Advanced Rates §5 (2½) (q); Canada (qq); Commodity Rates §1 (f), §2 (f), §5 (e) (f) (j) (4g); Restricted Rates; Water Carriers IV.

(a) Coal: Proposed cancellation of

proportional rates on anthracite coal from Erie, Pa., and Brocton, Buffalo, and Buffalo Junction, N. Y., to Sparland, Ill., thereby making applicable higher combination rates based on Chicago through increase of factor beyond these junction points, found justified on ground that such higher rates will compare favorably with rates on like traffic from and to other points for comparable distances. Coal from Erie to Sparland, 104 I. C. C. 188.

(b) Proposal to reduce rates on grain, seed, and products from points in Colorado, Wyoming, Kansas, Arkansas, Oklahoma, and Missouri to points in Louisiana west of Mississippi River, found justified. Proposed reductions will, among other things, remove many violations of aggregate-of-intermediates provision of section 4 of the act in so far as local rates from Kansas City and rates from country points beyond are concerned. Grain and Products from Western States, 104 I. C. C. 272, 275.

(c) Proposed withdrawal of Wabash from participation in joint rates on grain products from Chicago to destinations in Arkansas on the Missouri Pacific, resulting in application of higher combinations, found not justified. To urge that combinations are general basis for constructing rates from points on Wabash to this destination territory is not sufficient to justify increases, and is contrary to commission's view that through rate should be somewhat less than the sum of rates to and from an intermediate point. Moreover, the Wabash is at no disadvantage by reason of circuity of route and no evidence has been submitted tending to indicate that these joint rates are depressed. Grain Products to Arkansas Points, 104 I. C. C. 742.

(d) Proposed cancellation of joint rates on grain and products from points on Los Angeles & Salt Lake to destinations in Louisiana, Oklahoma, and Texas, resulting in application of higher combinations found not justified. While proposed rates would remove certain departures from long-and-short-haul provision of section 4 of the act, new departures would be created, and purpose intended would not be accomplished. Grain to Louisiana, Oklahoma, and Texas, 104 I. C. C. 753.

(e) Proposed withdrawal of Pennsylvania R. R. from participation in joint rates on grain and products from Omaha, and South Omaha, Nebr., and Council Bluffs, Iowa, to New Orleans, which had its origin in a dispute over divisions, found justified. The routes in which this carrier participates result in wasteful transportation and unwarranted loss in revenue to carriers owing to their circuity. Grain and Products to Mississippi Valley, 107 I. C. C. 167.

(f) Proposal of Seaboard Air Line Ry. to cancel its participation in a joint rate in connection with the Southern Ry. on common brick from Van Wyck, S. C., to Charlotte, N. C., in view of its own single-line route carrying same rate between same points, found justified. Over the joint route, 38 miles, the Seaboard received but a 4-mile haul, whereas over its own route, 46 miles, it receives the entire haul. The single-line route is not unduly long, the rate over that route was prescribed by commission on common brick for distance thereover, and record of past routing by protestant does not argue for the maintenance of joint route as a real necessity. Moreover, the inhibition of section 15 of the act against short hauling a carrier in a through route clearly relieves the Seaboard of obligation to participate in joint route. Routing Brick and Clay Products, 112 I. C. C. 252.

(g) Proposal to readjust rates on grain and products from points in Utah and Idaho to destinations in the Southwest and Alabama and Mississippi, and to cancel application of such rates over routes through Texas, designed for supposed purpose of removing departures from long-and-short-haul provision of section 4 of the act, found not justified. There is in issue in a pending proceeding the reasonableness of rates to this destination territory as well as to points in Texas, where rates are now higher than to more distant Louisiana points, and cancellation of joint rates over Texas routes, which are generally shorter than through states north thereof, would result in substantial rate increases which would seriously affect the ability of Texas mills to handle Idaho wheat. Grain and Products from Western Points, 112 I. C. C. 283.

(h) While the commission is not prepared to say how many transcontinental routes should be maintained at the direct-line rate, it is evident that reasonable restrictions on routing are desirable

in the interest of efficient operation. Revenues in Western District, 113 I. C. C. 3, 21.

(i) Respondents propose to cancel the existing joint proportional rates on grain and grain products, carloads, from Omaha and South Omaha, Neb., Des Moines and Council Bluffs, Ia., and Kansas City, Mo., to destinations on that portion of the Frisco in Arkansas extending from Nettleton to Victoria and formerly operated by the J. L. C. & E. For sometime past the Cotton Belt has participated in rates from Des Moines and Missouri river points to stations on its line in Arkansas applicable over the Cotton Belt beyond East St. Louis or Gale, Ill., which are lower than the combinations of rates made on East St. Louis. Joint proportional rates lower than the East St. Louis combination rates were also in effect from the same shipping points to destinations on the J. L. C. & E., with routing over the Wabash to East St. Louis, Cotton Belt to Jonesboro, Ark., J. L. C. & E. beyond When this arrangement was entered into the J. L. C. & E. was an independent line. On November 9, 1925, it was absorbed by the Frisco. It has not been the practice of the Frisco to participate in rates from Des Moines and the Missouri river points to stations on its line in Arkansas via St. Louis or East St. Louis on a basis lower than the combinations of rates made on those river crossings. Its purpose is to place the rates on grain and grain products to stations on what was formerly the J. L C. & E. on the same rate basis it maintains to nearby stations on its line, and to confine the routing of those commodities to the Kansas City gateway and its own line. This would have the effect of giving the Frisco the entire haul beyond Kansas City as compared with the short haul which it now receives beyond Jonesboro on shipments routed via East St Louis. Provision would be made for routing via St. Louis and the Frisco, thereby giving that carrier the entire haul beyond St. Louis, but the record indicates that the Frisco desires to eliminate routing via the Mississippi river crossings, except on basis of combination rates. HELD: Proposed schedules not justified without prejudice to a proposal to cancel these routes if the Frisco will substitute itself for the Cotton Belt as the carrier south of St. Louis. Grain and Grain Products to Arkansas, 115 I. C. C. 457.

(j) Respondents proposed to cancel joint rates on grain and grain products, carloads, between points on the Spearman branch of the P. & S. F. and points in Kansas and Missouri on lines other than the Santa Fe and to apply in lieu thereof combination rates. The Spearman branch extends westward from Shattuck, Okla., to Spearman, Tex., a distance of 84 miles. Prior to December 12, 1925, joint rates were not maintained between points on this branch and points in Kansas and Missouri, excepting in those states on the Santa Fe. HELD: Proposed rates not justified. Grain and grain products, 115 I. C. C. 615.

(k) Proposed elimination of Salt Lake & Utah R. R., an electric line, as an intermediate carrier in routing of eastbound and westbound transcontinental traffic, found justified and not unreasonable or otherwise unlawful. Such route is artificial, can draw traffic only through the most vigorous and expensive solicitation methods, and no advantage to anyone other than intermediate line would result. On the other hand, such participation is a positive disadvantage to other carriers and transcontinental shippers, and results in needless delays and considerable added expense of operation. While such intermediate line is in a weak financial condition public interest will not be served by solving its financial problems at sacrifice of efficiency and economy of operation. Restrictions in routing over S. L. & U., 115 I. C. C. 357.

(l) Proposal of L. & N. R. R. to restrict application over its own line of joint rates on slag from Birmingham, Ala., group points to Jacksonville, Fla., for local delivery and for beyond, found not justified. Restriction is proposed because the L. & N. has been unable to arrange satisfactory divisions with Atlantic Coast Line which handles the traffic beyond Montgomery, Ala. While proposed restriction would merely make joint rates inapplicable, the record does not show what rates would apply or whether those rates would be reasonable. Slag from Birmingham, 115 I. C. C. 587.

(m) Proposal to cancel joint rates on grain and products between points on the Spearman branch of the Panhandle & Santa Fe Ry., and points in Kansas and Missouri on lines other than the A.,

T. & S. F., and apply combinations in lieu thereof, found not justified. Carriers contend that these joint rates were erroneously established in complying with commission's order in 101 I. C. C. 116, that joint rates from the branch-line points are considerably lower than from main-line points and thus contrary to all theories of rate making, and that it has not been the practice of the Panhandle to publish joint rates between points on its lines and lines other than the Santa Fe for reasons that demand for commodities consumed along the Panhandle can well be supplied from Santa Fe origins. Contention raised can not be sustained and last-named reason advanced in justification of proposed schedules does not establish their reasonableness. Grain and Products, 115 I. C. C. 615.

(n) Complainant attacked charges on one car of farm wagons shipped on July 10, 1924 from Fort Smith, Ark., to Fredericksburg, Tex., as unreasonable to extent they exceeded $1.05, minimum 24,000 pounds. Charged combination made up of $1.05 to Fredericksburg Jct, plus local class A rate of 25 cents beyond. At the time of movement the $1.05 rate applied over a number of routes, but by an exception it did not apply to destinations on the F. & N., in connection with the Frisco. This exception became effective on Oct. 1, 1921. For a great many years prior thereto the Frisco had participated with the F. & N. and other lines in the joint rate. The record does not disclose the reason for its withdrawal from such participation, and defendants made no effort to justify the reasonableness of the higher $1.30 rate resulting therefrom. HELD, rate attacked unreasonable to extent it exceeded $1.05, reparation awarded. Deere Plow Co. v. St. L. & S. F. Ry., 120 I. C. C. 67.

(o) Respondents proposed changes which would result in increases and reductions in the rates on cement, in carloads, between points in Oklahoma and Texas and between points in Texas over interstate routes, and the cancellation of routes through Texas on shipments from Oklahoma to destinations in Arkansas, Louisiana and Mississippi. Rates were established to comply with the order in 113 I. C. C. 536. HELD, schedules not justified. Cement between Oklahoma and Texas, 120 I. C. C. 177.

(p) Respondents proposed to allow the present joint commodity rate of 25.5 cents on spelter, carloads, from Blackwell, Okla., to Greencastle, Ind., to expire, thus making applicable in lieu thereof a higher combination of intermediate rates. For many years the basis of rates on spelter, in carloads, from southwestern smelters to points east of the Illinois-Indiana state line was the aggregate of intermediate rates based on East St. Louis, Ill., the combination from Blackwell to Greencastle at the present time being 34 cents, made up 19 cents to East St. Louis and 15 cents beyond. The joint rate in effect to Greencastle of 25.5 cents is the same as that in effect to Chicago, Ill., and Hammond, Ind. This tariff was subject to rule 77. Under authority of this rule the Hammond rate was established on short notice to Greencastle, located on the Pennsylvania, intermediate to Hammond, and became effective Aug. 1, 1926. This rate is restricted to apply over the Frisco and Pennsylvania via East St. Louis, and was published to expire Aug. 31, 1926. Effective Sept. 1, 1926 the routing to Chicago and Hammond in connection with the Frisco was restricted to routes other than that through Greencastle. HELD, schedules justified. Spelter from Blackwell, 120 I. C. C. 576.

(q) Proposed increased rates and routing restrictions on potatoes and cabbage from points in Virginia on the Norfolk Southern to destinations in c. f. a. territory, for avowed purpose of correcting existing violations of long-and-short-haul provision of section 4 of the act, by which rates from points here involved are lower than rates in effect from Norfolk, found not justified. While comparison with rates in effect between various points for comparable distances indicate that proposed rates, in numerous instances, are reasonable, their establishment, without corresponding advances from competing points in North Carolina, would result in undue prejudice and leave uncorrected many fourth-section violations in addition to creating new ones at points where no such violations now exist. Vegetables from Virginia, 120 I. C. C. 319.

(r) In 115 I. C. C. 357, division 3 found that the proposed elimination of the Salt Lake & Utah as an intermediate participating carrier in the routing of westbound transcontinental traffic was justified and that the refusal of defendants to include that line as an intermediate participating carrier in routing

of eastbound transcontinental traffic was not unreasonable or otherwise unlawful. Rates to and from points on protestant's line are not in issue. The record indicates that protestant has a complete line of joint rates to and from these points and that no increase in the rates would result from protestant's exclusion from the transcontinental routes. The record is clear that the inclusion of protestant's line in the transcontinental routes can benefit no one except protestant and can add nothing to transportation facilities. It will result, further, to inefficient and uneconomical operation, upon which the Commission is unwilling to place its stamp of approval. HELD, previous finding affirmed. Restrictions in routing over S. L. & U. R. R., 122 I. C. C. 208.

(s) Northern Pacific, respondent, and its connections proposed to revise the rates on grain and grain products, carloads, from 46 points on respondents line in western North Dakota to St. Louis, Mo., and Chicago, Ill., and points taking same rates. The suspended schedules in most instances would increase the joint commodity rates, or cancel the joint commodity rates leaving higher combination rates to apply, but in a few instances would effect reductions either by establishing joint commodity rates lower than existing combinations, or by the cancellation of joint commodity rates, leaving lower combinations applicable. Respondent contends that the proper basis of making rates from these points of origin is to extend the rate applying from Yates to St. Louis into North Dakota until the point is reached where the combination basing on Minnesota Transfer makes less than the rate from Yates to St. Louis, the burden of justifying the proposed increased rates whether made upon this or any other basis rests upon respondent. This it has not borne. HELD, except for the proposed revision in the rates on flax seed from stations Geneva to Mandan, to St. Louis and from Glenullen to Gladstone, to Chicago, and on wheat, alfalfa meal and corn from Beach to Chicago, schedules not justified. Grain and grain products from North Dakota, 123 I. C. C. 49.

(t) Proposed readjustment in rates on grain and products from certain stations on the Northern Pacific in North Dakota to St. Louis and Chicago and points taking same rates, found not justified, except that no occasion is found to change proposal to cancel rates on flaxseed from stations Geneva to Mandan, N. Dak., inclusive, to St. Louis, and from stations Glenullen to Gladstone, N. Dak., to Chicago, leaving in effect the existing Minnesota Transfer combination rates, and to cancel rates on wheat, alfalfa, and corn from Beach, N. Dak., leaving in effect combinations the same in amount as present joint rates. Grain and Products from North Dakota, 123 I. C. C. 49.

(u) Proposed cancellation of rates on fish bait, leaving in effect higher rates on fresh and frozen fish from Boston to New York, found justified. Carriers showed that vessels engaged in fishing industry do not operate from New York, that the rate is now obsolete, and that large and regular shipments of high-class food fish were being made at the bait rate and that they are unable to adequately police the shipments. Harlem & Morrisiana Transp. Line v. N. Y., N. H. & H., 123 I. C. C. 480.

(v) Respondents proposed to cancel the existing joint rates on grain and related commodities from points on the M. P. and certain of its connections in Colorado, Kansas, Nebraska, Iowa, and Missouri to stations on the J. L. C. & E., now a part of the Frisco. From Kansas City to the destinations here considered proportional rates now apply also over the line of the Frisco, which has its own rails between these points, and from Missouri river cities such as Omaha joint proportional rates are likewise maintained in connection with this carrier and the M. P. These various rates are the same as or less than the joint rates from the same points sought to be canceled, and the proposed schedules would result merely in closing the existing routes which deprive the Frisco of the long haul. The Frisco seeks to place the rates to destinations on the J. L. C. & E. on the same rate basis as it maintains to nearby stations on its own line. It also seeks, on traffic from the Missouri river gateways to these destinations, to confine the routing to the Kansas City gateway and its own line, which would give it the entire haul beyond Kansas City. HELD, suspended schedules not justified. Grain and Grain Products, 126 I. C. C. 536.

(w) Proposed cancellation of joint rates on grain and related commodities from points on Missouri Pacific R. R., and certain of its connections to various destinations in Arkansas on the Jonesboro, Lake City & Eastern, now a part of the St. Louis-San Francisco, FOUND

not justified. While proposed cancellation would close existing routes which now deprive the Frisco of the long haul and place rates to destinations on the J., L. C. & E. on same rate basis as now maintains to stations on the Frisco, higher combinations from most points would result. Since protestant's mills and elevators are located on the M. P. R. R., and transit is authorized at points on its lines, protestant is desirous of maintaining present joint rates. Moreover, similar situations were considered in 113 I. C. C. 209; 115 I. C. C. 457, and if general principles which governed disposition of those cases are followed here, suspended schedules may not be approved. Grain and Products, 126 I. C. C. 536.

(x) Complainant attacked rates charged on strawberries, carloads, from Tennessee origins to C. F. A. territory shipped during 1923 and 1924 as unreasonable. unjustly discriminatory, and unduly prejudicial as compared with the rates from Huntsville and Chase, Ala., to Detriot and Grand Rapids, Mich., and in violation of the fourth section. Points of origin, with one or two exceptions, are on the C. N. O. & T. P., between Harriman and Chattanooga. Shipments moved C. N. O. & T. P. to Cincinnati, O., and either B. & O., to Toledo, O., and M. C. beyond, or C. N. from Cincinnati to Jackson, Mich., and M. C. beyond. The special service rates apply on shipments handled in a special train scheduled to leave Chattanooga at 6 P. M. and arrive at Cincinnati at noon the following day. It was requested on 90% of the 1925 movement. The use of special service is optional with the shipper, and it is not shown that defendants regular service is any different from that of other lines. The record is insufficient to determine whether or not the rates for special service are unreasonable. From Huntsville and Chase the joint rates on berries nos are 96c to Detroit and 97c to Grand Rapids. From the same points a joint rate of 81c applies on peaches in carloads. The average distances are to Detroit and Grand Rapids, 670.5 and 679.5 miles, respectively. The points of origin here considered are directly intermediate to Chase and Huntsville. Battle Creek and Kalamazoo are intermediate to Detroit and Grand Rapids via some of the available routes. Respondents, Southern Ry., proposed to increase the rates on strawberries in carloads, from Alabama and Tennessee to destinations in central territory. At the present time the Southern tariff names joint through rates on strawberries from Chase and Huntsville to points in central territory, from other points in Alabama and from Tennessee points, there are through rates based on the local rates to the Ohio river crossings, plus proportional rates beyond. It is now proposed to cancel the existing joint through rates and to restrict the application of the proportional rates from Ohio river crossings to central territory points, to traffic originating at points other than in Alabama and Tennessee, and in lieu thereof establish through rates based on the local rates to the river crossings plus third class rates beyond. Strawberries in crates, are rated first class in the official and southern classification. The exceptions to the classification applicable in central territory provide a third class rating on shipments originating in the south. Considering the light loading and perishable nature of strawberry traffic the rates proposed do not appear unreasonable. Furthermore they will correct any fourth section departures that may exist. HELD, rates attacked not unreasonable, proposed schedules justified. Complaint dismissed. Lewis Co.. v. C. N. O. & T. P. R. R.. 128 I. C. C. 3.

(y) Proposed increased rates on strawberries, from points in Tennessee and Alabama to destinations in c. f. a. territory, found justified. Carriers propose to cancel existing joint through rates from Alabama points; to restrict application of proportional rates from Ohio River crossings to traffic originating at points other than in Alabama and Tennessee, and in lieu thereof to establish through rates based on local rates to river crossings plus third-class rates beyond. Principal movement is from points intermediate to Knoxville and Cleveland, Tenn., from which rates are higher than from Knoxville and Cleveland. However, proposed rates apparently are satisfactory to latter points and compare favorably with those for corresponding distances in the same and other territories and with those prescribed in 100 I. C. C. 513 and other cited cases. Moreover, considering the light loading and perishable nature of strawberries, proposed rates do not appear unreasonable and will correct any fourth-section departures that may exist. Lewis Co. v. C., N. O. & T. P., 128 I. C. C. 3, 6, 8.

(z) Proposed cancellation of commo

ity rates on dolomite and fluxing stone in box cars between specified points in c. f. a. territory, and restriction thereof to shipments in open-top cars, on ground that shipments in box cars should take higher rates because of nature of equipment and lighter loading, found not justified. Dolomite is crushed limestone and falls within description of "agricultural limestone." Carrier participates in Indiana intrastate rate applicable on both agricultural limestone and dolomite; rates on agricultural limestone were prescribed in 112 I. C. C. 7, from various points to c. f. a. territory equal to present rate on that commodity between points involved; and record is persuasive that latter rate will be reasonable for application on commodities in box cars here involved. Dolomite and Fluxing Stone, 128 I. C. C. 23.

(aa) Proposal to cancel rates on soda ash, caustic soda, and crude bicarbonate of soda from Cartago, Skinner, and Koeler, Calif., to destinations in trans-continental groups F, G, H, and J, and to restrict routing to destinations in Texas in groups F and H to specific lines, found not justified. Present tariff names varying rates on soda ash depending on minimum weight and proposed cancellation would leave in effect higher rates, applicable on lower minima. Present rate allows protestant to compete with Michigan and Virginia shippers; compares favorably with rates from St. Louis and Chicago to California points and with those on other heavy-loading commodities to and from points involved; moreover, earnings thereunder appear amply remunerative, although respondents' reasons for publishing the protested schedules are explained, they fail to justify the higher rates and greater earnings which would result thereunder. Soda Ash from California, 128 I. C. C. 45.

(bb) Respondents proposed to cancel certain rates on soda ash, caustic soda, and crude bicarbonate of soda, in carloads and to restrict the routing in connection with others, from Cartago, Skinner and Koeler, Calif., to transcontinental groups F, G, H, and J. Points of origin are on the S. P. between Mojave, Calif., and Mina, Nev. The effect of the cancellation will be to leave applicable the higher rates with lower minimum. The earnings under the 90c rate, which it is here proposed to cancel to a large part of the affected territory, seem to be amply remunerative and although respondents reasons for publishing the protested schedules explain, they do not justify the considerably higher rates and greater earnings which would result if the proposed schedules become effective. HELD, schedules not justified. Soda ash from California, 128 I. C. C. 45.

(cc) Respondents proposed to cancel the joint rates on grain and grain products, in carloads, between Sioux City, Ia., and points taking same rates and stations in Kansas, Oklahoma and Colorado, on the Santa Fe, leaving existing higher combination rates in effect generally. Points taking Sioux City rates are in Nebraska and Iowa intermediate to Sioux City. The tariff item which respondents proposed to cancel provides for the construction of joint rates, except rates over the Omaha on northbound grain and southbound grain and grain products, made up of published arbitraries of 13.5c on wheat and articles taking same rates, and 12.5c on corn and articles taking same rates, added to the Kansas City rate. These joint rates have been in effect on northbound traffic since 1912 without substantial charges other than those which occurred under the general increases and decrease. In 1923 they were made applicable on southbound traffic. HELD, proposed schedules not justified. Grain between Sioux City group and Kansas, 128 I. C. C. 434.

(dd) Respondents proposed to cancel certain joint commodity rates on petroleum and its products, in carloads, from Vicksburg and Natchez, Miss., New Orleans, La., and points grouped therewith, including producing points in Arkansas and Texas, to destinations in Ontario and Quebec, Canada taking Buffalo and Boston, Mass., rate bases, respectively. The suspended schedules, if allowed to become effective, would leave in effect to the Canadian destinations higher combination rates based on the Mississippi or Ohio river crossings, or on Chicago, Ill. The lawfulness of rates or charges for that part of the transportation which takes place within the United States has not been put in issue, or dealt with on the record. HELD, schedules justified. Petroleum Mississippi Valley to Canada, 128 I. C. C. 545.

(ee) Proposed cancellation of joint commodity rates on petroleum and its products from Vicksburg and Natchez, Miss., New Orleans, La., and points grouped therewith, to destinations in the Provinces of Ontario and Quebec, Can-

ada, leaving in effect higher combination rates, found not in violation of interstate commerce act. As proposed cancellation was prompted by desire of Canadian lines to withdraw from participation in joint rates and provisions of section 1 of the act apply to common carriers only in so far as transportation takes place within the United States, commission has no authority to prevent Canadian lines from withdrawing their participation in joint rates, or to prevent their cancellation upon such withdrawal. See 115 I. C. C. 609. Petroleum and Products to Canadian Points, 128 I. C. C. 545.

(ff) Respondents proposed the elimination of routes via Montgomery, Ala., in connection with joint rates on cotton originating at points in Alabama and Mississippi on the Southern, Northern Alabama, A. & N. W., S. & C., and M. C., to Carolina destinations and south Atlantic ports. At the present time the rates on cotton from points on the Southern and its connections west of the main line of the L. & N. extending from Decatur, Ala., to Mobile, Ala., to the destinations here considered are not restricted and such cotton may move in connection with carriers operating through Montgomery, thereby depriving the Southern of its long haul on such traffic. The routes of the Southern from and to the points here considered are reasonably direct. In the schedules under suspension it is proposed to restrict the routes so that the Southern should not be required to surrender such traffic to its competitors at short haul junction points. In other words, the Southern proposed to conserve the long haul on traffic it originates or receives from its connections. Respondents have also undertaken to restrict the application of through rates on cotton from Miss. Cent. stations to Carolina destinations so that they will apply only in connection with the Southern beyond Hattiesburg, Miss., its junction point with that carrier. The record shows that the short line distances from M. C. stations to the Carolinas are over the proposed routes. At the present time the tariffs publishing the rates from these stations are unrestricted as to routing and the rates are applicable via numerous routes. The haul of the M. C. would be the same whether the traffic moved via the Montgomery or the Birmingham gateway. Over the latter route, however, the service is more expeditious and the record shows that during the two years prior to the hearing no cotton moved from M. C. stations to the Carolinas via Montgomery, the traffic having moved in connection with the Southern through Birmingham. Respondents have co-ordinated their schedules in such a manner as to give expedited service in the movement of cotton from M. C. stations to the Carolinas, and as these carriers form the short line routes the proposed elimination of the routes via Montgomery do not appear unreasonable. It is not shown or intimated that the elimination of the routes via Montgomery will retard the movement of cotton from and to the point considered or that shippers will be subjected to increased rates as the rates now applicable via Montgomery also apply over the routes to which the traffic is proposed to be confined. It appears that there are practical through routes in connection with respondents lines and there is no showing that the public interest will suffer as a result of the proposed schedules. HELD, proposed schedules justified. Routing on cotton, 129 I. C. C. 387.

(gg) Respondents proposed to cancel the route maintained over the C. & E. I., respondent, in connection with joint rates on lumber and forest products, in carloads, from points in the Mississippi valley to East St. Louis, Ill., and St. Louis, Mo. Traffic from the Mississippi valley to St. Louis and East St. Louis moving in connection with respondents line is generally delivered to it by the Frisco at Chaffee, Mo., or by the M. & O. at Tamms, Ill. The distances from Chaffee and Tamms over respondents line through Findlay, Ill., to East St. Louis are 310 and 279 miles. The distances to East St. Louis from Chaffee over the Frisco and from Tamms over the M. & O. are 147 and 132 miles. The distance over respondents line from Thebes, Ill., its gateway to and from the south, to East St. Louis is 294 miles as compared with 126 miles over the direct route of the M. P. HELD, suspended schedules justified. Restriction in routing lumber, 129 I. C. C. 561.

(hh) Proposed cancellation of commodity rates and application of fifth-class rates on soap and related articles between points in western trunk line and Illinois classification territories, found justified except to extent that class rates resulting therefrom exceed 35 per cent of present first-class rates prescribed in Consolidated Southwestern Cases, 123 I C. C. 203. Present com-

modity rates are low as compared with those under southwestern soap scale as well as with various other rates introduced for comparison, while soap generally moves at fifth-class rates in official and western trunk-line territories and therefore rates proposed will tend to establish uniformity of soap rates in those territories. Soap and Soap Powder, 129 I. C. C. 392.

(ii) Proposed cancellation of circuitous route over Chicago & Eastern Illinois in connection with joint rates on lumber and forest products from points in Mississippi Valley to East St. Louis, Ill., and St. Louis, Mo., found justified. Maintenance of routes does not afford the public any facilities which are not available over several more direct routes and to compel the application of short-line rates over indirect and longer routes merely as a means of providing a channel of doubtful benefit to comparatively few shippers would lay an unnecessary expense upon the railroads against the interest of the public as a whole. See 49 I. C. C. 372. Restriction in Routing Lumber, 129 I. C. C. 561.

(jj) Proposed cancellation of commodity rates on fluxing limestone in box cars between points in eastern trunk-line territory and restriction thereof to shipments in open-top cars, found not justified. While respondents intended ground-limestone rates to become effective on this commodity in box cars by proposed cancellation, sixth-class rates would become applicable thereon. Ground-limestone rates are but 45 per cent of sixth class. Since in 112 I. C. C. 7, rates on fluxing lime were found unreasonable to extent they exceeded 80 per cent of rates on common lime, hydrated, quick or slaked, and in 128 I. C. C. 23, increases to sixth-class rate resulting from porposal to restrict rates on fluxing limestone to shipments in box cars were found not justified, record is persuasive that rates on ground limestone will not be unreasonable for application on fluxing limestone in box cars. Fluxing Limestone, 129 I. C. C. 574.

VII. DUTY TO FURNISH FACILITIES.

See Supra §24; Cars and Car Supply; Facilities and Privileges II.

§26. Restriction Of Routes and Rates.

(a) Tariff provision restricting application of joint rates and providing local or combination rates on iron and steel articles shipped from Pennsylvania and Ohio points, fabricated in transit at Parkersburg, W. Va., and reshipped to Kentucky points and to New Orleans, for export, found unreasonable and unduly prejudicial to extent they exceeded the contemporaneous joint rates plus prevailing transit charges. Transit arrangements on joint rates tend to avoid maladjustments, and connecting lines can not dictate to the road that alone serves the transit point the manner in which joint rates through that point shall be applied in conjunction with the transit arrangements as long as they are not deprived of their long haul, especially where, as here, they perform no greater service on shipments fabricated in transit than they do on shipments not so handled. Reasonable and nonprejudicial rates prescribed and reparation awarded. Parkersburg Rig & Reel Co. v. B. & O., 109 I. C. C. 569.

(b) Proposal to restrict application of rates on lumber between points in Florida including Pensacola, so as to prevent use of such rates in constructing through interstate rates from or to points in that state, designed for purpose of restoring preexisting Jacksonville basis of rates, found not justified. Carriers' contention that Jacksonville combination should be applicable regardless of lower combinations based on Pensacola or other junction points is not sound and would result in unlawful charges to extent that Jacksonville combination would exceed lower aggregate of intermediates over same route. Lumber from or to Florida Points, 112 I. C. C. 133.

(c) While the commission is not prepared to say how many transcontinental routes should be maintained at the direct-line rate, it is evident that reasonable restrictions on routing are desirable in the interest of efficient operation. Revenues in Western District, 113 I. C. C. 3, 21.

(d) Proposed restriction to transcontinental routing of the application of the transcontinental Deming, N. Mex., rates as maxima on grain and related articles from defined territories to all destinations in Texas found not justified. Carriers merely referred to inconsistent routing provisions, their history and re-

sults, and some of the out-of-line hauls which are or may be made under present tariffs, but did not seriously attempt to justify reasonableness of resulting rates. While they should be permitted, even encouraged, to eliminate wasteful transportation, in seeking, as here, to disrupt a rate adjustment of long standing they must show that resulting rates will be reasonable, and will not result in other violations of the act. This burden carriers have failed to sustain. Grain and Related Articles, 113 I. C. C. 195.

(e) Respondents proposed to exclude the Salt Lake & Utah from participation as an intermediate carrier in domestic and export traffic from eastern transcontinental groups to points in inter-mountain and Pacific coast territory. Complainant, Salt Lake & Utah, alleged that the failure and refusal of defendants to list it as a participating carrier in certain eastbound transcontinental tariffs has subjected it to rules, regulations, and practices which have been, and are, unreasonable and unduly prejudicial. Protestant, an electric line, has 78.04 miles of main track and 19.09 miles of side tracks. Its main line extends southwardly from Salt Lake City to Payson, Utah, 66.6 miles, and a branch line extends from Granger, Utah, 6 miles south of Salt Lake City to Magna, Utah, 9 miles. Protestant transports freight, express, mail and passengers between points on its line. At Provo, Utah, it connects with D. & R. G. by means of direct interchange, and with the Salt Lake Route, a unit of the U. P., and Utah Ry. through a switching movement by the D. & R. G. At Salt Lake City it has a direct connection with the movement for protestant's interchange at that point with the D. & R. G. and W. P. Necessarily protestant can participate as an intermediate carrier under the effective tariffs only on traffic moving westward over the D. & R. G. or the U. P. From Salt Lake City to Payson protestant's line parallels both the D. & R. G. and Salt Lake Route, the maximum distance from any point on its line to the nearer of the two steam roads being about 2.5 miles. Between Salt Lake City and Payson there are 10 points on protestant's line spread out fairly evenly, not including Salt Lake City, which are also served by one or the other of the two steam roads, some few of its stations being served by both. The financial status of protestant is but one of the elements of the question before the commission and is not necessarily controlling. Not only is there no advantage to anyone other than protestants by reason of its participation as an intermediate carrier of transcontinental freight, but it sufficiently appears that its participation is, and will continue to be, a positive disadvantage both to respondents and to the transcontinental shippers. It is true that a very few of the shippers along protestant's line might in rare instances be slightly benefited thereby, although the number of such instances has thus far been negligible, but there seems to be no real demand by them for the routes sought; the record is persuasive that the real interest of these shippers lies in protestant's continued existence as an origin and destination carrier, and that the apparent interest of certain other shippers located on other lines has been stimulated by methods of doubtful propriety. It is undisputed that protestant's participation in these routes will result in needless delays and in a considerable added expense of operation. The public interest will not be served by solving protestant's financial problems at the sacrifice of efficiency and economy of operation. HELD: Suspended schedules justified, complaint dismissed. Restrictions in routing over S. L. & U. R. R., 115 I. C. C. 357.

(f) L. & N., respondent, proposed to restrict the application over its line of joint rates on slag, carloads, from Birmingham, Ala., and points in the Birmingham district to Jacksonville, Fla., for local delivery and for beyond. The present rates are $2.03 and $1.91 per ton for local delivery and for beyond, respectively, and apply over all initial lines, including the route over the L. & N. to Montgomery, Ala., and its connections beyond, the Montgomery route. Respondent serves all of the slag producing points in the Birmingham district. Under the proposed schedules these rates would apply on shipments originating on respondent's line when turned over to its connections at Birmingham, but would not apply on such shipments when moved over respondent's line beyond Birmingham. The distance over the Montgomery route in connection with the A. C. L. is 43 miles longer and in connection with the S. A. L. and G. S. & F. is only 20 miles longer than the short line distance over the C. of Ga. to Albany,

Ga., and A. C. L. beyond. As there is no proposal to cancel routing generally, the Montgomery route would still remain open for class and other commodity traffic. So far as appears it would also remain open for the transportation of slag. The proposed restriction would merely make the joint rates inapplicable on shipments so routed, and the record does not show what rates would apply or whether those rates would be reasonable. HELD: Proposed schedules not justified. Slag from Birmingham group points, 115 I. C. C. 587.

(g) If defendants intended to restrict application of the joint rate to any particlar route, and to likewise restrict the reconsignment service in connection therewith, they should have done so in clear and unequivocal language. That there were no established divisions over the route of movement is immaterial. National American Wholesale Lumber Asso. v. A. C. L. R. R., 120 I. C. C. 665, 666.

(h) No joint rates were in effect on lumber from Sulligent, Ala., to Wallins, Evarts, Baxter, Harlan, and Livingston, Ky., and combinations were accordingly assessed. Contemporaneously lower rates applied but were restricted in their application to specified routes. Upon contention that such lower rates were applicable to shipments here involved under an intermediate clause carried in the tariff, HELD: As intermediate rule was specifically restricted to apply via routes over which shipments did not move, they were not entitled to lower rates sought and those charged were applicable. Kentucky Lbr. Co. v. L. & N., 122 I. C. C. 119.

(i) Upon further consideration, finding in former report, 115 I. C. C. 357, that proposed elimination of Salt Lake & Utah R. R., and electric line, as an intermediate participating carrier in the routing of eastbound and westbound transcontinental traffic was not unreasonable or otherwise unlawful, affirmed. The inclusion of the Salt Lake & Utah in transcontinental routes can benefit no one but that line, and can add nothing to transportation facilities. It will result, rather, in inefficient and uneconomical operation, upon which the commission is unwilling to place its stamp of approval. Restrictions in Routing over S. L. & U., 122 I. C. C. 208.

(j) Contention of the Salt Lake & Utah R. R., that the practice of transcontinental lines in permitting certain carriers to short haul them on transcontinental traffic while refusing it the same privilege, subjects it to discrimination under section 3 (3) of the act, not sustained. No showing was made that the circumstances under which these other carriers short haul the transcontinental lines are similar to those existing in connection with the Salt Lake & Utah, or that the latter named carrier is adversely affected by the transcontinental lines' arrangements with these other lines. Moreover, if these arrangements were discontinued protestant would be in no better position than that in which it now finds itself. See 35 I. C. C. 131. Restrictions in Routing over S. L. & U., 122 I. C. C. 208, 210.

(k) Joint rate charged on sweet potatoes from Wybark, Okla., to Hutchinson, Kans., moving via Emporia, Kans., found unreasonable as compared with lower through commodity rate contemporaneously in effect from and to same points but restricted to apply via a longer route through Kansas City, Mo., which lower rate was established via route of movement subsequent to shipment. Reparation awarded. Mid-West Fruit Co. v. A., T. & S. F., 122 I. C. C. 383.

(l) The fact that the shipment traveled a particular route because of a reconsignment order does not deprive the shipper of the benefit of the joint rates. If it was defendants purpose to restrict the application of the joint rate to any particular route, and the reconsigning privileges authorized in connection therewith to any particular point, that should have been done by clear and unequivocal language. Thames v. Southern Ry. Co., 128 I. C. C. 508, 509.

(m) Coal from southern Illinois, Indiana, and Kentucky to points within Chicago switching district were assessed local rates to Chicago plus arbitraries beyond. Contemporaneously lower proportional rates were in effect to Chicago but were restricted to apply only to points beyond the switching district via Chicago and to points on certain lines within the district to which no through rates were published. While complainants contend that rates assessed were not through rates and lower proportionals were applicable, carriers urge that since both locals and arbitraries were concurred in by all participating carriers, they were through as well as joint rates. FOUND: While

doubt as to meaning of tariff provisions is ordinarily construed against the maker, such doubt must be reasonable after consideration of pertinent tariff provisions. Here, it is reasonably apparent that local rates plus arbitraries were through rates within meaning of restrictive tariff provisions and that rates assessed were applicable. Chicago Coal Merchants Asso. v. N. Y. C., 129 I. C. C. 203.

(n) Through rates on coal from Illinois, Indiana, and Kentucky to points within Chicago switching district, consisting of locals to Chicago plus arbitraries beyond, found not in violation of aggregate-of-intermediates clause of the fourth section or otherwise unlawful. While contemporaneously lower proportional rates were in effect to Chicago, they could not be used in connection with the arbitraries but were restricted to apply only in connection with local rates beyond Chicago, on which basis charges higher than those assessed would result. Chicago Coal Merchants Asso. v. N. Y. C., 129 I. C. C. 203, 207, 208.

(o) Proposed restriction of combination rule so as to prohibit any construction thereof by which respondents may be held liable for failure of some other line to make provision for single or maximum increase, found not justified. Proposed restriction would result in increases or avoid reductions of respondents' own local rates when used as factors of through rates, as well as relieve them of shrinkage in factors not pulished by them. However, as it would be inequitable to require them to continue a tariff rule under which they receive less for their services than carriers maintaining joint rates, and in view of finding in 93 I. C. C. 458, usupended schedules ordered canceled without prejudice to filing others which will relieve respondents of shrinkage chargeable to their connections but will not avoid responsibility for that portion which belongs to them combination Rule on Lumber, 129 I. C. C. 564.

(p) First-class rate on passenger automobiles from Janesville, Wis., to Mason City, Iowa found applicable and not unreasonable or unduly prejudicial. Under a restricted tariff a lower joint rate subject to rule 77 of Tariff Circular 18-A was contemporaneously in effect to Ames. Complainant contended that as Mason City was intermediate to Ames over a circuitous route and shipment moved in compliance with routing restriction the lower rate was applicable. FOUND: That publication of rule 77 does not warrant a finding of unreasonableness where as in this case, point which is claimed to be intermediate only over excessively circuitous and unnatural routes over which no shipper could reasonably request transportation under provisions of section 1 (4) of the interstate commerce act. Woodward Auto Co. v. C., M. & St. P., 129 I. C. C. 613.

(q) Seattle-Portland factor of combination rates on wooden poles from Washington points to California was described in the governing traiff as a proportinoal rate but was, nevertheless, an arbitrary. Tariff authorized the application of the combination rule "except as otherwise indicated" and restricted use to "separately establish commodity (or class) rate factors," thus precluding the use of the rule in connection with the Seattle-ortland arbitrary. Rates assessed found applicable except that overcharge, not due to inapplicable rate, was assessed on one shipment. Complaint dismised. National Pole Co. v. G. N., 129 I. C. C. 697.

VIII. EVIDENCE AND PROCEDURE.

See Evidence; Procedure Before Commission.

§27. In General.

(a) A failure to name one participating carrier as a party defendant in a complaint is not fatal where rate in which such carrier participated was a joint rate under which liability of the participants is joint and several. Russellville Compress Co. v. G., M. & N., 120 I. C. C. 481, 482.

(b) Comparisons of average earnings and hauls on all traffic and on a particular commodity are of little value in considering reasonableness of joint rates on such particular commodity between particular points. United Zinc Smelting Corp. v. B. & O., 126 I. C. C. 677, 686.

(c) On hearing before Interstate Commerce Commission to establish tariffs on certain naval stores, from points south of the Ohio river to Kalamazoo, Grand Rapids, and other points testimony of reasonableness of "specifics"

north of the river was competent, since on issue of reasonableness, propriety of each factor was both competent and material, notwithstanding in proposed new tariff rate was published as through rate. Western Paper Makers' Chemical Co., v. United States, 7 Fed. (2d) 164.

(d) Prior existing rates, whether locals or such proportionate rates from a key point to points of destination as were made applicable to particular class of traffic, or through rates on other commodities moving from similar points of origin, are proper matters to be considered by Interstate Commerce Commission in establishing new through rates. Western Paper Makers' Chemical Co. v. United States, 46 Sup. Ct. 500.

(e) Carriers objected to including in an exhibit certain shipments which moved over routes embracing carriers not named as defendants. HELD, objection is without merit. Testimony was not limited to any particular route or routes; rates under attack applied at time of movement over all routes shown on the exhibit; and several of named defendants participated in each movement set forth. Where carriers participate in an unreasonable joint rate they are jointly and severally liable for the unlawful assessment. See 21 I. C. C. 20: Boston Wool Trade Asso. v. B. & A., 128 I. C. C. 185, 186.

(f) Carriers point to defect in pleadings in that a certain carrier was not named as party defendant in the complaint. FOUND, as shipments moved under joint rates omission is not fatal, although no order can be entered against carrier not named. Practical Drawing Co. v. C. & N. W., 128 I. C. C. 540, 541.

§28. Orders of Commission.

(a) Authority exercised by Interstate Commerce Commission in directing that certain routes, which were seldom used, should be abandoned, in order that new schedule of rates would not violate long and short haul clause of Interstate Commerce Act. § 4 (Comp. St. § 8566), HELD within broad discretion vested in Commission. Western Paper Makers' Chemical Co. v. United States, 46 Sup. Ct. 500.

(b) Under Act to Regulate Commerce, §§ 1, 3 (Comp. St. §§ 8563, 8565), Interstate Commerce Commission's finding that combined rates on Western coal shipments from particular West Virginian mines were unreasonable and discriminatory HELD not invalid, for want of finding of public necessity for establishment of through rates and joint rates. Virginian Ry. Co. v. United States. United States v. Virginian Ry. Co., 47 Sup. Ct. 222.

(c) Where Virginian Railroad, having physical connection with Chesapeake & Ohio, was ordered to establish through routes and joint rates from mines on its line to Western markets, HELD, a subsequent agreement to lease Virginian to Norfolk & Western and the establishment of through routes and joint rates between Virginian and Norfolk and Western, was not equivalent to compliance with such order. Virginian Ry. Co., v. United States. United States v. Virginian Ry. Co., 47 Sup. Ct. 222.

TIME ZONES

(a) Upon petitions of cities of Middletown and Cincinnati O., the Commission reopened this proceeding for further hearing to determine whether the boundary line between the United States standard eastern time zone and the United States standard central time zone should be so modified as to include them in the Eastern time zone. Cincinnati is in southwestern Ohio on the Ohio river, and Middletown is about 30 miles north of Cincinnati. HELD, from the entire record it would appear that the inclusion within the eastern time zone of the petitioning municipalities and that territory on and east of the B. & O. from Toledo to Cincinnati, will remove many inconsistencies in commerce, will not interefere with the safe operation of the railways serving such territory, or necessitate any change in the present division points, but will simplify the operation of certain of such railways. Standard Time Zone Investigation, 122 I. C. C. 122.

(b) Upon supplemental report, previous orders, particularly the twelfth supplemental report, 91 I. C. C. 686, defining limits of United States standard Eastern and Central time zones, modified so as to include Cincinnati and Middletown, Ohio, and portions of Ohio, Kentucky, and West Virginia in the Eastern time zone. Such change will remove many inconveniences in commerce, will not interfere with safe operation of railways serving the territory, or necessitate any change in present division points, but will simplify operation of certain of such railways. Standard Time Zone Investigations, 122 I. C. C. 122.

(c) Santa Fe requests, by petition, that the Commission modify its orders so as to include its branch lines from Dodge City, Kan., to Felt and from Satanta to Pritchett within the Central time zone, and also to authorize it to operate its Great Bend branch, which extends from Great Bend to Scott City, Kas., under standard central time. HELD, petition granted. Standard Time Zone Investigation, 129 I. C. C. 209.

(d) Previous orders based upon original and supplemental reports, 51 I. C. C. 273, 555, defining limits of United States standard Central and Mountain time zones, modified so as to place certain portions of the State of Kansas now in the Mountain zone within the Central time zone, and under an exception to allow the Atchison, Topeka & Santa Fe Ry. Co., to operate its line from eastern boundry of Ness County, Kans., to Scott City, Kans., under standard Central time. By such change greater convenience of commerce will be served and intent of preceding orders better effected. Standard Time Zone Investigation, 129 I. C. C. 209.

TOP ICING

See Perishable Freight; Refrigeration §3½a.

(a) Proposed changes in rules, regulations, and practices affecting refrigeration and handling of perishable freight at points in United States, designed for purpose of securing compensatory charges for transporting ice placed upon top of load and alleged resultant damage to cars, found not justified. While carriers should be compensated in some way for whatever damage may be attributable to top icing and for cost of transporting ice, the proper method of refrigerating perishable traffic is from ice in bunkers. Protective Service Rules on Perishable Freight, 104 I. C. C. 79.

(b) Findings in original report, 104 I. C. C. 79, wherein commission approved maximum amount of top ice which should be permitted to be placed on top of load, modified to permit increase in maximum amount on shipments of cauliflower. Protective Service Rules on Perishable Freight, 109 I. C. C. 657.

TOWAGE

See Water Carriers.

TRACKAGE AGREEMENTS

(a) Upon petition of carriers parties to an operating agreement governing use and operation of union terminals at Kansas City, seeking entry of an order, pursuant to section 3 (4) of the act, under which they will be accorded right to use such facilities upon compensation determinable wholly upon a user basis, HELD: Power and authority invoked are not conferred by section 3 (4), requirment of which lays upon a carrier "owning or entitled to enjoyment" of such facilities to accord their enjoyment or use to "another carrier or carriers." Here carriers under operating agreement and as coproprietors, already use and enjoy such terminals, and to grant relief sought would involve a revision or reformation of operating agreement. M.-K.-T. v. K. C. T., 104 I. C. C. 203, 222, 223.

(b) Carriers seeking, in effect, revision or reformation of an improvident operating agreement governing joint use and operation of terminal facilities, contend that for commission's jurisdiction to attach it need only give effect to section 15a of the act without waiting until a carrier's bankruptcy shall ensue, and find as a fact that operating agreement is so burdensome as to result in inefficient and uneconomical operation, to cause misapplication of funds created for an entirely different purpose, and generally to operate to impair carrier's ability to furnish adequate railway service. FOUND:Neither expressly nor by implication does section 15a embrace a direct or indirect revision or reformation of any such contract, nor is commission able to find requisite power or authority in any other provision of the act. M.-K.-T. v. K. C. T., 104 I. C. C. 203, 223, 224.

(c) Complainant's mines are exclusively on one carrier, and neither defendant has the right of access thereto over the lines of the other. The duty of a carrier to equalize treatment among shippers extends only to those whom it is bound to serve. Complainant contends that they are discriminated against because defendants refuse to enter into trackage arrangements or otherwise extend their lines so as to accord them joint service. Commission has held the location of mines upon two or more lines differentiates their situation from that of a mine or mines located on but one carrier. Winding Gulf Colliery Co. v. C. & O. Ry., 115 I. C. C. 113, 116.

(ca) If a carrier extends its service by trackage agreement to one mine on another line, it would be difficult, if not impossible, to justify a refusal to accord similar treatment to another intermediate competing mine located on the track over which it operates under the trackage agreement. Ragland Coal Co. v. V. Ry., 115 I. C. C. 147, 150.

(d) Trackage agreements may in some cases result in undue preference to the party benefited by such arrangements. Winding Gulf Colliery Co. v. C. & O., 115 I. C. C. 113, 118.

(e) Failure of carriers to accord same service and facilities to certain local mines in the New River district of West Virginia as are accorded other mines in the same district similarly situated, the latter by trackage agreement or otherwise being accorded a joint-mine status, found not to result in discrimination or undue prejudice. The location of mines upon two or more lines differentiates their situation from those located on but one carrier and where a railroad enters into a trackage agreement with another, it is in effect an extension of its line. The complaining mines here are not intermediate to mines accorded a joint status, and carriers are not chargeable with discrimination or undue prejudice merely because they accord certain mines a joint status by trackage arrangements, while refusing to extend similar service to other mines. Winding Gulf Colliery Co. v. C. & O. Ry., 115 I. C. C. 113; Ragland Coal Co. v. V. Ry., 115 I. C. C. 147.

(f) Prior report 98 I. C. C. 183, modified so as to provide for application of single-line distance scale rates therein prescribed, in lieu of joint-line rates, on cottonseed and related articles between points west of Mississippi River on the St. L., S. W. Ry., and Memphis, Tenn., when handled by that carrier over the C., R. I. & P. Ry., between Memphis and Brinkley, Ark., under a trackage arrangement. Oklahoma Corp. Commission v. A. & S., 118 I. C. C. 439.

TRANSFER

See Allowances §8 (7); Electric Lines IV; Facilities and Privileges §15a, §15½; River Crossings (a); Transshipment Rates.

TRANSIT

See Compress Companies and Charges; Concentrating Rates and Privileges; Facilities and Privileges §15; Routing and Misrouting §8½; Stoppage-In-Transit; Through Routes and Joint Rates §19.

TRANSPORTATION

I. WHAT IS TRANSPORTATION SERVICE.
- §1. In general.
- §1½. Jurisdiction of Commission.

II. DUTY OF CARRIER TO TRANSPORT.
- §2. In general.
- §3. Company material.
- §4. Collection of charges.
- §5. Delivery by carrier.
- §5a. Delivery to carrier.
- §5½. Extension of line.
- §6. Notifying consignor or consignee.
- §6½. Notice to carrier.
- §7. Prompt and safe carriage.
- §7½. Receipt by consignee.
- §8. Special services.
- §9. State interference.
- §10. Unloading or loading at terminal.
- §11. When transit ends.

III. OPERATION OF RAILROAD.
- §11½. In general.
- §12. Right of carrier to make regulations.
- §13. Economy of management.
- §14. What are operating expenses.
- §15. Right to traffic.
- §16. Eminent domain.

CROSS REFERENCES

See Act to Regulate Commerce VI; Additional Charges and Service; Allowances §8 (4⅞), §8 (5), §10, §11, §12 (2); Common Carrier III: Crimes §12; Demurrage §16 (g); Exclusive Contracts; Express Companies §5, X; Facilities and Privileges II, §10; Passenger Fares and Facilities §12; Refrigeration §13; Special Rates and Services; Storage; Tap Lines; Track Storage; Water Carriers.

I. WHAT IS TRANSPORTATION SERVICE.

§1. In General.

(a) "Transportation service" is one which requires no other service to complete shipper's object, while "switching or transfer service" is one which precedes or follows transportation service, regardless of whether or not it involves use of portion of carrier's main line or that of another. Andrews Steel Co. v. Davis, (Ky., 1925) 276 S. W. 148.

(b) Carrier's movement of loaded cars, containing freight shipments between two companies located about a mile apart, in yard limits, HELD, a "transportation service," and not a switching service, and carrier not entitled to recover car rental charge for such service in excess of published rate denominated a "switching charge." Andrews Steel Co. v. Davis, (Ky., 1925) 276 S. W. 148.

§1½. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) Denial by a common carrier subject to the act of delivery lawfully designated in a bill of lading or reconsignment instructions in respect of shipments moving in interstate commerce is a matter which may change, affect, or determine value of service rendered to a shipper, and as such is within commission's Jurisdiction. Berger v. P. R. R., 115 I. C. C. 697, 698.

II. DUTY OF CARRIER TO TRANSPORT.

See C. O. D. Shipments (a); Cars and Car Supply IV, V; Classification §6½ (a), §16 (i); Common Carrier §6; Facilities and Privileges II; Freight Charges (f); Routing and Misrouting II.

§2. In General.

(a) Complainant alleged defendant's refusal to accept shipments of gasoline and petroleum refined oils, in tank cars, tendered by complainant at Wilmington, N. C., for transportation over interstate routes to Kernersville, Hookerton and Raeford, N. C., as unlawful. The routings specified were interstate, and rates of 32c prior to July 1, 1922, and 29c thereafter were applicable. No routing restrictions were published in connection with the interstate rates, the application of which were limited to interstate traffic. When the bills of lading for the shipments were tendered to the agent of the A. C. L. at Wilmington, he refused to accept the shipments for transportation over the interstate routes, and before he signed the bill of lading demanded that the routing be changed to the intrastate route over A. C. L. and A. & R., over which intrastate rates of 35.5c prior to July 1, 1922, and 32c thereafter were applicable. Shipments moved over intrastate routes. Defendants clearly violated paragraph 8 of section 15 in that they refused to accept the shipments for transportation over the duly published unrestricted interstate routes. HELD: Refusal to accept the shipments for transportation over interstate routes unlawful, reparation awarded. Standard Oil Co. v. A. C. L. R. R., 115 I. C. C. 239.

(b) Refusal of carriers, parties to southern classification, to accept l. c. l. shipments of stoves or ranges made of cast iron, or of plate or sheet iron with cast-iron bases or tops, unless boxed or crated, found unreasonable. Reasonable rating of second class, or one class higher than on crated stoves or ranges, prescribed for future. Cairo Asso. of Commerce v. B. & N. W., 115 I. C. C. 3.

(c) A carrier's duty to furnish transportation does not arise until request is made therefor. See section 1 (4) of the act. Victor-American Fuel Co. v. D. & S. L., 115 I. C. C. 169, 174.

(d) Refusal of carriers to accept and transport intrastate shipments tendered for transportation via a duly published unrestricted, interstate route and compelling shipper to change routing in bills of lading to a higher intrastate route, found to violate section 15 (8) of the act. Reparation awarded. Standard Oil Co. v. A. C. L. R. R., 115 I. C. C. 239.

(e) Denial by a common carrier subject to the act of delivery lawfully designated in a bill of lading or reconsignment instructions in respect of shipments moving in interstate commerce is a matter which may change, affect, or determine value of service rendered to a shipper, and as such is within commission's jurisdiction. Berger v. P. R. R., 115 I. C. C. 697, 698.

(f) Fuel oil shipped from Okmulgee,

Okla., to Chicago Heights, Ill., was delivered to consignee. Thereafter, car was placed on tracks outside plant, and carrier notified by telephone that it was empty and to return same over inbound route, such instructions also being confirmed in writing. Upon arrival of returned car at original point of origin it was found to have been fully loaded. HELD, complainant not denying that he gave instructions above set forth and that he executed the usual certificate authorizing return of car without having first ascertained whether or not it was empty, failure of carriers to ascertain whether car tendered to them was empty did not result in collection of unreasonable or discriminatory charges. Mfgrs. Asso. of Chicago Heights v. C. H. T. T., 120 I. C. C. 357.

(g) It is the duty of carriers to provide transportation services desired by the public over any of their lines at rates not in excess of reasonable maxima. Consolidated Southwestern Cases, 123 I. C. C. 203, 377.

(hi) Carrier's refusal to accept shipment of watermelons for transportation, charges collect, FOUND, not discriminatory or otherwise unlawful. Governing tariff specified that watermelons would be accepted freight "collect" only where carriers were protected by surety bond guaranteeing payment of freight charges. Complainant's telegram and certain bills of lading covering similar shipments from another point, were only evidence offered by shipper as authority to ship on complainant's bond and agent considered this insufficient authority to cover shipment tendered. Moreover, determination of what constitutes sufficient evidence of authority must necessarily be left to discretion of agents, and it was not an abuse of such discretion to refuse to accept the telegram as general authority to ship on complainant's bond. Edgerton & Beers v. A. C. L., 126 I. C. C. 422.

(j) Though carrier may make separate and additional charge for service (that is, accessorial to transportation service), it may not make such charge for one of necessary elements of that service. Andrews Steel Co. v. Davis (Ky., 1925) 276 S. W. 148.

(k) Abnormal conditions may relieve carrier from liability for failure to perform usual transportation services, but does not justify extra charge for performing them. Chesapeake & O. Ry. Co. v. Westinghouse, Church, Kerr & Co., Inc., 46 Sup. Ct. 220. Mellon, Director General of Railroads, v. Same, 46 Sup. Ct. 220.

§5. Delivery By Carrier.

See Drayage; Express Companies §2; Side Tracks and Spur Tracks; Spotting; Stock Yard Companies; Switch Tracks and Switching §5.

(a) In absence of instructions to the contrary, it is right of a carrier, and ordinarily would be appropriate course, to place a car for unloading promptly upon arrival at destination. Milne Lbr. Co. v. C. & N. W., 107 I. C. C. 653, 655.

(b) When a shipment is placed at a track where either actual delivery or inspection could be made, it would be vain to require unloading if receiver of the car desired to resell its contents and reship to another party. But where point of placement is admittedly selected solely for purposes of inspection it is obvious that any unloading which there takes place is incident to inspection and that an immediate sale of contents to another party is not sufficient to change character of transaction from inspection to actual or constructive delivery. Brown & Co. v. E. R. R., 109 I. C. C. 109, 113.

(c) While shipment was in transit consignee notified carrier by telephone that it would not be accepted. Nevertheless, upon arrival shipment was placed on consignee's private track where it was refused and subsequently reforwarded without surrender of bill of lading. HELD: Notice of refusal being given before arrival of shipment at original destination, placement of car on consignee's private track was unauthorized and shipment found overcharged to extent that charges collected exceeded those which would have accrued on basis of through rates from origin to final destination. Refund of overcharges directed. Scoular-Bishop Co. v. A., T. & S. F., 118 I. C. C. 501.

§6. Notifying Consignor or Consignee.

See Notice.

(a) Tariff required that notice of a refused shipment at destination shall be "sent by wire to consignor when known," but does not name agency for transmission of the notice. Fact that such notice is sent "by wire" over carrier's private

line and not over lines of Western Union or Postal Telegraph, does not affect the sufficiency thereof. Milne Lbr. Co. v. D., T. & I., 120 I. C. C. 488, 491.

§8. Special Services.

See Express Companies §2; Special Rates and Services.

(a) A carrier is not required, as part of its transportation service, to furnish warehouse space to all shippers of fruits and vegetables for unloading, sorting, displaying, auctioneering, and delivery of c. l. shipments in l. c. l. lots, to purchasers thereof. This is a trade service. Generally speaking, shippers are required to unload c. l. freight and it does not appear that there is any duty upon carrier to do more than furnish suitable delivery tracks for the unloading service. Andrews Bros. v. P. R. R., 123 I. C. C. 733, 739.

III. OPERATION OF RAILROAD.

§11½. In General.

(a) Carrier is presumed to conduct business lawfully. New York, N. H. & H. R. Co., v. Salter, (Conn. 1926) 134 Atl. 220.

TRANSPORTATION ACT

See Act to Regulate Commerce VI; Claims §1½; Statute of Limitations.

TRANSSHIPMENT RATES

See Facilities and Privileges §15½; Transfer.

(a) Rates on anthracite silt from Scranton and other Pennsylvania mines to Buffalo, N. Y., and Erie, Pa., for transshipment by lake to interstate destinations, found unreasonable. Washed silt is of extremely low value at the mines and although used to some extent for other purposes, it has value as a domestic fuel only when manufactured into briquets. Furthermore, transshipment rates which contemplate a movement beyond ports may reasonably be somewhat lower than those applicable on local traffic. Stott Briquet Co. v. P. R. R., 113 I. C. C. 693.

TRAP CARS

See Allowances §8 (7a), §12 (2) (a); Demurrage §10; Ferry Charges.

(a) Failure or refusal of carrier to compensate complainant out of line-haul rates for services performed by latter in checking, weighing, loading, and unloading l. c. l. shipments delivered to or forwarded from its industrial plant at Minetto, N. Y., in trap or ferry cars, found not to violate the act. Here shipper voluntarily elected to perform such services without request, intention, or desire of carrier, who expressed a preference to handle such shipments through its own terminals. It was carrier's privilege to perform these services itself and commission can not competently prescribe compensation it is to pay to a voluntary agent (here the complainant) for performing them. Columbia Mills v. D., L. & W., 118 I. C. C. 112.

(b) A carrier is under no duty or obligation to "farm out" the work of and incident to receipt or delivery of l. c. l. freight handled in usual way, and such traffic as is accorded service of a trap or ferry car, received or delivered upon private sidings remote from carrier's own terminal facilities, is for obvious reasons loaded or unloaded by consignors or consignees. This is recognized by definition of the term "trap or ferry car service" in 34 I. C. C. 516, 519, 520. Columbia Mills v. D. L. & W., 118 I. C. C. 112, 117.

TWENTY-EIGHT HOUR LAW

See Live Stock Shipments.

(a) Carrier, by contracting that shipper shall take care of animals during transportation, cannot escape liability for penalty, under U. S. Comp. St. § 8653 for confining animals in car for more than 28 hours without unloading for rest, water and feeding, as required by sections 8651 and 8652. Walrath v. American Ry. Ex. Co. 216 N. Y. S. 545, 546.

UNDERCHARGES

I. CONTROL AND REGULATION.
- §1. Jurisdiction of Commission.
- §1½. Jurisdiction of courts.

II. DUTY OF CARRIER TO COLLECT
- §2. In general.
- §3. Defenses.

III. EVIDENCE
- §3½. In general.
- §4. Admissibility of tariff copies.

§5. Burden of proof.
§6. Testimony as to rate.

IV. LIABILITY TO PAY.

§7. In general.
§7½. State courts and laws.
§8. Waiver.
§9. Pleading.
§10. Statute of Limitations.

CROSS REFERENCES

See Freight Charges; Reparation §20½.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction Of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) Shipment of old files (company material) moved free over initial carrier's line, but for movement beyond such carrier failed to prepay full amount of applicable rates, resulting in outstanding undercharges being collected from consignee. Upon complaint seeking their refund upon theory that as director general was operating both initial and delivering lines he disregarded his own instructions that charges be fully prepaid, and that billing should have been corrected and collection made of initial carrier, HELD: It is delivering carrier's duty to collect applicable rates on prepaid shipments and correct any errors made by initial carrier's agent in billing or in collection by it of prepaid charges; and it is not for the commission to determine the liability of consignor or consignee for undercharges, that question being one for the courts. Continental File Corp. v. Director General, 109 I. C. C. 403.

(b) It is delivering carrier's duty to collect applicable rates on prepaid shipments and to correct any errors that may have been made by agent of initial carrier in billing or in collection by it of prepaid charges. See 25 I. C. C. 442, 475; Conf. Rulings 16, 156, and 314. It is not for the commission to determine in any case which party, the consignor or consignee, is legally liable for an undercharge; that question is determinable only by a court having jurisdiction and upon the facts in each case. Continental File Corp. v. Director General, 109 I. C. C. 403, 404.

§1½. Jurisdiction Of Courts.

See Courts.

(a) It is not for commission to determine in any case which party, the consignor or consignee, is legally liable for an undercharge; that question is determinable only by a court having jurisdiction and upon facts in each case. Continental File Corp. v. Director General, 109 I. C. C. 403, 404.

II. DUTY OF CARRIER TO COLLECT.

§2. In General.

(a) It is delivering carrier's duty to collect applicable rates on prepaid shipments and to correct any errors that may have been made by agent of initial carrier in billing or in collection by it of prepaid charges. See 25 I. C. C. 442, 475; Conf. Rulings 16, 156, and 314. It is not for the commission to determine in any case which party, the consignor or consignee, is legally liable for an undercharge; that question is determinable only by a court having jurisdiction and upon the facts in each case. Continental File Corp. v. Director General, 109 I. C. C. 403, 404.

IV. LIABILITY TO PAY.

§7. In General.

(a) Paper was sold f. o. b. mill at a price reflecting actual freight charges paid instead of applicable rate, deduction of such charges as such not being shown on face of invoice. Such freight charges, were paid and borne by consignee, who passed them on to its customers. Upon contention of consignee that in selling it has to meet prices of competing jobbers, and that if forced to pay outstanding undercharge, the paper having been resold, it will sustain a loss in the amount of undercharges collected, HELD: Undercharges and consequent loss would have occurred even if rate assessed had not been unduly prejudicial, and since shippers as well as carriers are charged with a knowledge of legally applicable tariff charges the fact that there are outstanding undercharges is insufficient to sustain an award of damages under a finding of undue prejudice. Clements Paper Co. v. T. C., 112 I. C. C. 411, 416, 417.

(b) Where charges presented to and paid by consignee of interstate freight shipment, on his receipt thereof, were less than the established rate, he is liable

for the undercharge, carrier not being estopped, as this would result in discrimination, which under any circumstances is forbidden. Director General of Railroads v. McCormick, (N. H., 1927) 136 Atl. 253.

(c) The delivering carrier may maintain an action to collect undercharges on prepaid shipments. Illinois Cent. R. Co., v. Van Dusen, Harrington Co., (Minn., 1927) 212 N. W. 940.

(d) A common carrier must collect the amount of an undercharge on an interstate shipment from one legally liable, and, under the facts detailed in the opinion, one, who bought merchandise in the course of transportation to be delivered, and who accepted the shipment and paid the charges, was liable to the carrier for an undercharge, though not named as consignee in the bill of lading. Case v. Union Pac. R. Co., (Kans., 1925) 241 Pac. 693.

(e) In an action by a railway carrier to recover a balance alleged to be due as undercharges on the intrastate transportation of 31 carloads of wheat and the products milled in transit therefrom, the record and pertinent freight rate schedules considered, and HELD to support plaintiff's cause of action and the judgment based thereon. Missouri Pac. Ry. Co., v. Red Star Milling Co. (Kans., 1926) 251 Pac. 417.

(f) Evidence that railroad iced carload of oranges to preserve them from damage in transit HELD to authorize recovery of icing charge from consignee. Central of Georgia Ry. Co. v. City Supply Co. (Ga., 1926) 135 S. E. 767.

(g) Where contract of shipment of cut stone provided for rate less than published schedule filed with interstate commerce commission, carrier could recover difference, since scheduled rate formed part of contract of shipment by operation of law and parties could not contract for less rate than schedule filed with commission. Missouri Pac. R. Co., v. Pfeiffer Stone Co., (Ark., 1924) 266 S. W. 82.

(h) Where a shipper ships goods to a consignee over a railroad whose rates are fixed by a public body, and such rates are made obligatory upon the railroad and a mistake is made in the rate charged for such shipments, and the shipment is delivered to the consignee before such mistake is discovered, the carrier may recover the difference in the rate paid and that required to be paid from the shipper. In such case it has the option to sue either the shipper or consignee, unless it has made a binding contract to the contrary. Gulf, M. & N. R. Co. v. Riverside Brick & Mfg. Co., (Miss., 1926) 107 So. 193.

(i) Delivering carrier cannot sue consignee for undercharge on interstate shipment where latter is agent for consignee and such fact is known to carrier. Louisville & N. R. Co. v. A. N. Chappell & Co. (Ala., 1926) 109 So. 573.

(j) Delivering carrier may recover of consignee for undercharge on interstate shipment delivered to consignee, though latter is agent for consignor, which fact is known to carrier. Louisville & N. R. Co. v. A. N. Chappell & Co., (Ala., 1926) 109 So. 573.

(k) One who acts as agent for another in receiving from a railway carrier a shipment of goods is not liable to the carrier for the amount due in case of an undercharge of freight, in the absence of facts justifying an estoppel by which he should be prevented rom showing such agency. Under this principle the defendants in this case were not liable for the undercharge sued for. The verdict in the plaintiff's favor was unauthorized and must be set aside. Smith Bros. Co. v. Charleston & W. C. Ry. Co. (Ga., 1927) 137 S. E. 115.

§7½. State Courts and Laws.

See Courts.

(a) In suits to recover for undercharge on interstate shipments, federal statutes control, but state courts follow their own judgment unless statutes have been construed by United States Supreme Court. Louisville & N. R. Co. v. A. N. Chappell & Co., (Ala., 1926) 109 So. 573.

§10. Statute of Limitations.

See Statute of Limitations.

(a) Complainant alleged that the collection of undercharges by defendants after the expiration of the three year period of limitation on a carload of flour shipped Oct. 14, 1920 from Lawrenceburg, Ind., to Jacksonville, Fla., was unreasonable, unjustly discriminatory, unduly prejudicial and unlawful. The jurisdiction of the Commission to consider ques-

tions of this kind is shown in paragraph 3 of section 16 of the act as amended, and is confined to cases where complaints are filed within two years from the date of delivery or tender of delivery of the property, except that where transportation charges are collected by carrier on or before the expiration of the two year period of limitation in subdivision b or of the three year period of limitation in subdivision c of said paragraph complaint may be filed within 90 days from the date such charges are collected. The statutory period had expired before the complaint was filed. HELD, complaint dismissed. Baker & Holmes Co. v. A. C. L. R. R., 132 I. C. C. 723.

UNPUBLISHED RATES

See Evidence §60; Interstate Commerce Commission §13; Reparation §15; Routing and Misrouting §12.

USE OF COMMODITY

See Classification §10; Discrimination §7½.

VALUE

See Classification §11; Evidence §61; Reasonableness of Rates §38.

WAGON TRANSFER

See Motor Truck Service.

WAREHOUSES

See Facilities and Privileges §16½; Storage.

WATER CARRIERS

I. CONTROL AND REGULATION.
- §1. In general.
- §2. Jurisdiction of Commission.

II. DISCRIMINATION AND REASONABLENESS.
- §3. In general.

III. TARIFFS AND CONSTRUCTION.
- §4. In general.
- §5. Reparation.
- §5½. Bills of lading.

IV. THROUGH ROUTES AND JOINT RATES.
- §6. In general.
- §6½. Free transportation.
- §6½a. Barge lines and rail carriers.

V. EVIDENCE.
- §7. In general.

VI. REASONABLENESS OF RATES.
- §8. In general.

CROSS REFERENCES

See Bills of Lading §3; Break-Bulk Rates; Coastwise Traffic; Discrimination §8 (5); Export Rates and Facilities; Foreign Commerce; Merchant Marine Act; Panama Canal Act; Port-to-Port Rates; Rail and Water Rates; River Crossings; Towage; Through Routes and Joint Rates §11 (2) (m) (n); Water Competition.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. In General.

(a) The policy declared by Congress in section 500 of the transportation act 1920, is to foster and preserve in full vigor both rail and water transportation. Traffic between trunk-line territory and the Texas ports and points contiguous thereto is naturally tributary to the ocean lines and to permit rail carriers from St. Louis, Chicago, Pittsburgh, Cleveland, and other points to maintain rates so low as to deprive such water carriers of the traffic naturally theirs is not in accord with the spirit of section 500. Consolidated Southwestern Cases, 123 I. C. C. 203, 341.

(b) Section 500 (1) of transportation act, 1920, declaring it "to be the policy of Congress to promote, encourage, and develop water transportation, service, and facilities in connection with commerce of the United States, and to foster and preserve in full vigor both rail and water transportation," negatives any intent on part of Congress to restrict extension of water transportation to regions which can not be adequately served by rail lines. Inland Waterways Corp. v. C. G., W., 129 I. C. C. 521, 529.

§2. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) To give interstate commerce commission authority to fix a through rate, including both rail and water car-

riage, it is not necessary that the water carrier should be controlled by a rail carrier. Chicago, R. I. & P. Ry. Co. v. United States, 6 Fed. (2d) 888.

(b) Under Interstate Commerce Act as amended, the Interstate Commerce Commission has jurisdiction to establish through joint rates for carriage partly by rail and partly by water. Chicago, R. I. & P. Ry. Co. v. United States, 6 Fed. (2d) 888.

II. DISCRIMINATION AND REASONABLENESS.

See Infra VI; Discrimination; Reasonableness of Rates.

§3. In General.

(a) Conditions peculiar to water transportation require consideration of cost elements which do not enter into all-rail rates. Express Publishing Co. v. A. S., 107 I. C. C. 528, 532.

(b) Piling is unsatisfactory traffic from the point of view of the steamship operator. It is difficult to stow properly and as a deck load it is not even as suitable as lumber. In the event that piling is loosed from its lashings during rough weather it becomes a source of serious damage and danger. Dutton Lbr. Corp. v. Director General 112 I. C. C. 661, 674.

(c) The ratio in favor of water transportation as compared with rail transportation increases with the length of water haul, but what the ratio may be in case of long hauls between the costs through Panama Canal is purely speculative. Wool Rates Investigation, 1923, 120 I. C. C. 493, 503.

III. TARIFFS AND CONSTRUCTION.

See Tariffs.

§4. In General.

(a) Southern Ry. system FX3 concurrence to a tariff of St. Louis & Tennessee River Packet Co., the originating line, found not sufficient to make Northern Alabama Ry. one of the Southern system lines, not specifically shown as a concurring carrier therein, a party to such tariff. Florence Chamber of Commerce v. N. O. & N. E., 118 I. C. C. 228.

(b) Cotton gathered at Tennessee River landings by packet boat line was carried to Riverton, Tenn., and forwarded by rail to New Orleans under new bills of lading taken out by complainant for sole purpose of showing car numbers therein. Charges were prepaid at through rate shown in bills of lading which also specified routing via Northern Alabama Ry. That carrier not concurring in packet company's tariff carrying through rate, additional charges were collected at destination. HELD: Nonconcurrence rendered a combination applicable. Moreover, shipments were through shipments and had packet company advised complainant that its tariff did not, as its title-page purported to do, apply via Riverton, complainant unquestionably would have directed rerouting. There being no intention to break continuity of movement, packing company's failure to refuse shipments or hold them pending settlement of conflict between rate and route specified in original bills or lading, resulted in misrouting. Reparation awarded against all carriers for overcharges and against packet company for misrouting. Florence Chamber of Commerce v. N. O. & N. E., 118 I. C. C. 228.

(c) Most large shippers have spur-track connections, and if a shipment moves over a carrier's line owning the spur there is no switching charge in addition to line-haul rate. Local steamer rates apply from dock to dock and shippers have to pay drayage and switching charges to and from the dock. Switching charges plus handling charge make total switching cost about same as drayage cost. In some, but not in all instances, unloading, reloading, and switching charges are absorbed by standard steamer lines. Such lines contend that if rail carriers' rates were based upon a 10-cent differential over the water rate both water and rail lines would enjoy an equal opportunity and each could be expected to obtain its share of traffic. Pacific Coast Fourth Section Applications, 129 I. C. C. 3, 14.

(d) All-rail and water-and-rail rates on sugar from San Francisco and Crockett, Calif., to Missoula, Mont., found unreasonable as compared with lower rates distance considered contemporaneously in effect from San Francisco to Utah, Colorado, and various other points; and rates from Portland, Oreg., Seattle and Tacoma, Wash., to Missoula, found unreasonable and unduly prejudicial to extent they exceed corresponding rates from Seattle, Tacoma, and Portland to Spokane, Wash., by more

than 20 cents per 100 pounds. Reasonable rates prescribed for future and reparation awarded. M'Clintock-Trunkey Co. v. McComick S. S. Co., 129 I. C. C. 591.

IV. THROUGH ROUTES AND JOINT RATES.

See Routing and Misrouting §6½ (a); Through Routes and Joint Rates.

§6. In General.

(a) Pulp wood: Proposal of Pennsylvania R. R., to restrict application of its rate on, from Washington, D. C., to Roaring Springs, Tyrone, Williamsburg, and Lock Haven, Pa., to shipments reaching Washington by water, and on such traffic originating locally at Washington to apply a higher rate in effect from Rosslyn, Va., found not justified. West Virginia Pulp & Paper Co. v. B. & O., 104 I. C. C. 495.

(b) Refusal of rail carriers to establish through routes and joint or proportional rates with the Nelson S. S. Co. on same basis and to same extent as contemporaneously maintained with the Pacific S. S. Co. and McCormick S. S. Co., competing water lines, found to result in undue prejudice. The Nelson company transports same classes of freight at same time between same ports at same rates under substantially similar circumstances and conditions as its competitors, its service is satisfactory, and it is financially responsible. While service rendered by the competing lines is also satisfactory, this fact alone is sufficient under the law to warrant undue prejudice found in view of the express language of section 3 of the act. The through routes and rates prayed for found desirable in the public interest and ordered established. Nelson S. S. Co. v. B., A. & P., 109 I. C. C. 529.

(c) The commission has repeatedly declined to sustain pleas of rail carriers that their existing water-line connections were ample and satisfactory as a reason for not requiring them to make similar arrangements with another water line. The national policy has been declared to be that a navigable river is a public highway, a natural avenue of commerce, and public interests demand that its advantages be utilized to the fullest extent. The same language is applicable to the ocean. See 31 I. C. C. 281 and other cited cases. Nelson S. S. Co. v. B., A. & P. Ry., 109 I. C. C. 529, 536.

(d) Refusal of rail carriers at Duluth to accord the Minnesota-Atlantic Transit Co., increased divisions for handling carload freight between cars and floor of its privately owned docks, found not unjustly prejudicial, nor in violation of section 1 (4) of the act. The law does not require defendants to perform services sought merely because they perform them at their own docks, so long as no discrimination is practiced. Here defendants perform no loading or unloading at any private dock, at any dock leased by it to steamship lines or shippers, or at docks of other carriers to which, for convenience of shipper or steamship line, it switches cars. Moreover, the issue of divisions has not been presented with sufficient particularly to warrant a finding as to their reasonableness. Minnesota-Atlantic Transit Co. v. C., St. P. M. & O., 123 I. C. C. 485.

(e) Order of Interstate Commerce Commission, requiring carriers to fix through rail and water rates by relation to their all rail rates between the same points, HELD not invalid. Chicago, R. I. & P. Ry. Co. v. United States, 6 Fed. (2d) 888.

(f) Complainants alleged that the through water and rail rates on sugar from San Francisco, Crockett, and Protrero, Calif., through the ports of Portland, Ore., and Seattle and Tacoma, Wash., to Spokane, Wash., as well as proportional rates from the said ports and the local rate from Portland, are unreasonable, unjustly discriminatry and unduly prejudicial to Spokane and unduly preferential of dealers located at the ports as well as at Salt Lake City, Utah and Ogden, Utah, and elsewhere. Although attacking the through rate, complainants contend that the unreasonableness is in what they term the rail factor from the ports, and they seek the establishment of a local and proportional rate of 38.5c from Portland, applicable from Seattle and Tacoma as a proportional rate. Sugar is a heavy loading commodity whose transportation is not attended by any special difficulties, but its value is such that freight rates play comparatively small part in the ultimate cost to the consumer. It may reasonably pay relatively high rates, compared with many low grade commodities, but the 75c and 61c rates under attack yield amounts per ton mile and per car mile which are sufficiently high to invite scrutiny. HELD, rate

of 75c water and rail from San Francisco to Spokane not unreasonable or otherwise unlawful. The 61c rate is too high for local rate from Portland. HELD, this rate from Portland to Spokane, Wash., unreasonable to extent it exceeds 55c, minimum 44,000 pounds, reparation awarded. No. 17562. Complainant attacked the water and rail rates on sugar from San Francisco and Crockett, Calif., and the local and proportional rates on the same commodity from the north coast ports to Missoula, Mont., 238 miles east of Spokane, as unreasonable and unduly prejudicial, and attacked the all rail and water and rail rates on canned goods from San Francisco and local and proportional rates from north coast points to Missoula, Mont. The distance from San Francisco to Missoula is shown as 1,331 miles water and rail and as 1,338 miles all rail. Present rates on sugar over both routes are $1.31, minimum 36,000 pounds and $1.10 minimum 60,000 pounds. these same rates are also in effect from Portland, Seattle and Tacoma to Missoula. HELD, rates on sugar, carloads, from San Francisco and Crockett, Calif., to Missoula, Mont., are unreasonable to extent they exceeded 95c minimum 44,000 pounds via water and rail routes; and $1, minimum 44,000 pounds, via direct all rail lines. HELD, further rates on sugar, carloads, from Portland, Tacoma and Seattle to Missoula, unreasonable to extent they exceed 75c, minimum 44,000 pounds. HELD, further rates from points above mentioned to Missoula unduly prejudicial to extent they exceed the rates from the same points to Spokane by more than 20c. CANNED GOODS. Rate on condensed milk is 62.5c, minimum 60,000 pounds. There is no sufficient reason why the rates on canned goods should be lower than the rates on sugar. HELD, rates on canned goods from San Francisco and points taking same rates to Missoula over water and rail and all rail rates and from north coast ports to Missoula are not unreasonable but unduly prejudicial to extent the rates to Missoula exceed the rates to Spokane by more than 20c per 100 pounds, reparation awarded. McClintock Trunkey Co. v. McCormick Steamship Co., 129 I. C. C. 591.

V. EVIDENCE.

See Evidence.

§7. In General.

(a) Cost of transportation per mile by water is comparatively high for short distances and very small for long distances. See 24 I. C. C. 570. Wool Rates Investigation, 1923, 120 I. C. C. 493, 503.

VI. REASONABLENESS OF RATES.

See Supra II; Loss and Damage; Reasonableness of Rates.

§8. In General.

(a) Piling is unsatisfactory traffic from the point of view of the steamship operator. It is difficult to stow properly and as a deck load it is not even as suitable as lumber. In the event that piling is loosed from its lashings during rough weather it becomes a source of serious damage and danger. Dutton Lbr. Corp. v. Director General, 112 I. C. C. 661, 674.

WATER COMPETITION

See Act to Regulate Commerce II (m); Advanced Rates §18 (2); Differentials; Discrimination §3½a, §8, §8 (5); Equalization of Rates §4 (4); Evidence §14 (1) (3) (4) (5); Long and Short Hauls; Motor Truck Competition; Panama Canal Act; Reasonableness of Rates §8 (4) (5); Reduced Rates §4½; Water Carriers.

WEIGHTS AND WEIGHING

I. CONTROL AND REGULATION.
- §1. In general.
- §2. Jurisdiction of Commission.

II. METHODS OF COMPUTING CHARGES.
- §2½. In general.
- §3. Actual weight.
- §4. Capacity weight.
- §5. Estimated weight.
- §5½. Origin weights.
- §6. Reweighing.
- §7. Scaleage and shrinkage.
- §7a. Tolerance.
- §7½. Track scales.
- §7¾. Wagon weights.

III. DISCRIMINATION.
- §8. In general.

IV. EVIDENCE AND BURDEN OF PROOF.
- §9. In general.

V. REPARATION.
- §10. In general.

VI. TARIFFS AND CONSTRUCTION.
- §11. In general.
- §12. Inspection bureaus.

VII. REASONABLENESS OF CHARGES.

§13. In general.

CROSS REFERENCES

See Bills of Lading §7; Classification §4, §11½, §21; Evidence §65; Mails; Minimums; Reasonableness of Rates §41; Refrigeration V.

II. METHODS OF COMPUTING CHARGES.

§2½. In General.

(a) Shipper sought a change in method of stating rates on fresh and green vegetables from a basis per package, generally used from all vegetable-producing areas, to a weight basis. HELD: No general demand for such a change having been brought to commission's attention, the burden is upon shipper to show unlawfulness of present method of stating rates. South Carolina Produce Asso. v. A. & R., 107 I. C. C. 613, 614.

(b) Upon complaint seeking a change in method of stating rates on fresh and green vegetables from a basis per package, generally used from all vegetable-producing areas, to a weight basis, FOUND: Basis proposed would necessitate use of minimum weights on some of these commodities which can not be loaded, a practice which commission has universally condemned. Moreover if rates on these commodities were published on a weight basis it would be a practical necessity, in interest of economical and expeditious handling, that estimated rather than actual weights be used and record fails to contain a sufficient showing upon which to base a schedule of estimated weights. South Carolina Produce Asso. v. A. & R., 107 I. C. C. 613, 614.

(c) Complainant attacked charges on one car of cottonseed cake shipped October 24, 1923, from Itasca, Tex., to them at Memphis, as illegal, unreasonable, unjustly discriminatory and unduly prejudicial. The complaint is against the overloading under authority of item 155 D Supt. 14 St. L. S. W. tariff I. C. C. 3374. Shipment was loaded by consignor and moved M. K. T. to Fort Worth, St. L. S. W. beyond. While enroute the car was set out bad ordered at Texarkana and Wabbaseka, Ark. Its capacity is shown as 60,000 pounds and under the tariff the maximum weight which should have been loaded therein was 10% greater than marked capacity or 66,000 pounds. Charged 38.5c on that weight and at 77c on balance of shipment. The weight of the shipment was inserted on the bill of lading executed by the consignor. The way bill also shows this weight, bears the notations "B-L weight," and "HOT BOX," and the number of the weight agreement which indicated the manner in which the weight was ascertained as required by the tariffs. The consignor has operated under a weight agreement for 18 years. When shipper's weights are accepted under such an agreement the applicable tariffs do not require that shipments should be weighed. The tariff of the originating line provides that they should not be reweighed. The tariffs imposed no duty on defendants to weigh this shipment enroute. The carrier is obligated to furnish proper equipment for the safe transportation of goods which it holds itself out to carry. It is the corresponding duty of the shipper to load his goods properly for shipment and to observe carriers' rules which have as their object the protection of such equipment. HELD: Charges assessed and rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Memphis Freight Bureau v. St. L. S. W. Ry., 115 I. C. C. 409.

(d) Complainant contended that because of defendant's failure to verify the weight as stated by the consignor on a car of coal shipped February 26, 1923, from Clinton, Ind., to Wabash, Ind., he was overcharged. Shipment moved C. & E. I. to Danville, Ill., and Wabash beyond, rate was applicable of $1.70. The evidence shows that the consignor after loading the car with 4-inch lump coal, weighed it on its mine scales, and from the gross weight of 177,800 pounds deducted the marked tare weight, leaving a net weight of 137,300 pounds. No request for reweighing was made by complainant of the delivering carrier, nor was any complaint made to consignor or to defendants at that time with respect to any error in weight. HELD: Complaint dismissed. Hipskind v. Wabash Ry., 115 I. C. C. 417.

(e) Complainant alleged overcharge on coal, carloads, from Kentucky and West Virginia to Connersville and Greenfield, Ind. Shipment from Plymouth, W. Va., November 23, 1922, to Greenfield. The only fact to be determined is the

weight of the coal shipped. The evidence shows that the loaded car was weighed at Hobson, O., and charged at net weight of 92,500 pounds at rate of $2.52 per ton. Gross weight shown on the freight bill was 123,800 pounds and tare weight 31,300 pounds. D. & H. Ry. advised that the tare weight of this car was 30,800 pounds in December, 1922. A check by the N. Y. C. develops the fact that on the scale records the loaded car is shown to have weighed 103,800 pounds gross and not 123,800 pounds as stated on the freight bill. HELD: Shipment overcharged based on net weight of 73,000 pounds, overcharge to be refunded, complaint dismissed. Van Hart v. C. I. & W. Ry., 115 I. C. C. 741.

(f) Marked tare weight of car was used in computing freight charges on coal. Upon contention that shipment was overcharged because of discrepancies in recorded tare weights of car and carrier's failure to verify weight stated by consignor, HELD: Governing tariff provided that when coal is weighed at mines under an arrangement with initial carrier, the weight thus obtained will govern, and car will not be reweighed at destination unless carrier is requested to do so. No request for reweighing or complaint as to error in weight having been made at time of acceptance of shipment, evidence fails to sustain complainant's allegation of overcharges. Hipskind v. W. Ry., 115 I. C. C. 417.

(g) Complainant alleged that the charges collected on 183 cars of lumber, brick, cement, and gravel between points in Alabama or between Alabama and Georgia from Jan. 1, 1923 to Jan. 9, 1925 were inapplicable. The points of origin and destination are either local to the Chattahoochee Valley, C. V., or the points of origin are located on connecting lines and the destinations are on the C. V. No joint rates are in effect, and the rates assailed are applicable only for the movement over the C. V. The applicable tariff publishes commodity rates on brick and other building materials in terms per car, except as shown. The rate on brick from West Point to Langdale, Ala., a distance of 5 miles, is illustrative. The tariff referred to publishes a rate of 1.550c on common brick, carloads, minimum weight 30,000 pounds. The tariff publishing the assailed rates was canceled effective Jan. 10, 1925 and the subsequent tariff added the words "excess in proportion" immediately after the minimum weight per car. HELD, charges assailed were inapplicable, and the applicable charges were those computed in the published "per car" basis without any charge for the additional weights loaded in excess of the published minima. Overcharges to be refunded, complaint dismissed. Batson Cook Co. v. C. V. Ry., 132 I. C. C. 703.

§3. Actual Weight.

(a) The question of the weight of shipments is one of fact, and actual weight constitutes true basis upon which assessment of freight charges should be made. Curtis v. Director General, 109 I. C. C. 378, 379.

(b) Shipment of coal found overcharged, due to deduction by carrier of 41,000 pounds to cover weight of car, whereas actual weight as shown by carrier's records was 45,000 pounds. Reparation awarded. Monon Lbr. Co. v. Director General, 109 I. C. C. 429.

(c) Complainant alleged that charges on numerous carloads of coal shipped interstate between Jan. 10, 1920 and Feb. 20, 1924 from West Virginia, Pennsylvania, Ohio, Indiana, Illinois, and Kentucky and reweighed at destinations in Indiana, were inapplicable. No. 17386. From Rawl, W. Va., a carload of bituminous coal to Tipton, billed gross, 123,700 pounds, tare 39,500 pounds, net 84,200 pounds. Upon request of complainant shipment was reweighed at Tipton with result, gross 122,600 pounds, tare 39,500, net 83,100 pounds difference in weight of 1,100 pounds. The tariff does not provide that destination weight shall govern, but that in determining the correct weight of the car all of the conditions which obtained when the car was severally weight would be taken into consideration. The shipment was subject to a tolerance of 1,263 pounds which exceeded the difference in the scale weights. The charges were properly assessed. Sub. No. 1. Car of coal from Kennerly No. 1, Pa., to Indianapolis, original billed weights gross 142,000, tare 39,900 pounds, net 102,100, and those on reweighing, gross, 140,800 tare 39,900, net 100,900, difference 1,200 pounds. The difference in weight is less than the tolerance plus the allowance for evaporation. Charges assessed applicable. Sub. 2. Coal from Clinton, Ind., to Muncie, Ind., billed weights gross 147,100, tare 39,200, net 107,900 pounds. Reweighing gross 146.000, tare 38,300, net 107,700 pounds. HELD, charges as-

sessed applicable. Sub. 3. Coal from Springfield, Ill., delivered at Indianapolis, Ind. There was no charge made for reweighing and the only claim in this case is for excessive freight charges collected. HELD, record not sufficiently definite to warrant a finding in complainants favor. sub. 4, 6, and 8, Complaints are barred by the statute of limitations. Complaint dismissed. Sub. 5. Coal from Lost Run, O., to Nappane, Ind. Weighed gross 160,500, tare 38,000, net 122,500 pounds. HELD, charges assessed applicable. Sub. 7. Coal from Lackeyville, Ky., to Muncie, Ind., billed gross 130,600, tare 37,800, net 92,800 pounds. Reweighed at Muncie, gross 135,700, tare 37,800, net 97,900, difference 5,100 pounds. Tariff check shows that the charge of $2.70 was correctly assessed. Sub. 9. Two cars of coal, one from Thacker, . Va., to Indianapolis, billed gross 131,100, tare 42,200, net 88,900, reweighed at Indianapolis, gross 128,000, tare 42,200, net 85,800, difference 3,100 pounds. No evidence was introduced tending to show that the weighing at destination was more reliable than the original weighing. HELD, charges correctly assessed. Other car was barred by statute of limitations. Downing & Son v. Director General, 132 I. C. C. 19.

§5. Estimated Weight.

See Estimated Weights; Express Companies §37½ (a).

(a) Estimated billing weights used in assessing charges on shipments of ice cream by express, and rates and charges resulting therefrom, found not unreasonable or unjustly discriminatory. Upon contention that a new-style tub adopted by ice cream shippers is of less cubic capacity and of less weight when packed for shipment than old-style tub upon which present estimated billing weight was established, it was agreed by parties that a joint weighing test be made. Certificate reports thereof show that average gross weight of shipments in new-style 5-gallon tubs exceeds that of old-style and that actual average gross weight of all shipments in 5-gallon tubs is greater than that upon which present estimated billing weight is based. Nat'l Asso. Ice Cream Mfrs. v. Amer. Ry. Exp. Co., 107 I. C. C. 267.

(b) Based upon weight tests conducted by carriers in various sections of the country, proposed increased estimated weight on lettuce, in crates of specified dimensions, moving transcontinentally eastbound from points west of Albuquerque, Belen, and Deming, N. Mex., El Paso, Tex., Salt Lake City, Utah, and certain points in northern California, found justified. Lettuce from Pacific Coast Territory, 107 I. C. C. 559.

(c) Vegetables: Upon complaint seeking a change in method of stating rates on fresh and green vegetables from a basis per package, generally used from all vegetable-producing areas, to a weight basis, FOUND: Basis proposed would necessitate use of minimum weights on some of these commodities which can not be loaded, a practice which commission has universally condemned. Moreover, if rates on these commodities were published on a weight basis, it would be a practical necessity, in interest of economical and expeditious handling, that estimated rather than actual weights be used and record fails to contain a sufficient showing upon which to base a schedule of estimated weights. South Carolina Produce Asso. v. A. & R., 107 I. C. C. 613, 614.

(d) Complainant attacked commodity rates on grape fruit, carloads, from Florida to Salt Lake City, Ogden, Pocatello and Butte between April, 1918 and May 3, 1924 as unreasonable, unjustly discriminatory and unduly prejudicial, and in violation of section 4. Charged to Salt Lake City and Ogden at applicable joint commodity rates named in amounts per standard box or crate, minimum 300 boxes or crates, prior to Dec. 20, 1921 and at combinations of proportional commodity rates to and from Jacksonville, Fla., on and after that date, with the exception of four shipments from points on the A. C. L., three of which moved to Ogden in Jan., Feb. and March, 1922 and one to Salt Lake City in Jan., 1922 on which joint commodity rates were collected. Charges to Pocatello were collected at the applicable combination of proportional commodity rates based on Jacksonville. Charged at 80 pounds per box or crate. Although the tariff rule is illogical, in that while it purports to provide an estimated weight for standard boxes or crates, such weight is subject to change when it is less than the actual weight of the box or crate, and unfair, in that no compensatory provision is made for pro rata decrease in rates for boxes weighing less than 80 pounds, nevertheless the joint rates were subject under that rule to pro rata increase for standard boxes

weighing in excess of 80 pounds. HELD, joint rates in effect from April 4, 1918 to April 4, 1923 unreasonable to extent they exceeded the aggregate of intermediates; undercharges should be waived. Reparation awarded. Rates to Pocatello not unreasonable. Ryan Fruit Co. v. Director General, 120 I. C. C. 206.

(e) Respondents proposed to increase the estimated weights on carrots from all points in the Mississippi valley, except New Orleans, La., on the I. C. and Y. & M. V., respondents, to numerous destinations in official classification territory, certain of the middle western states and Carolina territory. Large majority of the points of origin are in Mississippi and a smaller number in Louisiana. Except to the destinations considered herein, estimated weights on the same basis as those proposed are effective from these points of origin to practically all destinations, including Chicago, Ill., and the proposed estimated weights are in effect from New Orleans to all destinations. Rates on carrots are made with respect to, and are the same as, rates on beets, and the proposed weights are the same as those now applicable on beets. It is almost self evident that if an estimated weight is less than the actual weight, the shipper obtains free transportation of so much of his shipment as is in excess of the estimated weight, and that if the estimated weight is greater than the actual weight, the carrier obtains a revenue upon the excess not hauled. It is obvious, therefore, that the estimated weights should correspond as closely as practicable to the carrying capacity of the container, when properly packed, plus the weight of the container. Estimated weights of different sized containers should be properly related and the estimated weights applicable from different points of origin in this territory should be uniform. HELD, suspended schedules justified. Estimated weights on carrots, 120 I. C. C. 733.

(f) Tariff provided for assessing of charges for transferring fuel oil from standard to narrow-gauge cars at Palisade, Nev., for transportation over the narrow-gauge line of the Eureka Nevada Ry. Co., based upon an estimated weight of 7.4 pounds per gallon at full shell gallonage capacity of the car. Upon contention of shipper that transfer charges should have been based on weight per gallon of oil transported which aggregated less than weight based on full shell gallonage capacity of cars, HELD: transfer charges being restricted in tariff to apply per carload, the contention is without merit. Mackintosh Mines Co. v. E. N. Ry., 120 I. C. C. 121.

(g) Upon complaint seeking establishment of an estimated weight of 80 pounds per standard box or crate on grapefruit from points in Florida to Salt Lake City and Ogden, Utah, HELD: to grant relief sought would be inconsistent with commission's findings in 95 I. C. C. 532, wherein it was proved that an average estimated weight of 85 pounds per box of this commodity is not excessive. Ryan Fruit Co. v. Director General, 120 I. C. C. 206.

(h) Proposed increased estimated weights on carrots from points on Illinois Central and on Yazoo & Mississippi Valley railroads, to northern, eastern, and western points, found justified. Based upon the evidence of record and tests conducted by carriers, the 1-bushel containers are capable of holding enough carrots to bring the aggregate up to the estimated weight here proposed. Although the average test-weight of ⅞-bushel hampers was less than the estimated weight, instances in which these hampers reached the proposed weight are sufficient in number to make it reasonably certain that when properly packed they can attain that weight. However, estimated weights of different-sized containers should be properly related and established weights applicable from different points of origin in this territory should be uniform. Estimated Weights on Carrots, 120 I. C. C. 733.

(i) If an estimated weight is less than actual weight, the shipper obtains free transportation of so much of his shipment as is in excess of estimated weight, and if estimated weight is greater than actual weight, the carrier obtains a revenue upon the excess not hauled. It is obvious, therefore, that estimated weights should correspond as closely as practicable to the carrying capacity of containers, when properly placed, plus the weight of the container. Estimated Weights on Carrots, 120 I. C. C. 733, 734.

§6. **Reweighing.**

(a) Complainant alleged overcharge in sum of $16.20 for reweighing at destination six cars of anthracite coal shipped from Pennsylvania points to Kokomo, Ind., during the period March 8

to October 27, 1923. They were first weighed at points on the lines of the originating carriers. At complainant's request they were reweighed at destination by the N. Y. C. & St. L., and weighmaster's certificate which showed the gross, tare, and net weights obtained by reweighing were furnished to complainant with the bills for reweighing and the freight bills. The gist of the complaint is that defendant failed to comply with the provisions of its tariff governing the weighing and reweighing of coal, in that the gross, tare, and net weights obtained by reweighing were not shown on the freight bills, and that because of such failure the weighing charges were illegally assessed and should be refunded. The difference between the original net weights and the weights obtained by reweighing at destination did not exceed the tolerance allowance. All of the data pertinent to the reweighing was contained on the weighmaster's certificate which accompanied each freight bill. Failure of complete literal compliance with the rule does not affect the applicable charges to the shipper. For a long period complainant accepted without objection weighmaster's weigh certificates in lieu of such information on the freight bills, which latter frequently did not afford sufficient space for this information. HELD: Charges for reweighing applicable, complaint dismissed. Consolidated Coal & Supply Co. v. N. Y. C. & St. L. R. R., 115 I. C. C. 209.

(b) Reweighing charges on coal at Kokomo, Ind., found to have been legally collected. Complainant contended that inasmuch as gross, tare, and net weights were not shown on freight bills as provided by tariff, charges were illegally assessed. However, as all data pertinent to reweighing was contained on weighmaster's certificate accompanying each freight bill, for all practical purposes this was equivalent to entry on the bill itself, the latter frequently not affording sufficient space for this information. Moreover, failure of complete literal compliance with rule did not affect applicable charges to shipper. Consolidated Coal & Supply Co. v. N. Y., C. & St. L., 115 I. C. C. 209.

(c) Marked tare weight of car was used in computing freight charges on coal. Upon contention that shipment was overcharged because of discrepancies in recorded tare weights of car and carrier's failure to verify weight stated by consignor. HELD, governing tariff provided that when coal is weighed at mines under an arrangement with initial carrier, the weight thus obtained will govern, and car will not be reweighed at destination unless carrier is requested to do so. No request for reweighing or complaint as to error in weight having been made at time of acceptance of shipment, evidence fails to sustain complainant's allegation of overcharges. Hipskind v. W. Ry., 115 I. C. C. 417.

§7½. **Track Scales.**

(a) Shipment of piles moving in two cars from Hadley, Ala., to West Brighton, N. Y., found overcharged. Charges were assessed on basis of an erroneous rate and billed weight, whereas they should have been assessed on basis of applicable rate and actual weight as determined by track scale, the shipment having been weighed on such scale en route. Reparation awarded. Bowers & Co. v. Director General, 107 I. C. C. 305.

(b) Carriers maintained no track scales at origin points. Freight charges were assessed on basis of weights obtained on scales operated by mining companies at such points. These weights were also used for invoice purposes, and complainants paid for coal on basis of such weights. They were also checked for purpose of making up pay rolls. Complainants made no request to have shipments reweighed, as they were entitled to do, nor did they weigh them upon arrival at destination. Upon complaint alleging that weights were not ascertained in conformity with tariff rules and regulations and that freight charges, should have been based upon applicable rate and minimum weight, HELD: Weight question of shipments is one of fact, and actual weight constitutes true basis upon which freight charges should be assessed. While carrier's failure to comply with certain tariff rules may make it liable to penalty provisions of the act, such failure is not a sufficient basis for a reparation award where evidence, as here, does not show that shipper was damaged thereby. Curtis v. Director General, 109 I. C. C. 378.

(c) Charges assessed on a shipment of coal were based upon weight obtained on carrier's track scales at point of origin. Shipper's invoice, upon which basis it made settlement for the coal, showed a less weight. Upon complaint alleging that charges of carrier were

upon an erroneous basis, HELD: The scale weight must govern in the absence of convincing proof of error. See 20 I. C. C. 60 and other cited cases. Were the commission to base its opinion in cases of this character upon invoice weight, the door would be left open to collusion and fraud, making rebating an easy matter. Here the invoice weight, obtained from some unknown agent of carrier, can not be considered proof that the scale weight was incorrect, nor is this shown from fact that market tare weight of car was somewhat less than the actual weight. Monon Lbr. Co. v. Director General, 109 I. C. C. 429.

(d) In cases involving claims for refunds of charges based upon alleged improper weights, the scale weight must govern in absence of convincing proof of error. See 20 I. C. C. 60 and other cited cases. Were commission to base its opinion in cases of this character upon invoice weights of shipments the door would be open to collusion and fraud, making rebating an easy matter. Monon Lbr. Co. v. Director General, 109 I. C. C. 429, 430.

(e) Complainant attacked track scale weighing charge of $2.70 assessed at Allegheny, Pa., on inbound shipments of scrap iron, carloads, and a like charge on empty cars after unloading, between November 9, 1922, and December 22, 1923, as unreasonable and unduly prejudicial. Complainant's plant is south of and parallel with defendant's Smoky Island break up yard. The track scale at which the weighing was performed is about 858 feet east of complainant's yard. Under written instructions all carload shipments of scrap iron for complainant were weighed prior to placement and the empty cars were weighed after unloading, for which the total charge was $5.40. HELD: Charge attacked not unreasonable or unduly prejudicial, complaint dismissed. Luria Bros. Co. v. B. & O. R. R., 115 I. C. C. 193.

(f) The presumption of accuracy which attaches to weights obtained over scales maintained by carriers must be clearly rebutted to be overthrown. Dallas Transfer Co. v. S. P., 115 I. C. C. 658, 659.

VI. TARIFFS AND CONSTRUCTION.

§12. Inspection Bureaus.

See Inspection.

(a) Circulars published by the Weighing and Inspection Bureau not published as tariffs by carriers or filed with commission are not controlling as are tariffs or other publications filed in accordance with section 6 of the act. Glarner & Co. v. S. Ry., 129 I. C. C. 75, 77.

VII. REASONABLENESS OF CHARGES.

§13. In General.

See Reasonableness of Rates.

(a) Complainant contended that weighing charge of B. & O. at Allegheny, Pa., on inbound shipments of scrap iron, and on empty cars after unloading, was unreasonable and unduly prejudicial in that it exceeded rate charged competitors for similar service by the Pennsylvania R. R. in Pittsburgh district as well as by other carriers in trunk-line territory generally. However, upon showing that charges assailed were same as those charged all shippers in Pittsburgh and at other stations on B. & O's lines, and that all carriers in c. f. a. territory make same charge for similar service. HELD, charge assailed was not unreasonable or otherwise unlawful. Luria Bros. & Co. v. B. & O., 115 I. C. C. 193.

(b) Applicable charges and tariff rule which provided for assessing of double the c. l. rate on excess weight of overloaded cars when moved through to destination, or for levying a charge for reloading into suitable equipment where such shipments are discovered en route, found not unreasonable or otherwise unlawful. Complainant here operated under a weight agreement whereby his weights were accepted by carriers, tariffs providing that such shipments need not be reweighed either at point of origin or en route. Moreover, while a carrier is obligated to furnish proper equipment for safe transportation of goods, shipper's duty is to load properly and to observe tariff rules, noncompliance with which affords no basis for finding legally applicable charges unreasonable or otherwise unlawful. See also 95 I. C. C. 525; 51 I. C. C. 99. Memphis Frt. Bureau v. St. L. S. W., 115 I. C. C. 409.

WHARFAGE

See Allowances §8 (8); Dockage; Facilities and Privileges §16; Water Carriers §6¾.

(a) Proposal of the Hawaii Consolid-

ated Ry., Ltd., on the island of Hawaii, to increase loading and unloading charges on sugar, from 35 to 50 cents per net ton when unloaded from cars to warehouse and reloaded from warehouse to lighters, or ship's side at Kuhio wharf, found not justified. Kuhio wharf is a Government-owned structure, portions of which are leased by the carrier. The carrier has no money invested therein but collects from those making use of these facilities amounts sufficient to pay all expenses incident to service performed. However, it is entitled to a fair profit for its services and a study of expenses attached thereto indicates that an increase of 5 cents per net ton is ample for this purpose. Rates on Hawaii Consolidated Ry., 118 I. C. C. 489.

WORDS AND PHRASES

(a) "Billets" and "blooms:" In the manufacture of steel, pig iron, the crudest form in which metallic iron is shipped, is refined by eliminating in part certain undesired metals and metalloids by oxidation. The resulting product, steel, is cast into ingots weighing from two to three tons each. While still hot the ingot is passed through rollers of the blooming mill until reduced to a size about 8 inches square in cross section, when it is known as a bloom. The bloom is then rolled in billet mill until it reaches a size from 4 inches square to 1.5 inches square in cross section, when the steel is usually cut into convenient lengths and allowed to cool, for the first time. These lengths are called billets. Iron and Steel Articles, 104 I. C. C. 616, 617, 618.

(b) "Grain leather:" When leather is split, that which is removed from the flesh side of the hide is known as split leather and that which remains as grain leather. Griess-Pfleger Tanning Co. v. E., J. & E., 104 I. C. C. 464, 465.

(c) "Just and reasonable:" The words as used in Federal control act obviously bear a similar or closely analogous meaning to that attaching to their use in interstate commerce act. See 51 I. C. C. 250, 258. North Packing & Provision Co. v. Director General, 104 I. C. C. 607, 608.

(d) "Plant service:" The holding of cars at a place in a plant where loading is impossible is not spotting cars for loading, but if the plant requires empties to be placed in this manner for its convenience the additional move is a plant service. Divisions Received by B. R. R. & C. Co., 104 I. C. C. 415, 432

(e) "Practice:" Defined as an "often repeated or customary action, usage, custom." York Mfrs. Asso. v. P. R. R., 107 I. C. C. 219, 232.

(f) "Private tracks:" Placement tracks, from standpoint of tariff description, are either public or private; there is no middle ground. A plug track used for inspection of hay and leased to a hay exchange for that purpose could not be described as a public delivery track on which any or all shippers could receive or ship any or all freight. Consequently it falls into the general category of private tracks. Brown & Co. v. E. R. R., 109 I. C. C. 109, 111.

(g) "Shortest workable routes:" Defined. Southern Class Rate Investigation, 109 I. C. C. 300, 312.

(h) "Split leather:" When leather is split, that which is removed from the flesh side of the hide is known as split leather and that which remains as grain leather. Greiss-Pfleger Tanning Co. v. E., J. & E., 104 I. C. C. 464, 465.

(i) "Tank Car:" Proposal to define a "tank car" as a car with permanently attached tank or tanks which can not be detached for filling, emptying, or storage of contents, found not justified. Such definition would result in charges on chlorine and other compressed gases moving in multiple-unit tank cars higher than on shipments moving in single-unit class V cars. The multiple-unit car affords every safeguard for transporting and handling chlorine gas, and it would be impracticable or impossible for some consumers to use that commodity when shipped in single-unit cars. Use of a car, tanks of which may be removed in interest of safety, is necessary for future development of chlorine-gas industry. Moreover, if full complement of tanks which form superstructure of middle-unit car is securely attached to underframe when offered for transportation, or return movement after being unloaded, no good reason appears for applying different rules and charges on the two types of equipment. Definition of Tank Cars, 104 I. C. C. 196.

(j) "Working Capital:" is understood to include, usually, three parts; First, investment in a stock of material and supplies, second, cash necessary to pay operating expenses incurred for com-

mon-carrier service prior to time when revenues from that service are available; and, third, a buffer fund of cash constantly on hand to cover amply recurrent and fluctuating deficiencies in the inflow of revenue applicable to payments falling due. Divisions Received by B. R. R. & C. Co., 104 I. C. C. 415, 426.

(k) "Action": The word "action" as used in section 16 (3) of the act must be interpreted to mean "action at law." Pfister & Vogel Leather Co. v. E. R. R., 112 I. C. C. 659, 660.

(l) "Barrel Shook": A barrel shook is a set of staves, heads, and hoops for a complete barrel, knocked down and packed for shipment. For latter purpose the staves are tied in bundles and the heads and hoops stowed in barrels. Hamilton v. P. R. R., 113 I. C. C. 723.

(m) "Compo-board" is a built-up board consisting of a wood core of thin narrow slats or strips of wood, glued together, and faced on either side with a layer of paper or clapboard, which is glued or cemented to the wooden core. About 70 per cent of the finished article is composed of lumber. The product is used for drawer bottoms, show-case backs and bottoms, shelves, store fixtures, blackboards, bulletin boards, picture packing, etc. Wright Lumber Co. v. A. A., 112 I. C. C. 337.

(n) "Electric Starter": An electric starter is an electric motor. Wagner Electric Corp. v. Director General, 112 I. C. C. 57.

(o) "Engine distillate" is a product intermediate between gasoline and kerosene. It contains some of the low-volatile gasoline fractions which do not meet gasoline specifications, and a large percentage of kerosene. It is a finished product and is used as a fuel for certain types of internal-combustion engines. Commodity Specifications on Petroleum Products, 113 I. C. C. 707, 709.

(p) "Engines": Question as to whether marine engines are comprehended in the term "engines" as used in a tariff item in view of the limiting words in the heading, viz., "Electrical, Iron Working (Power), Mining and Smelting," HELD: In common acceptation the term "engine" does not include motors and generators or dynamos, which the item specifically names. However, it can not be said that engines used for operating iron-working, mining, or smelting machinery are essentially different from other engines used to operate power machinery; in fact, same kind and style of engines as are used for purposes named are put to many other uses, marine-type engines being sometimes used on land for power purposes. The parenthetical expression in the heading, therefore, clearly does not so restrict the term "engines" as to prevent its application to marine engines. See 68 I. C. C. 195, construing the term "turbines" in the same item. Duthie & Co. v. Director General, 113 I. C. C. 255, 257.

(q) "Existing Connections for the Interchange of Carload Traffic": Fact that by means of a switch it is possible to so handle a car at a place not a point of interchange as to reduce distance between points of origin and destination by the fraction of a mile or a few miles does not bring such a place within the meaning of the phrase "existing connections for the interchange of carload traffic" as used in a finding of commission prescribing distance rates and which provided for computation of distance by the use of "the shortest routes via existing connections for the interchange of carload traffic * * *." Cottonseed to Cairo, 112 I. C. C. 709, 711.

(r) "Gas Oil" is generally understood to be a low-grade product containing no gasoline or kerosene. Refinery tops are not considered to be gas oil for transportation purposes. Commodity Specifications on Petroleum Products, 113 I. C. C. 707, 712.

(s) "Gas Oil" as defined by chemists and others connected with the oil industry, is a low-grade petroleum product containing no kerosene or gasoline in quantities commercially recoverable by distillation. It is the product which is distilled from crude petroleum immediately following kerosene, and is used in manufacture of illuminating gas, as a furnace oil, to thin heavy fuel oil, and as charging stock in the production of gasoline by the cracking process. Commodity Specifications on Petroleum Products, 113 I. C. C. 707, 709.

(t) "Lime": It is impracticable to frame definitions of lime in terms under which different grades could be distinguished merely by inspection and which at same time would be free from discrimination. Eastern Lime Mfrs. Traffic Bureau v. A. & B. B., 112 I. C. C. 7, 15.

(u) "Newsprint paper": Upon contention that "printing paper" is a ge-

neric term and therefore should include "newsprint paper," HELD: Terms describe separate and distinct articles, the commission having previously stated in 38 I. C. C. 120, 140, that they are readily distinguishable. Great Northern Paper Co. v. B. & A., 113 I. C. C. 463, 464.

(v) "Products of agriculture": Terms "products of agriculture" and "livestock" construed by the commission to mean such products and animals as are customarily produced for profit by farmers and ranchmen individually or cooperatively. Revenues in Western District, 113 I. C. C. 3, 39.

(w) "Practice": Contention that the word "practice" as used in the act relates only to matters between shippers and carriers and not to questions affecting handling of traffic between carriers, not sustained. The word as used in paragraphs (6) and (11) of section 1 and paragraph (1) of section 15 of the act clearly comprehends within its meaning questions relating to handling of traffic between carriers. C., R. I. & P. v. B. & O., 113 I. C. C. 681, 683.

(x) "Printing paper": Upon contention that "printing paper" is a generic term and therefore should include "newsprint paper," HELD: Terms describe separate and distinct articles, the commission having previously stated in 38 I. C. C. 120, 140, that they are readily distinguishable. Great Northern Paper Co. v. B. & A., 113 I. C. C. 463, 464.

(y) "Red oil" is a reddish-brown liquid derived from splitting the natural oil which has run off animal grease after a process of cooling and pressing. It is also known as oleic acid or olein and is used in the manufacture of soap, oleates, medicine, and polishing compounds, and for scouring and oiling wool. Williams Co. v. C. N. E., 112 I. C. C. 158.

(z) "Refinery Tops" is a loose and indefinite term, being nothing more than a nickname used to designate the "top" of the crude oil produced by the first distillation. Commodity Specifications on Petroleum Products, 113 I. C. C. 707, 714.

(aa) "Refinery tops" are not considered to be gas oil for transportation purposes. Commodity Specifications on Petroleum Products, 113 I. C. C. 707, 712.

(bb) "Refinery tops" are a semi-refined product obtained from crude petroleum by the first distillation. They contain gasoline, engine distillate, kerosene, and a small quantity of gas oil, which are extracted in the order named at refineries. Commodity Specifications on Petroleum Products, 113 I. C. C. 707, 709.

(cc) "Tin plate scrap" consists of clippings from tin plate used by can manufacturers. In the detinning process tin scrap is hydraulically bundled and exposed to chemical action of chlorine gas. Bundles are then washed to remove remnant of chlorine and products are steel scrap and tin. Metal & Thermit Corp. v. C. R. R. Co. of N. J., 112 I. C. C. 523, 524.

(dd) In interpreting meaning of the term "unclaimed" a demand for delivery and a readiness to pay charges are equivalent to claiming a shipment. See 85 I. C. C. 331, 333. Northwestern Fruit Exchange v. E. R. R., 112 I. C. C. 29, 32.

(ee) "Actual-value rates:" Released rates afford shipper a choice of two rates, under the higher of which unlimited carrier's liability attaches and under the lower of which the shipper, in consideration of reduced rate, by fair and reasonable agreement declares or agrees that for purpose of claim in case of loss or damage the value of his shipment is a certain amount, or not in excess of a certain amount. Actual-value rates, on the other hand, are published on commodities upon which ranges in value are so wide that articles covered by different groups of valuations are in fact different commodities. In other words, released rates limit carrier's liability, whereas actual-value rates designates the commodity. Carr v. Director General, 118 I. C. C. 569, 571.

(ff) "Alcohol, denatured and wood:" Denatured alcohol is ethyl alcohol that has been rendered unfit for beverage purposes by addition of foreign substances, while wood alcohol is obtained from distillation of wood and is a poisonous substance. U. S. Industrial Alcohol Co. v. C. & N. W., 118 I. C. C. 674, 675.

(gg) "Base point:" The term "base point" as used in rule 5 (b) of Tariff Circular 18-A was not intended to refer to stations named in tariffs as basing points, or even to well-known basing points, but was used merely to refer to any point upon which rates may base. Birmingham Traffic Bureau v. Director General, 115 I. C. C. 33, 36.

(hh) Depreciation is loss in service value not restored by current maintenance other than extraordinary repairs

and incurred in connection with consumption or prospective retirement of property in course of service from causes against which carrier is not protected by insurance, which are known to be in current operation, and whose effect can be forecast with a reasonable approach to accuracy. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 342.

(ii) The function of depreciation is to account currently for consumption or exhaustion of service life of property from causes known to be in operation and effect of which can be forecast with reasonable accuracy. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 341.

(jj) "Depreciation reserve" is a record of undoubted fact that service lives of existing depreciable property units have to a certain extent been consumed. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 308.

(kk) "Dumping:" The term as understood in sand and gravel trade, consists of shipping one's surplus production to a market, usually without a previous sale, and disposing of same at prices which are considerably below the market and represent only freight charges or little more. Chicago Gravel Co. v. A., T. & S. F., 118 I. C. C. 633, 637.

(ll) "Extraordinary repairs:" Term construed and defined for purpose of depreciation accounting of railroad and telephone companies. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 350.

(mm) "Insurance:" The function of insurance is to afford protection against possible contingencies which can not be foreseen and which may or may not ever occur. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 341.

(nn) "Lahn" is a form of tinsel and is not wire. Nat'l. Tinsel Mfg. Co. v. C. & N. W., 115 I. C. C. 631, 632.

(oo) "Ledger value:" Method of determining "ledger value" for purpose of depreciation accounting of railroad and telephone properties, outlined and described. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 351, 378, 380, 381.

(pp) "Lime, agricultural:" Agricultural lime is limestone kiln-burned, whereas agricultural limestone is ground or powdered limestone. Both are used as fertilizers and are similar from a transportation standpoint. Case & Sons v. P. R. R., 115 I. C. C. 694.

(qq) "Machine:" Upon contention that a self-propelling road roller is not a machine because it is ordinarily referred to as a "steam roller" rather than a machine, HELD: For obvious reasons most machines are referred to by their individual names but that does not make them any the less machines. A self-propelling road roller is a machine in an entirely proper and normal sense of the word. Lawrence Construction Co. v. L. & N., 115 I. C. C. 439.

(rr) "Net salvage value:" Term construed and defined for purpose of depreciation accounting of railroad and telephone companies. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 350, 351.

(ss) "On the same line:" Phrase as incorporated in an intermediate clause of tariffs construed to require that intermediate point be on line of same carrier as more distant point to which a rate is published. American Radiator Co. v. D. & T. S. L. R. R., 115 I. C. C. 529, 531.

(tt) "Other malt liquors:" Tariff description "other malt liquors" found sufficiently broad to comprehend "cereal beverages." Latter are made in same manner as beer, but are then subjected to a process for reducing alcoholic content. Bradley & Woertz v. I. C., 118 I. C. C. 233, 236.

(uu) "Released rates:" Released rates afford shipper a choice of two rates, under the higher of which unlimited carrier's liability attaches and under the lower of which the shipper, in consideration of reduced rate, by fair and reasonable agreement declares or agrees that for purpose of claim in case of loss or damage the value of his shipment is a certain amount, or not in excess of a certain amount. Actual-value rates, on the other hand, are published on commodities upon which ranges in values are so wide that articles covered by different groups of valuations are in fact different commodities. In other words, released rates limit carrier's liability whereas actual-value rates designates the commodity. Carr v. Director General, 118 I. C. C. 569, 571.

(vv) "Scraps or pieces of iron suitable for remelting purposes only:" To come within tariff description articles must not be shipped in their original

form but must be so reduced to fragments, scraps, or pieces as to be useless for any purpose other than remelting. Richmond Radiator Co. v. C. & N. W., 115 I. C. C. 743, 744.

(ww) "Service life:" Term construed and defined for purpose of depreciation accounting of railroad and telephone companies. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 350.

(xx) "Service value:" Term construed and defined for purpose of depreciation accounting of railroad and telephone companies. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 351.

(yy) "Servidors" are patented doors designed with double panels enclosing a narrow compartment to permit delivery or removal of clothes and other articles from hotel rooms without an employee having to enter a room. By means of a locking device only one panel can be opened at a time, so that there is always a complete barrier or door between the room and the corridor. Servidor Co. v. C., M. & St. P., 118 I. C. C. 49.

(zz) "Sinking fund method of depreciation:" Described. Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 309.

(3a) "South and west of Jacksonville:" Tariff carried notation "applicable only via Seaboard Air Line as initial carrier and only on traffic originating at points south and west of Jacksonville." Upon contention that notation included points on all lines in Florida south and west of Jacksonville or on traffic turned over to the S. A. L. at that point, HELD: Given a reasonable construction such notation restricted lower rate to traffic originating only on Seaboard Air Line south and west of Jacksonville. Wauchula Development Co. v. A. C. L., 115 I. C. C. 207.

(3b) "Transportation charges:" Question as to whether or not demurrage charges are included in the term, discussed. Manassa Timber Co. v. L. & N. R. R., 115 I. C. C. 421, 424, 425.

(3c) "Under substantially similar circumstances and conditions:" The phrase as found in section 2 of the act, refers to matter of carriage and does not include competition. See 44 I. C. C. 455 and cases there cited. Winding Gulf Colliery Co. v. C. & O., 115 I. C. C. 113, 119.

(3d) "And intermediate points." Tariff item publishing Rates from Carthage and Phoenix, Mo., to various Illinois and Missouri destinations listed rates to "Chicago, Ill., Milwaukee, Wis., and intermediate points." Upon contention that phrase "and intermediate points" included all points between Carthage and Phenix as origins, and Chicago and Milwaukee as destinations, via all routes, and that rates named thereunder applied on sawed stone and marble moving from Carthage and Phenix, to Indianapolis, Brightwood, and St. Mary of the Woods, Ind., HELD: by a fair and reasonable construction of tariff as a whole, the phrase "and intermediate points" refers only to points between Chicago and Milwaukee. To sustain complainant's contention would necessitate a strained and unnatural construction of tariff and result in various conflicts. Gates Marble & Tile Co. v. C., P. & St. L., 120 I. C. C. 275, 277, 278.

(3e) "Billets": A billett is a short piece of wood, split or sawed to convenient size for turning purposes. See 62 I. C. C. 701. Cronk & Carrier Mfg. Co. v. G., M. & N., 120 I. C. C. 663, 664.

(3f) "Intermediate Carrier:" Fact that a carrier hauls cars with its own engines over tracks of an intermediate line does not constitute the latter line an intermediate carrier. Kansas City, K. V. & W. Ry. v. A., T. & S. F., 120 I. C. C. 258, 261.

(3g) "Street car": Upon contention that phrase in tariff "Cars and Car Bodies, Street, with or without motor attachments," must be construed as applying only to passenger street cars or street-car bodies on theory that term "street car" as ordinarily used means a passenger street car, not sustained. Dictionaries define a street car as "A car, usually a passenger car, running through the public streets, usually on rails," and "A passenger car on rails laid on the surface of streets; a car on a street railway." Both phrases incorporated in the tariff or above definitions are sufficiently broad to include cars used on street railways for construction and repair work, in addition to passenger cars. Market Street Ry. Co. v. S. P., 120 I. C. C. 654, 655.

(3h) "At-and-east rates": The at-and-east rates are proportional rates from the lake ports and apply on grain which is moved to lake ports by water. They include a charge of one cent a bushel for elevation and transfer of lading to cars.

Birkett Mills v. D., L. & W., 123 I. C. C. 63, 64.

(3i) "Cottonseed-hull fiber or shavings and cotton linters": Shipments billed as "cottonseed-hull fiber or shavings" were upon inspection found to consist of "cotton linters," and charges on later commodity were collected. Neither published tariffs nor classification defined "hull fiber or shavings" or "linters." Upon complainant's contention that shipments consisted of hull fiber or shavings, HELD: Where tariffs merely provide rates on linters and hull fiber or shavings without defining either, determination of applicable rate is a question of fact. See 77 I. C. C. 727. Here, samples of commodity shipped were entirely free from particles of the hull, which is one of the chief characteristics of cotton-seed hull fiber or shavings, and were somewhat lighter in color, whereas hull fiber or shavings are usually dark. Therefore shipments consisted of linters and applicable rates were assessed. Fraser v. A. C. L., 122 I. C. C. 520.

(3j) "F. o. b. rates": The f. o. b. rates are local rates applying on both grain and products from the lake ports and do not include elevation or other services incident to transfer of lading from lake vessels to cars. Birkett Mills v. D., L. & W., 123 I. C. C. 63, 64.

(3k) "Locomotive" and "Motor car" defined. Rules for testing other than Steam Power Locomotives, 122 I. C. C. 414, 419.

(3l) "Merchandising cotton": Includes grading and arranging in lots of even-running grade and staple, sampling and resampling, tagging, marking, patching, reconditioning, rebaling, and assembling in shipment lots. Rates on Cotton to Gulf Ports, 123 I. C. C. 685, 697.

(3m) "Prior to September 1, 1920": Phrase as used in section 208 (a) of the transportation act, 1920, is not to be construed as prescribing a time limitation within which commission was authorized to act, but as fixing the period as to which its approval was necessary to a reduction in rates whether made during the guaranty period by naming lower rates for future, or accomplished after expiration of the period by way of reparation on shipments which moved during that period. Reparation on Intrastate Traffic, 122 I. C. C. 443, 448.

(3n) "Railroad premises": Storage assessed charges on private cars of gasoline under storage rule providing for assessment of charges on dangerous articles requiring "inflammable" placards, held on railroad premises in excess of free time, found inapplicable. Under the rule the term "Railroad premises" included private tracks constructed, maintained or operated under written agreement, located inside carrier's right-of-way, yard, and terminals, reserving to carrier right of use. Here, tracks were constructed under contract, but were used exclusively as plant facilities, and could be used by carrier only when such use did not interfere with complainant's business. Moreover, in 65 I. C. C. 58, interpretation of term "railroad premises" made the written agreement the controlling factor rather that right of use. Complainant's tracks therefore could not under any circumstances be considered as railroad premises. Refund of charges directed. Kelly Oil Co. v. M.-K.-T., 123 I. C. C. 517.

(3o) "Scarfed material": Used in making basket tops consists of that portion of the wood remaining in the slab after the log has been squared. Liberty Cooperage & Lbr. Co. v. S. Ry., 122 I. C. C. 297, 298.

(3p) "Separately operated": Winston-Salem Southbound Ry., found not to be a separately operated railroad within meaning of commission's order entered in 56 I. C. C. 1. In defining the term "separately operated" the commission did not limit it to physical operation but it was given a broader meaning to include administration of the affairs of the carrier as well. The Winston-Salem has not a separate administrative organization and hence does not come within the classification of roads for which higher rates of mail pay were established. Railway-Mail Pay, 123 I. C. C. 33.

(3q) Direction "Best Route for B. & O. Del." required shipments to be sent over the cheapest route that would permit of B. & O. delivery, either by line haul or in switching service. See 42 I. C. C. 719. Norcross Marble Co. v. B. & O., 126 I. C. C. 741, 742.

(3r) Direction to send shipments over the "Best Route" to be given the same effect as if the shipments were not routed by shipper at all, and imposes upon carrier the duty to send them over the cheapest reasonable route to which shipper would be entitled on shipments tendered unrouted. Norcross Marble Co., v. B. & O., 126 I. C. C. 741, 742.

(3s) "Consignee" is one to whom goods are consigned, shipped, or other-

wise transmitted. Case v. Union Pac. R. Co., (Kan., 1925) 241 Pac. 693.

(3t) "Fleshings" consists of refuse of tanneries in the form of pieces of flesh and waste scraped from hides. It is a low-grade commodity used in making glue, being preserved for shipment by a milk-of-lime treatment and, as shipped, consists of approximately 80 per cent water and 20 per cent solid matter. It is not easily damaged and may be transported in either box cars or open-top equipment. Keystone Glue Co. v. S. Ry. Co., 126 I. C. C. 507, 508.

(3u) "Product of Agriculture:" Respondents' contention that milk and cream are not products of agriculture and that provisions of Hoch-Smith resolution do not apply in determining whether proposed increases in rates thereon may be established, not sustained. Milk and cream are agricultural products and come within class of products with which the resolution specifically deals, and in adjusting freight rates in accordance with its provisions "the conditions which at any given time prevail in the several industries to the end that commodities may freely move, and especially the effect upon agricultural products," must be considered and rates for movement of such commodities reduced to lowest lawful level consistent with maintenance of adequate service. Milk and Cream Between New England Points, 126 I. C. C. 38, 68, 69.

(3v) "Rods:" It is immaterial whether a steel rod be circular, rectangular, or hexagonal in cross-section to come within the description of a rod. See 93 I. C. 171 and other cited cases. Standard Nut & Bolt Co. v. N. Y., N. H. & H. 126 I. C. C. 731, 732.

(3w) "Tin Oxide:" is pig tin reduced to a pulverized form and mixed with oxygen. It is shipped in this pulverized form, in barrels, in box cars, and is not inflammable or subject to loss and damage. Federated Metals Corp. v. P. R. R. Co., 126 I. C. C. 144.

(3x) "To extent that it exceeded, etc.:" Words in finding of commission "to the extent that it exceeded the aggregate of intermediate rates" indicate measure of unreasonableness under section 1 and do not denote a finding under section 4 of the act, this manner of stating measure of unreasonableness having been followed in numerous decisions. Burns & Knapp v. B. S. & K. R. 126 I. C. C. 410, 413.

(3y) "When from beyond:" Tariff published two sets of rates from Peoria, one without restriction, and the other a lower rate applicable on traffic "when from beyond." Upon contention that lower rates are not proportional rates because when added to rates inbound to Peoria from shipping points generally "through rates" are not thereby secured inasmuch as joint rates on lower basis are maintained from such points through Peoria, HELD: Contention is without merit. The "when from beyond" rates could be used in constructing combination rates from points from which no through rates were published. Moreover, in 81 I. C. C. 688, the commission HELD that the word "beyond" implies a line-haul movement "beyond" the rate-breaking point. Armour & Co. v. Director General, 126 I. C. C. 539, 540, 541.

(3z) Under Interstate Commerce Act (U. S. Comp. St. § 8563 et seq.), term "transportation" includes storage charges. Erie R. Co., v. F. Kieser & Son Co., 215 N. Y. S. 576.

(4a) "China clay" is an imported, low-grade commodity and is used as a filler in the manufacture of paper. Newton Falls Paper Co. v. R. Co., 128 I. C. C. 563, 564.

(4b) "Cold-pack fruit" is fresh fruit, the deterioration of which has been arrested by freezing and refrigeration. American Preserve Co. v. Reading Co., 128 I. C. C. 146, 147.

(4c) "Competitive Traffic:" Tariff provided for absorption of switching charges on lumber when shipments originated at competitive points but not when it originated at noncompetitive points. Upon contention that term "competitive traffic" as used in tariffs should include all shipments of lumber on ground that more or less competition is always present in purchase of that commodity, FOUND, that is not the meaning of this term as used in connection with absorption or nonabsorption of switching charges, competition as there used relating only to competition between carriers for the traffic. Federal Match Corp. v. G. N. 128 I. C. C. 415, 417.

(4d) "Dolomite:" Dolomite is crushed limestone and falls within the general commodity description "agricultural limestone." The dolomite used by the glass industry is the residue after two crushings and screenings of the limestone have removed, first, the stone of a size suitable

for the manufacture of burnt lime, and, second, the size suitable for furnaces in the steel industry. This residue is then dried and further screened. The third screening retains particles one-fourth inch and less in size, is used as a flux in the manufacture of glass and is known as raw dolomite stone. Dolomite and Fluxing Stone, 128 I. C. C. 23, 24.

(4e) "Mah-jongg" is a Chinese game, played with tiles and requiring a certain amount of skill. While to some extent it is played by children, it can not be dominated a toy. Paraffine Companies v. S. P., 128 I. C. C. 421, 423.

(4f) "Out of Route:" There is an obvious distinction between cases in which it has been found that shipments moving by other than the short route were not forwarded "out-of-route" in the absence of a definition of the term and the present case where "out-of-route" is described in the tariff as a movement not on direct route between origin and destination. Michigan Bean Co. v. D., G. H. & M., 128 I. C. C. 207, 209.

(4g) "Paper, wrapping, vegetable-parchment:" Vegetable-parchment wrapping paper, so called because it has some superficial resemblance to true parchment, is made of a mixture of rag pulp sulphite pulp, the rag-pulp content averaging about 35 per cent. It is treated with sulphuric acid, which removes the animal and mineral matter and leaves only the vegetable base. Because of its grease and water resisting properties it is used to wrap food products such as butter, meat, and certain vegetables which give off moisture or grease, or both. Kalamazoo Vegetable Parchment Co. v. C., K. & S., 128 I. C. C. 675, 677.

(4h) "Picher District:" The Picher district in northwestern Oklahoma and southeastern Kansas, is the largest zinc-ore producing district in the world, producing approximately one-third of the world's supply of that commodity. Probable productive life of the mines is said to be from five to seven years. Absorption of Drayage Charges, 128 I. C. C. 405.

(4i) "Port:" A port is neither the destination nor the origin of traffic passing through it. It levies toll on the traffic in substantially same manner as do common carriers in its charges for use of its facilities in transfer of traffic between rail and water carriers. Galveston Commercial Asso. v. G. H. & S. A., 128 I. C. C. 349, 369.

(4j) "Preserved:" Term "preserved" as applied to fruit contemplates only fruit that has been treated in such a manner that it will keep for an indefinite but substantial length of time at ordinary temperatures, and does not embrace cold-pack fruit which is fresh fruit, the deterioration of which has been arrested by freezing and refrigeration. American Preserve Co. v. Reading Co., 128 I. C. C. 146, 147.

(4k) "Viz" is generally read "namely" or "to wit," and is commonly employed to make specific that which has theretofore been stated in general terms. Paraffine Companies v. S. P., 128 I. C. C. 421, 423.

(41) "Asphalt, liquid": Liquid asphalt is a residual oil obtained from crude petroleum after the more valuable properties, such as gasoline, kerosene, naptha, and lubricating oils, have been removed. It is used in the manufacture of roofing material and for other purposes. Continental Roofing Mfg. Co. v. G. & S. I., 129 I. C. C. 313, 14.

(4m) Coal mining is not "commerce." Berwind-White Coal-Mining Co. v. United States, (Pa., 1925) 9 Fed. (2d.) 429, 430.

(4n) "Fiber or shavings, cottonseed-hull": Cotton linters are used for spinning purposes, as absorbents, and in manumacture of mattresses, low-grade yarns, and pads for automobiles. Cottonseed-hull fiber or shavings are used in manufacturing certain knids of paper, such as blotting or glazed paper, Rayon or artificial-silk products, guncotton and other cellulose products, low-grade mattresses, and pads. Average value of linters is perhaps about twice that of fiber or shavings. Glarner & Co. v. S. Ry., 129 I. C. C. 75, 76.

(4o) "Last blocks": Last blocks are used in manufacture of shoe lasts and consist of maple logs sawed into triangular pieces of proper length, turned into rough shape in a lathe and placed in ovens to dry. They are loaded loose in car and are not susceptible to damage. Jackson v. M. C., 129 I. C. C. 235, 236.

(4p) "Lead, red": Red lead and litharge, oxides of lead, are scarlet and dark yellow powders produced from the film which forms when lead is heated to certain temperatures in con-

tact with air. Oklahoma Traffic Asso. v. St. L.-S. F. 129 I. C. C. 461, 462.

(4q) "Linters, cotton": Cotton linters are used for spinning purposes, as absorbents, and in manufacture of mattresses, low-grade yarns, and pads for automobiles. Cottonseed-hull fiber or havings are used in manufacturing certain kinds of paper, such as blotting or alazed paper, Rayon or artificial-silk products puncotton and other cellulose products, low-grade mattresses, and pads. Average value of linters is perhaps about twice that of fiber or shavings. Glarner & Co. v. S. Ry., 129 I. C. C. 75, 76.

(4r) "Litharge": Red lead and litharge, oxides of lead, are scarlet and dark yellow powders produced from the film which forms when lead is heated to certain temperatures in contact with air. Oklahoma Traffic Asso. v. St. L.-S. F. 129 I. C. C. 461, 462.

(4s) "Off-line industries": Are industries which can only be reached by the line-haul carrier through a switching service performed by some other railroad. Southern Kansas Millers Club v. A., T. & S. F., 129 I. C. C. 632.

(4t) "Plugs, paper-mill": Are used in paper mills to grind paper stock and consist of castings mounted on a steel shafting, weight of casting approximating 1,200 pounds, and that of the shafting 800 pounds. Outer, or grinding, surface of casting is corrugated. Bahr Bros. Mfg. Co. v. C., C., C. & St. L., 129 I. C. C. 289.

(4u) "Reasonable rate": A reasonable rate may be said to be somewhere between minimum charge that can be made for the service and permit carrier be borne by shipper. Otherwise stated, to live, and maximum charge that can there is a zone of reasonableness within which any rate is just and reasonable to the carrier as well as just, fair, and reasonable to the shipper that utilizes carrier's service. Calif. Growers' & Shippers' Protective League v. S. P., 129 I. C. C. 25, 33, 34.

(4v) "Separately established rates": Can not be construed as embracing switching charges. Romann & Bush Pig Iron & Coke Co. v. A., T. & S. F., 129 I. C. C. 509, 510.

(4w) "80-5-15 mixture" is a dry agricultural insecticide composed of 80 per cent sulphur, 5 per cent lead arsenate, and 15 per cent lime. It is combat scale insects and the plum curculio, a beetle injurious to fruit. General Sprayer Co. v. A., B. & A., 129 I. C. C. 318.

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Bess v. Southwestern Bell Telephone Co., (Mo. 1926), 287 S. W. 466. Telephone and Telegraph Companies §1 (a) (b), §2 (b), §4 (b).
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Canton Bridge Co. v. B. & O., 107 I. C. C. 141. Reparation §6 (f) (g), §11 (a); Routing and Misrouting §5 (a); Through Routes and Joint Rates §15 (h).
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Ex-Lake Iron Ore from Chicago to Granite City, 120 I. C. C. 75. Divisions §7 (a), §9 (i); Evidence §4 (e) (f) (g), §8 (fg), §13 (2) (a), §51 (f), §58 (i), §63 (lm); Ex-Lake Rates (a) (b); Minimum Rates (a); Minimums §1 (a); Proportional Rates II (z); Rail-and-Water Rates (aa) (dd) (ee); Reduced Rates §4½ (y) (z) (aa) (bb); Through Routes and Joint Rates §9 (g).
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§32 (b); Export Rates and Facilities §6 (d) (e) (f) (g) (h) (i); Reasonableness of Rates §28 (qq).
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Falcon Zinc Co. v. M. P., 104 I. C. C. 267. Evidence §12 (f); Reasonableness of Rates §28 (o).
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Fall River Chamber of Commerce v. B. & O., 122 I. C. C. 100. Any Quantity Rates I (q) (r); Classification §28 (p); Tariffs §18 (4a).
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Farrell Foundry & Machine Co. v. A. B. & A. Ry., 123 I. C. C. 127. Differentials §8 (yy); Discrimination §3½a (3d); Divisions §7 (b); Evidence §13 (2) (b); Procedure Before Commission §2 (k); Reasonableness of Rates §7½ (aa), §26½ (uu).
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Faulk & Co. v. Chicago, I. & L. Ry. Co., (Ala., 1926) 111 So. 196. Freight Charges (mm) (nn) (oo) (pp) (qq) (rr) (uu).
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Florence Chamber of Commerce v. N. O. N. E. R. R., 118 I. C. C. 228. Any Quantity Rates I (o); Routing and Misrouting §6½ (a); Through Routes and Joint Rates §20½ (a); Water Carriers §4 (a) (b).
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Frank Produce Co. v. Director General, 118 I. C. C. 88. Evidence §34¼ (a); Long and Short Hauls §6⅞ (i); Switch Tracks and Switching §3 (kl); Tariffs §9a (jj).
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Fraser, Jr., v. B. & O. R. R., 120 I. C. C. 675. Overcharges (oo); Reconsignment §6½a (t); Through Routes and Joint Rates §22 (l) (m).
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Fredonia Linseed Oil Works Co. v. A. T. & S. F. Ry., 122 I. C. C. 291. Discrimination §4 (b), §7 (c) (d); Reasonableness of Rates §26½ (oo), §28 (12l).
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modity Rates §5 (3n); Distance Rates §1 (x); Evidence §12 (5t), §63 (p); Reasonableness of Rates §26½ (vv).
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Hamm Co. v. B. & O., 120 I. C. C. 345. Class Rates §2 (5c); Evidence §13 (l) (u) (aa) (bb); Tank Car Shipments (z) (ff).
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Hammand Iron Works v. P. R. R., 107 I. C. C. 473. Discrimination §2½ (a); Long and Short Hauls §4 (j); State Rates and Regulation (j); Switch Tracks and Switching §6 (h) (i).
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Hansen-Peterson Co. v. A. T. & S. F., 113 I. C. C. 575. Blanket Rates §10½ (l); Equalization of Rates §3 (r); Reasonableness of Rates §28 (6g); Receivers (c); Reparation §19 (l).
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Harding Glass Co. v. M. P., 128 I. C. C. 754. Distance Rates §2 (e), §3 (4s); Tariffs §18 (5j); Through Routes and Joint Rates §13 (4w).
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Harman & Hulsey v. Director General, 112 I. C. C. 275. Claims §1 (d); Overcharges (u); Through Routes and Joint Rates §20a (n).
Harmon v. A., T. & S. F., 109 I. C. C. 90. Evidence §12 (bb).
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Harington v. Missouri Pac. R. Co. (Kan., 1927) 254 Pac. 379. Attorney's fees (e).
Harris v. Chicago & E. I. Ry. Co., (Ind., 1927) 158 N. E. 636. Employer's Liability Acts (f) (g) (h) (i).
Harrisonville Brick & Tile Co. v. A., T. & S. F. Ry., 122 I. C. C. 489. Commodity Rates §5 (3g); Distance Rates §3 (3z); Percentages Rates (x).
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Haselton Co. v. Interstate Stage Lines, (N. H. 1926) 133 Atl. 451. Motor Truck Service (b); Passenger Fares and Facilities §½ (a).
Hastings Commercial Club v. C. M. & St. P., 107 I. C. C. 208. Terminal Facilities §1 (b) (c) (d) (e), §3 (h) (i) (j) (k), §5 (a), §6 (a).
Hatch v. Portland Terminal Co., (Me., 1925), 131 Atl. 5. Cars and Car Supply §12 (o).
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Hauber Cooperage Co. v. A. T. & S. F. Ry., 115 I. C. C. 533. Minimums §5 (d), §7 (m) (q), §12 (a); Reasonableness of Rates §28 (7s); Through Routes and Joint Rates §15 (3c).
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Haviland Clay Works Co. v. C. N. R. R., 120 I. C. C. 241. Class Rates §2 (5a); Commodity Rates §5 (nn); Reasonableness of Rates §32½ (ss).
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Haynesville Provision Co. v. L. & N. W. R. R., 109 I. C. C. 451. Through Routes and Joint Rates §15 (w).
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Indianapolis Board of Trade v. B. & O., 129 I. C. C. 675. Classification §17 (5b); Discrimination §3 (ee), §5 (g); Evidence §12 (7k); Facilities and Privileges §15 (4o); Reasonableness of Rates §28 (18t); Through Routes and Joint Rates §1 (m) (p), §9 (m), §11 (2) (y) (bb) (cc).
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Iola Cement Mills Traffic Asso. v. A. V. I., 115 I. C. C. 49. Distance Rates §1 (n), §3 (jj) (pp) (qq); Procedure Before Commission §10 (3) (h); Rate Scales (a); Reparation §12 (n) (o).
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Jackson Traffic Bureau v. A. & V. Ry., 122 I. C. C. 387. Facilities and Privileges §15 (3c) (3k), §21 (i); Long and Short Hauls §6⅞ (ff); Proportional Rates II (ee); Reasonableness of Rates §28 (12p).
Jackson Traffic Bureau v. A. & V. Ry., 128 I. C. C. 744. Long and Short Hauls §6 (e); Reasonableness of Rates §28 (17i); Routing and Misrouting §5 (kk).
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Lehigh Valley R. Co. v. Maas & Waldstein Co., (N. J., 1926) 131 Atl. 884. Courts §12 (a).
Lehigh Valley R. Co. v. United Lead Co., (N. J., 1926) 133 Atl. 290. Special Contracts §2 (g), §5½ (b).
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Lothrop v. Southern Pac. Co., 10 Fed. (2d) 225. Attorney's Fees (g) (h); Courts §11 (f); Evidence §3 (a); Hawaii (h); Tariffs §7 (3c) (3d) (3e) (3f).
Lothrop v. Spokane, P. & S. Ry. Co., 10 Fed. (2d) 225. Attorney's Fees (g) (h); Courts §11 (f); Evidence §1½ (ff), §3 (a); Hawaii (h); Tariffs §7 (3c) (3d) (3e) (3f).
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Lynchburg Chamber of Commerce v. B. & O., 128 I. C. C. 557. Class Rates §1 (l), §2 (7j); Long and Short Hauls §13 (i); Tariffs §18 (5e).
Lynchburg Chamber of Commerce v. D. L. & W. R. R., 132 I. C. C. 321. Classification §5 (3u); Commodity Rates §2 (r); Through Routes and Joint Rates §20a (4q).
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Lynchburg Chamber of Commerce v. P. R. R., 104 I. C. C. 293. Long and Short Hauls §6⅞ (a); Reasonableness of Rates §28 (q).
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Lynchburg Chamber of Commerce v. P. R. R., 120 I. C. C. 392. Long and Short Hauls §6⅞ (v) (w); Reasonableness of Rates §28 (10y).
Lynchburg Chamber of Commerce v. Pennsylvania R. R., 132 I. C. C. 708. Discrimination §1 (n); Long and Short Hauls §5 (3k).
Lynchburg Chamber of Commerce v. R. Co., 107 I. C. C. 610. Classification §22 (l); Reasonableness of Rates §28 (3c).
Lynchburg Chamber of Commerce v. S. A. L., 115 I. C. C. 537. Routing and Misrouting §5½ (p).
Lynchburg Chamber of Commerce v. S. A. L. Ry., 118 I. C. C. 287. Routing and Misrouting §4½ (c) (d).
Lynchburg Chamber of Commerce v. S. Ry., 115 I. C. C. 625. Claims §5½ (i); Reconsignment §5 (o); Reparation §7 (u); Routing and Misrouting §5½ (r).
Lynchburg Chamber of Commerce v. S. Ry., 128 I. C. C. 497. Routing and Misrouting §4 (hh) (ii) (jj).
Lynchburg Chamber of Commerce v. Southern Ry., 132 I. C. C. 317. Class Rates §2 (8c).
Lynchburg Chamber of Commerce v. W. J. & S. R. R., 123 I. C. C. 579. Long and Short Hauls §6⅞ (dd); Through Routes and Joint Rates §15 (4j).
Lynchburg Traffic Bureau v. A. C. L., 115 I. C. C. 121. Reasonableness of Rates §28 (6z) (7a); Routing and Misrouting §4 (o), §5 (s); Through Routes and Joint Rates §15 (3a).
Lynchburg Traffic Bureau v. B. & O. R. R., 128 I. C. C. 557. Long and Short Hauls §5 (3b); Tariffs §7 (ss).
Lynchburg Traffic Bureau v. E. R. R., 112 I. C. C. 59. Routing and Misrouting §7 (b).

Lynchburg Traffic Bureau v. E. R. R., 129 I. C. C. 230. Long and Short Hauls §6⅞ (qq).
Lynchburg Traffic Bureau v. N. O. N. E. R. R., 122 I. C. C. 371. Long and Short Hauls §6¾ (dd), §6⅞ (bb).
Lynchburg Traffic Bureau v. N. Y. C., 123 I. C. C. 15. Class Rates §2 (5z); Long and Short Hauls §6⅞ (ii); Reasonableness of Rates §28 (13h).
Lynchburg Traffic Bureau v. S. A. L. Ry., 115 I. C. C. 537. Routing and Misrouting §4½ (b) (e) (f).
Lynchburg Traffic Bureau v. Southern Ry., 118 I. C. C. 523. Reasonableness of Rates §32½ (gg).
Lynchburg Traffic Bureau v. Southern Ry., 132 I. C. C. 317. Classification §5 (3t).

M. & M. Wood Working Co. v. O.-W. R. & N., 129 I. C. C. 329. Evidence §12 (7c); Percentage Rates (oo); Reparation §8½ (3k).
M. K. T. v. K. C. T. 104 I. C. C. 203. Accounting §5 (a); Act to Regulate Commerce I (a), II (b); Courts §1 (a); Interstate Commerce §5 (a); Interstate Commerce Commission §1 (b), §8¼ (a), §8½ (a); Operating Contracts (a) (b); Reasonableness of Rates §2 (b); Special Contracts §2 (a), §4 (1) (a), §5½ (a); Terminal Facilities §1 (a), §3 (a) (b) (c) (d) (e) (f) (g); Trackage Agreements (a) (b).
MacBeth Evans Glass Co. v. P. R. R., 132 I. C. C. 129. Class Rates §2 (7z); Evidence §63 (y).
Macken v. A. C. L. R. R., 132 I. C. C. 589. Long and Short Hauls §6⅞ (ss).
Mackintosh Mines Co. v. E. N. Ry., 120 I. C. C. 121. Branch Lines §7 (a); Tank Car Shipments (y) (ee); Weights and Weighing §5 (f)
Maine Spinning Co. v. B. & M. R. R., 129 I. C. C. 266. Class Rates §2 (7o); Reduced Rates §4½ (pp).
Maloney Tank Mfg. Co. v. B. & O. R. R., 113 I. C. C. 379. Claims §1½ (j), §2 (d) (4s); Reasonableness of Rates §28 (11p).
Maloney Tank Mfg. Co. v. B. & O., 113 I. C. C. 379. Reparation §7 (q).
Manassa Timber Co. v. L. & N. R. R., 115 I. C. C. 421. Demurrage §2 (e) (f), §3½ (b), §14 (a), §16 (g) (h); Overcharges (gg); Words and Phrases (3b).
Manget Bros. Co. v. A. C. R. R., 118 I. C. C. 85. Facilities and Privileges §18 (1); Rail-and-Water Rates (x); Reasonableness of Rates §28 (8q).
Manget Bros. Co. v. A. C. R. R., 126 I. C. C. 403. Evidence §12 (6f); Procedure Before Commission §2 (no); Rail-and-Water Rates (zz) (3c); Reasonableness of Rates §28 (14r).
Manget Bros. Co. v. G. R. R., 123 I. C. C. 532. Equalization of Rates §3 (ee); Evidence §66 (q); Long and Short Hauls §5 (xx), §6⅞ (kk); Reasonableness of Rates §16 (a), §26½ (ww), §32½ (yyzz).
Manieri v. Seaboard Air Line Ry Co., (Va., 1927) 137 S. E. 496. Quarantine Regulations (d) (e) (f) (g) (h).
Mfrs. Asso. v. P. R. R., 107 I. C. C. 219. Tariffs §7 (g).
Mfgrs. Asso. of Chicago Heights v. C. H. T. T., 120 I. C. C. 357. Transportation §2 (f).
Manufacturers Traffic Bureau v. B. Ry. of Chicago, 122 I. C. C. 188. Commodity Rates §5 (zz).
Manure from New Orleans, 120 I. C. C. 525. Distance Rates §1 (v); Minimums §7 (ff).
Marcellus & Otisco Co. v. N. Y. C., 104 I. C. C. 389. Cars and Car Supply §11⅞ (a) (b) (c), §30 (a).
Maricopa County Farm Bureau v. A. & S., 109 I. C. C. 472. Refrigeration §4 (b) (c).
Marinette & Menominee Paper Co. v. C. & N. W., 107 I. C. C. 21. Discrimination §3 (d), §3½a (b); Evidence §13 (6) (a); Switch Tracks and Switching §6 (a).
Marion Machine, Foundry & Supply Co. v. C., C. C. & St. L. Ry., 115 I. C. C. 327. Commodity Rates §5 (z); Evidence §13 (m); Reasonableness of Rates §28 (7l).
Marion Machine, Foundry & Supply Co. v. Director General, 104 I. C. C. 265. Classification §22 (d).
Marion Machine, Foundry & Supply Co. v. P. R. R., 104 I. C. C. 471. Evidence §12 (j).
Maritime Asso., Boston Chamber of Commerce v. A. A. R. R., 126 I. C. C. 199. Differentials §5 (c); Equalization of Rates §2 (f); Ex-Lake Rates (c) (d) (e); Procedure Before Commission §13 (i); Proportional Rates II (jj); Port Differentials (c) (d); Reparation §6 (ww).
Market Street Ry. Co. v. S. P. Co., 120 I. C. C. 654. Class Rates §1 (h); Commodity Rates §2½ (c), §3 (f); Tariffs §18 (3n); Words and Phrases (3g).
Marshall & Jefferson v. T. & P. Ry., 120 I. C. C. 455. Class Rates §2 (4n); Differentials §8 (tt); Evidence §44¼ (j); Long and Short Hauls §6⅞ (m-p); Reasonableness of Rates §28 (11f) (11g); Through Routes and Joint Rates §15 (3r) (3s).
Mason v. M. & W. R., 112 I. C. C. 56. Claims §2 (a).
Mason City Brick & Tile Co. v. Director General, 107 I. C. C. 702. Differentials §8 (i); Distance Rates §1 (g); Reparation §12 (e).
Mathieson Alkali Works, Inc., v. Norfolk & W. Ry., Co., (Va., 1927) 137 S. E. 608. State Rates and Regulation (zz).
Maxwell Sons Commission Co. v. St. L.-S. F., 128 I. C. C. 725. Commodity Rates §2½ (h); Live Stock Shipments (3l) (3m); Tariffs §9a (3w), §18 (5g).
Mayer & Co. v. A. T. & S. F. Ry., 122 I. C. C. 305. Live Stock Shipments (ii) (kk).
Mayfield Chamber of Commerce v. A. & W. Ry., 120 I. C. C. 137. Class Rates §2 (4g) (4w) (4x) (4y); Commodity Rates §2½ (b), §5 (tt); Differentials §8 (mm) (nn); Discrimination §3½a (ww); Evidence §47b (k); Reasonableness of Rates §28 (10i) (10j); Reparation §12 (x).
Mayo v. Southern Ry., 115 I. C. C. 595. Long and Short Hauls §5 (bb); Reasonableness of Rates §28 (7v).
McCabe Lathe & Machinery Corp. v. N. Y., N. H. & H., 107 I. C. C. 311. Reduced Rates §5 (f); Tariffs §18 (d).
McCaffrey Bros. Co. v. Chicago, B. & Q. R. R. Co., (Neb., 1926) 207 N. W. 503. Tariffs §3 (l) (g), §8½ (a) (b) (c), §9 (b).
McClave & Son v. A. C. L. R. R., 128 I. C. C. 1. Facilities and Privileges §15 (4f); Reasonableness of Rates §26½ (3c); Stoppage-in-Transit (i).
M'Clintock-Trunkey Co. v. McCormick S. S. Co., 129 I. C. C. 591. Differentials §8 (4f); Evidence §61 (p), §62 (m).
M'Clintock-Trunkey Co. v. McCormick S. S. Co., 129 I. C. C. 591. Rail-and-Water Rates (3r) (3s)

(3t); Reasonableness of Rates §28 (18o); Reparation §3½ (f); Through Routes and Joint Rates §13 (5n); Water Carriers §4 (d), §6 (f).
McDonald Chocolate Co. v. A. T. & S. F. Ry., 122 I. C. C. 493. Rail-and-Water Rates (ll) (pp) (qq).
McDonald Chocolate Co. v. B. E. R. R., 118 I. C. C. 45. Class Rates §2 (3v); Long and Short Hauls §6⅞ (h); Reasonableness of Rates §8 (1) (a), §28 (8m).
McEwing & Thomas Co. v. C. & E. I., 118 I. C. C. 211. Classification §10 (f), §22 (uu); Evidence §60½ (b); Tariffs §11½ (f).
McFadden v. Director General, 113 I. C. C. 387. Reparation §7½ (d), §8½ (g) (j), §19 (i) (k).
McFadden & Bros. Agency v. A. & R. R. R., 126 I. C. C. 519. Facilities and Privileges §3 (k) (l) (m) (n), §4 (l), §18 (aa).
McFarland Co. v. G. N. Ry., 123 I. C. C. 631. Long and Short Hauls §6¾ (ffgg); Reasonableness of Rates §28 (14e); Through Routes and Joint Rates §15 (4b) (4k) (4l).
McGrew Coal Co. v. Mellon, Federal Agent, (Mo., 1926) 287 S. W. 450. Discrimination §1 (i).
McKeesport Tin Plate Co. v. A. A. R. R. Co., 128 I. C. C. 259. Procedure Before Commission §10 (3) (n); Reasonableness of Rates §26½ (3h); Reparation §6 (3g) (3h), §8½ (3e).
McLeod v. T. & P. Ry., 120 I. C. C. 550. Evidence §13 (l) (v) (w); Long and Short Hauls §5 (ss), §6¾ (z) (cc), §6¾a (h); Reasonableness of Rates §7½ (y), §26½ (jj); Tank Car Shipments (aa); Through Routes and Joint Rates §15 (3n) (3w).
McNeely v. Mayor and Board of Aldermen of Town of Vidalia, 6 Fed. (2d) 21. Courts §12 (b); Ferry Charges (a) (b) (c) (d) (e).
Medal Brick & Tile Co. v. B. & O. R. R., 128 I. C. C. 241. Discrimination §4 (o); Percentage Rates (gg); Reasonableness of Rates §28 (16f).
Meier Dawson Produce So. v. C. & S. Ry., 115 I. C. C. 221. Classification §7 (m) (p).
Mellon, Director General of Railroads, v. Erb, 13 Fed. (2d.) 752. Reparation §½ (j).
Mellon, Director General of Railroads v. Westinghouse, Church Kerr & Co., Inc. 46 Sup. Ct. 220. Allowances §9 (i); Special Contracts §2 (k); Transportation §2 (k).
Memphis Freight Bureau v. A. C. L. 109 I. C. C. 31. Reasonableness of Rates §28 (3k).
Memphis Freight Bureau v. A. G. S. R. R.,126 I. C. C. 87. Discrimination §7 (ef); Import Traffic §2 (tt) (ww) (xx)
Memphis Freight Bureau v. A. G. S., 128 I. C. C. 445. Classification §5 (3f), §20 (gg), §22 (4a); Discrimination §4 (p) (q) (r) (s); Evidence §8 (j), §13 (l) (oo), §30 (s), §52 (d) (e), §58 (u); Long and Short Hauls §6⅞ (oo); Percentage Rates (hh); Rail-and-Water Rates (3h); Reasonableness of Rates §26½ (3m), §28 (16q).
Memphis Freight Bureau v. A. G. S. Ry., 132 I. C. C. 223. Distance Rates §3 (5a).
Memphis Freight Bureau v. C. & O. Ry., 112 I. C. C. 55. Overcharges (t)
Memphis Freight Bureau v. St. L. S. W., 115 I. C. C. 409. Penalty Charges (b); Tariffs §3 (3) (c); Weights and Weighing §2½ (c), §13 (b).
Memphis Furniture & Mfg. Co. v. L. & N. R. R., 120 I. C. C. 267. Classification §4½ (f) (g); Evidence §63 (n); Tariffs §18 (3h).
Memphis Furniture & Mfg. Co. v. L. & N., 120 I. C. C. 269. Evidence §12 (5i).
Memphis Furniture Mfg. Co. v. I. C. R. R., 115 I. C. C. 554. Classification §22 (pp); Percentage Rates (o); Reasonableness of Rates §26½ (v).
Menasha Woodenware Co. v. D., S. S. & A., 120 I. C. C. 415. Classification §10 (j); Evidence §12 (5c); Overcharges (ll); Tariffs §7 (ii), §18 (3k).
Merabal Motor Co. v. M. C. R. R., 129 I. C. C. 411. Long and Short Hauls §6 (f).
Merchants & Planters Oil Co. v. A., T. & S. F., 109 I. C. C. 477. Reasonableness of Rates §26½ (g).
Merchants & Planters Co. v. G. H. & H. R. R., 129 I. C. C. 477. Demurrage §10½ (b) (c) (d) (e), §12 (g), §14 (b), §14½ (a), §15 (b) (c) (d), §16 (z); Export Rates and Facilities §7 (c) (d) (e).
Meridian Fertilizer Factory v. A. C. L., 115 I. C. C. 226. Commodity Rates §5 (hh); Reasonableness of Rates §26½ (t); Through Routes and Joint Rates §13 (nn).
Meridian Fertilizer Factory v. A. C. L., 126 I. C. C. 478. Discrimination §3½a (3v), §8 (5) (c); Distance Rates §3 (4h); Long and Short Hauls §4 (3c), §5 (zz); Reasonableness of Rates §28 (4w) (4x).
Merrill Engineering Co. v. G. M. & N. Ry., 129 I. C. C. 249. Long and Short Hauls §5 (3f) (3m); Tariffs §9a (4d); Through Routes and Joint Rates §21 (d).
Metal & Thermit Corp. v. C. R. R. of N. J., 112 I. C. C. 523. Classification §22 (v); Evidence §12 (3a); Reasonableness of Rates §28 (5l), §38 (a); Words and Phrases (cc).
Metal & Thermit Corp. v. Pennsylvania R. R., 115 I. C. C. 396. Cars and Car Supply §8 (m), (p); Minimums §3 (a).
Metal Package Corp. v. B. & O. R. R., 129 I. C. C. 301. Class Rates §2 (7p); Evidence §12 (6z); Reasonableness of Rates §28 (18c).
Michael v. United States, 7 Fed. (2d) 865. Crimes §35 (a) (b), §37 (a); Interstate Commerce §2 (a).
Michigan Bean Co. v. D. G. H. & M. Ry., 128 I. C. C. 207. Evidence §1 (n); Facilities and Privileges §18 (cc) (dd); Procedure Before Commission §2 (r) (s); Routing and Misrouting §4 (gg); Words and Phrases (4f).
Michigan Cent. R. Co. v. I. M. Partridge Lumber Co., 17 Fed. (2d) 657. Freight Charges (p).
Midcontinent Oil Rates, 1925, 112 I C. C. 421. Blanket Rates §2 (c), §6 (a), §10 (d), §10½ (c) (h), §11 (a), §13 (b) (c), §15½ (c), §20 (a); Class Rates §2 (x) (ff); Evidence §11 (d) (e), §20 (c); Percentage Rates (l); Reasonableness of Rates §28 (5g).
Midcontinent Oil Rates, 1925, 132 I. C. C. 103. Equalization of Rates §3 (qq).
Midland Valley R. Co. v. Barkley, (Ark., 1927), 291 S. W. 431. Cars and Car Supply §7 (f), §33 (b) (c); Interstate Commerce Commission §2 (b).
Mid-West Fruit Co. v. A., T. & S. F., 122 I. C. C. 383. Through Routes and Joint Rates §26 (k).
Midwest Refining Co. v. G. N., 122 I. C. C. 205. Classification §17 (hh); Local Rates and Combinations (3l); Reparation §19 (r); Through Routes and Joint Rates §16 (hi)
Miles Medical Co. v. B. & O., 118 I. C. C. 33. Claims §2 (l); Class Rates §1 (f); Long and Short Hauls §5 (ee); Routing and Misrouting §7½a (c) (i); Tariffs §9a (hh) (ii); Through Routes and Joint Rates §21 (b).

Miles Medical Co. v. B. & O. R. R., 126 I. C. C. 159. Class Rates §2 (6m); Long and Short Hauls §12 (2) (h); Tariffs §13a (b).
Milhollan v. Great Northern Ry. Co., (N. D., 1925) 204 N. W. 994. Side Tracks and Spur Tracks (e); Switch Tracks and Switching §1 (a).
Milk and Cream Between New England Points, 126 I. C. C. 38. Advanced Rates §17 (kk) (nn); Classification §17 (3e); Discrimination §3½a (3n); Divisions §3 (l); Evidence §1½ (x), §15½ (cd) (e) (f), §18 (o); Expedited Service (f) (g); Hoch-Smith Resolution (aa) (bb); Words and Phrases (3u).
Milk and Cream in Northwest, 115 I. C. C. 77. Advanced Rates §11½ (c); Distance Rates §3 (rr); Evidence §20 (g); Expedited Service (d); Hoch-Smith Resolution (q).
Milk Producers Cooperative Co. v. B. & O., 113 I. C. C. 721. Discrimination §3½a (dd); Reasonableness of Rates §28 (6n); Through Routes and Joint Rates §13 (dd).
Miller v. C. of G., 115 I. C. C. 518. Long and Short Hauls §4¾ (p); Routing and Misrouting §4 (q), §5½ (j).
Miller v. I. G. N. Ry., 112 I. C. C. 538. Refrigeration §4 (e) (f).
Miller v. Maine Cent. R. Co., (Me., 1926), 133 Atl. 907. Caretakers (a) (b) (c) (d); Passenger Fares and Facilities §12 (a).
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Miller & Brickley Grain Co. v. Director General, 107 I. C. C. 81. Advanced Rates §9½ (c); Local Rates and Combinations (b).
Miller County Highway & Bridge Dist. v. Standard Pipe Line Co., Inc., 19 Fed. (2d.) 3. Pipe Lines §1 (d).
Miller Petroleum Co. v. B. S. L. & W. Ry., 126 I. C. C. 21. Reconsignment §3 (m), §6½ (b).
Milne Lbr. Co. v. B. & O., 113 I. C. C. 739. Hold Charges (a) (b).
Milne Lbr. Co. v. C. & N. W., 107 I. C. C. 653. Demurrage §5¾ (a), §16 (c); Reconsignment §6½a (e); Transportation §5 (a).
Milne Lumber Co. v. C. R. R. of N. J., 122 I. C. C. 67. Demurrage §4 (b) (d).
Milne Lumber Co. v. D. T. & I. R. R., 120 I C. C. 488. Demurrage §5¾ (b), §16 (l) (m); Transportation §6 (a).
Milne Lbr. Co. v. D., T. & I., 123 I. C. C. 573. Demurrage §3½ (e) (f), §4 (f), §12 (a), §16 (n); Embargoes (j) (k).
Milne Lumber Co. v. D. T. & I. R. R., 129 I. C. C. 324. Demurrage §16 (r) (w) (x) (y), §16a (a).
Milne Lumber Co. v. M. C. R. R., 118 I. C. C. 580. Demurrage §16 (e) (j) (k), §17 (d); Reconsignment §5 (r); Switch Tracks and Switching §4 (y), §10 (g).
Milne Lumber Co. v. N. Y. C. R. R., 129 I. C. C. 457. Reconsignment §6½a (ff) (ll); Tariffs §18 (5l) (6b).
Milne Lumber Co. v. St. L. S. F. Ry., 113 I. C. C. 369. Reconsignment §6½a (i); Routing and Misrouting §5½ (h), §7 (f).
Milne Lumber Co. v. S. Ry., 122 I. C. C. 113. Demurrage §4 (c) (e). §15½ (a).
Milner Lbr. Co. v. W. Ry., 104 I. C. C. 669. Claims §1½ (a).
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Minimum Weight on Salt, 104 I. C. C. 631. Minimums §7 (c); Reduced Rates §4½ (g).
Minneapolis & St. L. R. R. Co. v. Peoria & P. U. Ry. Co., 46 Sup. Ct. 402. Courts §12 (r) (s); Discrimination §2 (h) (i) (j).
Minneapolis, St. P. & S. S. M. Ry. Co. v. Railroad Commission of Wisconsin, 205 N. W. 932. Locomotive Inspection (p); State Rates and Regulation (xx).
Minnesota-Atlantic Transit Co. v. C., St. P., M. & O. 123 I. C .C. 485. Allowances §9 (h); Divisions §3 (i), §9 (j) (n); Facilities and Privileges §10 (e); Rail-and-Water Rates (yy); Water Carriers §6 (d).
Minnesota-Dakota Transit Millers v. A. A. R. R., 118 I. C. C. 585. Basing Points and Lines §1 (f); Cars and Car Supply §27 (c); Discrimination §8 (l) (b); Evidence §14 (l) (ef), §14 (3) (c), §32 (g); Facilities and Privileges §15 (mmnn) (ss) (tt) (uu) (vv) (ww); Hoch-Smith Resolution (s); Through Routes and Joint Rates §19 (a).
Minnesota Western R. R. v. A., T. & S. F., 109 I. C. C. 127. Divisions §3 (b), §9 (d); Evidence §51 (b) (c), §55 (b) (c).
Minturn v. New York Cent. R. Co., 220 N. Y. S. 789. Passenger Fares and Facilities §10 (d) (e) (f).
Mirabel Motor Co. v. M. C., 129 I. C. C. 411. Classification §5 (4b); Reasonableness of Rates §28 (18g); Routing and Misrouting §5 (qq); Tariffs §11 (q), §18 (5z).
Mississippi Pearl Button Co. v. I. C. R. R., 120 I. C. C. 647. Class Rates §2 (4q); Evidence §44¼ (m), §69 (b) (c).
Mississippi Railroad Commission v. A. & V. Ry., 120 I. C. C. 569. Blanket Rates §19¼ (d); Branch Lines §1 (o); Differentials §8 (ww); Distance Rates §3 (3o) (3p) (3q); Long and Short Hauls §4 (rr), §4¾ (r), §11 (b); Reparation §6 (ee).
Mississippi Valley Iron Co. v. C. & N. W., 104 I. C. C. 243. Discrimination §3½ (a), §4½ (b); Reasonableness of Rates §26½ (a).
Missouri Gravel Co. v. C. B. & Q. R. R., 132 I. C. C. 200. Distance Rates §3 (4z).
Missouri, K. & T. Ry. Co. v. Dewey Portland Cement Co., (Okla., 1925) 242 Pac. 257. Finance Dockets §6 (f) (g); Reparation §7 (ii).
Missouri-Kansas-Texas R. Co. of Texas v. Mars, (Tex., 1927) 294 S. W. 941. Interstate Commerce §1 (a); Interstate Commerce Commission §2 (c).
Missouri Pac. R. Co. v. Baldwin (Tex., 1925) 273 S. W. 834. Personal Injuries (x) (y).
Missouri Pac. R. Co. v. Boone, 46 Sup. Ct. 341. Statutes (e).
Missouri Pac. R. Co. v. Pfeiffer Stone Co. (Ark., 1924) 266 S. W. 82. Freight Charges (aa) (bb) (cc); Tariffs §3 (1) (k) (l); Undercharges §7 (g).
Missouri Pac. Ry. Co. v. Red Star Milling Co., (Kans., 1926) 251 Pac. 417. Undercharges §7 (e).
Missouri Pacific R. R., Central Kansas Division (Intermittent magnetic-induction type without forestalling feature), 109 I. C. C. 199. Safety Appliance Acts (e).

Mitchell Chamber of Commerce v. C., M. & St. P., 129 I. C. C. 451. Switch Tracks and Switching §3 (cc), §4 (qq) (rr) (ss), §6 (n), §7 (d).
Mitsui & Co. v. Director General, 107 I. C. C. 469. Import Traffic §2 (f); Reparation §6 (j).
Mobile Chamber of Commerce v. A. & V., 129 I. C. C. 103. Barge Service (d); Export Rates and Facilities §4a (b), §6 (gg); Proportional Rates II (oo); Rail-and-Water Rates (3k).
Mobile Chamber of Commerce v. A. & V. Ry., 129 I. C. C. 147. Blanket Rates §10½ (3f); Classification §22 (4s); Reasonableness of Rates §26½ (3w), §28 (17u).
Mobile Chamber of Commerce v. M. S., B. & P., 129 I. C. C. 419. Branch Lines §3 (b); Evidence §57½ (f); Export Rates and Facilities §6 (dd) (ii); Receivers (h) (i); Reparation §19 (aa) (dd).
Molding Sand from Dallas City, 132 I. C. C. 540. Advanced Rates §5 (½) (f).
Moline George Co. v. N. Y. C. R. R., 128 I. C. C. 517. Class Rates §2 (7i); Reasonableness of Rates §28 (16u).
Monarch Cement Co. v. C., St. P., M. & O. Ry., 120 I. C. C. 4. Long and Short Hauls §5 (mm); Switch Tracks and Switching §4 (dd).
Monon Lbr. Co. v. Director General, 109 I. C. C. 429. Overcharges (m); Weights and Weighing §3 (b), §7½ (c) (d).
Montello Granite Co. v. M., St. P. & S. S. M., 129 I. C. C. 427. Adjacent Foreign Country (q); Evidence §30 (t); Interstate Commerce §3 (c); Local Rates and Combinations (5h); Reasonableness of Rates §27¾ (i), §28 (17m) (18h).
Montgomery Cotton Exchange v. L. & N., 112 I. C. C. 325. Advanced Rates §8½a (e); Any Quantity Rates I (f), (g); Facilities and Privileges §1 (c), §3 (b) (c) (d), §7 (d), §15 (r) (s) (t) (u) (v) (w) (x), §18 (f) (g); Through Routes and Joint Rates §20a (p).
Montgomery Cotton Exchange v. L. & N., 118 I. C. C. 157. Facilities and Privileges §4 (h); Tariffs §18 (bb); Through Routes and Joint Rates §18 (d), §20a (qq).
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Moore Lawless Grain Co. v. M. P. R. R., 109 I. C. C. 588. Overcharges (o).
Moore Lawless Grain Co. v. M. P., 123 I. C. C. 647. Facilities and Privileges §15 (3u), §16¾ (c), §18 (u); Proportional Rates VI (f).
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Moore Shipbuilding Co. v. C., I. & W., 118 I. C. C. 3. Alternative Rates I (b); Class Rates §2 (3e); Tariffs §18 (zz); Through Routes and Joint Rates §15 (3d), §21 (a).
Moores-Coney Co. v. C., G. & P., 123 I. C. C. 559. Classification §17 (yy); Tariffs §7 (mm); Through Routes and Joint Rates §13½ (w).
Morgan Canning Co. v. O. S. L. R. R., 120 I. C. C. 466. Class Rates §2 (4o); Minimums §7 (ee); Reasonableness of Rates §28 (11h).
Morley Cypress Co. v. Hines, Director General of Railroads, (La., 1926) 107 So. 487. Storage §2 (e) (f).
Morrell & Co. v. C., B. & Q., 109 I. C. C. 613. Reparation §8½ (c).
Morrell & Co. v. N. Y. C., 104 I. C. C. 104. Act to Regulate Commerce II (a); Classification §16 (a), §22 (a); Discrimination §4½ (a); Divisions §8 (a); Equalization of Rates §3 (a) (b); Evidence §12 (b) (c), §13 (1) (a), §14 (1) (a), §14 (3) (a), §31 (a), §61 (a), §62 (b); Interstate Commerce Commission §1 (a); Percentage Rates (a); Proportional Rates I (a); Reasonableness of Rates §28 (g) (h) (i); Through Routes and Joint Rates §13 (a) (b), §13½ (a).
Morrell & Co. v. N. Y. C., 120 I. C. C. 537. Differentials §8 (vv); Evidence §12 (5n), §44¼ (k); Percentage Rates (t); Proportional Rates II (bb); Reparation §12 (y); Through Routes and Joint Rates §13 (3t).
Morse Dry Dock & Repair Co. v. A. C. L. R. R., 132 I. C. C. 351. Evidence §30 (u); Long and Short Hauls §6⅞ (rr); Tariffs §7 (tt).
Morton Salt Co. v. B., A. & P. Ry., 113 I. C. C. 548. Distance Rates §3 (cc); Reparation §8½ (l).
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Mountain States Roofing Co. v. A., T. & S. F., 126 I. C. C. 475. Percentage Rates (ff); Reasonableness of Rates §28 (4v); Through Routes and Joint Rates §13 (4j).
Mountain Valley Springs Co. v. C. R. I. & P. Ry., 120 I. C. C. 313. Class Rates §2 (4k); Evidence §12 (5k); Reasonableness of Rates §28 (10v).
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Murphy v. A. C. L., 107 I. C. C. 651. Long and Short Hauls §13 (a); Reasonableness of Rates §28 (3h) §32½ (m) (n).
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Murphysboro Paving Brick Co. v. M. & O. R. R., 122 I. C. C. 15. Commodity Rates §5 (xx); Reparation §12 (z) (ff); Tariffs §3 (3) (e), §7 (kk).
Mutual Creamery Co. v. American Ry. Express Co., 132 I. C. C. 207. Discrimination §2½ (c) (d); Express Companies §6b (a); State Rates and Regulation (3g).

Napier, Atty. Gen., v. Atlantic Coast Line R. Co., 47 Sup. Ct. 207. Locomotive Inspection (q) (r) (s).
Nashville Machine & Supply Co. v. L. & N. R. R., 118 I. C. C. 577. Class Rates §2 (3j); Discrimination §3 (x) (y), §3½a (rr) (ss); Evidence §30 (j); Reasonableness of Rates §28 (9k).
Nashville Traffic Bureau v. L. & N., 113 I. C. C. 673. Differentials §8 (z).
Nashville Traffic Bureau v. L. & N., 118 I. C. C. 748. Equalization of Rates §2 (e), §4 (5) (e); Evidence §20 (j), §66 (n); Facilities and Privileges §18 (o); Local Rates and Combinations

(kk) (yy); Long and Short Hauls §12 (2) (e); Proportional Rates II (t) (y); Reasonableness of Rates §28 (9v); Through Routes and Joint Rates §18 (e).
National-American Wholesale Lbr. Asso. v. A. C. L., 120 I. C. C. 665. Demurrage §3½ (d); Reconsignment §5 (u), §6½a (r); Routing and Misrouting §7½a (r); Tariffs §10 (a); Through Routes and Joint Rates §26 (g).
Nat'l Asso. of Ice Cream Mfrs. v. Amer. Ry. Exp. Co., 107 I. C. C. 267. Express Companies §37½ (a); Weights and Weighing §5 (a).
Natl. Assn. of Ice Cream Mfrs. v. Amer. Ry. Exp., 132 I. C. C. 377. Express Companies §11a (c), §40 (a).
Nat'l Asso. Ice Cream Mfrs. v. Express Co., 128 I. C. C. 143. Express Companies §11a (a) (b); Reduced Rates §5 (z).
National Asso. of Furniture Mfrs. v. A. A. R. R. Co., 132 I. C. C. 546. Discrimination §4 (dd).
National Broom Co. v. A. T. & S. F. Ry., 128 I. C. C. 98. Classification §17 (3x); Differentials §8 (3o); Evidence §31 (ef); Tariffs §11½ (m).
National Canners Asso. v. B. & O., 129 I. C. C. 269. Advanced Rates §17 (3j); Differentials §8 (4d) (4e); Evidence §12 (6x), §20 (v); Reasonableness of Rates §26½ (3y); Through Routes and Joint Rates §13 (4y).
National Car Coupler Co. v. A. T. & S. F. Ry., 120 I. C. C. 37. Class Rates §2 (4e); Discrimination §3½a (vv); Distance Rates §3 (3h); Reasonableness of Rates §28 (10b); Reparation §8½ (nn), §12 (w).
Nat'l Commercial Fixture Mgrs. Asso. v. A. A. R. R., 109 I. C. C. 479. Class Rates §2 (p); Classification §4 (a) (b) (c) (d), §5 (f) (g), §20 (e), §22 (p) (q).
Nat'l. Council of Furniture Assos. v. A. A., 112 I. C. C. 289. Classification §16 (h), §20 (f); Evidence §4 (a), §12 (3m); Reasonableness of Rates §2 (l), §6 (a), §7½ (n).
National Lead Battery Co. v. M. P., 128 I. C. C. 39. Classification §7 (jj) (kk); Reasonableness of Rates §28 (15r).
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National Oil Co. v. S. A. L., 113 I. C. C. 371. Class Rates §2 (kk); Local Rates and Combinations (p); Routing and Misrouting §5 (o).
National Petroleum Asso. v. B. & O., 126 I. C. C. 11. Blanket Rates §10½ (qq), §11 (e) (f), §13 (x) (y), §20 (g); Reasonableness of Rates §28 (14l)
National Pole Co. v. G. N., 129 I. C. C. 697. Proportional Rates I (j), VI (i); Tariffs §11½ (t), §18 (6g); Through Routes and Joint Rates §20a (4z) (5a), §22 (v), §26 (q).
Natl Poultry, Butter & Egg Asso. v. Am. Ry. Exp. Co., 109 I. C. C. 565. Evidence §12 (nn); Express Companies §10 (j).
National Refining Co. v. L. & N., 118 I. C. C. 177. Classification §7 (r); Overcharges (hh); Tank Car Shipments (s); Tariffs §18 (3f).
National Show Case Co. v. S. A. L. Ry., 128 I. C. C. 193. Class Rates §2 (7b) (7c); Evidence §64 (x); Reasonableness of Rates §28 (16c), §32½ (3c).
National Silica Co. v. W. Ry. Co., 118 I. C. C. 669. Import Traffic §2 (ee) (jj).
National Tinsel Mfg. Co. v. C. & N. W. Ry., 115 I. C. C. 631. Classification §22 (qq); Tariffs §18 (vv); Words and Phrases (nn).
National Tube Co. v. A., T. & S. F., 129 I. C. C. 693. Classification §17 (5c); Discrimination §1 (m), §5 (h); Long and Short Hauls §6¾ (yy), §6¾a (l); Tariffs §7 (3a), §9a (4g), §18 (6f); Through Routes and Joint Rates §13½ (bb), §15 (5e), §15½ (k), §22 (u).
National Tube Co. v. Director General, 129 I. C. C. 515. Claims §1 (q), §1½ (u) (v), §2 (x).
National Zinc Co. v. A. & V. R. R., 132 I. C. C. 249. Tank Car Shipments (3l).
National Zinc Co. v. C., R. I. & P. Ry., 132 I. C. C. 724. Distance Rates §3 (5h).
Nebraska v. C. B. & Q. R. R., 132 I. C. C. 717. Commodity Rates §5 (5l); Procedure Before Commission §13 (l); Reparation §12 (3c).
Nebraska Bridge Supply & Lbr. Co. v. A. G. S., 128 I. C. C. 94. Advanced Rates §3 (x); Evidence §1 (m); Long and Short Hauls §6¾ (tt); Reparation §6 (3e); Through Routes and Joint Rates §13 (4l), §15 (4u), §20a (4h), §22 (r).
Nebraska Cement Co. v. C. B. & Q. R. R., 113 I. C. C. 729. Blanket Rates §10½ (o); Reasonableness of Rates §7½ (p), §28 (6p).
Nebraska Gas & Electric Co. v. C. B. & Q. R. R., 132 I. C. C. 669. Long and Short Hauls §6⅞ (uu).
Nebraska State Ry. Com. v. A. & W., 113 I. C. C. 467. Differentials §8 (u) (v) (w) (x) (y); Discrimination §3½a (x); Evidence §42¼ (a); Interstate Commerce Commission §1 (h); Procedure Before Commission §10 (3) (f); Through Routes and Joint Rates §13 (z).
Nebraska Tire & Rubber Co. v. B. & O. R. R., 115 I. C. C. 99. Basing Points and Lines §1 (c); Evidence §58 (f), §63 (j); Import Traffic §2 (ff); Local Rates and Combinations (bb) (oo) (pp); Reasonableness of Rates §28 (6y).
Nekoosa-Edwards Paper Co. v. Railroad Commission of Wisconsin, (Wis., 1927) 213 N. W. 633. Switch Tracks and Switching §5 (b).
Nelson v. C., M. & St. P., 126 I. C. C. 713. Reasonableness of Rates §28 (15k); Routing and Misrouting §4½ (g), §7½a (z) (bb); Through Routes and Joint Rates §20a (4g).
Nelson Fuel Co. v. C. & O., 120 I. C. C. 723. Branch Lines §1 (q); Evidence §44¼ (n); Procedure Before Commission §1 (h), §4 (i) (j); Reasonableness of Rates §28 (9x) (11t); Reparation §6 (hh), §8½ (kk) (oo); Through Routes and Joint Rates §16 (f).
Nelson S. S. Co. v. B., A. & P., 109 I. C. C. 529. Rail-and-Water Rates (h) (i); Through Routes and Joint Rates §11 (2) (e); Water Carriers §6 (b) (c).
Neuhoff Packing Co. v. L. & N., 112 I. C. C. 223. Classification §7 (g).
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New England Divisions, 126 I. C. C. 579. Advanced Rates §2½ (o); Canada (ll); Class Rates §2 (6r) (6x); Divisions §1 (h) (i) (m), §3 (k) (o) (p) (q) (r), §9 (r) (s), §10 (c) (d); Evidence §43½a (a); Through Routes and Joint Rates §14 (a).
New England Divisions, 132 I. C. C. 93. Divisions §3 (t).
New England Paper & Pulp Traffic Asso. v. M. C. R. R., 113 I. C. C. 353. Blanket Rates §10 (c);

Differentials §8 (r).
New Jersey Lumbermen's Com. v. A. C. L. R. R., 120 I. C. C. 329. Blanket Rates §10½ (y); Differentials §8 (rr); Evidence §66 (o); Reasonableness of Rates §26½ (gg).
New Mexico Corp. Commission v. A., T. & S. F., 123 I. C. C. 675. Reparation §8½ (ww), §19 (t) (x).
New Orleans Joint Traffic Bureau v. G. M. & N. R. R., 132 I. C. C. 586. Facilities and Privileges §3 (p).
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New York & Pennsylvania Co. v. Davis, Director General of Railroads, 8 Fed. (2d) 662. Foreign Commerce §½ (a), §1 (c); Tariffs §3 (1) (d).
New York & Pennsylvania Co. v. Davis, Director General of Railroads as Agent, 9 Fed. (2d) 911. Canada (3b).
New York Cent. R. Co. v. New York & Pennsylvania, Co., 46 Sup. Ct. 447. State Rates and Regulation (3a) (3b).
New York Cent. R. Co. v. Public Utility Commission of Ohio, (O., 1927) 155 N. E. 862. Reasonableness of Rates §2 (z).
New York Cent. R. Co. v. United States, 13 Fed. (2d) 200. Canals (a) (b).
New York Cent. R. Co. v. Wheeling Can Co., (W. Va., 1925) 130 S. E. 288. Freight Charges (w).
New York Central R. R., Cleveland and Buffalo divisions and the Erie division (Intermittent-induction (automanual) type, with forestalling feature of the General Railway Signal Co.), 129 I. C. C. 483. Safety Appliance Acts (3t).
New York, Chicago & St. Louis R. R. Co., Chicago division (Intermittent-induction type, with forestalling feature of the Union Switch & Signal Co.), 122 I. C. C. 597. Safety Appliance Acts (tt).
N. Y. Federal Reserve Bank v. Am. Ry. Exp. Co., 107 I. C. C. 4. Express Companies §10 (b) (c) (d) (e) (f), §11 (2) (a) (b), §29 (a).
New York Insulated Wire Co. v. N. Y., N. H. & H., 128 I. C. C. 698. Long and Short Hauls §5 (3c) (3d), §12 (2) (i), §16 (i); Routing and Misrouting §1½ (m), §2 (o); Tariffs §9a (3s) (3t) (3u).
New York, N. H. & H. R. Co. v. Salter, (Conn., 1926) 134 Atl. 220. Courts §6 (a), §11 (a); Tariffs §6 (e), §18 (4y); Transportation §11½ (a).
New York, O. & W. Ry. Co. v. United States (Interstate Commerce Commission, Intervener) 14 Fed. (2d) 850. Interstate Commerce Commission §15 (e).
Newark Call Printing & Publishing Co. v. C. R. R. of N. J., 126 I. C. C. 569. Commodity Rates §5 (3z); Discrimination §3½a (3z); Evidence §64 (t); Reasonableness of Rates §28 (15g) (15h), §32½ (3a); Routing and Misrouting §5 (hh).
Newsome Feed & Grain Co. v. C. C. C. & St. L., 104 I. C. C. 269. Reconsignment §6½a (b).
Newsome Feed & Grain Co. v. P. & L. E. R. R., 122 I. C. C. 329. Evidence §47 (m); Reasonableness of Rates §27½ (m); Reparation §8 (f); Routing and Misrouting §7 (ee); Through Routes and Joint Rates §13 (3w).
Newsome Feed & Grain Co. v. Pennsylvania R. R., 132 I. C. C. 743. Facilities and Privileges §15 (4r).
Newspapers in Baggage Cars, 104 I. C. C. 527. Advanced Rates §3 (a), (b); Baggage Car Service (a), (b), (c), (d), (e), (f); Classification §5 (b); Evidence §8 (a), §13 (1) (c), §22 (a) (b); Expedited Service (a) (b); Mails (d) (e) (f).
Newspaper Union v. Director General, 115 I. C. C. 105. Claims §6 (b).
Newsprint and Wallpaper, 126 I. C. C. 166. Adjacent Foreign Country (o); Advanced Rates §17 (ll) (rr); Canada (kk); Long and Short Hauls §2 (a), §2½ (e).
Newsprint Paper from Eastern Canada, 109 I. C. C. 701. Adjacent Foreign Country (f); Advanced Rates §14¾ (i); Canada (c) (d).
Newsprint Paper from Lake Charles, 132 I. C. C. 543. Import Traffic §2 (3q).
Newton Oil Mill v. A. & V. Ry., 132 I. C. C. 33. Through Routes and Joint Rates §13 (5g).
Newton Falls Paper Co. v. R. Co., 128 I. C. C. 563. Class Rates §2 (7k); Classification §17 (4i); Evidence §12 (6n); Import Traffic §2 (3l); Reasonableness of Rates §28 (16y); Words and Phrases (4a).
Nichols Wire, Sheet & Hardware Co. v. A., T. & S. F. Ry., 132 I. C. C. 347. Reparation §12 (yy).
Nitrate of Soda from New Orleans, 104 I. C. C. 761. Absorption of Charges §3 (a); Advanced Rates §5 (½) (a).
Nivision-Weiskopf Co. v. A. & V., 128 I. C. C. 233. Discrimination §4 (n); Switch Tracks and Switching §13 (j) (k).
Nooney & Co. v. P. R. R., 112 I. C. C. 35. Evidence §13 (5) (a); Proportional Rates II (f); Reasonableness of Rates §28 (4l).
Nooney & Co. v. P. R. R., 115 I. C. C. 547. Long and Short Hauls §5 (z); Minimums §7 (r); Reasonableness of Rates §28 (7t).
Nooney & Co. v. Pennsylvania R. R., 132 I. C. C. 405. Floatage (a).
Norcross Marble Co. v. B. & O. R. R., 126 I. C. C. 741. Routing and Misrouting §2 (j) (k), §4 (w) (x) (y), §5½ (w) (x) (y); Words and Phrases (3q) (3r)
Norfolk & W. Ry. Co. v. Williamson Grocery Co., (W. Va., 1927) 138 S. E. 102. Freight Charges (z).
Norfolk Southern R. Co. v. Treeman Supply Corporation, (Va., 1926) 133 S. E. 817. Commodity Rates §2½ (e) (f), §5 (4f); Local Rates and Combinations (4o); Reparation §6 (3a) (3b); Tariffs §11 (m).
North American Cement Corp v. B. & O. R. R., 126 I. C. C. 36. Tariffs §9a (3j), §13a (a).
North American Cement Corp. v. W. M., 129 I. C. C. 90. Distance Rates §3 (5j); Import Traffic §2 (3m); Reasonableness of Rates §26½ (3t), §28 (17q); Routing and Misrouting §5 (ll); Tariffs §9a (4b); Through Routes and Joint Rates §15 (4y), §20a (4t) (4u).
North-American Wholesale Lbr. Asso. v. A. C. L., 120 I. C. C. 665. Embargoes (h).
North Carolina Pine Asso. v. A. C. L., 107 I. C. C. 100. Branch Lines §1 (c) (d), §4 (b) (c); Discrimination §3½a (c); Long and Short Hauls §4 (g), §4a (a); Port-to-Port Rates (a).
North Ontario Packing Co. v. O.-W. R. & Nav. Co., 122 I. C. C. 360. Claims §1 (j); Classifica-

tion §22 (3f); Procedure Before Commission §2 (j); Reasonableness of Rates §28 (12m); Reparation §6 (jj) (nn); Tariffs §18 (4d).
North Packing & Provision Co. v. Director General, 104 I. C. C. 607. Advanced Rates §8½a (a) (c), §9½ (a) (b); Basing Points and Lines §1 (a); Facilities and Privileges §15 (c); Procedure Before Commission §4 (b); Tariffs §7 (e); Words and Phrases (c).
North Packing & Provision Co. v. Director General, 128 I. C. C. 306. Live Stock Shipments (3h); Reparation §7½ (i), §8 (g).
Northeast Mississippi Bureau v. M. & O., 104 I. C. C. 15. Reasonableness of Rates §27½ (a), §28 (c).
Northeast Miss. Traffic Bureau v. M. & O., 109 I. C. C. 246. Long and Short Hauls §4 (l), §6⅞ (d), §13 (b); Reasonableness of Rates §28 (3r).
Northeast Miss Traffic Bureau v. N. O., T. & M., 107 I. C. C. 673. Discrimination §3½a (l).
Northern Pac. Ry. Co. v. Department of Public Works, (Wash., 1925) 240 Pac. 362. State Rates and Regulation (yy).
Northern Pacific Ry. Co., second subdivision of Yellowstone division (Intermittent magnetic- induction type with forestalling feature of Sprague Safety Control & Signal Corp.), 120 I. C. C. 199. Safety Appliance Acts (oo).
Northern Pacific Ry. Co., Yellowstone Division (Intermittent magnetic-induction type with forestalling feature of the Sprague Safety Control & Signal Corp.), 113 I. C. C. 359. Safety Appliance Acts (t).
Northern Potato Traffic Asso. v. B. & O. R. R., 113 I. C. C. 511. Heater Service (a); Protective Service (a) (b) (c).
Northern W. Va. Coal Asso. v. P. R. R., 109 I. C. C. 604. Cars and Car Supply §12 (a) (b), §32½ (a); Discrimination §3½ (d); Evidence §1½ (h), §44¼ (e); Pooling of Traffic (c); Procedure Before Commission §1 (d).
Northrup, King & Co., v. A., T. & S. F., 129 I. C. C. 125. Classification §17 (4p); Differentials §8 (3z); Percentage Rates (mm); Reasonableness of Rates §26½ (3v).
Northwestern Fruit Exchange v. E. R. R., 112 I. C. C. 29. Demurrage §4 (a), §9 (a); Refrigeration §6 (c); Words and Phrases (dd).
Northwestern Fruit Exchange v. G. N. Ry., 128 I. C. C. 538. Facilities and Privileges §18 (ee); Reconsignment §6½a (cc) (dd); Through Routes and Joint Rates §22 (t).
Northwestern Fruit Exchange v. S. L. Ry., 115 I. C. C. 127. Claims §2 (h) (i) (k).
Northwestern Leather Co. Trust v. M. & O., 118 I. C. C. 37. Long and Short Hauls §4 (dd), §5 (ff); Reasonableness of Rates §28 (8l); Reparation §6 (cc).
Northwestern Leather Co. Trust v. M. & O., 122 I. C. C. 517. Reasonableness of Rates §26½ (ss); Reparation §6 (oo), §8½ (tt).
Northwestern Oil Co. v. St. L. S. F. Ry., 112 I. C. C. 488. Canada (f) (j); Equalization of Rates §2 (a); Reasonableness of Rates §28 (5i); Through Routes and Joint Rates §13½ (m).
Norton & Co. v. R. F. & P. Ry., 132 I. C. C. 517. Class Rates §2 (8i).
Nuckolls Packing Co. v. A. T. & S. F. Ry., 113 I. C. C. 229. Blanket Rates §10½ (f); Discrimination §3½a (t); Distance Rates §3 (t); Reduced Rates §4½ (r); Reparation §3½ (a), §7½ (c), §12 (j).

Odell v. St. Louis-San Francisco Ry. Co., (Mo., 1926) 281 S. W. 456. Personal Injuries (z) (aa) (bb) (cc) (dd).
Olhafen-Mondeau Co. v. C. & N. W., 104 I. C. C. 295. Reconsignment §6½a (c); Through Routes and Joint Rates §13½ (b).
Ogden Grain Exchange v. A. & S. Ry., 122 I. C. C. 691. Blanket Rates §10½ (dd); Classification §17 (oo), §22 (3o); Differentials §8 (3c); Discrimination §3½a (3c), §4½ (u); Evidence §13 (1) (hh); Facilities and Privileges §15 (3o); Local Rates and Combinations (3r); Long and Short Hauls §4 (ww); Minimums §7 (jj); Reasonableness of Rates §2 (v), §28 (13c); Through Routes and Joint Rates §11 (2) (u) (v), §13 (4a) (4c), §18 (g).
Ogden Grain Exchange v. A. E. R. R., 126 I. C. C. 255. Blanket Rates §10½ (oo); Discrimination §3½a (3p); Evidence §1½ (bb); Long and Short Hauls §5 (3a), §6¾b (z), §16 (g); Reasonableness of Rates §28 (14o) (14p).
Ogden Grain Exchange v. A. E. R. R., 128 I. C. C. 490. Blanket Rates §10 (j); Differentials §8 (3w); Discrimination §4½ (bb).
Ohio Body & Blower Co. v. A., C. & Y., 104 I. C. C. 19. Cars and Car Supply §8 (a)
Ohio Farm Bureau Federation v. A. & W., 120 I. C. C. 361. Class Rates §2 (5d); Classification §20 (x); Distance Rates §1 (u), §3 (3m); Procedure Before Commission §1a (b); Reasonableness of Rates §28 (10w).
Ohio Farm Bureau Federation v. A. C. & Y. Ry., 129 I. C. C. 689. Live Stock Shipments (3p) (3y); Minimums §7 (ww).
Ohio Farm Bureau Federation v. N. & W. Ry., 120 I. C. C. 305. Facilities and Privileges §2 (a); Stoppage-In-Transit (b) (c) (d).
Ohio Farm Bureau Federation v. N. & W. Ry., 120 I. C. C. 305. Facilities and Privileges §2 (a); Reasonableness of Rates §28 (ee); Reparation §7½ (a); Tariffs §9a (b); Through Routes and Joint Rates §22 (a).
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Seaboard Air Line Ry. Co. v. Trask, (Ga., 1926) 136 S. E. 106. Demurrage §22 (a) (b).
Seaboard Live Stock Traffic Bureau v. A., C. & Y., 115 I. C. C. 687. Claims §5½ (j); Live Stock Shipments (x); Minimums §7 (n) (o); Reparation §7 (v).
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Shreveport-El Dorado Pipe Line Co., Inc., v. Bennett, (Ark., 1927) 290 S. W. 929. Gas and Electric Companies (b); Pipe Lines §1 (b).
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Sinclair Crude Oil Co. v. A., T. & S. F., 126 I. C. C. 73. Classification §17 (3f) (3g); Discrimination §4½ (w); Interstate Commerce Commission §1 (l); Reasonableness of Rates §28 (14m); Reparation §6 (tt) (uu); Switch Tracks and Switching §3 (u), §12 (a) (b).
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Sinclair Refining Co. v. A., T. & S. F. Ry., 123 I. C. C. 537. Long and Short Hauls §6¾b (p); Through Routes and Joint Rates §13 (4c).
Sioux City Chamber of Commerce v. B. & O., 120 I. C. C. 7. Reasonableness of Rates §7½ (v);

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Sioux City Chamber of Commerce v. C. B. & Q. Ry., 120 I. C. C. 71. Evidence §13 (1) (r); Reparation §8½ (ii).
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Sirles v. Am. Ry. Exp. Co., 113 I. C. C. 736. Express Companies §10 (k) (l).
Sisters of Providence of St. Mary's of the Woods v. Lower Vein Coal Co., (Ind., 1926) 154 N. E. 659. Crimes §26½ (a).
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Slate from Virginia Points, 126 I. C. C. 70. Advanced Rates §17 (oo); Proportional Rates II (hh).
Smith v. Philadelphia & R. Ry. Co., (Pa., 1927) 135 Atl. 648. Personal Injuries (b) (c) (d) (e).
Smith & Sons v. B. & M. R. R., 132 I. C. C. 596. Long and Short Hauls §5 (3i), §6¾b (ff), §6⅞ (tt); Routing and Misrouting §5½ (hh).
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South Carolina Produce Asso. v. A. & R., 107 I. C. C. 613. Commodity Rates §5 (i); Differentials §8 (h); Evidence §12 (z) (aa), §30 (a); Reasonableness of Rates §7½ (e) (f) (g); Weights and Weighing §2½ (a) (b), §5 (c).
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Southern Cement Rates, 132 I. C. C. 427. Distance Rates §3 (5e); Evidence §62 (k); Reparation §12 (zz); Through Routes and Joint Rates §13 (5j).
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Southern Class Rate Investigation, 128 I. C. C. 567. Blanket Rates §8 (e), §10 (k); Branch Lines §1 (z), §2 (f); Class Rates §2 (7l); Classification §20 (hh) (ii) (jj) (kk), §24 (mn); Differentials §2½ (b), §8 (3x) (3y); Evidence §5 (b), §11 (qq) (rr); Long and Short Hauls §4½ (d); Through Routes and Joint Rates §13 (4r).

Southern Cotton & Paper Co. v. A. & W. P. Ry., 129 I. C. C. 433. Class Rates §2 (7q); Commodity Rates §5 (5m).
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Southern Cotton Oil Co. v. Atlantic Coast Line R. Co., 17 Fed. (2d) 411. Cars and Car Supply §32⅛ (e).
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Southern Pac. Co. v. Lothrop, 15 Fed. (2d) 486. Hawaii (f) (g); Tariffs §3 (1) (e), §8 (j).
Southern Pac. Co. v. United States, 47 Sup. Ct. 123. Reduced Rates §4 (a) (b) (c).
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Southwell v. Atlantic Coast Line R. Co. (N. C., 1926) 131 S. E. 670. Employer's Liability Act (e).
Southwestern Brick Cases. 107 I. C. C. 681. Discrimination §3 (j); Distance Rates §1 (f); Reasonableness of Rates §26½ (d); Reparation §12 (e); State Rates and Regulation (o).
Southwestern Brick Cases, 113 I. C. C. 169. Distance Rates §1 (l), §3 (q).
Southwestern Horse & Mule Asso. v. A., T. & S. F., 129 I. C. C. 730. Absorption of Charges §1 (a); Live Stock Shipments (3q); Reparation §6 (3q); Stock Yard Companies (a) (b) (c) (d).
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Southwestern Sheet Glass Co. v. St. L.-S. F. Ry., 132 I. C .C. 577. Local Rates and Combinations (5n); Long and Short Hauls §12 (2) (k).
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Standard Oil Co. v. Atlantic Coast Line R. Co., 6 Fed. (2d) 911. Interstate Commerce §½ (d).

Standard Oil Co. v. A. T. & S. F. Ry., 113 I. C. C. 597. Advanced Rates §8½a (h); Classification §24 (e); Evidence §1½ (m); Interstate Commerce Commission §1 (i), §6½a (a); Long and Short Hauls §6¾b (b); Procedure Before Commission §2 (e), §9a (a); Routing and Misrouting §7½a (b); Tank Car Shipments (p); Tariffs §9a (q)
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Standard Oil Co. v. Seaboard Air Line Ry. Co., 6 Fed. (2d) 911. Interstate Commerce §½ (d).
Standard Oil Co. v. T. & P., 118 I. C. C. 627. Distance Rates §3 (3c); Reparation §8½ (v).
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Standard Oil Co. of Ky. v. Atlantic Coast Line R. Co., 13 Fed. (2d) 633. Courts §11 (b), §12 (e) (f) (g); Interstate Commerce §½ (g) (h) (i) (j) (k) (l).
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Standard Pipe Line Co. v. Index-Sulphur Drainage Dist. (Ark., 1927) 293 S. W. 1031. Pipe Lines §1 (c).
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State ex rel Burr, State Railroad Com'rs., v. Seaboard Air Line Ry. Co., (Fla., 1926) 109 So. 656. Interstate Commerce §½ (o) (p) (q) (r), §3 (a).
State of Colorado v. United States, 46 Sup. Ct. 452. Courts §14 (e); Finance Dockets §4 (c) (d), §10 (a); State Rates and Regulation (3c) (3d) (3e).
State of Louisiana v. Franklin & A. Ry. Co., 18 Fed. (2d.) 645. Courts §14 (m) (n); Finance Dockets §1 (c).
State of Louisiana v. Lake Charles & N. R. Co., 18 Fed. (2d.) 645. Courts §14 (m) (n), Finance Dockets §1 (c).
State of Louisiana v. Louisiana Western R. Co., 18 Fed. (2d.) 645. Courts §14 (m) (n); Finance Dockets §1 (c).
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State Wabash Ry. Co. v. Public Service Commission, (Mo., 1924) 267 S. W. 102. Grade Crossings (c) (d).
Staten Island Rapid Transit Ry. Co. v. Public Service Commission of State of New York, 16 Fed. (2d) 313. Electric Lines I (g); State Rates and Regulation (uu) (vv) (ww).
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Sunny Brook Distillery Co. v. A., T. & S. F., 113 I. C. C. 533. Storage §2 (a) (b), §3 (c) (d) (e).
Superior Coal Co. v. Director General, 115 I. C. C. 710. Claims §1½ (r); Demurrage §3½ (c), §17 (f); Embargoes (f); Facilities and Privileges §17 (a); Reparation §19 (o).
Swain v. Terminal R. R. Ass'n. of St. Louis, (Mo., 1927) 291 S. W. 166. Personal Injuries (ii) (jj) (kk) (ll).
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Swift & Co. v. G. T. Ry., 109 I. C. C. 45. Minimums §5 (a).
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Swiftsure Petroleum Co. v. M. P., 107 I. C. C. 637. Emergency Rates (b); Export Rates and Facilities §4 (c), §6 (j); Reasonableness of Rates §32½ (k) (l).
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(u) (v) (w) (x) (y) (z) (aa) (bb) (cc) (dd) (ee) (ff) (gg) (hh) (ii) (jj) (kk) (ll) (mm) (nn) (oo) (pp) (qq) (rr) (ss) (tt) (uu) (vv), §8 (b); Act to Regulate Commerce I (b); Finance Dockets §4 (b), §6 (e); Telephone and Telegraph Companies §3 (a), §6 (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m); Words and Phrases (hh) (ii) (jj) (ll) (mm) (oo) (rr) (ww) (xx) (zz).

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Tennessee Electric Power Co. v. L. & N., 112 I. C. C. 491. Class Rates §2 (gg); Classification §20 (h), §22 (u) (bb); Evidence §13 (1) (f); Long and Short Hauls §4 (q).

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Texas & P. Ry. Co. v. Gulf, C. & S. Ry. Co., 46 Sup. Ct. 263. Courts §14 (d); Finance Dockets §3 (d) (e) (f) (g).

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Thomas Day Co. v. Director General, 112 I. C. C. 749. Released Rates §1½ (d), §4 (a), §5 (c).

Thomas Motor Co. v. A., T. & S. F., 118 I. C. C. 631. Reasonableness of Rates §7½ (u), §28 (9n); Through Routes and Joint Rates §13 (3g)

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Thornton v. United States, 46 Sup. Ct. 585. Crimes §17 (a) (b); Quarantine Regulations (a) (b) (c).

Thornton Claney Lumber Co. v. M. & O. R. R., 118 I. C. C. 25. Long and Short Hauls §6¾a (f) (g); Through Routes and Joint Rates §15 (uu), §20a (oo) (pp).

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Threefoot Bros. & Co. v. G., M. & N., 112 I. C. C. 657. Facilities and Privileges §18 (h); Tariffs §18 (n) (t).

Tidal Osage Oil Co. v. Director General, 115 I. C. C. 237. Claims §1½ (q); Procedure Before Commission §2 (f); Reconsignment §5 (i); Routing and Misrouting §9 (a), §14 (c); Tariffs §18 (mm).

Tidal Western Oil Corp. v. M. K. T. R. R., 132 I. C. C. 681. Commodity Rates §5 (5j); Evidence §11 (xx); Long and Short Hauls §5 (3j); Reasonableness of Rates §27½ (s) (t).

Tilford Hunt Lumber Co. v. H. E. & W. T. Ry., 132 I. C. C. 751. Export Rates and Facilities §6 (ff).

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Tomkins Summer Co. v. C., M. & St. P. Ry., 120 I. C. C. 677. Import Traffic §2 (mm) (pp); Long and Short Hauls §6¾b (m) (n); Tariffs §11 (f) (g); Through Routes and Joint Rates §20a (vv).
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Transcontinental Oil Co. v. B. & O., 118 I. C. C. 518. Blanket Rates §3 (e), §8 (b), §20 (c); Differentials §8 (hh); Equalization of Rates §3 (v); Reasonableness of Rates §26½ (cc), §32½ (qq).
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Tulsa Paper Co. v. Davis, Agent, 16 Fed. (2d) 130. Attorney's Fees (c), (d); Courts §12 (j) (k); Reparation §6 (zz), §17½ (d) (e), §23 (f) (g), §25 (i); Through Routes and Joint Rates §16 (m).
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ness of Rates §27¾ (e); Routing and Misrouting §7 (r) (s); Tariffs §3 (2) (a), §3 (3) (d).
Union Bag & Paper Corp. v. B. & M., 104 I. C. C. 327. Discrimination §3½ (b); Import Traffic §2 (a); Procedure Before Commission §1 (a), §15¼a (a).
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United Iron Works v. Director General, 104 I. C. C. 449. Discrimination §4½ (c), §15 (a); Export Rates and Facilities §4 (a); Facilities and Privileges §15 (b); Reasonableness of Rates §32½ (c).
United Paperboard Co. v. A. & R., 129 I. C. C. 131. Classification §17 (4q); Differentials §8 (4a); Reasonableness of Rates §28 (17t).
United Paperboard Co. v. B. & A. R. R., 126 I. C. C. 751. Class Rates §2 (6s); Classification §17 (3u); Reasonableness of Rates §26½ (3b), §28 (15o).
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United Paperboard Co. v. C. & E. R. R., 120 I. C. C. 27. Commodity Rates §5 (jj); Evidence §8 (e); Reasonableness of Rates §6 (b), §28 (9y).
United Paperboard Co. v. G. & J. Ry., 118 I. C. C. 175. Reparation §8½ (u) (ee).
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United States v. Kinnett, 6 Fed. (2d) 902. Crimes §34 (a) (b) (c).
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United States v. Michigan Portland Cement Co., 46 Sup. Ct. 395. Cars and Car Supply §½ (b), §½a (a); Crimes §34 (e).
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United States v. Northern Pac. Ry. Co., 18 Fed. (2d.) 299. Crimes §7 (b) (c).
United States v. St. Louis, S. F. & T. Ry. Co., 46 Sup. Ct. 182 Freight Charges (ss); Statutes (d).
United States v. Spencer Kellogg & Sons, Inc., 12 Fed. (2d.) 612. Crimes §7 (a).
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United States Finishing Co. v. N. Y., N. H. & H., 107 I. C. C. 412. Reasonableness of Rates §28 (vv) (ww); Through Routes and Joint Rates §13 (h) (i), §13½ (e).
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United States Potters' Asso. v. A., C. & Y., 128 I. C. C. 249. Classification §10 (n) (o), §17 (4e); Evidence §64 (z); Import Traffic §2 (3e); Reasonableness of Rates §32½ (3g).
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Usher Bros. v. A. & V. Ry., 115 I. C. C. 89. Tariffs §9a (s); Through Routes and Joint Rates §15 (ff).
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Utah-Idaho Sugar Co. v. C. R. I. & P. Ry., 118 I. C. C. 256. Blanket Rates §19½ (a); Evidence

§11 (q); Reasonableness of Rates §28 (8y) (8z); Reparation §12 (t).
Utah-Idaho Sugar Co. v. Director General, 115 I. C. C. 707. Advanced Rates §8½a (j) (k), §9½ (g); Local Rates and Combinations (hh); Through Routes and Joint Rates §20a (nn).

Valley City Milling Co. v. C. & O., 104 I. C. C. 634. Long and Short Hauls §6¾ (a); Through Routes and Joint Rates §15 (d) (e) (f), §16 (a).
Valley Paving & Construction Co. v. E. R., 109 I. C. C. 255. Evidence §12 (ee).
Van Dusen & Baumberger Co. v. M. P., 115 I. C. C. 603. Local Rates and Combinations (uu); Tariffs §9a (w) (ff)
Van Dyke Motor Co. v. M. P., 122 I. C. C. 411. Evidence §66 (s); Local Rates and Combinations (3n) (3y); Reparation §12 (hh); Through Routes and Joint Rates §13 (3y) (4b).
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Walters v. Kansas City Southern Ry. Co., (Mo., 1925) 266 S. W. 491. Interstate Commerce §5 (i).
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Western Paper Makers' Chemical Co. v. United States, 46 Sup. Ct. 500. Evidence §1½ (dd); Interstate Commerce Commission §3 (c); Through Routes and Joint Rates §27 (d), §28 (a).
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World Pub. Co. v. Davis, Agent, 16 Fed. (2d) 130. Attorney's Fees (c), (d); Courts §12 (j) (k); Reparation §6 (zz), §17½ (d) (e), §23 (f) (g), §25 (i); Through Routes and Joint Rates §16 (m).
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Wrigley Pharmaceutical Co. v. Cameron, 16 Fed. (2d.) 290. Courts §6½ (a), §12 (l) (m), §14 (a) (b) (c); State Rates and Regulation (rr) (ss) (tt).
Wuille & Co. v. S. P. & S., 123 I. C. C. 190. Long and Short Hauls §4¾ (t); Routing and Misrouting §2 (h), §5 (cc).
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